

**FIRST SUBMISSIONS ON THE 'MERITS' OF THE APPEAL**

**FOR** :The **Republic of Kazakhstan**, represented by the Minister of Justice, in the Ministry of Justice, located at 010000 Astana (Kazakhstan), Left Bank, Mangilik El Street 8, House of Ministries, 13,

*Appellant and respondent on cross-appeal*

Hereinafter, the "**Republic of Kazakhstan**" or the "**RoK**";

with Arnaud NUYTS, Michaël HOUBBEN and Julien DEGROOFF, lawyers, in 1000 Brussels, Boulevard de l'Empereur 3 ([a.nuyts@liedekerke.com](mailto:a.nuyts@liedekerke.com); Tel : + 32 2 551 14 72; Fax: +32 2 551 14 54).

**AGAINST:** **1. Mr. Anatolie Stati**, entrepreneur, domiciled in MD-2008\Moldova (Republic), 20 Dragomirna Street, Chisinau,

**2. Mr. Gabriel Stati**, entrepreneur, domiciled in MD-2008\Moldavia (Republic), 1A Ghiocelilor Street, Chisinau,

**3. Ascom Group SA ("Ascom")**, with its registered office in MD- 2009\Moldova (Republic), 75A Mateevici Street, Chisinau,

**4. Terra Raf Trans Traiding Ltd ("Terra Raf")**, whose registered office is at GI-13/1 Line Wall Road, Gibraltar,

having elected domicile at the office of their judicial officer, Mr Marc Sacré, located at 1081 Koekelberg, avenue de Jette 32, in their writ of service of 2 January 2018 of the Exequatur Order issued;

*Respondents and appellants on cross-appeal*

hereinafter referred to as "**Stati**";

advised by Stan BRIJS, Sophie JACMAIN and Jean-François VAN DROOGHENBROECK, lawyers, in 1000 Brussels, Chaussée de la Hulpe 120.

Hereinafter referred to individually as a "**Party**" or together as the "**Parties**".

Having regard to the decision of the Court of First Instance of Brussels of 20

December 2019; Having regard to the appeal of the RoK of 17 February 2020;

Having regard to the Stati's motion under Article 1066 of the Judicial Code of 29 April 2020;

Having regard to the introductory hearing before Your Court on 5 May 2020;

Having regard to the second introductory hearing before Your Court on 16 June 2020, during which the Parties were heard on the judicial status of the 1st plea (1<sup>st</sup> appeal complaint raised by the RoK) and on the motion of 29 April 2020 of the Stati ;

Having regard to the minutes of the public hearing of 16 June 2020 setting out the timetable for the preparation of the 1<sup>st</sup> plea (1<sup>st</sup> appeal grievance raised by the RoK) pursuant to Article 747 of the Judicial Code;

Having regard to Stati's first submissions of 1 July 2020 on the first grievance;

Having regard to RoK's first submissions of 3 August 2020 on the first

grievance; Having regard to Stati's summary submissions of 20 August 2020

on the first grievance;

Having regard to the summary conclusions of the RoK on the first grievance of 7

September 2020; Having regard to the judgment of Your Court of 17 November

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## I. SUMMARY OF THE DISPUTE AND STRUCTURE OF THE CONCLUSIONS

### A. Summary of the dispute

1. As your Court noted in its first judgment of 17 November 2020, the dispute concerns a third-party objection to an exequatur order issued on 11 December 2017 by the French-speaking Court of First Instance of Brussels granting exequatur of two arbitral awards made (respectively) on 19 December 2013 and 17 January 2014, the latter being an amending award (together, the "**Award**").
2. The Award was made by an arbitral tribunal ("**Arbitral Tribunal**") sitting in Stockholm, Sweden, in investment arbitration proceedings commenced under the *Energy Charter Treaty* ("**ECT**" and "**ECT Arbitration**"). Mr Anatolie Stati and his son Gabriel Stati, together with two companies they control, Ascom based in Moldova and Terra Raf based in Gibraltar ("**the Stati**"), claimed compensation from the  
  
In the case of the "damage" they allegedly suffered as a result of a breach by the RoK of the so-called "fair and equitable treatment" clause of the ECT.
3. The Stati's alleged investment ("**Kazakh Project**") was a puzzle that the RoK and the Arbitral Tribunal could not put together because of the Stati's actions before and during the arbitration. Throughout the arbitration proceedings, the Stati concealed essential pieces of this puzzle, produced false ones and filled in the remaining gaps with lies. In the end, the Arbitral Tribunal was presented with a picture that did not correspond to reality: a picture in which the Stati's audited financial statements accurately reflected the financial situation of their  
  
"The Stati had not siphoned off hundreds of millions of dollars from their Kazakh companies, Kazpolmunay LLP ("**KPM**") and Tolkyneftegaz LLP ("**TNG**"); the Stati had invested nearly USD 250 million in the construction of an LPG plant whose main supplier, Perkwood, was an independent company; where the liquidity crisis of their Kazakh companies was not caused by the Stati but by a "harassment campaign" by the RoK; where the Stati were forced to take out a loan on "horrible terms" to refinance their Kazakh companies via the "Laren Transaction".
4. As RoK did not know the real pieces of the puzzle, it was not able, in a procedure guaranteeing respect for the rights of the defence, to put forward its contradiction and correct the picture presented by the Stati in due course, i.e. during the arbitration. The Tribunal therefore rendered its Award on the basis of this truncated image. On this basis, it concluded that the RoK had violated the "fair and equitable treatment" clause and ordered it to compensate the Stati in the amount of USD 497,685,101, plus interest and costs, i.e. a total of approximately USD 530 million, for the "damage" the Stati claimed to have suffered for their  
  
This is the only way to ensure that the "investment" policy is implemented because of the violation of the ECT.

5. However, this image was later proven to be completely wrong.
6. Since the Award was rendered, RoK has gradually uncovered the real pieces of the puzzle, and has been working to put it together, each time encountering the Stati's efforts to prevent it. The puzzle may not be complete to date, but the evidence now available reveals a completely different picture from that given by Stati to the Arbitral Tribunal. The current picture is one of a reality where the Stati falsified their financial statements, deceived their auditor KPMG for years; illegally diverted hundreds of millions of dollars from their Kazakh Project through an opaque network of companies specifically set up for this purpose, while hiding these diversions in their financial statements; artificially inflated the construction costs of their LPG plant by tens of millions of dollars, notably through the main "supplier", Perkwood, which was in reality a company linked to the Stati; deliberately plunged their Kazakh companies into financial disaster after looting them; tried to sell their Kazakh companies by misleading potential buyers under the "Zenith Project"; arranged the so-called "horrible terms" of the Laren Transaction themselves to make a profit at the expense of their Kazakh companies, which they hoped to get rid of quickly; after failing to sell their Kazakh companies, decided to file an arbitration against the RoK accusing it of sabotaging their "investment"; and misled the RoK and the Arbitral Tribunal.

Independent experts have confirmed in several concordant reports that the latter image is the true one.

7. While RoK worked to put the pieces together, Stati continued to misrepresent their alleged investment to the courts and tribunals reviewing the award. This was particularly the case in Sweden, where the Stati claimed that KPMG was fully aware of their actions. On this still distorted basis, the Swedish courts rejected RdK's application to set aside the Award in December 2016.
8. Stati's strategy has not always worked. In June 2017, the High Court in London ruled that there was *"sufficient prima facie evidence that the Award was obtained by fraud"* (**Exhibit 5.8**, §92). It ordered a full trial on the merits of the fraud, which was to take place in November 2018 and determine what the Stati puzzle really looked like.
9. In order to escape this trial, which would have exposed the true terms of their "investment", the Stati suddenly filed four new exequatur proceedings in other countries immediately after the London High Court judgment: on 24 August 2017 in Luxembourg, on 26 September 2017 in the Netherlands, on 13 November 2017 in Belgium and on 11 December 2017 in Italy. After these four proceedings were initiated, the Stati abandoned the exequatur proceedings in England in February 2018.

The reason for the Stati's flight is obvious: they did not want to let the English judges put the pieces of the puzzle together in a trial where the Stati would have had to appear in person and answer questions from the courts, they did not want their deceptions to be exposed. This is not a guess; it is the conclusion of the English courts themselves. In May 2018, the High Court in London concluded that "*the real reason for the notice of discontinuance is that the Stati do not want to take the risk that the trial will result in findings against them and in favour of the State*"<sup>1</sup> (**Exhibit 5.16**, §25). In July 2019, the High Court in London, which was to rule on the allocation of the costs of the exequatur proceedings abandoned by the Stati (by ordering the Stati to pay those costs), concluded that: '*clearly the Stati decided - in line with their decision to withdraw - that the risk of going to trial with witness statements on which there might be cross-examination was not a risk worth taking*'<sup>2</sup> (**Exhibit 5.22**, §20).

10. Since then, Stati has continued to misrepresent its alleged investment in all other proceedings, including before the Italian, Dutch, Luxembourg and Belgian courts.
11. In August 2019, KPMG confirmed that it had been misled. It withdrew all audit reports relating to Stati's alleged investments in Kazakhstan. A range of other evidence, starting with the account statements of several Stati companies, also clarified the extent of Stati's embezzlement and fraud.

Yet, against all odds, the Stati continue to serve up a false image of their alleged investment to Your Court. Their strategy now is to make the dispute as complex as possible, using implausible and contradictory explanations, in an attempt to prevent Your Court from understanding the puzzle. While purposely trying to muddy the waters by making the debate more complex, the Stati are quick to assert that the exequatur judge cannot examine all these issues because, in their view, "*the exequatur procedure must be considered a mere formality*" with "*limited control*" (Stati's Conclusions of 26 February 2021, §222).

12. This strategy of avoidance by the Stati can no longer be allowed to prosper. If the question of the impact of the Stati's dishonest manoeuvres on the Award is now before Your Court, it is precisely because the Stati prevented this issue from being discussed during the arbitration.

In the light of the documents in the file, your Court will necessarily find that the explanations of Stati do not hold water. It will find that the RoK demonstrates, with supporting documents, that there is no

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<sup>1</sup> Free translation of : "*I am however prepared to hold that the real reason for the notice of discontinuance is that the Statis do not wish to take the risk that the trial may lead to findings against them and in favour of the State.*"

<sup>2</sup> Free translation of : "*in all probabilities, the Stati has decided - consistently with their decision to discontinue - that the risk of proceeding to trial with witness statements upon which there could be cross-examination was not a risk that was worth taking.*"



There was no debate on the actions and deceptions of the Stati during the arbitration proceedings and the Arbitral Tribunal was deceived.

13. In order to assess the practical impact that the evidence now available would have had on the conduct of the ECT Arbitration and on the Award itself, the RoK sought an independent expert opinion from Professor Bernard Hanotiau. Professor Hanotiau has taught arbitration law for many years at the Catholic University of Leuven. He is one of the most renowned specialists in Belgium and in the world in the field of arbitration, in particular investment arbitration. He has served as an arbitrator, often as chairman of the arbitral tribunal, in over 600 arbitrations, including 67 investment arbitrations. After having examined the elements which are the subject of the debate between the Parties before Your Court, including the elements put forward by the Stati summarised in their conclusions of 26 February 2021, Professor Hanotiau concludes his in-depth analysis, to which the RoK will return regularly in these conclusions, as follows

*"In the present case, had the new evidence discovered since the notification of the Award been known at the time of the arbitration proceedings, both Kazakhstan and the Arbitral Tribunal would have been faced with a dispute of a totally different nature and content. The new documents and evidence would have had a fundamental impact on the arbitral proceedings and the Award.*

*Firstly, there would have been a genuine adversarial debate on these new documents and evidence. Kazakhstan would have confronted the Stati witnesses and would have been able to present other evidence themselves. FTI, the Stati parties' experts responsible for assessing the damage claimed by the Stati parties, would most likely have withdrawn to protect their reputation, or alternatively, they would have necessarily and fundamentally changed their reports. The information available to the Kazakhstan experts would also have led them to draw up a completely different report on the assessment of the damage.*

*The new documents and evidence would therefore have had a fundamental impact on the evaluation of the evidence in general. The Arbitral Tribunal would have given no credibility, or at most little weight, to the erroneous or falsified testimonies, financial statements, declarations and other documents produced by the Stati Consortium.*

*As a result, it is certain that the content of the Award and the Arbitral Tribunal's conclusions on jurisdiction, liability, causation and quantum would have been totally different" (Exhibit 12.23, §§154-157).*

## **B. Structure of the conclusions**

14. These conclusions are structured as follows.
15. It will start by explaining two fundamental concepts that are at the heart of this dispute: the concept of audited financial statements, and the fundamental distinction between an independent company and an affiliated company (**Title II**).

