NOTIFICATION OF THE DECISION FOR THE RENEWAL OF A GARNISHMENT

(sec. 1459 – 1460 of the Judicial Code)

On this day October 1 two thousand and twenty,

At the request of:

1) Mr. **ANATOLE STATI**, residing at 20 Dragomina Street, Chisinau, MD-2008, Moldavia;

2) Mr. **GABRIEL STATI**, residing at 1A Ghioceilor Street, Chisinau, MD-2008, Moldavia;

3) **ASCOM GROUP S.A.,** a company assimilated under foreign law, with its registered office is at 75A Mateevici Street, Chisinau, MD-2009, Moldavia;

4) **TERRA RAF TRANS TRAIDING LTD.,** a company assimilated under foreign law, with its registered office is at 7 Gavino's Passage, GX11 1AA, GIBRALTAR,

Represented by Mr. Stan Brijs, Mr. Sophie Jacmain, Mr. Jean-François Van Drooghenbroeck and Mr. Karen Paridaen, lawyers in Brussels, Terhulpsesteenweg 120, where domicile is elected;

I, the undersigned Stefan SACRE, Court Bailiff with offices at **KOEKELBERG**, Jettelaan, 32,

SERVED a copy of this document on:

1) **THE REPUBLIC OF KAZAKHSTAN**,

a) domiciled at:

MINISTRY OF FOREIGN AFFAIRS
31 Kunayev Street,
010000 Nur-Sultan (Kazakhstan)

WHERE I SERVED MY WRIT AS STATED HEREINAFTER

b) domiciled at

MINISTRY OF FINANCE
11 Pobeda Ave
010000Nur-Sultan (Kazakhstan)

WHERE I SERVED MY WRIT AS STATED HEREINAFTER

c) domiciled at

MINISTRY OF JUSTICE, HOUSE OF MINISTRIES
8 Mangilik El Street
010000 Nur-Sultan (Kazakhstan)

2) NV **THE BANK OF NEW YORK MELLON**, KBO No. 0806.743.159, with corporate headquarters at 1000 BRUSSELS, MONTOYERSTRAAT 46,

Declaring truthfully that:

My original acknowledgement of receipt of copy was not signed;

Given that the writ could not be served in accordance with sec. 32 to 35 of the Judicial Code, I have left a copy at the above-mentioned address at o'clock in accordance with sec. 38(1) of the Judicial Code.

The issuance, delivered in executable form (R.V. 20/1300/B) on a petition forming an integral part of that order by Ms E. DE BREUCKER, judge dealing with attachment matters at the Dutch-language Court of First Instance in Brussels, dated TENTH SEPTEMBER 2020.

This service was carried out for notification purposes, information purposes and for such purposes as are provided by law and without prejudice;

I.

To ensure that the addressees indicated in 1a, 1b and 1c are made aware of this, but given that they are domiciled in the Republic of Kazakhstan and therefore with no place of residence or elected domicile in Belgium that is known to me, I, the undersigned and aforementioned bailiff, have

by virtue of the International Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, concluded at The Hague on 15 November 1965 (approved by the law of 24 January 1970 - Moniteur belge 9 February 1971), which took effect force with regard to the Republic of Kazakhstan on 01/06/2016,

transmitted the following to **each of them**, by registered mail dispatched today from the post office in Brussels,

1) an application duly completed in English, in accordance with the model form annexed to this Convention,
2) two copies of the present writ (and the documents referred to in it) with each copy of the writ being accompanied by
   a) a form, drawn up in English, which reproduces the nature and subject matter of the legal document,

b) a translation in Russian,

to the Central Authority of the Republic of Kazakhstan, specifically

The Department for provision of courts' activity under the Supreme Court of the Republic of Kazakhstan (administrative office of the Supreme Court of the Republic of Kazakhstan), Dinmukhamed Qonayev Street 39, Nur-Sultan 010000, Kazakhstan;

requesting the latter to

1. cause to be served a copy of this writ, abovementioned under 2°, accompanied by the form indicating the nature and subject matter of the legal document and the translation,

THE REPUBLIC OF KAZAKHSTAN,

1/ domiciled at:

MINISTRY OF FOREIGN AFFAIRS
31 Kunayev Street
010000 Nur-Sultan (Kazakhstan)

2/ domiciled at

MINISTRY OF FINANCE
11 Pobeda Ave
010000 Nur-Sultan (Kazakhstan)

3/ domiciled at

MINISTRY OF JUSTICE, HOUSE OF MINISTRIES
8 Mangilik El Street
010000 Nur-Sultan (Kazakhstan)

regarding the forms prescribed by the law of the requested State for the service of documents drawn up in that State and intended for persons residing in that State, specifically IN APPLICATION OF ARTICLE 5, PARAGRAPH 1, SUBPARAGRAPH A OF THE ABOVE-MENTIONED CONVENTION

2° return to me the other copy, accompanied by the declaration provided for in article 6 of this Convention, to the effect that the request has been complied with, indicating the form in which, where and when this took place, and the person to whom the document was issued or, where appropriate, the circumstances preventing the request from being carried out.

I have annexed the receipts for these registered letters and they are attached to the original of this

II.

And given that section 10 of the Convention does not affect the authority of judicial documents to be sent directly by post to persons abroad, unless the State of destination opposes this – which is not the case in this instance - I have also sent a copy of the present writ (and of the documents contained therein), accompanied by a form reproducing the nature and subject matter of the document, and a translation into Russian, in a registered envelope with acknowledgement of receipt, sent to the address of the person concerned, serving my writ at the stipulated post office.

I have also attached the receipts for these registered mails to the original of this writ.

III. To ensure that the addressees indicated in 1a, 1b and 1c are made aware of this, but given that they are domiciled in the Republic of Kazakhstan, I, the undersigned and aforementioned bailiff, **have for each of them and for as many as necessary**, transmitted two copies of my current writ (12 copies in total) together with the documents mentioned in it, to the MINISTER OF FOREIGN AFFAIRS, PROTOCOL SERVICE, SECOND UNIT, Karmelietenstraat 15, 1000 BRUSSELS, by registered post deposited today at the post office, requesting:

A.

- the transmission of a copy to the Served Party, via the Embassy of the Republic of Kazakhstan in Belgium;
- the return of a second copy to me, together with the proof of delivery to the Served Party;

B.

- The transmission of a copy to the Served Party via the Belgian Embassy in the Republic of Kazakhstan;
- The return to me of the second copy together with the proof of delivery to the Served Party;

I have also attached the receipts for these registered mails to the original of this writ.

To ensure that the served party 2 is made aware of this, I left a copy of the present document, together with the documents served, if necessary in a closed envelope in accordance with the provisions of the Law.

Subject to all reservations.

So executed.

Cost: five thousand, five hundred and fifty-eight euros and thirty-eight cents, to be increased if necessary by the costs of the letters (sec. 38 of the Judicial Code) which is 1.21 euro.