16. The procedural background and facts of the dispute will then be summarised (**Section III**). It will be shown, by reference to the documents in the file, that the Stati systematically committed deceptions before, during and after the ECT Arbitration, and that these deceptions continue even before Your Court.
17. After having summarised the claims of the parties (**Section IV**), the four grounds for refusing the exequatur of the Arbitral Award will be set out (**Section V**). It will be shown that, if the documents available today had been known at the time, they would have been the subject of an **adversarial debate** and would have had a **fundamental** impact on the whole course of the arbitration proceedings and on the Award itself.

By its judgment of 17 November 2020, Your Court decided that, as long as the arbitration started before <sup>1</sup> September 2013, the applicable rules are the former provisions of Part VI of the Judicial Code as they were in force before the reform introduced by the law of 24 June 2013. It will be shown that under these former provisions of the Judicial Code, the exequatur of the Arbitral Award must be refused on four grounds:

- 17.1. **First plea:** the recognition and enforcement of the award is contrary to public policy (article 1723, 2°, old, of the Judicial Code) and/or the RoK was not given the opportunity to assert its rights and means on the evidence now available (article 1723, 3° *juncto* 1704, 2°, g, old, of the Judicial Code)
  - 17.2. **Second plea:** documents and evidence were discovered which would have had a decisive influence on the sentence and which had been withheld by the Stati (articles 1723, 3° *juncto* 1704, 3°, c, former Judicial Code).
  - 17.3. **Third plea:** the Arbitral Award was obtained by fraud (Articles 1723, 3° *juncto* 1704, 3°, a, former Judicial Code).
  - 17.4. **Fourth plea:** the Arbitral Award is based on evidence that has been found to be false (Articles 1723, 3° *juncto* 1704, 3°, b, former Judicial Code).
18. The three grounds of non-admissibility raised by the Stati (**Title VI**) will then be answered. By these, the Stati claim in substance that Your Court could not even consider the above pleas for refusal of enforceability because, allegedly, these pleas **(i)** would amount to a retrial of the quantum of damages awarded to them by the Arbitral Tribunal, **(ii)** would have been set aside by the Swedish courts whose decisions would be binding on Your Court, and **(iii)** would have had to be invoked before the Arbitral Tribunal and therefore could no longer be invoked today.  
  
As will be shown, each of these pleas in law must be rejected: **(i)** the pleas for refusal of enforceability put forward are in no way intended to reopen the debate on quantum which took place before the Court of First Instance

the arbitral tribunal, **(ii)** the Belgian exequatur judge must rule on the conditions of Belgian law for the recognition of a judgment in Belgium, and is in no way bound by a decision rendered by a foreign court, and **(iii)** the grounds for refusing exequatur could by definition not have been invoked during the arbitration proceedings, since they are based on documents and information that the Stati voluntarily concealed during those proceedings.

19. In the appeal filed on 17 February 2020, the RoK had put forward an additional plea for refusal of enforceability concerning the irregularity of the arbitral proceedings. This plea concerned more specifically the composition of the arbitral tribunal. While the Stati were granted the right to appoint one of the three arbitrators composing the arbitral tribunal, the RoK was deprived of this right. This irregularity stems from the fact that the Stockholm Chamber of Commerce hastily proceeded, at the request of the Stati, to appoint a "default arbitrator", even though the request for appointment had not yet been received by Kazakhstan<sup>3</sup>. Once informed, the RoK requested the right to appoint its arbitrator, but was denied (**Exhibit 2.14**).

After careful consideration, the RoK has decided not to pursue this ground before your Court. This decision is not related to a change in the RoK's position on the intrinsic merits of this plea. The RoK rightly considers that it has been deprived of an absolutely fundamental right in any investment arbitration proceedings, namely the right of the sovereign state to participate in the process of constitution of the arbitral tribunal and to appoint its own arbitrator on an equal footing with the investor<sup>4</sup>.

However, in the present case, both the arbitral proceedings and the resulting Award were affected by the Stati's fraudulent manoeuvres. The identity of the arbitrators would not have made any difference: whether it was the arbitrator appointed by default or the arbitrator that RoK would have appointed in accordance with the applicable rules, it would have been deceived by the Stati. The RoK therefore decided to focus its efforts on demonstrating the Stati's manoeuvres and their impact on the arbitration proceedings and the Award. The plea concerning the irregularity of the composition of the arbitral tribunal will therefore not be developed in the context of these submissions, and is not included in the operative part.

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<sup>3</sup> The haste with which this appointment was made is obvious. On 26 July 2010 Stati filed the arbitration application with the Stockholm Chamber of Commerce ("SCC") (**Exhibit 2.2**). On 11 August 2010, this request was received by a department of the RoK (**Exhibit 2.4**). On 13 September 2010, the Stati requested the appointment of an arbitrator by default. This request did not reach Kazakhstan until 23 September 2010 (**Exhibit 2.8**). In the meantime, on 15 September 2010, the CCS had **already** appointed an arbitrator by default in the person of Mr Lebedev (**Exhibit 2.7**).

<sup>4</sup> As explained by D. Bishop and L. Reed in the seminal treatise on the subject, this right is one of the most decisive in the arbitral process: "*In the usual scenario of a three-arbitrator panel, in which each party nominates an arbitrator and the party-appointed arbitrators then select the presiding arbitrator, the selection by each party of 'its' arbitrator is perhaps the most decisive step in the arbitration. The ability to appoint one of the decision-makers is a defining aspect of the arbitration system and is a powerful tool when properly used by a party*" (D. BISHOP and L. REED, *Practical Guidelines for Interviewing, Selecting and Challenging Party-Appointed Arbitrators in International Commercial Arbitration*, Kluwer Law International, 1998, Volume 14, No. 4, p. 395).

## II. PREAMBLE: THE TWO KEY CONCEPTS OF LITIGATION

20. First of all, it is necessary to define the contours of two key investment concepts, which are at the heart of the present dispute and which are necessary for a proper understanding of the seriousness of Stati's actions: the notion of "audited financial statements" (A) and the fundamental distinction between "related companies" and "independent companies" (B)

### A. Audited financial statements

21. When a company raises funds on the financial markets, it is required to prepare its financial statements in accordance with accounting standards (1). This basic requirement is accompanied by a requirement that the financial statements be audited by an independent firm (2). Stati raised funds on the capital markets to finance their Kazakh project and were contractually obliged to provide their investors with audited financial statements (3).

#### 1. Preparation of financial statements by the company

22. The financial statements of a company are primarily intended to give third parties (public authorities, lenders, investors, other creditors, etc.) a true and fair view of the company's financial position. When several companies are related to each other, they are usually required to file consolidated financial statements which then reflect the financial position of the whole group<sup>5</sup>.
23. When a company raises funds on the financial markets, it is legally<sup>6</sup> and/or contractually obliged to prepare its financial statements in accordance with accounting standards that are applied worldwide:
- 23.1. **IAS:** Between 1973 and 2001, the *International Accounting Standards Committee (IASC)* was responsible for issuing *International Accounting Standards (IAS)* in order to harmonise accounting standards worldwide.
- 23.2. **IFRS:** In 2001, the IASC gave way to the *International Accounting Standards Board (IASB)*, which is responsible for setting *International Financial Reporting Standards (IFRS)*.
- "**IFRS**). IFRS succeeded IAS but did not replace them<sup>7</sup>.
24. In practice, IAS and IFRS provide a framework for how a company prepares its financial statements.

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<sup>5</sup> See for example Article 1.24, §6 of the Companies Code: "*In the case of a company which is affiliated with one or more other companies, as referred to in Article 1:20, the turnover and balance sheet total criteria referred to in paragraph 1 shall be determined on a consolidated basis.*"

<sup>6</sup> This is the case, for example, for all publicly traded companies that are governed by the national law of a Member State of the European Union, in accordance with Article 4 of Regulation 1606/2002/EC of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

<sup>7</sup> See recital 7 of Regulation 1606/2002/EC of 19 July 2002.

## 2.audit of the financial statements by an independent auditor

25. In the audit of financial statements by an independent auditor, the auditor verifies whether the financial statements prepared by the company give a **true and fair view** of the company's financial position<sup>8</sup>. For this reason, the auditor must be external and independent of the audited company<sup>9</sup>.
26. Audit operations are also subject to international standards that are generally applied by independent auditors, in particular the International Standards *on Auditing (ISAs)* developed by the International *Auditing and Assurance Standards Board*, a body of the *International Federation of Accountants*.
27. The ISAs provide guidance on how the auditor reviews the financial statements prepared by the audited company.
28. According to ISA 200, the auditor's primary role is to verify that the financial statements are free from *material misstatements* and to issue a report containing his or her observations (**Exhibit 11.1**, §11).
29. ISA 450 defines the technical term 'misstatements' as 'a *difference between the amount, classification, presentation or disclosure in the financial statements of an item and the amount, classification, presentation or disclosure required for that item by the applicable financial reporting framework*' and states that such misstatements 'may result from **error or fraud**' (**Exhibit 11.4**, §4) (RoK emphasises).
30. According to ISA 240, "*the distinguishing feature between fraud and error is whether the act that gave rise to it was intentional or not*. In the case of fraud, the auditor is concerned with "*two types of intentional misstatements: misstatements resulting from the preparation of false financial information and misstatements resulting from misappropriation of assets*" (**Exhibit 11.2**, §3). It will conclude that financial statements are misleading when they are affected by "*Intentional misstatements involving omissions of figures or information from the financial statements in a manner that is likely to mislead users of the statements*" (**Exhibit 11.2**, §A2).
- Obviously, "*the risk of not detecting a material misstatement resulting from fraud is higher [...] because fraud may result from sophisticated or carefully organised processes designed to conceal the facts, such as falsification of documents, lack of*

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<sup>8</sup> See e.g. article 3.75, §1, 4° of the Companies Code: "*The report of the auditors referred to in article 3:74, paragraph 1, shall include at least the following elements [...] an opinion as to whether, in their opinion, the annual accounts give a true and fair view of the assets and liabilities, the financial position and the profit or loss of the company having regard to the applicable accounting framework and, if applicable, as to compliance with the applicable legal requirements*".

<sup>9</sup> See e.g. article 3.75, §1, 11° of the Companies Code: "*The report of the auditors referred to in article 3:74, paragraph 1, shall include at least the following elements [...] a statement confirming that they have not carried out any assignments incompatible with the statutory audit and that they have remained independent of the company during their mandate [...]*".

*deliberate misstatement of a transaction, or deliberate misrepresentation to the auditor"* (**Exhibit 11.2**, §3) (RoK emphasis added).

31. According to ISA 320, misstatements, whether intentional or unintentional, will be considered **material** "*when it is reasonable to expect that, individually or in the aggregate, they could influence the economic decisions that users of the financial statements make on the basis of the financial statements*" (**Exhibit 11.3**, §2) (RoK emphasises).
32. Finally, according to ISA 560, if the auditor becomes aware, after the financial statements have been issued, of a matter that might have led the auditor to amend the financial statements had the auditor known of it at the date of the auditor's report, "***the auditor should*** *discuss the matter with management*" (**Exhibit 11.5**, §14). If the auditor believes it is necessary to amend the financial statements but the company's management refuses to take the necessary action, the auditor, after notifying management, "***should*** *take appropriate steps to attempt to prevent the use of the auditor's report by others*" (**Exhibit 11.5**, §17).

### **3.the audited consolidated financial statements of Tristan, KPM and TNG**

33. In 2006, the Stati used their company Tristan Oil Ltd ("**Tristan**") to raise funds in the capital markets to finance the activities of their two Kazakh companies, Kazpolmunay LLP ("**KPM**") and Tolkynneftegaz LLP ("**TNG**"). To implement this fundraising, on 20 December 2006, Tristan, KPM and TNG signed a master agreement with the US bank Wells Fargo, which acted as trustee ("**Trust Agreement**") (**Exhibit 1.46**).
34. The Stati, through Tristan, issued two tranches of bonds ("*Notes*") in December 2006 (USD 300 million) and June 2007 (USD 120 million) (**Exhibit 1.172**). Jefferies & Company purchased these bonds by paying money to the Stati and then distributed them to investors ("*Noteholders*").
35. According to the Trust Agreement, as long as the bonds were outstanding, the Stati had to provide the Noteholders with various financial information, including **consolidated annual financial statements audited** by an independent auditor of (inter)national reputation and accompanied by a written report from that auditor confirming that nothing suspicious had come to light during the review of the financial statements (**Exhibit 1.46**, Articles 4.03 and 4.04.b).
36. In 2006, the Stati hired Deloitte ("**Deloitte**") as auditors of Tristan, KPM and TNG (**Exhibit 1.40**). In the course of 2007, the Stati had a dispute with Deloitte (discussed below) regarding the financial reporting of Tristan, KPM and TNG (**Exhibit 1.50**). The Stati then decided to replace Deloitte with KPMG ("**KPMG**"). KPMG audited the annual financial statements for 2007 and the quarterly and annual financial statements for 2008 and 2009 (**Exhibit 1.1**).

37. In this context, the Stati sent letters of affirmation to KPMG in which they confirmed They also stated in black and white in all their *financial statements that they had been "prepared in accordance with IFRS"*<sup>10</sup> (Exhibit 1.83, pp. 2- 3; Exhibit 1.122, p. 1; Exhibit 1.140, p. 1; Exhibit 1.142, p. 2) (RoK emphasis added). They also stated in black and white throughout their financial statements that these had been "*prepared in accordance with IFRS*"<sup>11</sup> (Exhibit 1.1, pp. 26, 193 and 353).
38. It will be shown in these conclusions that the Stati breached their obligations and **deceived** KPMG and users of the financial statements.

## **B. Basic distinction between "related companies" and "independent companies"**

39. In order to ensure a fair presentation of the audited financial statements of a company or group of companies, a fundamental distinction is made between transactions between so-called "related companies" and transactions between "independent companies". After explaining this distinction on the basis of the applicable standards (1), it will be shown that transactions between related companies are subject to a significant risk of manipulation (2), which is why such transactions and related companies must be fully identified in the financial statements, with all the related information to allow for review by independent auditors (3). Stati themselves were subject to a specific obligation to disclose related party transactions in the financial statements of Tristan, KPM and TNG (4).

### **1.distinction between related and independent companies**

40. Two companies are **related to each** other when one controls the other or when they are under the common control of a third person. According to IAS 24, "*A party is related to an entity if (a) directly, or indirectly through one or more intermediaries, the party (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and sister companies)*"<sup>12</sup> (Exhibit 11.8, §9).
41. Conversely, two companies are **independent** of each other when one does not control the other or when they are not controlled by the same person.

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<sup>10</sup> "*We acknowledge our responsibility for the fair presentation of the financial statements in accordance with IFRS*".

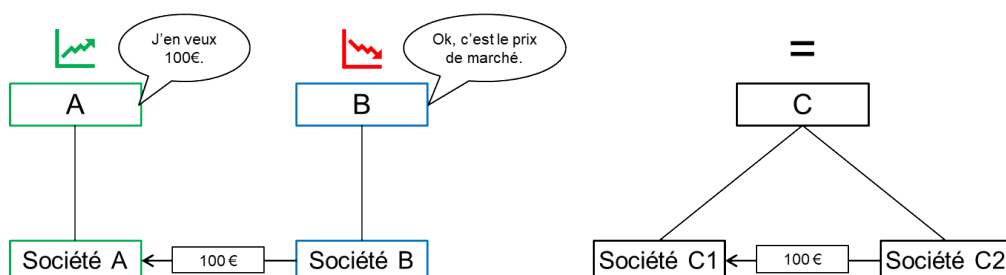
<sup>11</sup> Free translation of : "*These combined financial statements have been prepared in accordance with International Financial Reporting Standards*".

<sup>12</sup> Free translation of : "*A party is related to an entity if: (a) directly, or indirectly through one or more intermediaries, the party: (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries)*". This definition is consistent with the definition of "related company" in Articles 1.19 and 1.20 of the Belgian Companies Code, according to which "the following are to be understood by (1) 'companies linked to a company': a) companies which it controls; b) companies which control it; c) companies with which it forms a consortium", it being understood that a consortium refers to "*the situation in which a company, on the one hand, and one or more other companies governed by Belgian or foreign law, on the other hand, which are neither subsidiaries of each other nor subsidiaries of the same company, are placed under a single management*".

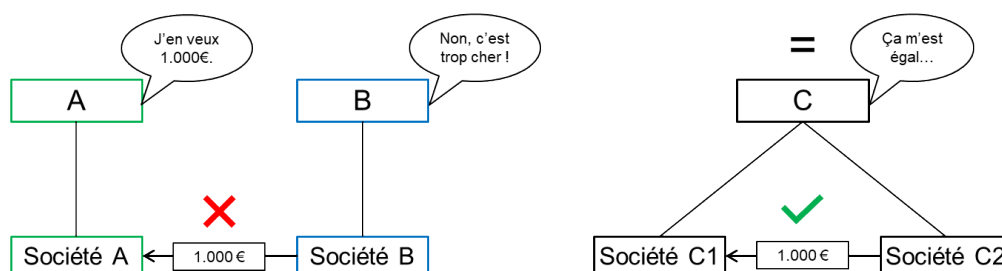
## 2.increased risk of manipulation of transactions between related companies

42. IAS 24 defines a "related party transaction" as "*a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged*"<sup>13</sup> (Exhibit 11.8, §9) (RoK emphasises). Transactions between related companies do not affect the consolidated profits of the group or the beneficial owner, so internally the price of these transactions is irrelevant. They are mere *transfers*, whereas transactions with external entities are true *sales*<sup>14</sup>.
43. Since intra-group transfers fall outside the constraints imposed by free competition, there is an increased risk that the group or ultimate beneficiary will abuse its position to artificially shift profits or even divert funds from one company to another. As IAS 24 states, "*Related parties may undertake transactions that unrelated parties would not undertake*"<sup>15</sup> (Exhibit 11.8, §6).
44. The risk can be illustrated by these diagrams:

Situation 1 : Prix de 100€



Situation 2 : Prix de 1.000€



<sup>13</sup> Free translation of : "*A related party transaction is a transfer of resources, services or obligations between related parties, regardless of whether a price is charged.*"

<sup>14</sup> Ph. Malherbe, *Eléments de droit fiscal international*, Brussels, Bruylant, 2016, p. 134, n°252.

<sup>15</sup> Free translation of : "*Related parties may enter into transactions that unrelated parties would not. For example, an entity that sells goods to its parent at cost might not sell on those terms to another customer. Also, transactions between related parties may not be made at the same amounts as between unrelated parties.*"



### 3.Mandatory identification of related party transactions in the financial statements

45. *It is precisely to avoid such a distortion that IAS 24 aims to "ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that the financial position and profit or loss may have been affected by the existence of related parties and by transactions and balances, including commitments, with them" (Exhibit 11.8, §1)<sup>16</sup> (emphasis added).*
46. For example, under IAS 24, the company must disclose in its financial statements the relationships with its parent and subsidiaries, whether or not there have been transactions with these parties (Exhibit 11.8, §12), as well as all other related companies with which it has transacted during the audited period (Exhibit 11.8, §17). In the presence of transactions with related companies, the company "should disclose the nature of the related party relationships and provide information about the transactions and balances, including commitments, that are necessary for users to understand the potential impact of the relationship on the financial statements "<sup>17</sup> (Exhibit 11.8, §17) (RoK emphasis added)
47. Disclosure of related party information is therefore **absolutely necessary** to give a true and fair view of the financial position of a company.

It is precisely for this reason that transactions between Stati companies were **strictly regulated** by the Tristan Trust Agreement. The Trust Agreement required that all transactions between related companies above USD 1 million be conducted at market price, those above USD 3 million be specifically cleared by the independent members of the Tristan Board and those above USD 10 million be subject to an independent third party fairness *opinion* (Exhibit 1.46, section 4.12).

### 4.disclosure of related party transactions in the financial statements of Tristan, KPM and TNG

48. In the letters of affirmation sent to KPMG, Stati stated that "*the definition of related parties in IAS 24 Related Party Disclosures is attached as Annex 3 to this letter* "<sup>18</sup> .  
*"completeness of the information provided regarding the identification of related parties and*

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<sup>16</sup> "The objective of this Standard is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding commitments: "*The objective of this Standard is to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances, including commitments, with such parties.*

<sup>17</sup> *If there have been transactions between related parties, an entity shall disclose the nature of the related party relationship as well as information about the transactions and outstanding balances necessary for an understanding of the potential effect of the relationship on the financial statements.*

<sup>18</sup> "*the definition of a related party in IAS 24 Related Party Disclosures is attached as Appendix 3 to this letter*".

regarding transactions with such parties that are material to the financial statements"<sup>19</sup>, stating that "Annex 2 to this letter is a **complete list of subsidiaries and associates, and other direct and indirect related companies of [Tristan, KPM and TNG]**"<sup>20</sup> (Exhibit 1.83, p. 4; Exhibit 1.122, p. 2; Exhibit 1.140, p. 2; Exhibit 1.142, p. 2) (Emphasis added).

49. In Annex 2 of these affirmation letters, the Stati listed the following companies: Ascom, Arpega Trading, General Affinity, Kasco, Kasco-Petrostar, Stadoil and Terra Raf (Exhibit 1.83, p. 10; Exhibit 1.122, p. 5; Exhibit 1.140, p. 6; Exhibit 1.142, p. 9). Similarly, only the companies included in this list appear in the "Related party transactions" section of the financial statements prepared by Stati and submitted to KPMG (Exhibit 1.1, 2007 consolidated financial statements, pp. 62-63; 2008 consolidated financial statements, pp. 225-226; 2009 financial statements, pp. 392-393).
50. Stati also stated in the financial statements that the transactions between the affiliated companies it controlled were '**based on market rates**', i.e. the economic conditions that would prevail between independent companies (Exhibit 1.1, pp. 62-63, 225-226 and 392-393) (RoK emphasises).

#### **5. embezzlement, deception by KPMG and large-scale financial fraud**

51. Contrary to what the Stati led KPMG and the users of the financial statements to believe, the list of their related companies was not "complete". At least two companies that played a key role in the Stati's deception were missing: Perkwood Investment Ltd ("**Perkwood**") and Azalia OOO ("**Azalia**").

It will be shown in the following conclusions that this is not a "mistake" but a **deliberate concealment**, and therefore 'fraud'.

52. Contrary to what the Stati led KPMG and the users of the financial statements to believe, the transactions between their related companies were not at all based on "market conditions".

It will also be shown in the remainder of these findings that the Stati knowingly **manipulated the terms of transactions between their related companies**, including in violation of the Tristan Trust Agreement clause governing such transactions (Exhibit 1.46, Section 4.12), to illegally divert hundreds of millions of dollars from their Kazakh companies KPM and TNG, and that these illegal actions inexorably plunged KPMG and TNG into a disastrous financial situation.

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<sup>19</sup> "We confirm the completeness of the information provided to you regarding the identification of the related parties and regarding transactions with such parties that are material to the financial statements.

<sup>20</sup> Free translation of : "We confirm that Appendix 2 to this letter is a complete list of the Company's direct and indirect subsidiaries and associates, and other related parties.

### **III. FACTUAL BACKGROUND: THE DECEPTIONS COMMITTED BY THE STATI BEFORE, DURING AND AFTER THE TCE ARBITRATION**

53. In order to understand the background of this dispute, it is necessary to distinguish between the deceptions committed by the Stati *before* the ECT Arbitration, in the context of the Stati's design and implementation of their Kazakh Project (A), *during* the ECT Arbitration, in which the Stati incriminated the RoK while concealing the wrongdoing they had committed in connection with their Kazakh Project (B) and *after* the ECT Arbitration, in order to frustrate the review of the Award (C). Finally, it will highlight how the truth finally came out about the extent of the Stati's deception (D).

#### **A. Pre-arbitration period: Stati misled their auditors, their project partner, their investors and customs authorities**

54. In their Kazakh Project, the Stati developed a *modus operandi* of using a myriad of related companies to divert funds from their Kazakh companies and perpetrate fraud to conceal their misdeeds (1) and then deceive all stakeholders involved in their Kazakh Project (2).

##### **1.the Stati secretly and illegally siphoned off their Kazakh companies for years**

55. In the early 2000s, the Stati acquired two Kazakh companies, KPM and TNG, (a) and financed their activities through several sources of funding outside the Stati group (b). From 2005, the Stati set up an opaque network of companies through which they diverted hundreds of millions of dollars from their Kazakh companies (c).

##### **(a) Stati's first step in Kazakhstan (1999 - 2004)**

56. From 1999 onwards, Anatolia Stati and his son, Gabriel Stati, bought, via Ascom and Terra Raf, two Kazakh entities, KPM and TNG, to exploit hydrocarbon deposits in Kazakhstan.