Bailiff

Registration fees – Application of section 8bis of the Registration Act Registration fee: 50.00 euro

WE, PHILIPPE, KING OF THE BELGIANS
TO ALL, PRESENT AND TO COME,
HEREBY MAKE KNOWN:

That the Dutch-speaking Court of First Instance Brussels,
Has rendered the following decision
Of which the contents are as follows:

ISSUE:
Delivered to the party
[Signature]

DUTCH-SPEAKING
COURT OF FIRST INSTANCE
BRUSSELS

DECISION

Attachment Proceedings Judge

APPLICATION
FOR THE RENEWAL OF A CONSERVATORY GARNISHMENT
On the basis of section 1459 of the Judicial Code

To the Attachment Court
Dutch-speaking Court of First Instance Brussels

At the request of:

1) Mr. **ANATOLE STATI**, residing at 20 Dragomina Street, Chisinau, MD-2008, Moldavia;

2) Mr. **GABRIEL STATI**, residing at 1A Ghioceilor Street, Chisinau, MD-2008, Moldavia;

3) **ASCOM GROUP S.A.,** a company incorporated under foreign law, whose registered office is at 75A Mateevici Street, Chisinau, MD-2009, Moldavia;

4) **TERRA RAF TRANS TRAIDING LTD.,** a company incorporated under foreign law, whose registered office is at 7 Gavino's Passage, GX11 1AA, GIBRALTAR,

Hereinafter referred to jointly as the "**Statis**" or "**Applicants**";

Represented by Mr. Stan BRIJS (stan.brijs@nautadutilh.com; +32 496 50 73 46), Mr. Sophie JACMAIN, Mr. Jean-François VAN DROOGHENBROECK and Mr. Karen PARIDAEN, lawyers in Brussels, Terhulpsesteenweg 120, where domicile is elected;

TABLE OF CONTENTS

1 GENERAL EXPLANATION AND OBJECT OF THIS APPLICATION

1. This petition for the renewal of a conservatory attachment was lodged by the Statis on the basis of Sections 1458 and 1459 of the Judicial Code. These sections determine that a conservatory attachment is to be applied for three years from the date of the decision authorising the attachment and that a creditor who proves there are reasonable grounds for maintaining it, may be authorised to renew it.

2. By order of 11October 2017 (known under Docket number 17/1185/B), the Statis were authorised by the Dutch-speaking Attachments Division of the Court of First Instance in Brussels to impose precautionary attachment on Kazakhstan's assets in Belgium, including those of the NFRK (the "**Authorisation Decision**"), held by BNYM (exhibit 1)., the Statis subsequently levied this attachment (exhibit 2). This Authorisation Decision was challenged by a third party opposition which was rejected by a decision of 25 May 2018 (subsequently referred to as the "**Confirmatory Decision**") (Exhibit 3).

   As a result of their debtor Kazakhstan's incessant (dilatory) resistance and defiance against every possible enforcement step, the Statis have not yet to date, been able to realise the attached assets to their advantage.

3. The conservatory attachment was converted into an executory attachment on 12 June 2018 following the issuing of the enforceable Confirmation Decision of 25 May 2018, after the exequatur of 11 December 2017 had already been served on 2 January 2018 (**exhibit 15 and exhibit 16**)[1].

   As a result of this conversion into an executory attachment, the conservatory attachment should, in principle, no longer be required today, now that the executory attachment is in force, and is valid for a period of 10 years[2].

   However, given that Kazakhstan, in the opposition proceedings against the executory attachment, is attempting to (unjustifiably) challenge this regular conversion of the conservatory attachment and, in general is systematically quoting all possible, far-fetched

[1] This conversion was carried out on the basis of section 1491 of the Judicial Code: "*The judgment in the case itself shall, where appropriate, in respect of the pronouncements handed down, constitute the enforceable title, the sole notification of which shall cause the conversion of the conservatory attachment into the executory attachment. This provision shall not prevent the suspensive effect of the provisions and the owner's right of recovery in the event of attachment. Where the attachment is the subject of a dispute pending before the Attachment Court at the time of notification of the final decision on the case itself, the conversion of the conservatory attachment into an executory attachment merely involves the service of the decision of the Attachment Court recognising the lawfulness of the attachment*".

[2] In fact, the Judicial Code does not provide for a specific period of validity for executory attachments of movable property. It is generally assumed that the prescription period for personal claims under ordinary law is applicable, in particular 10 years under Section 2262bis of the Civil Code (see E. Dirix (and V. Van Herreweghe)): "in the case of attachments of movable

property, no time-limit is laid down for the period of validity of the order, such that the time-limit under common law applies. Under section 2262a of the Civil Code, this period currently stands at ten years [...]" (E. Dirix, Attachment, 2018, Mechelen, 4th edition, No. 465; V. Van Herreweghe, Notebook on Attachments, Kluwer, 2019, p. 363); See also G. De Leval and F. Georges (eds), Attachments - Annotated Judicial Code Case Law, Brugge, die Keure, 2009, 424; S. Brijs and M. Van Hoecke, "Time-limits in the law governing attachments", in J. Van Doninck and others, Civil Procedural Law, present and future, Intersentia, Antwerp, 2013,170; L. Frankignoul, "Garnishment, Judicial Law. Practical Commentary, Kluwer, 2011, XII.4-33: "*There is no time limit on the validity of a garnishment. The enforcement may last as long as the creditor does not waive its claim and the title remains current*". See also Antwerp, 5 October 1998, P&B, 1999, 240).

(unfounded) arguments, the Statis have decided to request the renewal of the conservatory order, without prejudice and in order to avoid the risk of any future challenge by Kazakhstan with regard to the conservatory garnishment.

4. This application concerns only the renewal of the attachment already authorised. For the sake of clarity, the Statis are not, therefore, applying for further authorisation to levy an attachment on the basis of section 2 quinquies of the Judicial Code[3], given that this is no longer necessary in the context of an extension of an attachment that has already been levied.[4] In this application, the Statis are therefore no longer going into the conditions of section 2 quinquies of the Judicial Code, but only the issue as to whether the general conditions of common law of the conservatory garnishment are still met (i.e. urgency and the existence of a certain, definitive and due claim). In any event, the Authorisation Decision, in which the attachment was authorised and which held that the assets were not immune (and therefore not incapable of being attached) on the basis of section 1412 quinquies of the Judicial Code, has the authority of res judicata.[5] This judgment was confirmed in third-party proceedings in the Confirmation Decision[6] (**exhibits 1 and 3**).

5. Finally, for the purposes of this application and the renewal of the Belgian conservatory attachment, the Statis have limited themselves to the facts and exhibits they deem relevant to this court in the context of the assessment of this renewal. Naturally, the Statis and their advisers are available should this Court require additional documents or information.

FACTUAL BACKGROUND

6. In the interim, as a result of the actions and delaying strategy on Kazakhstan's behalf, who is refusing to abide by the numerous court rulings, this case has been the subject of very extensive proceedings, including at an international level. As stated above, the Statis will confine themselves to the facts relevant in the context of the current application for renewal of the conservatory attachment. The facts of the present case are known to this Court following the third-party proceedings initiated by Kazakhstan against the conservatory attachment (docket number 2017/4281/A), in which the Confirmation Order dismissing the third-party challenge and maintaining the authorisation and the attachment was issued on 25 May 2018 (**exhibit 3**).

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[3] Section [illegible] quinquies of the Judicial Code stipulates the principle of non-attachability of assets of a foreign state, which can be rebutted in three cases ("exceptions").

[4] "*The renewal of a conservatory attachment entails the maintenance of the earlier attachment and its continuation without interruption or discontinuity*". (E. Dirix, Attachment, 2018, Antwerp, APR, 264).

[5]Moreover, the circumstances have also remained unchanged. Cass. 18 December 2017, A W., 2018/19, p. 498; E. Dirix and K. Broeckx, Attachment, APR, Mechelen, 2010, p. 332; A. Fettweis, Civil Procedure Manual, Faculte de droit de Liege,1987, pp. 272- 273.