57. KPM operated the Borankol field and TNG operated the Tolkyn field (**Exhibit 1.1**, p. 169). TNG also owned an LPG plant ("**Centrale LPG**"), the construction of which began in 2006 and on which the Stati claimed to have spent over USD 245 million by December 2009 (**Exhibit 1.1**, pp. 336 and 495). The LPG Plant was never completed and never became operational.

**(b) Sources of funding for the Kazakh Project (2005 - 2010)**

58. KPM and TNG had three external sources of funding: Kazkommertzbank **(i)**, the Vitol Group **(ii)** and the Noteholders **(iii)**. In June 2009, Stati also obtained emergency financing from various lenders in an opaque financial transaction **(iv)**.

**(i) Kazkommertzbank**

59. As early as 2005, Stati financed its activities in Kazakhstan with a bank loan from a Kazakh bank, Kazkommertzbank ("**KKB**") (**Exhibit 1.1**, p. 52).

60. In January 2007, the Stati decided to prepay the KKB loan (**Exhibit 2.39**, §575; **Exhibit 1.1**, 2007 audited financial statements, F-139). Stati made this repayment with part of the funds raised on the financial markets (see *below*, point iii).

**(ii) Vitol**

61. The Vitol Group ("**Vitol**") was the main partner in the Kazakh Stati Project.

62. As early as 2005, the Stati sold to Vitol's Swiss subsidiary Vitol SA ("**Vitol SA**") almost all of KPM's and TNG's oil and condensate production ("**Oil Sales**") (**Exhibit 1.1**, pp. 6, 169 and 327). Between 2005 and 2010, Oil Sales to Vitol SA amounted to over USD 1 billion<sup>21</sup> (**Exhibit 10.2**, pp. 588-947; **Exhibit 10.3**).

63. Stati also entered into negotiations with Vitol's Dutch subsidiary Vitol FSU ("**Vitol FSU**") to build the LPG Plant near the Opornaya railway station in Kazakhstan. According to the *business plan* drawn up by Stati in 2006, the CAPEX ("*Capital Expenditure*") of the LPG Plant was to be around USD 105 million (including taxes) and the LPG Plant was to be operational in the third quarter of 2007 (**Exhibit 1.35**, p. 2).

64. Vitol FSU agreed to fund part of the initial cost estimate while limiting its exposure to risk. It therefore made an equity contribution of USD 20 million and agreed to finance more if necessary by increasing the advances paid under the Oil Sales (**Exhibit 3.5**, §§31, c and 36).

65. In June 2006, negotiations finally led to the conclusion of a *Joint Operating Agreement* ("**JOA**") between the Stati companies (Ascom, Terra Raf, TNG) on the one hand and Vitol FSU on the other (**Exhibit 1.38**). In accordance with Articles 2.1 and 2.2 of the JOA, Vitol FSU made the capital contribution of USD 20 million to the Stati in July 2006 and April 2007 (**Exhibit 10.2**, pp. 748 and 892).

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<sup>21</sup> See **Table 1** attached to these conclusions.

### (iii) Noteholders

66. As early as 2006, the Stati used Tristan, a letterbox company based in the British Virgin Islands, to raise funds on the financial markets.
67. On 13 December 2006, the Stati issued a circular to potential investors ("**Tristan Circular**").
68. On 20 December 2006, Tristan, KPM and TNG signed the Tristan Trust Agreement with the US bank Wells Fargo acting as trustee (**Exhibit 1.46**). According to this contract, Tristan was obliged to pay regular coupons corresponding to the interest generated by the bonds issued and to repay the balance in January 2012 (**Exhibit 2.1**, §1749). Since Tristan was an empty shell, KPM and TNG were guarantors of Tristan's debts to the Noteholders (**Exhibit 1.46**, Articles 1.01 and 11.01).
69. Subsequently, Tristan issued two tranches of bonds: USD 300 million in December 2006 and USD 120 million in June 2007 (**Exhibit 1.172**). In accordance with the Trust Agreement, Jefferies Bank purchased these two tranches of bonds by paying the corresponding funds to the Stati (**Exhibit 10.1**, pp. 1 and 21) and then distributed the bonds to the Noteholders.

### (iv) Lenders of the Laren Transaction

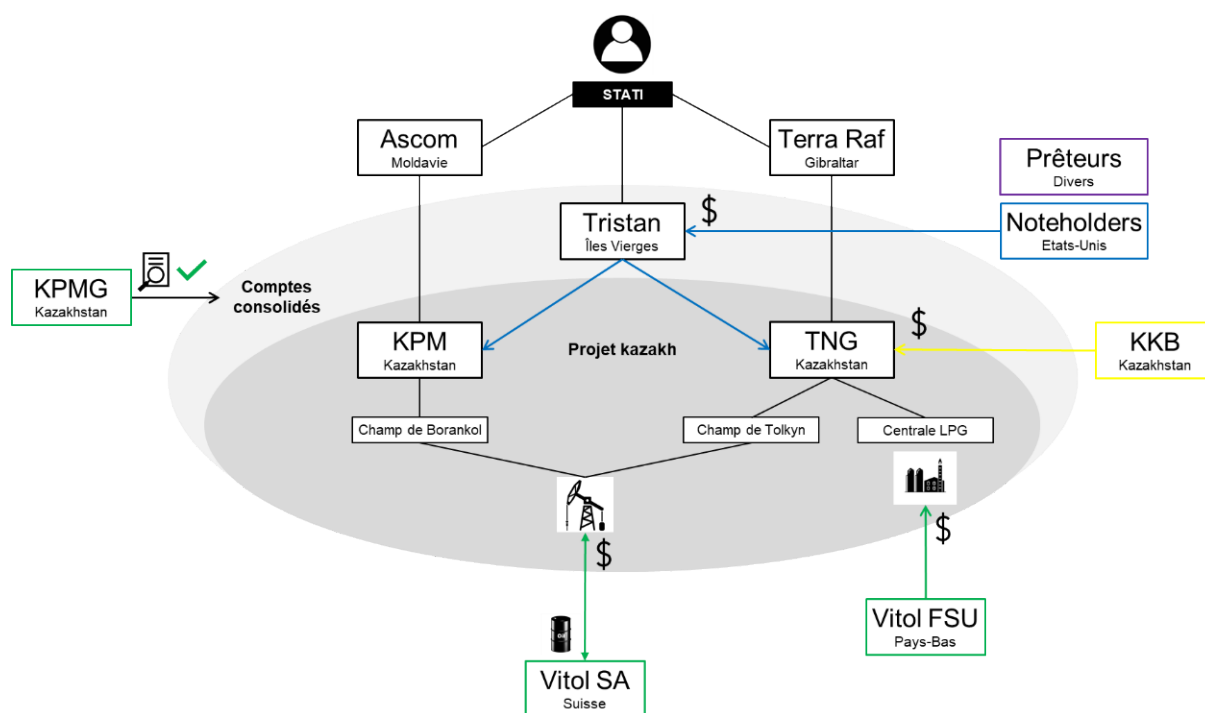
70. In June 2009, the Stati obtained what they presented as USD 60 million in emergency financing from various lenders ("**Lenders**") in a complex and opaque financial transaction ("**Laren Transaction**"). The Lenders paid USD 30 million to Tristan (**Exhibit 10.1**, pp. 50-53) and USD 25.5 million to Montvale Invest Ltd ("**Montvale**"), also based in the British Virgin Islands and owned by the Stati (**Exhibit 10.3**, pp. 71-74)<sup>22</sup>. The Stati then used part of these funds to settle tax debts of KPM and TNG with the Kazakh Treasury.
71. In this transaction, Tristan issued a third tranche of bonds with a nominal value of USD 111 million ("**New Bonds**"), which were transferred in full to the Lenders.

### (v) Conclusions on sources of funding

72. Between 2005 and 2010, the Stati obtained (i) approximately USD 480 million in loans from KKB, Noteholders and Lenders to finance the activities of KPM and TNG<sup>23</sup>, (ii) USD 20 million from Vitol FSU to finance the construction of the LPG Plant and (iii) approximately USD 1 billion from Vitol SA in return for Oil Sales.
73. The operation can be summarised in this diagram, which shows the complexity of the set-up:

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<sup>22</sup> The remaining USD 4.5 million was used to pay transaction costs (**Exhibit 1.125**, Articles 3.1, 11 and 16). USD 420 million from the Noteholders and USD 60 million from the Laren Transaction Lenders. The loan from KKB is not accounted for as the Stati repaid it in full with part of the funds obtained from the Noteholders.



**(c) Opaque network of companies, fraudulent transactions and embezzlement**

74. As early as 2005, the Stati set up an opaque network of companies without offices or employees (i). They then interposed these empty shells between the real providers and their Kazakh companies to divert hundreds of millions of dollars from their Kazakh Project (ii).

**(i) Establishment of a network of opaque companies**

75. According to the information available, the Stati control or have controlled as many as 80 companies around the world, most of which are located in opaque tax havens. Only the companies used by the Stati to divert funds from KPM and TNG are listed below.

***Stadoil (takeover in May 2005)***

76. Stadoil Ltd ("**Stadoil**") is a shell company with no office or employees, registered in the UK on 27 April 2005. Mr Shaun Walters was the sole director (**Exhibit 1.7**).
77. On 24 May 2005, Mr Walters signed a secret mandate granting Anatolia and Gabriel Stati full powers over Stadoil (**Exhibit 1.9**). This mandate has been renewed several times.
78. The Stati then opened an account in Stadoil's name with a Latvian bank, Rietumu Banka ("**Rietumu Banka**") (**Exhibit 10.5**).
79. Stadoil was dissolved on 25 April 2014 (**Exhibit 1.7**).

***General Affinity (taken over in May 2005)***

80. General Affinity Ltd ("**General Affinity**") is a shell company with no office or employees, registered in the UK on 26 January 2005. Ms Sarah Petre-Mears was the sole director (**Exhibit 1.6**). According to a November 2012 Guardian article, Ms Petre-Mears is known as a "sham director", and she and her husband together "managed" more than 2,200 shell companies around the world (**Exhibit 1.163**).
81. On 18 May 2005, Ms Petre-Mears signed a secret mandate granting Anatolia and Gabriel Stati full powers over General Affinity (**Exhibit 1.8**). This mandate has been renewed several times.
82. The Stati then opened a bank account in the name of General Affinity with Rietumu Banka over which Anatolia Stati had full powers (**Exhibit 10.6**).
83. General Affinity was dissolved on 14 May 2013 (**Exhibit 1.6**).

***Azalia (takeover in September 2005)***

84. Azalia OOO ("**Azalia**") was formally registered in Russia by Alexey Shorin and Alexander Bryukhanchikov on 21 February 2003 (**Exhibit 1.666**, Nos. 38, 39, 45 and 46).
85. In September 2005, Mr. Shorin granted a concealed mandate (**Exhibit 1.15**, p. 1) to three Stati employees: Messrs. O. Zakharia, V. Raylyan and S. Bisultanov (**Exhibit 1.15**, pp. 2 and 3). This secret mandate was renewed annually (**Exhibit 1.15**, pp. 3 and 5).
86. A few weeks later, the Stati opened an account in Azalia's name with Rietumu Banka (**Exhibit 10.7**).

***Perkwood (taken over in November 2005)***

87. Perkwood Investment Ltd ("**Perkwood**") is a shell company with no office or employees registered in the UK on 14 September 2005. The same "shadow director", Sarah Petre-Mears, was the sole director, and her husband Edward Petre-Mears the secretary (**Exhibit 1.13**, pp. 9 and 12).
88. In November 2005, the Petre-Mears granted a secret mandate to Anatolia and Gabriel Stati, just weeks after the creation of Perkwood and the takeover of Azalia (**Exhibit 1.20**, pp. 1 and 2). This mandate was renewed every year (**Exhibit 1.20**, pp. 3 et seq.).
89. On 28 November 2005, Gabriel Stati opened an account in Perkwood's name with Rietumu Banka to which only Anatolia and Gabriel Stati had access (**Exhibit 1.23**).
90. Perkwood was always registered as a dormant *company* (**Exhibit 1.13**, pp. 25, 31, 37) until its dissolution in May 2011 (**Exhibit 1.13**, p. 65).