[6] "*Consequently, this last fifth ground of appeal of KAZAKHSTAN [i.e. that the assets would benefit from immunity from enforcement] must also be dismissed*".

2.1 The Arbitral Awards and the Swedish annulment proceedings

7. Between 1999 and 2003, Anatolie Stati and his son, Gabriel Stati, through Ascom Group S.A. ("**Ascom**") and Terra Raf Trans Traiding ("**Terra Raf**") invested in two Kazakh companies, Kazpolmunay LLP ("**KPM**") and Tolkynneftegaz LLP ("**TNG**") through Ascom Group, for the exploitation of hydrocarbon deposits and the construction of an LPG plant.

8. In 2008 Kazakhstan launched a defamation and intimidation campaign against the Statis in order to obtain their investments at cut-rate prices. When this plan failed, Kazakhstan took over the investments and the LPG plant without compensation, and expropriated the Statis.

9. Following this unlawful expropriation, the Statis initiated arbitration proceedings under the Energy Charter Treaty before the Arbitration Institute of the Stockholm Chamber of Commerce1 ("**SCC**"). They claimed damages of almost USD 2.5 billion in these proceedings,.

10. On 19 December 2013, the Arbitral Tribunal (consisting of three internationally renowned arbitrators) rendered an arbitral award (**exhibit 4**), supplemented on 17 January 2014 (**exhibit 5**) (jointly known as the "**Arbitral Awards**").The arbitral tribunal rejected certain jurisdictional and other defences raised by Kazakhstan and ruled that Kazakhstan had violated its obligation, as laid down in section 10(1) of the Energy Charter Treaty, to treat investors fairly and equitably.[8]

11. The arbitral tribunal ruled that Kazakhstan's wrongful conduct had caused serious damage to the Statis and that Kazakhstan was liable for it. Kazakhstan was ordered to pay a total amount of USD **506,660,597.40** (comprising the sum of USD 497,685,101 and USD 8,975,496.40), plus interest. The Arbitral Tribunal then also ruled that Kazakhstan had to pay 3/4 of the 1,069,470.98 euro of arbitration costs, or **802,103.24 euro**.

12. Kazakhstan sought to procure the annulment of these Arbitral Awards in Sweden (the country of the seat of arbitration).To that end, Kazakhstan had lodged a first application for annulment in the Swedish SVEA Court in 2014, which rejected that application in 2016. Subsequently, Kazakhstan submitted an extraordinary request for annulment to the Swedish Supreme Court, but this request was also rejected in 2017 (**exhibits 6 and 7**).

    Recently, in October 2019 and April 2020 respectively, Kazakhstan filed a further application for annulment in the Swedish SVEA Court and the Swedish Supreme Court. These two applications were (again) rejected by the Swedish Courts by decisions of 9 March 2020 and 18 May 2020 respectively (**exhibits 8 and 9**).

[7]"The Arbitration Institute of the Stockholm Chamber of Commerce
[8]Arbitral Awards, paragraph 1095 (exhibits 4 and 5).

13. As a result of the Swedish rulings, it is now, more than ever, indisputable that the Arbitral Awards are enforceable, final and binding and that there is no possibility of appeal or other recourse against them.

14. Despite the fact that the Arbitral Awards are final, Kazakhstan is still refusing - after more than 7 years - to comply with these Arbitral Awards and to pay the damages it has been ordered to pay. Instead, Kazakhstan is disputing its liability and is introducing numerous, costly and dilatory proceedings against the Statis worldwide. In doing so, Kazakhstan is violating the Arbitral Awards, as well as numerous binding court rulings that have in the interim been handed down in the dispute between the Statis and Kazakhstan, not least those of the Swedish courts up to the highest level.

2.2 Foreign proceedings

15. Faced with Kazakhstan's dilatory attitude, the Statis was forced to initiate exequatur and enforcement proceedings against Kazakhstan following arbitration in various jurisdictions. For example, the Statis have initiated proceedings in England, Sweden, the Netherlands, Luxembourg, the United States, Italy and Belgium.

16. With the exception of England - where the Statis decided to terminate the exequatur procedure early for mainly financial reasons - the Statis have obtained an exequatur for the Arbitral Awards in the following jurisdictions: in the United States (District of Columbia) on 23 March 2019 (this exequatur was confirmed on appeal on 19 April 2019 and by the US Superior Court (District of Columbia) on 15 October 2019), in Italy on 29 January 2018 (this exequatur was confirmed on appeal on 27 February 2019), in Luxembourg on 30 August 2017 (this exequatur was confirmed on appeal on 19 December 2019), in Belgium on 11 December 2017 (this exequatur was confirmed in third-party proceedings at first instance on 20 December 2019) and in the Netherlands on 14 July 2019.

2.3 The Belgian conservatory attachment

17. In Belgium, on 29 September 2017, the Statis lodged an application with this Court (the Dutch-speaking Attachment Court in Brussels, hereinafter referred to as the "**Attachment Court**" for short) for authorisation to levy a conservatory attachment against Kazakhstan, on all the assets of Kazakhstan, including those of the NFRK, held by the BNYM for Kazakhstan in Belgium.

18. The NFRK is a fund that does not have a *separate legal personality* but is part of the State of Kazakhstan. This fund is divided into two parts, a *stabilisation fund* and a *savings fund*. This fund's assets are the exclusive property of the State of Kazakhstan. Kazakhstan has assigned the management of this fund to the National Bank of Kazakhstan ("**NBK**"). This was done on the basis of a private law "Trust Management Agreement"[9] ("**TMA**") concluded between Kazakhstan and NBK and governed by Kazakh law (**exhibit 10**).

[9] *Trust management agreement*

On the basis of this TMA, NBK acts as a kind of "trust manager"[10] of the NFRK. In doing so, NBK did not acquire any ownership rights to the assets of the NFRK. This property is wholly owned by Kazakhstan, which also exercises extensive control and power over NBK and the NFRK's assets.

19. After the conclusion of the TMA with Kazakhstan, NBK outsourced the management of a significant part of the NFRK (i.e. a part of the Savings Fund) to BNYM, as an external administrator. This was done on the basis of a Global Custody Agreement[11] ("**GCA**") (**exhibit 11**). This GCA, formally concluded between NBK and BNYM, is governed by English law and expressly provides that NBK acts under the TMA as administrator of the NFRK on Kazakhstan's *behalf* and *for its benefit*.

20. On 11 October 2017, the attachment was authorised by means of the Authorisation Order (**exhibit 1**).

21. On 13 October 2017, the Authorisation Decision was notified to BNYM and the attachment was levied (**exhibit 2**).

22. In its declaration of third-party attachment 30 October 2017, BNYM wrote that although the GCA had been concluded with NBK, it could not rule out the possibility that Kazakhstan had or would acquire a claim on BNYM and froze some USD 22 billion in securities and cash (exhibit 12).

    To date, BNYM has not deviated from its position in its garnishee declaration.

23. On 20 November 2017, Kazakhstan brought third-party proceedings against the Authorisation Order before the Dutch-speaking Court of First Instance in Brussels. NBK and BNYM intervened voluntarily. Both Kazakhstan and NBK put forward arguments in these proceedings concerning (i) an alleged lack of international jurisdiction (ii) an alleged incompatibility of the attachment with the *lex causae* (English law) of the GCA, (iii) an alleged non-fulfilment of the common law conditions for attachment, (iv) the alleged lack of an object of the attachment (absence of a debt relationship between BNYM and Kazakhstan in relation to the attached assets) and (v) the attached assets' alleged immunity from enforcement.

    The hearing was held on 27 April 2018.

24. In the Confirmatory Decision of 25 May 2018, the Attachment Court dismissed the third party challenge in its entirety and declared all the appeals of Kazakhstan and NBK unfounded (**exhibit 3**). The object of the attachment (USD 22 billion) was reduced to USD 530 million[12].

[10] Trust administrator

[11] Global Custody Agreement

[12] This was done at the invitation of the Statis themselves, who had stated in their brief that they would not object to the sum being limited to the amount of the Arbitral Award (plus interest and costs).

25. On 11 July 2018, Kazakhstan appealed the Confirmation Order in the Brussels Court of Appeal. NBK also lodged an appeal on 12 July 2018. BNYM voluntarily intervened. Those appeal proceedings are currently pending. The parties have exchanged briefs and oral arguments have been fixed for 13 April 2021, 20 April 2021 and 4 May 2021.

2.4 Belgian exequatur obtained for the Arbitral Awards

26. On 13 November 2017, the Statis filed a unilateral request for exequatur in the French-speaking Court of First Instance in Brussels. On 11 December 2017 the court granted exequatur (**exhibit 13**).

27. On 2 February 2018, Kazakhstan filed a third-party challenge in the French-speaking Court of First Instance seeking the annulment of the exequatur. Kazakhstan's main argument was that the Arbitral Awards were allegedly tainted by fraud. This procedure took almost 2 years (and more than a thousand pages of briefs and exhibits were exchanged). A total of 5 hearings took place: on 9 and 10 May 2019 (during which the facts and procedural arguments were presented) and on 13, 14 and 15 November 2019 (for the discussion of the alleged fraud).

28. On 20 December 2019, the French-language Exequatur Court dismissed in its entirety Kazakhstan's third-party challenge, including the alleged fraud arguments, and confirmed the Belgian exequatur for the Arbitral Awards in a reasoned 34-page judgment (**exhibit 14**) (the "**Exequatur judgment**").

29. The exequatur court is the natural court to rule on the title (and the arguments put forward by Kazakhstan and the Statis in this respect), and has therefore already done so (to the disadvantage of Kazakhstan) in a court decision which is provisionally enforceable.

30. On 17 April 2020, Kazakhstan lodged an appeal against the Exequatur judgment[13] and an appeal for annulment on 2 June 2020. These appeals do not have suspensory effect.

2.5 Conversion of the conservatory attachment into an executory attachment

31. On 25 May 2018, the Attachment Court confirmed the validity of the current conservatory attachment (and dismissed the third-party challenge in its entirety) in the Confirmatory Decision, and the Statis had had an enforceable exequatur since December 2017, so on 12 June 2018 they converted the conservatory attachment into an executory attachment (**exhibit 15**).

32. On 27 June 2018, Kazakhstan lodged an objection to this executory attachment with the Attachment Court of the French-speaking Court of First Instance in Brussels. NBK and BNYM voluntarily intervened in this challenge procedure.

[13] The Statis consider this action inadmissible on the basis of the provisions of Part 6 of the Judicial Code which provides that in exequatur proceedings, the Court of First Instance shall decide at first and last instance (Section 1720 §2 and Section 1680 of the Judicial Code).

33. Challenge has suspensory effect on the third-party's attachment obligation to issue a declaration (section 1543 of the Judicial Code). Consequently, as long as that challenge procedure is pending, BNYM cannot and must not dispose of the funds.

34. On 20 August 2019, the French-language Attachment Court allowed the case to proceed. The parties are now exchanging briefs, and the hearing is scheduled for 2 December 2020.

2.6 **After almost three years from the date of the conservatory attachment, the Statis have not yet been able to obtain the handover and distribution of the attached assets.**

35. The current state of affairs in Belgium is that the Statis attached USD 530 million in 2017 under the Authorisation Decision. However, today, almost three years later, the Statis are still engaged in legal proceedings initiated by Kazakhstan and have not yet been able to realise any assets. On the one hand, there is the pending challenge procedure against the executory attachment (which has a suspensory effect) and, on the other hand, the pending appeal against the protective order.

36. In this regard, the Statis emphasize that Kazakhstan is not shying away from the tactics of dilatory manoeuvres and has a clear objective in mind: to stretch all procedures as long as possible and make them as complex as possible (for example, Kazakhstan's latest brief in the opposition to the executory garnishment is no less than 382 pages and in the appeal proceedings no less than 481 pages) as well as to use all possible legal remedies. Similarly, reference can be made to the fact that in the Belgian proceedings, Kazakhstan is demanding that these should be suspended pending other Belgian, but also foreign, proceedings. Kazakhstan, for its part, is attempting to slow down these proceedings (through procedural manoeuvres, alignment of procedural calendars with foreign proceedings, application of section 748(2) of the Judicial Code, systematic exhaustion of all legal remedies, "new" exhibits, etc.). This is creating a vicious circle in which Kazakhstan has been trying to block the Statis for many years, while still presenting themselves as being diligent. The Statis have had to defend themselves time and again against all kinds of litigation by Kazakhstan. As a result, time continues to elapse and it also means that today, almost three years after the attachment, the Statis have not yet been able to complete the seizure.

3. APPLICATION FOR THE RENEWAL OF THE CONSERVATORY ATTACHMENT ON THE BASIS OF SECTION 1459 OF THE JUDICIAL CODE

3.1 Renewal in accordance with section 1459 of the Judicial Code

37. Section 1459 of the Judicial Code provides the following for the renewal of garnishments:

> "*A creditor who proves that there are reasonable grounds for maintaining the attachment may be authorised to renew it. Renewal shall be requested by a reasoned application, submitted to the court competent to authorise the*

attachment by a lawyer or bailiff and signed by them. The application shall be dealt with within the period prescribed in section 1418. The court authorising the renewal shall determine its duration. The period shall begin on the expiry of the period of validity of the renewed attachment. Decisions refusing renewal are final".

38. It follows from this provision that this Court is certified to authorise the renewal of the attachment.

39. Where there are "justifiable reasons", the Attachment Court shall, on the basis of section 1459 of the Judicial Code, allow the requested renewal of a conservatory attachment[14]. Justifiable reasons are deemed to exist if, for example, "*the debt has not been fully discharged and the risk remains*"[15] When assessing the renewal, the Attachment Court will also examine whether there is (still) (i) urgency and (ii) the existence of a certain, fixed and due claim.

40. In accordance with section 1418 of the Judicial Code, the Attachment Court must decide within 8 days of this application's filing.

41. The Statis will demonstrate below that the conditions for a renewal in accordance with section 1459 of the Judicial Code have been (more than ever) satisfied, given that there are certainly justifiable reasons to renew the current conservatory attachment, the first justifiable reason being the fact that Kazakhstan has so far failed to pay and has involved the Statis in various judicial procedures in Belgium (i.e. attachment procedures/exequatur procedure). At the same time, the Statis still have a certain, fixed and due claim, and there is urgency, as explained below. The Statis therefore respectfully request, on the basis of this application, that this Court grant the authorisation to renew this attachment pursuant to section 1459 of the Judicial Code.

3.2 <u>Fixed, certain and due claim</u>

A. Principles

42. Legal doctrine is unanimous that when a creditor has obtained an arbitral award requiring the debtor to pay, the debt is certain, fixed and due[16].
43. Under Belgian law, it is also certain that a *foreign arbitral award* is considered to be an award within the meaning of section 1414 of the Belgian Judicial Code[17]. Such a judgment exempts the creditor from the application for conservatory attachment[18], *even if exequatur has not yet been obtained*, and also confirms *ipso facto* that a fixed, certain and due claim exists.