### ***Montvale (takeover in October 2005)***

91. Montvale Invest Ltd ("**Montvale**") is a shell company, with no office or employees, registered in the British Virgin Islands on 19 September 2005.
92. The Stati controlled Montvale through a secret mandate (**Exhibit 1.17**). In November 2005, they opened a bank account in Montvale's name with Rietumu Banka (**Exhibit 10.3**).
93. In June 2012, Montvale was placed into receivership by a decision of the *Eastern Caribbean Supreme Court* of the British Virgin Islands (**Exhibit 3.6**, §2.31). This decision was made at the request of Vitol, their partner in the Kazakh Project, which sought to enforce an arbitration award against Stati that Stati had refused to pay (**Exhibit 3.6**, §2.32).

### ***Hayden (takeover in October 2005)***

94. Hayden Intervest Ltd ("**Hayden**") is an empty shell, with no office or employees, registered in the British Virgin Islands in September 2005 (**Exhibit 1.14** at 1).
95. As early as October 2005, Les Stati had a secret mandate granting them control over Hayden (**Exhibit 1.18**, pp. 3 et seq.). In November 2005, Gabriel Stati opened an account in Hayden's name with Rietumu, of which he and Anatolie Stati were the sole beneficiaries (**Exhibit 1.21**, pp. 1-2).

### ***Laren (takeover in June 2009)***

96. Laren Holdings Ltd ("**Laren**") is an empty shell, with no office or employees, registered in the British Virgin Islands in May 2009 at the request of Artur Lungu, the Stati's right-hand man and Tristan's CFO at the time (**Exhibit 1.132**).
97. In December 2011, the Stati and the Laren Transaction Lenders signed a settlement agreement under which the Stati were to repay the loan granted to Laren two years earlier (see *infra*). Remarkably, it was Eldar Kasumov, Anatolia Stati's personal driver (**Exhibit 1.157**, p. 4), who signed the transaction as Laren's director (**Exhibit 1.162**, p. 25).

### ***Rietumu Banka***

98. While Rietumu Banka is not a related company of the Stati, it was a key part of their opaque network of related companies. The documents now available reveal that the Stati **systematically** turned to this Latvian bank to open the accounts of their related companies during the 2000s. In the following decade, it emerged that Rietumu Banka had for years been helping reprehensible actors to launder funds from all sources (**Exhibit 1.169**), which eventually attracted the attention of the authorities. Subsequently, it was embroiled in various court cases and was, for example, convicted of money laundering by the Paris Court in 2017 (**Exhibit 1.168**).



## (ii) Interposition, fraudulent transactions and embezzlement

99. The Stati set up such a network of companies because they had a clear plan: to siphon off funding and revenues from their Kazakh companies, KPM and TNG, while hiding these embezzlements from the financial statements to deceive everyone involved in their Project (KPMG, lenders, potential buyers of the assets, customs authorities, etc.).
100. To carry out this plan, the Stati systematically interposed the companies they controlled (often secretly) between the real providers (lenders, investors, sellers and buyers) and KPM/TNG. The Stati interposed :
- 100.1. Terra Raf between Tristan and KPM/TNG to divert part of the proceeds from the first tranche of bonds issued by Tristan (1).
- 100.2. Terra Raf, Montvale, General Affinity and Stadoil between KPM/TNG (producers and sellers) and Vitol SA (buyer) to divert part of KPM's and TNG's revenues from Oil Sales (2).
- 100.3. Azalia and Perkwood between the real contractors and the final buyer (TNG) to divert some of the funds allegedly allocated to the construction of the LPG Plant (3).
- 100.4. Laren between the Lenders and Tristan, KPM and TNG to conceal the profit they hoped to make from the Laren Transaction (4).

### *1. Diversion of part of the Terra Raf Loan*

#### *Interposition*

101. On 20 December 2006, Jefferies paid Tristan USD 288 million for the first tranche of bonds (**Exhibit 10.1**, p. 1). Most of these funds were used to repay the loan from KKB (see *above*). Instead of transferring the balance directly to KPM and TNG, Tristan provided a USD 76 million interest-free and maturity-free loan to Terra Raf ("**Terra Raf Loan**") (**Exhibit 1.1**, 2007 audited financial statements, p. F-32). Tristan transferred the funds to Terra Raf in December 2006 and January 2007 (**Exhibit 10.1**, pp. 2 and 5).

It can be seen from the Stati's financial statements that the amount of the Terra Raf Loan remained stable between 2006 and 2008 (USD 76 million) (**Exhibit 1.1**, pp. 49 and 212) and then increased in 2009 (USD 115 million) (**Exhibit 1.1**, p. 374).

102. According to the Tristan Circular, the Stati were to "use USD 70 million of the proceeds of this loan to repay USD 35.0 million of debts owed to both TNG and KPM in respect of

*sales of oil and condensate* "<sup>24</sup> (**Exhibit 1.45**, p. 52). The evidence now available shows that they did not.

#### *Diversions*

103. Subsequent to obtaining the account statements of numerous Stati-related companies between 2016 and 2019, the RoK asked PricewaterhouseCoopers ("**PwC**"), an independent auditing firm and member of the Big Four, to analyse the use of funds intended to finance the Stati's Kazakh Project. In a report dated 29 July 2020, PwC concluded that the Stati had misappropriated tens of millions of dollars via Terra Raf in the context of the Terra Raf Loan (**Exhibit 12.11**, §4.23).
104. Looking at Terra Raf's account statements for the first half of 2007, it is clear that the Stati did **not** pay the USD 70 million to KPM and TNG to clear the arrears in the Oil Sales.
105. On 7 January 2007, the credit balance in Terra Raf's account was USD 33,601. On 8 January 2007, Tristan paid Terra Raf USD 70 million, bringing the credit balance to USD 70,033,601 (**Exhibit 10.2**, p. 842). On 6 June 2007, Terra Raf's credit balance again stood at less than USD 100,000, indicating that the funds loaned by Tristan to be transferred to KPM and TNG had necessarily been distributed (**Exhibit 10.2**, p. 931).
106. A closer look at Terra Raf's account statements from 8 January to 6 June 2007 (see **Table 1** attached to these findings) reveals the following:
  - 106.1. Vitol SA, the ultimate buyer of the oil and gas produced by KPM and TNG, paid a net amount of USD 57,487,88525 to Terra Raf (**Exhibit 10.2**, pp. 842-931).
  - 106.2. Terra Raf paid USD 55,176,800 to Stadoil (**Exhibit 10.2**, pp. 842-931), which paid this amount to KPM (**Exhibit 10.5**, pp. 12-15).
  - 106.3. Terra Raf paid USD 41,418,800 to General Affinity (**Exhibit 10.2**, pp. 842-931), which paid this amount to TNG (**Exhibit 10.5**, pp. 7-10).
107. Terra Raf therefore received a net amount of USD 57,487,885 from Vitol SA while it paid a net amount of USD 96,595,600 to Stadoil/KPM and General Affinity/TNG. As a result, Terra Raf only used USD 39,107,71526 of the USD 70 million promised to settle the arrears owed to KPM and TNG. The Stati therefore withheld **at least USD 31 million** promised to KPM and TNG.

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<sup>24</sup> Translation of : "*Tristan Oil intends to use \$76.0 million from the net proceeds of this Note Offering to make a loan to Terra Raf, at an interest rate of 0%. Terra Raf intends to use \$70.0 million of the proceeds from this loan to repay \$35.0 million of accounts payable to each of TNG and KPM with respect to sales of oil and condensate.*

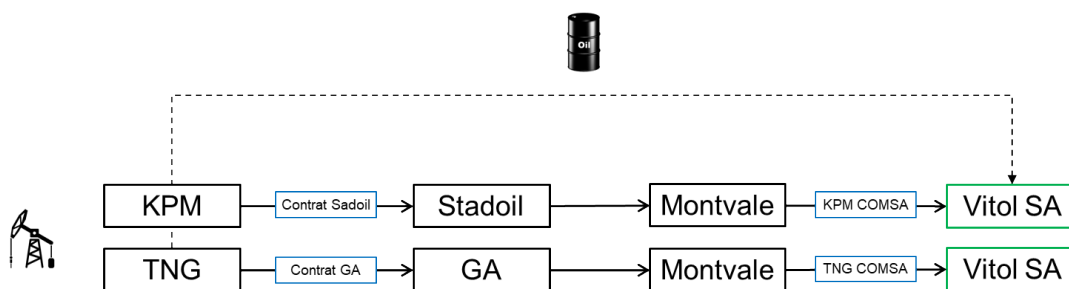
<sup>25</sup> Between 10 January and 6 June 2007, Vitol SA paid USD 60,250,000 to Terra Raf, which repaid 2,762,115 to Vitol SA.

<sup>26</sup> USD 96,595,600 - 57,487,885 USD = 39,107,715.

## 2. Diversion of revenue from Oil Sales (over USD 255 million)

### Interposition

108. On 8 August 2005, TNG entered into a sales contract with General Affinity ("**General Affinity**"), a shell company wholly controlled by the Stati, under which TNG agreed to sell USD 175 million worth of oil and condensate to be paid for by General Affinity within 170 calendar days of each delivery ("**General Affinity Contract**") (**Exhibit 1.11**)
109. On 15 August 2005, KPM entered into a sales contract with Stadoil ("**Stadoil**"), another shell company wholly controlled by the Stati, under which KPM agreed to sell USD 157.5 million of oil and condensate to be paid for by Stadoil within 170 calendar days of each delivery ("**Stadoil Contract**") (**Exhibit 1.12**).
110. On 11 November 2005, Terra Raf entered into a framework agreement with Vitol SA for the purchase by Vitol SA of oil and gas produced by KPM, entitled "KPM COMSA" ("**KPM COMSA Agreement**") (**Exhibit 1.22**).
111. On 20 January 2006, a second framework agreement was entered into between Terra Raf and Vitol SA for the purchase of oil produced by TNG, entitled "TNG COMSA" ("**TNG COMSA Agreement**") (**Exhibit 1.27**).
112. On 30 June 2007, two novation contracts were concluded to substitute Montvale for Terra Raf in the KPM COMSA and TNG COMSA Contracts (**Exhibits 1.55 and 1.56**). The situation can be represented by this diagram:



113. In practice, Terra Raf/Montvale sent Vitol SA prepayment notices stating the quantities ready for delivery. Vitol AG then paid the amount indicated to Terra Raf/Montvale in the form of advance payments, which were to be offset against the quantities delivered (**Exhibit 3.5, §42**).

### Diversions

114. In its report, PwC analysed the use of funds that had passed through the related companies used by the Stati in connection with the Oil Sales. In its analysis, PwC concluded that the Stati diverted approximately USD 263 million from KPM and TNG through their related companies (**Exhibit 12.11, §5.22**).

115. Using the account statements of Terra Raf, Montvale, Stadoil and General Affinity and focusing on the funds paid by Vitol SA (criterion 1) to Terra Raf/Montvale (criterion 2) under the KPM and TNG COMSA Contracts (criterion 3) and the funds transferred by Terra Raf/Montvale to Stadoil and General Affinity (criterion 4) between 15 November 2005 and 3 November 2010 (criterion 5), it can be seen that Stati deprived KPM and TNG of **at least USD 255 million** in revenues during this period (see **Table 1** attached to these findings)<sup>27</sup>.

115.1. Between November 2005 and June 2007, Vitol SA paid a net amount of USD 336,345,22928 to Terra Raf under the KPM COMSA and TNG COMSA Contracts (**Exhibit 10.2**, pp. 588-937). Terra Raf in turn paid USD 154,196,800 to Stadoil and USD 127,477,400 to General Affinity. Stadoil and General Affinity subsequently paid almost all of this amount to KPM (**Exhibit 10.5**, pp. 1-15) and TNG (**Exhibit 10.6**, pp. 1-10). The Stati thus deprived KPM and TNG of **USD 54,771,029** in revenue without any justification.

115.2. Between July 2007 and July 2010, Vitol SA paid a net amount of USD 713,483,25329 to Montvale (**Exhibit 10.3**, pages 1-83). Montvale in turn paid USD 224,277,470 to Stadoil and USD 288,768,700 to General Affinity. Stadoil and General Affinity subsequently paid almost all of this amount to KPM (**Exhibit 10.5**, pp. 15-29) and TNG (**Exhibit 10.6**, pp. 10-52). The Stati thus deprived KPM and TNG of **USD 200,437,083** in revenue without any justification. They then transferred almost all of these funds, i.e. USD 199,529,402, to Hayden (**Exhibit 10.3**, pp. 1-83).