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[14] E. Dirix, Attachment, 2018, Antwerp, APR, 264.

[15] "the debt has not yet been fully discharged and the risk remains". De Leval, G., "Attachment of immovable property", Rep. not., XIII, Notarial Procedure, Book 2, Brussel, Larcier, 2018, n° 201.

[16] H. Boularbah, "Successfully enforcing an arbitral award", in V. Foncke and B. Kohl, *What counsel in arbitration can do, must do or must not do?,* Bruylant, Brussel, 2015, 103.

[17] V. Van Herreweghe, Notebook on Attachment 2017, Mechelen, Wolters, 2017, 300.

[18]Beslagr. Antwerp 7 December 1979, Rechtspr. Antw. 1978, note by De Leval; E. Dirix, Attachment, APR, 2018, 279.

This is confirmed by E. Dirix19 and G. De Leval[19]: "*It was thus decided that the presentation of a foreign judgment that has not obtained exequatur in Belgium constitutes proof of a claim that is certain, due and of a fixed amount within the meaning of section 1415 of the Judicial Code, without it being necessary to take into account the outcome of the proceedings initiated in the context of the recognition and enforcement of the judgment*"[20]. A judgment - such as an arbitral award - even if it is not provisionally enforceable, notwithstanding a challenge or appeal, constitutes the basis for levying a conservatory attachment [21].

44. In addition, the exequatur court is the trial court, with regards to the assessment of the existence of an enforceable judgment in Belgium ("the exequatur"). This is the only competent court, as confirmed by legal doctrine and jurisprudence:

> *"(...) the Attachment Court may not rule that a claim is certain and definite in order to allow a conservatory attachment, if the trial court has declared this claim unfounded; Cass. 30 September 2016 C.15.0406.N, R W 2017-18, 220: not even regarding incidental disputes that arise in the enforcement dispute; the fact that the Attachment Court constitutes part of the court of first instance does not alter this. A fortiori, it must not undermine what has already been decided here by the trial court. (Cass. 11 May 1998, RW 1998-99, 602 and Arr. Cass. 1998, no. 233). (....) This is undeniably the case as regards conservatory attachments (see also No. 349). A similar response is required in the context of disputes arising in the context of executory attachments. After all, the pronouncement on the enforceable judgment has already been given by the trial court. Furthermore, any other solution would run counter to the nature of these disputes, which require a rapid resolution, and to the principle that implementation cannot in principle be further suspended by ambiguities.*
>
> *Nor does the jurisdiction of the appellate court hearing an appeal against an order of the Attachment Court extend further (Bergen 2 June 1991, JLMB 1992, 1396)"*[22].

B. Application in the instant case

45. **The Arbitral Awards**. At the time of the attachment, the Statis had a claim against their debtor that was certain, due and fixed: the Arbitral Awards (upheld in their entirety by the Swedish SVEA Court and the Supreme Court in the (first) annulment proceedings brought by Kazakhstan in 2016 and 2017) (**exhibits 6 and 7**).

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[19] E. Dirix, Attachment in APR, Mechelen, Kluwer, 2018,456.
[20] G. De Leval, *Treatise on Attachments*, Rechtsfaculteit Luik, 1988, 307; Luik 6 May 1976, *Jur. Liege*, 1976-77.
[21] E. Dirix, Attachment in APR, Mechelen, Kluwer, 2018,277.
[22] E. Dirix, Attachment, APR 2018, pp. 45 - 46.

46. As stated in the factual background, on 25 November 2019 Kazakhstan initiated *second annulment proceedings* against the Arbitral Awards in the SVEA Court based on "*new elements*" relating to alleged fraud allegedly committed by the Statis during the arbitration. That request was rejected by the SVEA Court on 9 March 2020 (**exhibit 8**). A second application for review of 3 April 2020 lodged in the Swedish Appeal Court - where Kazakhstan also produced 'new' exhibits related to the alleged fraud - was dismissed, on 18 May 2020 (**exhibit 9**).

47. As a result of the abovementioned Swedish decisions, the Arbitral Awards are now undeniably final and binding (in all respects) and constitute a certain, fixed and due claim.

48. **The Belgian exequatur**. What's more, the Statis now also have an enforceable title for the Arbitral Awards in Belgium. After the exequatur was first granted on a unilateral application on 11 December 2017, Kazakhstan brought a third-party challenge on 2 February 2018, the main argument being the alleged fraud of the Statis. These exequatur proceedings lasted almost 2 years (and the parties exchanged more than 1,000 pages of briefs). The hearings took place on 9 and 10 May 2019 (the account of the facts), and on 13, 14 and 15 November 2019 (the alleged fraud allegations).

    During the hearings of 13, 14 and 15 November 2019 - all three of which were reserved to deal with Kazakhstan's fraud arguments in detail - Kazakhstan made a lot of noise about so-called "new" "KPMG Correspondence". Kazakhstan insisted during the session that it wanted to present a whole series of "new exhibits" relating to this KPMG correspondence as evidence, which would prove the fraud. The Statis had initially opposed this request (because they saw it as yet another dilatory manoeuvre by Kazakhstan to postpone the case). Ultimately, the Statis finally agreed that Kazakhstan could also present these new exhibits at the November 2019 hearings. These exhibits were then the subject of the *inter partes* proceedings, as explicitly stated in the record of the hearings of 13, 14 and 15 November 2019 (**exhibit 17**):

    > "*the applicant [Kazakhstan] presented in evidence a file of new exhibits with a new list. The Defendants agreed to the said presentation. The Court heard the parties regarding these new exhibits, which were therefore included in the inter partes proceedings that took place during the three hearings. The Claimant shall not request the reopening of the proceedings regarding these new exhibits*"[23].

49. On 20 December 2019, following the hearings and in particular the presentation and discussion of all the exhibits by the parties, the French-language Exequatur Judge rejected Kazakhstan's third party challenge - and thus also the entire fraud argument - in the Exequatur judgment (**exhibit 14**). In doing so, the Exequatur court took the following into consideration, *inter alia*:

---

[23] Free translation: "*the applicant [Kazakhstan] presented a file of new exhibits with a new list as evidence. The Defendants agreed to the said presentation. The Court heard the parties regarding these new exhibits, which were therefore included in the inter parties' proceedings, that took place during the three hearings. The Claimant shall not request the reopening of the*

proceedings regarding these new exhibits. The court heard the parties on these new exhibits, which therefore formed part of the inter partes proceedings that took place during three hearings. The reopening of debates will not be requested by the plaintiff with regard to these new exhibits

"En novembre 2008, le Kazakhstan a réalisé un audit fiscal complet de KPMM et ING pour les années antérieures au 31 décembre 2007"[24] (p.4)

"L'interprétation restrictive des motifs de refus d'exequatur n'empêche pas un contrôle effectif de l'effet d'une sentence étrangère sur l'ordre public international belge. L'effectivité de pareil contrôle implique une appréhension des éléments de fait et de droit afin de vérifier l'adéquation de la solution retenue par l'arbitre avec l'ordre public international belge"[25] (p.23)

"Le Kazakhstan ne rapporte pas la preuve du lien causal déterminant entre le gonflement prétendument fictif des états financiers 2005 et 2007 et le quantum du dommage tel que retenu en équité par le tribunal arbitral"[26] (p.26)

"Il résulte dès développements qui précèdent que le Kazakhstan ne rapporte pas la preuve que les fraudes invoquées ont eu une incidence manifeste et certaine sur le résultat de la sentence, ou, autrement dit, qu'elles en sont « la cause déterminante"[27]

"Par voie de conséquence, the Kazakhstan n'établit pas non plus en quoi les manouvres alléguées de fraude auraient pour effet de rendre la reconnaissance ou l'exécution de la sentence arbitrale contraire à l'ordre public international belge"[28] (p.28)

50. The Exequatur judge considered that there was no "*lien causal déterminant*"[29]between the alleged fraud and the Arbitration Judgments and ruled that the Arbitration Judgments did not violate the Belgian international public order, at which time it completely confirmed the exequatur in the third-party proceedings.