#### *Concealment*

116. To conceal these massive embezzlements, the Stati **doubled** the payment terms granted by KPM to Stadoil under the Stadoil Contract (**Exhibits 1.12 and 1.109**) and by TNG to General Affinity under the General Affinity Contract (**Exhibit 1.11 and 1.110**) from 170 days to 325 days in 2009.

### ***3. Embezzlement of funds intended for the construction of the LPG plant (over USD 81 million)***

#### *Interposition*

117. On 11 January 2006, the Stati caused a first framework contract to be entered into between Azalia and Perkwood for the purchase of "goods" not defined at the time the contract was entered into but to be defined later in "*exhibits*" ("**Azalia Contract**") (**Exhibit 1.25**). The

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<sup>27</sup> In its report, PwC has taken into account more sources of financing (Vitol SA, Vitol FSU and the Laren Transaction Lenders) and analysed a longer period. PwC therefore obtained a result of slightly more than USD 263 million. The purpose of this analysis is to identify the misappropriation by the Stati of funds paid by Vitol SA under the KPM and TNG COMSA Contracts in connection with the Oil Sales. For this reason, funds from Vitol FSU and the Laren Transaction Lenders have not been included in this focused analysis.

<sup>28</sup> Vitol SA paid USD 344,950,000 to Terra Raf and Terra Raf repaid USD 8,604,771 to Vitol SA.

<sup>29</sup> Vitol SA paid USD 723,417,102 to Montvale and Montvale repaid USD 9,933,849 to Vitol SA.

The Azalia contract was signed by Serghei Bisultanov on behalf of Azalia and by Elena Ozerova on behalf of Perkwood (**Exhibit 1.25**, p. 6). These were in fact two employees of the Stati (**Exhibit 1.157**).

118. On 17 February 2006, the Stati caused a second master agreement to be entered into between Perkwood and TNG ("**Perkwood Agreement**") (**Exhibit 1.32**). The Perkwood Agreement consists of 16 schedules dated from 2006 to 2009, representing a total amount of approximately USD 191 million ("**Schedules 1 to 16**"). The Perkwood Agreement was signed by the same Elena Ozerova on behalf of Perkwood and by Alexandru Cojin on behalf of TNG (**Exhibit 1.32**, p. 9). The situation can be represented by this diagram:



#### *Diversions*

119. In its report on the use of funds, PwC analysed the transfers of funds made by the Stati through Azalia and Perkwood. PwC's analysis concludes that the Stati diverted approximately USD 81 million from KPM and TNG via the shells they had interposed between the providers and the actual buyer, TNG (**Exhibit 12.11**, §4.43).
120. When all the transfers made by the Stati via Perkwood and Azalia are compiled (see **Table 2** attached to these conclusions)<sup>30</sup>,
121. According to the account statements of Perkwood, Azalia, Terra Raf and Hayden, the Stati embezzled through Perkwood and Azalia at least **USD 86 million** between 2006 and 2009<sup>31</sup> :
- 121.1. TNG paid approximately USD 181 million to Perkwood under the Perkwood Agreement.
- 121.2. Perkwood paid approximately USD 11 million to various "external suppliers" of the LPG Plant and transferred approximately USD 170 million to Azalia under the Azalia Contract
- 121.3. Azalia paid approximately USD 84 million to various "external suppliers" of the LPG Plant. It also transferred approximately **USD 30 million** to Terra Raf (until July 2007) and **USD 56 million** to Hayden (from July 2007 to August 2009).

<sup>30</sup> It should be noted that, to simplify the analysis, all transfers to and from Perkwood's and Azalia's accounts have been taken into account. In the Swedish proceedings, Stati themselves acknowledged that some payments made from or to Azalia's account were not related to the construction of the LPG Plant (**Exhibit 4.7**). As these amounts are relatively limited (net amount < USD 1.5 million, i.e. about 1.5% of the payments made by Azalia, after excluding the amounts transferred to Terra Raf and Hayden), they have been included in the calculations for simplification purposes.

<sup>31</sup> The difference between this amount (USD 86 million) and the amount in the PwC report (USD 80.8 million) is explained by the application, for the sake of simplification, of a conversion rate of 1.346 on all transfers made in EUR during the period analysed, i.e. the average rate between 2005 and 2009 (1.24 + 1.26 + 1.37 + 1.47 + 1.39 = 6.73 : 5 = 1.346):

<https://fr.statista.com/statistiques/577988/taux-de-change-moyen-annuel-du-dollar-etats-unis-contre-l-euro/>. In practice, the issue of the conversion rate had no impact as the Stati obviously did not convert the amounts they were diverting.

122. In other words, with the USD 181 million paid by TNG, Stati paid approximately **USD 95 million** to "external suppliers" of the Centrale LPG, which Stati does not fail to point out (Stati's Conclusions of 25 October 2019, §718). However, Stati has never been able to provide any documentary evidence that these amounts were paid **(i)** to genuine suppliers of the Centrale LPG and **(ii)** at market price<sup>32</sup>.
123. At the same time, the Stati transferred the remaining **USD 86 million** to Terra Raf and Hayden, i.e. to themselves. However, Azalia, Perkwood, Terra Raf and Hayden are all empty shells, with no offices or employees, and therefore did not provide any services during the construction of the LPG Plant. To date, the Stati have not provided any documentary evidence to justify **(i)** the charging of such costs to TNG and **(ii)** the transfer of such funds to Terra Raf and Hayden between 2006 and 2009.

*Concealment through triple bookkeeping and fraudulent transactions*

124. In order to conceal these massive embezzlements, the Stati set up a triple blind accounting system which reveals at least two fraudulent schemes used by the Stati to embezzle tens of millions of dollars during the construction of the LPG plant.

Triple blind accounting

125. During the exequatur proceedings in England in 2018, the Stati were forced to produce over 70,000 documents. Among them, two documents regularly updated by Octavian Crudu, the Stati accountant, during the Kazakh Project reveal the existence of a triple secret accounting relating to the costs of the LPG Plant:

- 125.1. The first document is an Excel file dated December 2009 which contains about ten tabs ("**Crudu Tables**") (**Exhibit 1.143**). These tabs are divided between **(i)** the Vitol accounting ("**Vitol Accounting**") (**Exhibit 1.143**, tabs "CAPEX (Vitol)", (**Exhibit 1.143**, tabs "Total Balance (Vitol)" and "Capex Evolution"), **(ii)** the TNG accounting ("**TNG Accounting**") (**Exhibit 1.143**, tabs "CAPEX (TNG)" and "Balance (TNG)") and **(iii)** the internal accounting of the Stati ("**Internal Accounting**") (**Exhibit 1.143**, tabs "CAPEX", "Pump" and "Statements").

The Vitol accounts contain approximately 300 lines (including 194 services invoiced to TNG by Azalia, 17 by Perkwood and 1 by Terra Raf, i.e. 212 services in all) and show construction costs of **USD 168,392,040** (excluding customs duties and VAT) (**Exhibit 1.143**, tab "CAPEX (Vitol)", cell E6). TNG's accounts contain

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<sup>32</sup> This point had been made by Davis Stern, the financial expert appointed by Vitol in a parallel arbitration between them and Vitol concerning the true construction costs of the LPG plant (**Exhibit 3.6**, §§8.2 and 8.4). RoK will return to this arbitration later in the submissions.

In the case of TNG, the total cost of construction was **USD 213,164,107** (excluding customs duties and VAT) (**Exhibit 1.143**, tab "CAPEX (TNG)", cell E6), a difference of **USD 44,772,067**.

125.2. The second document is another Excel file also prepared by Octavian Crudu ("**Crudu Analysis**") (**Exhibit 1.144**). The Crudu Analyses served a triple function:

(i) (i) **regroup** the 212 services (equipment, services, transport and insurance) invoiced by Azalia, Perkwood and Terra Raf in the Vitol accounts; (ii) **conceal** them in the Annexes to the Perkwood Contract; and (iii) **inflate** the amount of certain services, in particular by incorporating a *planned profit* of USD 40 million in Annex 2 and by doubling the price of certain equipment listed in Annexes 1 and 4 by approximately USD 3.5 million

It is also clear from the Crudu Analyses that Annexes 14 and 15 of the Perkwood Contract, through which Perkwood sold approximately USD 46 million worth of equipment at the end of 2008 (**Exhibit 1.32**, pp. 1647-1648), do not appear anywhere. Perkwood therefore sold TNG equipment that did not exist!

126. Thanks to the Crudu Analyses, we understand why, when switching from Vitol Accounting to TNG Accounting, the number of services is suddenly divided by 3: the 212 services invoiced by Azalia, Perkwood and Terra Raf in TNG Accounting were in fact grouped together and concealed in the Annexes of the Perkwood Contract. It is also discovered that (i) the total amount of services increases by approximately USD 44 million in the TNG Accounts due to the fraudulent inflation of prices of certain equipment listed in Schedules 1, 2 and 4 of the Perkwood Contract and (ii) Schedules 14 and 15 are fictitious transactions. These two schemes are briefly summarised in the following paragraphs.

#### Artificial inflation of the price of Tractebel Equipment and Transeco Equipment

127. Stati's first fraudulent scheme consisted of artificially inflating the prices of equipment supplied by Tractebel GmbH ("**Tractebel**" and "**Tractebel Equipment**") and Transeco ("**Transeco**" and "**Transeco Equipment**").

128. **Tractebel equipment.** According to the evidence now available, Tractebel sold the main equipment of the LPG Plant to Azalia for approximately **EUR 30 million** under the Tractebel Contract (**Exhibit 1.28**). Azalia then sold the same equipment to Perkwood for EUR 62.4 million under the Azalia Contract (**Exhibits 1.25 and 1.26**). Perkwood finally sold the same equipment to TNG under the Perkwood Contract, for EUR 62.7 million according to a first version of Annex 2 (**Exhibit 1.33**) and for



**USD 93 million** according to a second version of Annex 2 (**Exhibit 1.32**, p. 1618). There is thus an inflation of several tens of millions of dollars when neither Azalia nor Perkwood provided any services. It is now absolutely certain that Stati artificially inflated the cost of the Tractebel Equipment by **at least USD 40 million**, by incorporating a "planned profit" of USD 40 million when the Tractebel Equipment was resold to TNG via Annex 2 of the Perkwood Contract (**Exhibit 1.144**, lines 44 to 111 and cells ABC340 and 341; **Exhibit 1.32**, p. 1618).

129. **Transeco Equipment.** Stati further inflated the price of the Transeco Equipment by approximately **USD 3.5 million** when reselling the equipment to TNG via Schedules 1 and 4 of the Perkwood Contract (**Exhibit 1.144**, lines 39-40 and 166-167; **Exhibit 1.32**, pp. 1616, 1617 and 1625).

Duplication of some equipment and non-reimbursement of advances paid by TNG

130. The second fraudulent scheme of the Stati consisted in duplicating the Tractebel Equipment, already included in Annex 2 of the Perkwood Contract, in Annexes 14 and 15 of the same contract and invoicing this fictitious equipment to TNG. According to Perkwood's account statements, TNG paid Perkwood USD 29,915,000 under Schedules 14 and 15 of the Perkwood Contract in late 2008 and early 2009 (**Exhibit 10.8**, pp. 29-30).
131. According to Addendum 11 to the Perkwood Contract dated 1 February 2010, TNG had paid Perkwood "advances" totalling **USD 36,800,211** for equipment that had never been supplied (**Exhibit 1.32**, p. 1655). This amount includes the USD 29,915,000 under Schedules 14 and 15. Logic dictates that Perkwood should repay these "advances".

At the time of the conclusion of this Addendum 11, Tristan had a claim of USD 55 million against TNG and TNG had a claim of USD 36.8 million against Perkwood. The Stati therefore decided to settle part of these claims "by way of set-off": "*Tristan Oil Ltd agreed to assume the right to claim and become the lender of the amount owed by Perkwood Investment Limited to LLP "Tolkynneftegaz, i.e. USD 36,800,211.56"*<sup>33</sup> (**Exhibit 1.32**, p. 1659) (emphasis added by RoK). By assigning its claim on Perkwood to Tristan, TNG reduced its own debt to Tristan from USD 55 million to USD 18.2 million<sup>34</sup>. At the same time, Tristan became a creditor of Perkwood for an amount of USD 36.8 million.

According to Perkwood's account statements (**Exhibit 10.8**), Perkwood **never** repaid the funds to Tristan. In the first instance proceedings, the Stati argued that "*On 9 February 2010, a contract of assignment of claim between TNG and Tristan Oil was entered into whereby the claim*

<sup>33</sup> WHEREAS Tristan Oil Ltd has agreed to assume the right to claim and to become lender of the amount owed by PERKWOOD INVESTMENT LIMITED to LLP "Tolkynneftegaz" totalling 36 800 211,56.