51. On 17 February 2020, Kazakhstan filed an appeal against this Exequatur award[30] and an appeal to the Court of Cassation on 2 June 2020. These procedures do not have a suspensory effect, which is why the Exequatur award is immediately enforceable today.

[24] Free translation: "In November 2008, Kazakhstan carried out a full tax audit of KPMM and ING for the years prior to 31 December 2007"

[25] Free translation: "The restrictive interpretation of the grounds for refusal of exequatur does not prevent effective control of the effect of a foreign award on Belgian international public order. The effectiveness of such control implies an understanding of the elements of fact and of law in order to verify the adequacy of the solution adopted by the arbitrator with Belgian international public order."

[26] Free translation: "Kazakhstan does not provide proof of the decisive causal link between the allegedly fictitious inflation of the 2005 and 2007 financial statements and the quantum of the damage as held in equity by the arbitral tribunal."

[27] Free translation: "It follows from the foregoing developments that Kazakhstan does not provide proof that the fraud invoked had a manifest and certain impact on the outcome of the award, or, in other words, that they are "the decisive cause".

[28] Free translation: "Consequently, Kazakhstan does not establish either how the alleged fraudulent manoeuvres would have the effect of rendering the recognition or enforcement of the arbitral award contrary to Belgian international public order.

[29] Free translation: "decisive causal link."

[30] According to the Statis, this appeal is not admissible in accordance with Part 6 of the Belgian Judicial Code [Ger. W.] (now the court of first instance in "first and final instance" rules that it is in accordance with the relevant articles 1720, §2 and 1680, § 5 Ger.W.)

52. It can be argued that there is a debt claim that is certain, for a fixed amount and due. In light of the above, it is clear that the Statis have a valid and enforceable title, based on no less than two foundations.

1. The Arbitration Judgments (confirmed up to 4 times by the competent courts in Sweden)
2. The (enforceable) Belgian exequatur for these Arbitration Judgments (granted ex part in 2017 and confirmed in third-party proceedings after proceedings in the presence of both parties in 2019 through the Exequatur award, against which the appeal and appeal to the Court of Cassation did not have suspensory effect).

The character of the Statis' title as certain and for a fixed amount thus, cannot be discussed today. Moreover, this character of the Statis' title as certain and for a fixed amount was also already recognized by the attachment judge in the Authorization Decision of 11 October 2017.

The Statis unnecessarily also once again refer to the Confirmation Decision, in which the following is stated:

> ***"The arbitral awards have res judicata effect. The Belgian exequatur judge in the meantime has also declared them to be enforceable. This means that he has not determined that this declaration of enforceability would to be contrary to public order.***
>
> ***The attachment judge may not undermine this decision on the declaration of enforceability, which still exists today.***
>
> ***The arbitral awards must consequently be regarded as "judgments" in the sense of article 1414 Ger. W.. According to this regulation, each award, even though it is not enforceable, notwithstanding challenge or appeal, is considered to be authorization to lay a conservatory attachment for the convictions handed down. Under this assumption, the creditor is not prohibited from requesting prior authorization from the attachment judge, but the existence of a debt claim that is certain can no longer be called into question".***
>
> ***Its [Kazakhstan's] requests for suspension of enforcement and annulment of the arbitral awards before the competent judge assessing the dispute on the merits in Sweden however, have been finally rejected in the meantime, in rulings of 20 September 2017 and 24 October 2017 by the Swedish Supreme Court. Its debt to the STATI parties thus, is indisputably established*** (own highlighting)

53. The Authorization Decision, Confirmation Decision as well as the Exequatur award have res judicata effect and the Statis' title cannot be disputed or put in doubt today, in view of the renewal of the attachment.[31]

54. Decision. The Statis have a debt claim that is certain, for a fixed amount and due, more specifically the Arbitration Judgments, for which they obtained an exequatur on 11 December 2017, completely established in third-party proceedings of 20 December 2019 through the Exequatur award. Your court must therefore determine that this requirement for the renewal of the conservatory attachment between third parties is met in the present case.

[31] E. Dirix, Beslag, APR, Mechelen, 2020, no. 380: A. Fettweis, Manuel de procédure civile. Faculté de droit de Liege, 1987, pp. 272-273

3.3 **Urgency**

A. **Principles**

55. Conservatory attachment under Belgian law is permitted when the debtor's financial situation is endangered based on objective criteria[32]. Hence, there is urgency when the creditor has reasons to fear that the subsequent recovery of their account receivable is endangered or when the debtor is organizing their insolvency.[33] The Court of Cassation confirmed on 23 December 2010[34]: There is urgency within the meaning of the regulation when the creditor has serious grounds to fear that the collection of their debt claim is compromised because it appears from the circumstances that the debtor's solvency is at risk."

56. The fact that the debtor remains completely indifferent and passive with respect to the notice of default and reminder notices – or does not in any way propose to settle – likewise forms urgency[35]. In particular with regard to foreign creditors, the Belgian court rulings traditionally regard the absence of sufficient goods on Belgian territory as a rationale for urgency[36]. The court rulings are also shown to be suppler for the assessment of urgency when the debtor remains abroad, a fortiori the creditor's assets are mainly located abroad, or when it appears that the debtor has already tried to oppose the implementation of the ruling[37].

57. When the conservatory attachment is laid by virtue of a ruling that is immediately enforceable, according to E. Drix, even "no further discussion can be had regarding the urgency"[38]

B. Application in the present case: there is urgency

1) The influence of the existence of an enforceable title (the Exequatur award of 20 December 2019)

58. With the Exequatur award, the French-speaking judge confirmed the exequatur for the Arbitration Judgments in Belgium. This award is immediately enforceable and confirms that the Statis have a debt claim that is certain, for a fixed amount and due **(exhibit 14).**

[32] E. Dirix and K. Broeckx, Beslag, Antwerp, Story Scientia, 2001, 270-271.
[33] Cass. 23 December 2010, JLMB 2012, 872: Brussel 26 October 1971. I. Not. 1972, 238
[34] Cass. 23 December 2010, JLMB 2012.
[35] Beslagr. Turnout 24 December 1987, RW 1989-90. 994: Liege 10 October 1994, Jur Liege 1985. 4.
[36] Antwerp 1 July 1982, RW 1983-84, 2691; Beslagr. Brussel 25 January 1988, VI 1988, 246; Beslagr. Ghent 27 July 1988, IGR 1988, 107; Brussels 29 September 1998, LMB 1999, 435; E. Dirix and K. Broeckx, Beslag, APR, 2010, p. 313.
[37] V. Van Herreweghe, Beslagzakk ..ge, Kluwer, Antwerp, 2018, no. 366, with reference to inter alia Belag. Brussel 12 March 1998, Rev. Nov. B. 1999, 259: Brussels 29 September 1998, JLMB 1999, 435 in Brussels 4 March 2002, www.ipr.be/nl tijdschnitt.html. 2005, 48
[38] E. Dirix, Beslag, APR, Mechelen, 2018, 271