<sup>34</sup> USD 55 million - USD 36.8 million = USD 18.2 million.

*TNG's claim on Perkwood was therefore assigned to Tristan Oil. And this claim was paid by way of set-off*" (Stati's Conclusions of 15 April 2019, §492) (RoK underlines). In doing so, the Stati (deliberately) confuse two claims:

131.1. On the one hand, Tristan had a USD 55 million claim on TNG. This claim was effectively partially "paid by set-off" when TNG assigned its USD 36.8 million claim on Perkwood to Tristan.

131.2. On the other hand, TNG had a claim of USD 36.8 million against Perkwood which it assigned to Tristan. This claim was therefore assigned but **not** "paid by way of set-off" and has never been repaid.

#### Conclusion on the orchestrated misappropriations in the construction of the LPG plant

132. When the amount of construction cost inflations (USD 44 million) and the unreimbursed advances by Perkwood (USD 37 million) are added together, the amount misappropriated by the Stati in the context of the LPG Plant is calculated by PwC (USD 81 million) (**Exhibit 12.11**, §4.43).

#### ***4. Planned hidden profit of the Stati in the Laren Transaction (up to USD 60 million)***

133. After embezzling hundreds of millions of dollars from their Kazakh Project, the Stati decided in the summer of 2008 to sell off their Kazakh companies, which they had siphoned off in an operation called "Project Zenith" ("**Zenith Project**"). They hired the bank Renaissance Capital ("**Renaissance Capital**") to lead the transaction.

134. In order to refinance their Kazakh companies, which had been looted by them, the Stati started to look for a loan at the end of 2008. After being turned down for a loan by Standard Bank ("**Standard Bank**") in November 2008 (**Exhibit 1.95**, p. 1), they rejected a loan offer from Credit Suisse ("**Credit Suisse**") as too expensive in December 2008 (**Exhibit 1.99**, p. 2). The Stati then decided to enter into a complex and opaque financial transaction designed, once again, to generate money for the Stati at the expense of their Kazakh companies, which were to inherit all the debts generated by this transaction.

135. In April 2009, the Stati called upon Renaissance Capital, already in charge of the Zenith Project, to set up a "*Financing and Buyout*" operation through which the Lenders<sup>35</sup> would make USD 60 million available to "*Mr. Anatolia Stati*", who would himself participate in the project.

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<sup>35</sup> Avelade Holdings Ltd, GLG Atlas Macro Fund, Renaissance Securities (Cyprus) Ltd, Sputnik Group Ltd, Vision Advisors III Ltd, Alder Shipping Ltd and GLG Atlas Value & Recovery Fund.

*"The Stati ultimately interposed Laren between the Lenders and Tristan, KPM and TNG to conceal the profit they hoped to make. The Stati ultimately interposed Laren between the Lenders and Tristan, KPM and TNG to conceal the profit they hoped to make.*

#### *Interposition*

136. Initially, the stakeholders intended to grant the loan to an entity "*controlled by Messrs Stati*"<sup>37</sup> (**Exhibit 1.107**, p. 4), namely Montvale (**Exhibit 1.107**, p. 6).
137. During May 2009, the parties involved (Renaissance Capital, the Stati and law firms) discussed at length how to avoid the operation being qualified as a  
The Trust Agreement required a "*related party transaction*" (**Exhibit 1.114**, p. 7). If it was revealed that the transaction was between related companies, the Trust Agreement required a "*third party fairness opinion*" (**Exhibit 1.46**, section 4.12), which would have derailed the transaction.
138. To disguise the transaction, the Stati in mid-May 2009 instructed the British Virgin Islands law firm Harneys ("**Harneys**") to incorporate Laren Holdings Ltd ("**Laren**") (**Exhibit 1.132**). On 10 June 2009, Laren was formally incorporated in the British Virgin Islands (**Exhibit 1.123**). In order to disguise any apparent connection with the Stati, Laren was formally administered by a trust set up by Harneys, in order to present Laren as a so-called "*orphan company*" (**Exhibit 1.118**, p. 1; **Exhibit 1.119**, p. 1).
139. This sleight of hand is so artificial that the Stati were prepared to sign the Laren Transaction with Laren as a related company to get the money as quickly as possible and "*after signing, we make Laren an orphan*" (**Exhibit 1.118**, p. 1).

#### *Hidden profit*

140. Between 11 and 15 June 2009, the Stati and the Lenders signed no less than 6 contracts framing the Laren Transaction (**Exhibits 1.125 to 113**).
141. In the following weeks, the Lenders paid approximately USD 60 million to the Stati, which the Stati were to repay within 6 months, at an interest rate of 35% (**Exhibit 1.125**, Articles 1.1 and 2). It was also provided that in case of default by Laren (which existed only on paper), KPM and TNG would themselves repay the funds to the Lenders (**Exhibit 1.127** and **Exhibit 1.128**, Article 3).
142. In parallel, Tristan issued a third tranche of USD 111 million bonds ("**New Bonds**") which were transferred in full to the Lenders (**Exhibit 1.130**, sections 2 and 3). The Stati, however, reserved the right to recover a portion of the New Bonds. This was conditional upon their repayment of the loan within 6 months and the successful sale of their Kazakh companies under the Zenith Project (**Exhibit 1.130**, sections 6.2 and 7).

<sup>36</sup> Free translation of: "*where Mssrs Stati would participate in 50% of any profit*".

<sup>37</sup> Free translation of "*SPV controlled by Mssrs Stati*".

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143. This relationship between the Zenith Project and the Laren Transaction was at the heart of the Stati scheme. According to the Trust Agreement, in the event of sales of KPM and TNG, Tristan was to immediately repurchase the bonds from the bondholders at 101% of their issue value (**Exhibit 1.46**, section 4.16). Specifically, if the Stati sold KPM and TNG as part of the Zenith Project, Tristan would have had to immediately repurchase the first two tranches of bonds from the Noteholders for USD 424.2 million and the third tranche of bonds from the Lenders for USD 112.1 million (101% of the face value). As Tristan did not have sufficient funds, the purchaser of KPM and TNG, guarantors of Tristan's obligations under the Trust Agreement (**Exhibit 1.46**, Articles 1.01 and 11.01), would have "stepped in".
144. And that is precisely what the Stati were counting on. As part of the proposed sale of KPM and TNG, the Stati expected to obtain the funds to repay the Lenders. In that case, they would have met both conditions to recover part of the New Bonds. And the sooner they sold, the richer they would have become: if they repaid within 28 days, 42 days or 6 months, Tristan (and thus the Stati) would get back 55% (USD 61.7 million), 50% (USD 56 million) or 20% (USD 22.4 million) of the New Bonds respectively (**Exhibit 1.130**, sections 6.2.a, b and c and 7).
145. The Stati's schemes failed this time as they never managed to sell KPM and TNG. However, the hidden scheme did add significantly to the debt burden of KPM and TNG, who were now the guarantors of the Laren loan (USD 60 million) and the New Bonds issued by Tristan (USD 111 million).

*Settlement Agreement between the Stati and the Laren Transaction Lenders*

146. Due to a lack of liquidity, Stati was unable to repay the Lenders on time. By the end of 2009, Laren had repaid just over USD 8 million to the Lenders (**Exhibit 1.162**, p. 2, point C).
147. In 2011, the Lenders filed a lawsuit against Laren, which led the Stati to reveal that it was indeed they who controlled Laren. The circumstances of this episode are as follows.
148. In July 2011, the financial press revealed that Komet Group S.A. ("**Komet Group**"), a company based in the British Virgin Islands owned by Anatolie Stati (**Exhibits 1.53** and **1.58**), was to be sold to the British oil company Afren PLC ("**Afren**") for several hundred million dollars (**Exhibits 1.159**, p. 2, **1.160** and **1.162**, §6).
149. Alerted by the imminence of this lucrative transaction for the Stati, the Lenders applied to a court in the British Virgin Islands to freeze Stati funds. In an order dated 27 September 2011, the court ordered the freezing of Stati's assets "*up to*

USD "<sup>38</sup>, preventing them in particular from disposing of "the proceeds of the sale of Komet Group S.A.'s 60% shareholding in Barda Rash PSC to Afren plc (the "Afren Transaction", whether the proceeds are held in or outside the British Virgin Islands "<sup>39</sup> (Exhibit 1.161, p. 3; see also Exhibit 1.162, p. 2, point D).

150. In December 2011, the Lenders and the Stati finally reached an agreement, under which the Stati agreed to pay USD 61.5 million to the Lenders to close the lawsuits (Exhibit 1.162, §1). Remarkably, the settlement was reached with Laren, and it was Eldar Kasumov, Anatolia Stati's personal driver (Exhibit 1.157, p. 4), who signed the settlement as a director of Laren (Exhibit 1.162, p. 25).

### *Conclusions on embezzlement*

151. In its report, PwC concludes that the Stati have, through various schemes, misappropriated more than half a billion dollars from their Kazakh companies, either by withholding funding or siphoning off revenues (Exhibit 12.11, pp. 15-16).
152. For the purpose of these findings, four schemes were analysed: the Terra Raf Loan, the Oil Sales, the artificial inflation of the costs of the LPG plant and the Laren Transaction. The first three schemes worked, with the Laren Transaction ultimately being a failure for the Stati, provided that they managed to increase the debt of their Kazakh companies and their so-called "damage".
153. It has been demonstrated, based on the analysis of the account statements of the Stati companies summarised in **Tables 1 and 2** attached to these conclusions, that the Stati have at least embezzled more than **USD 360 million** from their Kazakh companies KPM and TNG via these three schemes: at least USD 31 million in the context of the Terra Raf Loan, at least USD 255 million in the context of the Oil Sales and at least USD 81 million in the context of the construction of the LPG Plant. Through their misdeeds, the Stati have inexorably plunged KPM and TNG into financial distress. As of 30 September 2008, KPM and TNG had, according to their financial statements, barely "USD 9.7 million in cash, despite the issuance of bonds in mid-2006 for USD 300 million and in early 2007 for USD 120 million "<sup>40</sup> (Exhibit 2.1, §289). It is now clearer why the Stati decided to leave Kazakhstan in the summer of 2008. At the time, however, no one suspected their ill-fated enterprise.

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<sup>38</sup> "The Respondent must not except with the prior written consent of the Applicant's legal practitioners: (1) remove from the British Islands any of their assets which are in the British Virgin Islands up to the value of US\$90,000,000.00". <sup>39</sup> "The Respondent must not except with the prior written consent of the Applicant's legal practitioners: (4) take any steps whether directly or indirectly to deal with or dispose of any of the proceeds of the sale of the 60% participating interest held by Komet Group S.A in Barda Rash PSC to Afren plc (the "Afren Transaction"), whether the proceeds are held in or outside the British Virgin Islands.

<sup>40</sup> Based on Tristan's financial statements, on 30 September 2008, the cash on hand and cash equivalents of the Tristan group (KPM, TNG, and Tristan) were USD 9.7 million, despite the issuance of notes in mid-2006 for USD 300 million and at the beginning of 2007 for USD 120 million".

## 2.the Stati misled all stakeholders

154. Over the years, the Stati have misled all stakeholders in their Kazakh Project: KPMG (a), Noteholders and users of the financial statements (b), their partner Vitol (c), the customs authorities (d), KKB Bank (e), and potential buyers in the Zenith Project (f).