Accordingly, there can no longer be a discussion about any "urgency". Dirix confirms in this regard "When the conservatory attachment is laid by virtue of an award that is immediately enforceable, which is now the rule, no further discussion may be had regarding the urgency (different view: Beslag: Brussel 29 January 1987, RW 1989-1990, 994). If determined otherwise, this would compromise the res judicata effect of the decision[39]. This is confirmed by V. Van Herreweghe in the discussion of the laying of a conservatory attachment, based on an already existing award: "When the already existing award is basically immediately enforceable the urgency is established (through the res judicata effect) (..)"[40]

A fortiori it must be determined in today's matter that as a result of the existence of the enforceable Exequatur award for the Arbitration Judgments in Belgium, any discussion about the existence of urgency in the context of today's conservatory attachment (laid based on the Arbitration Judgments, where an enforceable exequatur exists) is currently no longer appropriate.

59. The Statis unnecessarily still refer to various other elements that demonstrate the existence of urgency in any case in today's matter in titles 2-6 below.

2.) Urgency confirmed in the Authorization Decision and the Confirmation Decision

60. The existence of urgency is confirmed in the Authorization Decision of 2017 **(exhibit 1)** and in the Confirmation Decision of 2018 (**exhibit 3**, p.10):

> *"Thanks to the final rejection of its action for annulment, Kazakhstan continues to be in default of payment of its debt in the STATIS parties. These debts amount to more than USD 500 million by virtue of the first arbitral award and more than EUR 1 million by virtue of the second arbitral award.*
>
> *"In each country where the STATI parties wish to enforce the execution of their titles, KAZAKHSTAN brings opposition proceedings and also maintains these after the Swedish ruling of 24 October 2007. KAZAKHSTAN also disputes and continues to dispute the conservatory attachment rules that affect the STATIS parties in various countries, also after the declaration of enforceability of the arbitral awards. KAZAKHSTAN disregards the arbitral awards and the Swedish ruling of 24 October 2017 that finally rejects its action for annulment.*
>
> *It clearly does not wish to pay its debts to the STATIS parties and tries as much as possible to evade the forced execution and also conservatory measures by constantly contesting once again the validity of the arbitral awards and invoking an immunity from enforcement measures.*

[39] E. Dirix, Beslag, APR, Mechelen, 2018, 271

[40] V. Van Herreweghe, Beslagzakboekje, Kluwer, Antwerp, 2018. no. 386. Van Herreweghe also makes it clear that a foreign arbitration award is considered to be an award within the meaning of 1414 Ger. W.

The execution that the STATIS parties have been seeking since 2014 is manifestly at risk, taking into account the limitations imposed on them by the immunity from enforcement measures. The urgency was and is still already demonstrated".
(own highlighting)

3. Frustration, obstruction and delay of the seizure and execution worldwide by Kazakhstan

61. Already 7 years since its final judgement in 2013, Kazakhstan refuses to comply with the Arbitration Judgments and pay the penalty it is ordered to pay. This was the case even after the Swedish courts have finally and irrevocably confirmed the Arbitration Judgments and the Statis have obtained an exequatur for the Arbitration Judgments in a number of countries (such as Italy, Luxembourg, USA, Belgium and the Netherlands). Kazakhstan's debt today is uncontestably established (as correctly also already established by the attachment judge in the Authorization Decision: "Its [Kazakhstan's] debt to the STATIS parties is thus incontestably established"). By not paying, Kazakhstan today thus (deliberately) fails to recognise the res judicata effect of a number of court decisions and also fails to recognise its obligations under international law and the Energy Charter.

62. As an excuse, Kazakhstan always refers to alleged "fraud" that is to have been committed by the Statis, but this argument can presently no longer be validly invoked. Now this fraud argument is rejected in the Exequatur award of 20 December 2019, which has res judicata effect between the parties (and this same fraud argument also in the other jurisdictions where Kazakhstan invoked the alleged fraud is rejected).

> Moreover, the considerable court costs (EUR 3 million), which the Swedish Courts finally ordered Kazakhstan to pay on 2018, have not yet been paid either (not even funds deposited in the Belgian Security Deposit and Lodgement Pay-Office ["*Deposito en Consignatiekas*"]. This confirms that the purported fund is only a pretext; an order to pay costs that has obtained res judicate effect (which has got nothing to do with fraud) is now also denied by Kazakhstan.
>
> It is clear that Kazakhstan does not wish to indemnify the Statis and for this, deliberately sets aside binding convictions and does everything to thwart and delay the execution with unprecedented resources. That conduct evidently creates urgency and the necessity to take all possible conservatory measures. This was also correctly the opinion of your seat: "It reads: Kazakhstan clearly wishes not to pay its debts to the STATIS parties …" (p.10) Confirmation Decision).

63. Finally, both in Belgium, as well as in foreign procedures, it appears that Kazakhstan does not hesitate to delay everything as long as possible. This too can be considered as a means of obstruction in order once again to put off the obligation to pay.

4) The difficulty to find attachable assets and the proven attempts to remove goods from Belgium

64. The Statis have been able to lay attachment on goods from Kazakhstan in various countries, but not one single one of these attachments have meanwhile led to an effective payment. The Statis fear (even more, realise) that Kazakhstan does everything to transfer goods to other countries (or back to Kazakhstan) in order to make it impossible to block further goods that (1) do not fall under any immunity, and (2) at the same time, remain sufficient in order to cover the substantial account receivable of more than USD 500 million. This point also did not elude your seat. In the Confirmation Decision (…..) "*tries as much as possible to evade the forced execution and also conservatory measures by constantly contesting once again the validity of the arbitral awards and invoking an immunity from enforcement measures"*

65. The Statis' fear is more than founded. It is always based on evidentiary material released in the (parallel) English Part 7 procedure between parties, it appears that the Kazakh parties in the course of September 2017 have tried to remove the NFRK's assets from Belgium with the sole intention to shield these assets from attachment by the Statis. These tactics took place after the Statis had already laid attachment in other countries but not yet in Belgium and appear in writing from the e-mail correspondence between NBK and BNYM, submitted in the pending appeal procedure (see for example **exhibit 18, (a), (b) and (c**). The fact that attempts are being undertaken to remove the attachable assets from Belgium confirms even more the presence of urgency.

5) Costs and time

66. In the ten years since Kazakhstan unlawfully appropriated their complete investment, the Statis have spent an enormous amount of time, money and energy in this matter: initially in the arbitration (3 years), then the first Swedish annulment proceedings (also 3 years). Both have been in favour of the Statis and have ordered Kazakhstan to pay a considerable amount of damages. Since 2016, however, the Statis must conduct procedures all over the world in order to be able to execute the Arbitration Judgments, where they always once again, ran up considerable costs.

67. It is clear that this dispute is not a fair dispute. In contrast to Kazakhstan (an enormous country with rich oil and gas reserves) the Statis do not have inexhaustible financial resources. Inevitably, there will come a point when the third party that finances it pulls the plug, considering the already ever-increasing procedural and lawyers' costs, caused professionally by Kazakhstan. Kazakhstan acts as though this third-party financier would make available "unlimited" resources, but this is far from true. This financial support is evidently not "free of charge" and comes with strict and heavy conditions and can also be stopped. How longer all procedures worldwide will last, (in which it is already extensively concluded and that prevent the Statis' from seizing and executing assets), the better for Kazakhstan and the quicker that moment of exhaustion will come. This factor too, must be mentioned for the assessment of the urgency.

68. That there was and is urgency today is solely but further confirmed by Kazakhstan's continued refusal to pay.

6) Pressure on BNYM

69. Finally, it should not be lost that Kazakhstan and NBK have tried to exert pressure on the third-party attachment BNYM in this matter. The Statis refer, among other things, to the various letters that NBK/Kazakhstan sent to BNYM, immediately after the Authorization Decision, in which they insisted forcefully that BNYM – completely in breach of this Authorization Decision – would unload all assets, even the USD 530 million **(exhibit 19)**. Not to be underestimated either, is the fact that NKB in the Part 7 procedure (filed by Kazakhstan and NBK against the Statis and BNYM in England regarding the Belgian attachment) initially filed a claim for damages against BNYM due to the unlawful blocking of assets. This claim was ultimately withdrawn by NBK but does not alter the fact that incontestably attempts are being undertaken to exert pressure and it is not inconceivable that even more such attempts will be undertaken in the future.

70. **Conclusion**: Urgency existed at the time of the authorization and the attachment; and this is incontestably true more than ever today, considering all of the elements mentioned above.

FOR THESE REASONS,

MAY IT PLEASE THE ATTACHMENT JUDGE IN THE DUTCH-SPEAKING COURT OF FIRST INSTANCE IN BRUSSELS

To grant authorization to the Statis based on article 1459 Belgian Judicial Code [Ger. W.] to renew the attachment of 13 October based on the Authorization Decision of 11 October 2017 (17/1185/B) against Kazakhstan delivered in the hands of BNYM and this for a new period of at least 3 years.

Brussels, 9 September 2019

For applicants

Their advisors

Handwriting [illegible]

Signature [illegible]

Stan Brijs – Sophie Jacmain – Jean-Francois Van Drooghenbroeck – Karen Paridaen

TABLE OF EXHIBITS

1. Authorization Decision dated 11 October 2017;
2. Writ of attachment dated 13 October 2017;
3. Authorization Decision dated 25 May 2018;
4. Arbitral award dated 19 December 2013;
5. Supplementary arbitral award dated 17 January 2014;
6. SVEA Court of Appeal ruling dated 9 December 2016 (English translation and sworn French translation);
7. Swedish Supreme Court ruling dated 24 October 2017 (English translation)
8. SVEA Court of Appeal ruling dated 9 March 2020 (sworn Dutch translation)
9. Swedish Supreme Court ruling dated 18 May 2020 (sworn Dutch translation);
10. The Trust Management Agreement;
11. The Global Custody Agreement;
12. Garnishee's declaration by BNYM dated 30 October 2017;
13. Exequatur decision dated 11 December 2017;
14. The Exequatur award dated 20 December 2019;
15. Writ of implementation of the conservatory attachment dated 12 June 2018;
16. Writ of service of the exequatur decision dated 2 January 2018;
17. Minutes of the hearings in the exequatur procedure dated 13, 14 and 15 November 2019;
18. E-mails concerning attempt to remove assets from Belgium;
19. NBK correspondence in Kazakhstan in connection with release of assets after the Authorization Decision.

Attachment order under third parties

Petitions register no. 20/1300/B

In the case of:	Dr Anatolie STATI Dr Gabriel STATI Company under foreign law ASCOM GROUP SA Company under foreign law TERRA RAF TRANS TRAIDING Ltd
Versus:	The Republic of KAZAKHSTAN
Counsel:	Mr Stan Brijs, Ms Sophie Jacmain, Mr Jean-Francois Van Drooghenbroek and Ms Karen Paridaen

Decision

Ms E. DE BREUKER, attachment judge in the Dutch-Speaking Court of First Instance in Brussels, represented by Mr T VERSTRAETE, deputy registrar.

Having regard to articles 4 and 9 of the Belgian Law on the Use of Languages in Legal Matters [*wet op het gebriuk der talen in gerechtszaken*] of 15 June 1935 and articles 1413 et seqq. of the Belgian Judicial Code [*gerechtlijke Wetboek*];

Having regard to the petition attached hereto;

Having regard to the decision handed down by the attachment judge here on 11 October 2017;

Having regard to article 1459 of the Belgian Judicial Code;

The petitioning party demonstrates good cause for upholding the attachment, in particular including the still pending proceedings concerning:

- The exequatur award as a result of the appeal and the appeal to the Court of Cassation by the party whose assets have been attached;
- The conversion of the conservatory attachment into an executory attachment, against which the party whose assets have been attached has lodged an objection;

Declares the petition to be well-founded as follows:

ACCORDINGLY,

Renews the attachment order by third parties permitted to the requesting party or parties by decision of 11 October 2017 of claims and items relating to the "***savings funds***" in the hands of:

- The public limited company THE BANK OF NEW YORK MELLON, with registered office in 1000 Brussels, Montoyerstraat 46, entered in the Central Business Registration Databank under number 806.743.159

to the debit of:

- the REPUBLIC OF KAZAKHSTAN, established in Astana, Kazakhstan, with seat inter alia at the following addresses:
    - Ministry of FOREIGN AFFAIRS

31 Kunayev Street
010000 Astana (Kazakhstan)

- Ministry of FINANCE
  11 Pobeda Ave
  010000 Astana (Kazakhstan)

- Ministry of JUSTICE, HOUSE OF MINISTERS
  8 Mangilik El Street
  010000 Astana (Kazakhstan)

including the NATIONAL FUND OF THE REPUBLIC OF KAZAKHSTAN, with seat in Astana, Kazakhstan,

to the value of:

in principal sum, interest and costs: USD 515,822,966.35
the costs: € 802,103.24

States that the renewal of the conservatory attachment applies for a period of 3 years, beginning upon the expiry of the period of validity of the attachment that is being renewed.

Orders the petitioners to pay the register fees of € 165, divided as follows:

to the debit of Dr Anatolie STATI:	€ 41.25
to the debit of Dr Gabriel STATI:	€ 41.25
to the debit of the company ASCOME GROUP SA:	€ 41.25
to the debit of the company TERRA RAF TRANS TRAIDING Ltd.:	€ 41.25

Issued in the court chamber at the Law Courts - Montesquieu annex – in Brussels on 10 September 2020

Signature [illegible]	Signature [illegible]
T. VERSTRAETE	E. DE BREUKER

We therefore, now ordain and declare that all assigned bailiffs shall implement this award, this decision.

That our Attorneys General and Public Prosecutors at the Dutch-Speaking Courts of First Instance, shall ensure compliance with it and that all Commanders and Officers of the state authority shall offer a strong hand when this is legally required of them.

In witness whereof, this award, this decision, is signed and sealed with the Court's seal.

Certified copy.

STAMP: [DUTCH-SPEAKING COURT OF FIRST INSTANCE BRUSSELS]

For the senior registrar

The registrar

Signature [illegible]

T. VERSTRAETE

Assigned registrar

This copy is exempted from court fees in application of article 280-9° of the Belgian Registration Duties Code [*wetboek der Registratie-, Hypotheek-, en Griffierechten*].

DUTCH-SPEAKING COURT OF FIRST INSTANCE

Date: 15 September 2020

Paid fees: EUR 0

The Registrar
Signature [illegible]

FOR IDENTICAL COPY Signature [illegible]

THE COURT REGISTRAR