### (a) Deception of KPMG by the Stati

155. In 2006, Stati engaged Deloitte ("**Deloitte**") as auditor of Tristan, KPM and TNG. In October 2006, Stati and Deloitte did not agree on how to present the *In addition, the Commission's proposal to include "related party transactions" in the financial statements was already a point of contention (Exhibit 1.40).*
156. As a result, in March 2007, a few weeks before the publication of the 2006 annual financial statements, Artur Lungu sent an internal e-mail to his colleagues, suggesting that they "In April 2007, the Stati issued a communication stating that they would not be able to publish the 2006 financial statements on time, arguing that "the auditors [*Deloitte*] were unable to complete their work" (Exhibit 1.50). In April 2007, Stati issued a communication stating that it would not be able to release the 2006 financial statements on time, claiming that "*the auditors [Deloitte] were not able to complete their review of the financial statements on time*" (Exhibit 1.52). Stati finally decided to replace Deloitte with KPMG in the course of 2007, claiming to follow "*the good practice of periodically changing auditors*" (Exhibit 1.84, p. 59).
157. According to the service agreements between KPMG and the Stati, KPMG was to perform the audit of the financial statements of Tristan, KPM and TNG "*in accordance with ISAs*" (see above, Preamble on Key Concepts), and KPMG was to "*ask specific questions of [Tristan, KPM and TNG] about the statements contained in the financial statements and the effectiveness of internal control, and to obtain a letter of representation from [Tristan, KPM and TNG] on those matters. The responses to our enquiries, the written representations, and the results of the audits constitute the evidence on which we will rely to form an opinion on the financial statements*"<sup>41</sup> (Exhibit 1.97, p. 19, item 5).
158. In preparation for KPMG's audit of the financial statements, Stati sent KPMG several "representation letters". In these letters, Stati began by making **two** very important preliminary **assertions**:

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<sup>41</sup> As required by ISA, we will make specific inquiries of the Company about the representations embodied in the financial statements and the effectiveness of internal control, and obtain a representation letter from the Company about these matters: "*As required by ISA, we will make specific inquiries of the Company about the representations embodied in the financial statements and the effectiveness of internal control, and obtain a representation letter from the Company about these matters. The responses to our inquiries, the written representations, and the results of audit tests comprise the evidential matter we will rely upon in forming an opinion on the financial statements.*

- 158.1. First, Stati claimed that it had to "*present the financial statements fairly in accordance with IFRS*"<sup>42</sup> (**Exhibit 1.83**, pp. 2-3; **Exhibit 1.122**, p. 1; **Exhibit 1.140**, p. 1; **Exhibit 1.142**, p. 2). Indeed, they wrote in black and white in **all the** financial statements that Stati submitted to KPMG between 2007 and 2009: "*These consolidated financial statements have been prepared in accordance with IFRS*"<sup>43</sup> (**Exhibit 1.1**, pp. 26, 193 and 353) (RoK emphasis added).
- 158.2. Secondly, they stated and acknowledged that "*the term 'fraud' includes misstatements resulting from fraudulent financial reporting and misstatements resulting from misappropriation of assets. Misstatements resulting from fraudulent financial reporting involve intentional misstatements, including omissions of amounts or information from the financial statements, in order to deceive users of the financial statements. Misstatements resulting from misappropriation of assets involve the theft of an entity's assets, often accompanied by false or misleading statements or documents to conceal the fact that the assets are missing or have been pledged without proper authorization*"<sup>44</sup> (**Exhibit 1.83**, pp. 2-3; **Exhibit 1.122**, p. 1; **Exhibit 1.140**, p. 1; **Exhibit 1.142**, p. 2).
159. Yet the Stati deliberately violated these standards and made false statements to KPMG to prevent KPMG from looking too closely at the transactions between their related companies and discovering the massive misappropriation of funds they were committing at the time. The deceptions that have been uncovered by indisputable evidence are as follows.

**(i) Deception on the Terra Raf Loan**

160. According to the 2007 and 2008 financial statements, the Terra Raf Loan amounted to USD 76 million (**Exhibit 1.1**, pp. 49 and 212). In the 2009 financial statements, the Stati stated that Terra Raf owed Tristan USD 115 million (**Exhibit 1.1**, p. 374). They also wrote that "*Despite financial difficulties experienced by some related companies, the management [Stati] considers that no provision was necessary for these financial assets*"<sup>45</sup> (**Exhibit 1.1**, p. 382).
161. In KPMG's Independent Auditors' Report of 25 May 2010 ("**2010 Audit Report**"), KPMG noted that "*financial difficulties were being experienced by certain related companies*" but pointed out that the Stati had not "*estimated the*

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<sup>42</sup> "We acknowledge our responsibility for the fair presentation of the financial statements in accordance with IFRS [...]"

<sup>43</sup> Free translation of : "*These combined financial statements have been prepared in accordance with International Financial Reporting Standards.*"

<sup>44</sup> "We understand that the term "fraud" includes misstatements resulting from fraudulent financial reporting and misstatements resulting from misappropriation of assets. Misstatements resulting from fraudulent financial reporting involve intentional misstatements including omissions of amounts or disclosures in financial statements to deceive financial statement users. Misstatements resulting from misappropriation of assets involve the theft of an entity's assets, often accompanied by false or misleading records or documents in order to conceal the fact that the assets are missing or have been pledged without proper authorisation."

<sup>45</sup> Free translation of : "*Despite of financial difficulties being experienced by certain related parties, the management believes that no provision is necessary for these financial assets*".



*recoverable amount of the receivables [Terra Raf Loan] as required by IFRS 39 Financial Instruments: Recognition and Measurement* <sup>46</sup> (Exhibit 1.1, p. 344).

162. The evidence now available shows that the alleged "*financial difficulties*" were merely a pretext to conceal the misappropriation of part of the Terra Raf Loan (at least USD 31 million). This is a fraud according to the meaning reproduced by the Stati in their letters of affirmation since the term fraud includes misstatements resulting from misappropriation of assets.

**(ii) Deception on Oil Sales**

163. In the 2009 financial statements, Stati stated that '*KPM and TNG renegotiated the terms of settlement of trade receivables from their main customers, related parties [Stadoil and General Affinity], extending the term from 170 days to [...] 325 days*'<sup>47</sup> (Exhibit 1.1, p. 383) because of "*financial difficulties experienced by the oil buyers [Stadoil and General Affinity]*"<sup>48</sup> (Exhibit 1.1, p. 385). According to the Stati, Stadoil and General Affinity owed more than USD 162 million to KPM and TNG as of 31 December 2009 (Exhibit 1.1, pp. 382-383). Despite this worrying situation, Stati stated in its financial statements that "*no provision was required for these trade receivables from related parties*"<sup>49</sup> (Exhibit 1.1, p. 384).
164. In its 2010 Audit Report, KPMG noted that "*the management of [TNG and KPM] agreed to extend the payment terms of their largest customers, Stadoil Ltd and General Affinity Ltd, who are related parties, after being informed that these customers would not be able to meet the existing contractual payment terms*" but pointed out that Stati did not "*estimate the recoverable amount of the receivables as required by IFRS IAS 39 Financial Instruments: Recognition and Measurement*"<sup>50</sup> (Exhibit 1.1, p. 344).
165. The evidence now available shows that the "*financial difficulties*" alleged by Stati and the extension of payment terms granted to Stadoil and General Affinity were not

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<sup>46</sup> Free translation of : "*Financial difficulties are being experienced by certain related parties which indicate that the asset might be impaired. [...] Despite the fact that these circumstances indicate that the receivables might be impaired, management has not estimated the recoverable amount of the receivables as required by International Financial Reporting Standard IAS 39 Financial Instruments: Recognition and Measurement.*

<sup>47</sup> During the three months ended March 31, 2009 KPM and TNG renegotiated the terms of settlement of trade receivables from its main customers, related parties, by extending the term from 170 days to 230-280 days. During the three months ended September 30, 2009 the Companies further renegotiated the terms of settlement of the trade receivables from its main customer, a related party, by extending the term from 230-280 days to 325 days.

<sup>48</sup> Management of the Companies believes that the liquidity problems are temporary and caused by financial difficulties being experienced by the ultimate buyers of crude oil [...]: "*Management of the Companies believes that the liquidity problems are temporary and caused by financial difficulties being experienced by the ultimate buyers of crude oil [...]*".

<sup>49</sup> Free translation of : "*Management believes that no impairment allowance is necessary in respect of trade receivables from related parties.*

<sup>50</sup> As described in Note 30(b), the management of Tolkyneftegaz LLP and Kazpolmunay LLP agreed to extend the payment terms for their largest customers, Stadoil Ltd and General Affinity Ltd: "*As described in Note 30(b), the management of Tolkyneftegaz LLP and Kazpolmunay LLP agreed to extend the payment terms for their largest customers, Stadoil Ltd and General Affinity Ltd, which are related parties, after they were informed that these customers would not be able to comply with existing contractual payment terms. [...] Despite the fact that these circumstances indicate that the receivables might be impaired, management has not estimated the recoverable amount of the receivables as required by International Financial Reporting Standard IAS 39 Financial Instruments: Recognition and Measurement.*

This is a fraud according to the meaning given by the Stati in their letters of affirmation, since the term "fraud" includes misappropriation of assets resulting from a misappropriation of assets by Vitol SA. This is a fraud according to the meaning reproduced by the Stati in their letters of affirmation since the term fraud includes misstatements resulting from a misappropriation of assets.

**(iii) Deception on the construction costs of the LPG plant**

166. In implementing KPMG's deception regarding the costs of the LPG plant, the Stati not only concealed from KPMG the misappropriation of funds, but even went so far as to conceal from their own auditor their control over the two supposedly independent companies that were presented as the main suppliers to the project, namely Perkwood and Azalia.

***Concealment of Perkwood and Azalia's true status***

167. In their representation letters to KPMG, Stati confirmed the "***completeness of the information provided [to KPMG] regarding the identification of related parties and regarding transactions with such parties that are material to the financial statements***"<sup>51</sup> and stated that

***"Annex 2 to this letter is a complete list of the Company's subsidiaries and associates, and other direct and indirect related companies; the definition of related parties in IAS 24 Related Party Declaration is attached as Annex 3 to this letter"***<sup>52</sup> (**Exhibit 1.83**, p. 4; **Exhibit 1.122**, p. 2; **Exhibit 1.140**, p. 2; **Exhibit 1.142**, p. 2) (RoK emphasis added).

168. In Annex 2 of these affirmation letters, the Stati listed the following companies: Ascom, Arpega Trading, General Affinity, Kasco, Kasco-Petrostar, Stadoil and Terra Raf (**Exhibit 1.83**, p. 10; **Exhibit 1.122**, p. 5; **Exhibit 1.140**, p. 6; **Exhibit 1.142**, p. 9). Similarly, Stati only included these companies in the "*Related party transactions*" section of the financial statements (**Exhibit 1.1**, pp. 62-63, 225-226 and 392-393).

169. In Annex 3 of the letters of affirmation, the Stati have reproduced in full the definition of "*In the case of a related party, this is defined in IAS 24, according to which "A party is related to an entity if (a) directly, or indirectly through one or more intermediaries, the party (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and sister companies) [...]"*<sup>53</sup> (**Exhibit 1.83**, p. 11; **Exhibit 1.122**, p. 7; **Exhibit 1.140**, p. 7; **Exhibit 1.142**, p. 10).

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<sup>51</sup> "We confirm the completeness of the information provided to you regarding the identification of the related parties and regarding transactions with such parties that are material to the financial statements.

<sup>52</sup> "We confirm that Appendix 2 to this letter is a complete list of the Company's direct and indirect subsidiaries and associates, and other related parties; the definition of a related party in IAS 24 Related Party Disclosures is attached as Appendix 3 to this letter.

<sup>53</sup> Free translation of: "A party is related to an entity if: (a) directly, or indirectly through one or more intermediaries, the party: (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries)".

170. The evidence now available shows that both Perkwood and Azalia clearly meet this definition as they and TNG are ultimately controlled by the same person, namely Anatolia Stati. Therefore, the transactions between Perkwood/Azalia and TNG are indeed

"In addition to the *"related party transactions"*, the Stati had a positive and absolute obligation to mention them in their financial statements and in the representation letters sent to KPMG to enable the audit of these transactions.

171. This was not a simple 'oversight' or 'error' on the part of the Stati. The Stati, who controlled Perkwood and Azalia through secret mandates and who had "pumped" tens of millions of dollars to TNG through them, **deliberately failed to** identify Perkwood and Azalia as related companies. This deliberate concealment is absolutely fundamental to this case because, had KPMG been informed at the time, it would **never** have certified the financial statements of Stati. Instead, KPMG would have carried out a review of all the financial information of Tristan, KPM and TNG, as required by the ISA to which KPMG was subject, which would have revealed the truth.

172. This is a *"fraud"* according to the specific meaning reproduced by the Stati in their letters of affirmation, since the term fraud includes misstatements resulting from fraudulent financial reporting and misappropriation of assets.

***Concealment of the fraudulent inflation of the construction costs of the LPG Plant***

173. While Stati's 2006 *business plan* assumed capital investment costs (CAPEX) of USD 105 million (including taxes) (**Exhibit 1.35**, p. 2), Stati reported construction costs of USD 248,084,113 as of 31 December 2009 in TNG's financial statements (**Exhibit 1.1**, p. 495), an **overrun of 150%**. While a CAPEX overrun is not uncommon in the construction industry, such an overrun is highly unusual.

The evidence now available, in particular the triple shadow accounting (see *above*) that Stati did not disclose to KPMG, shows that the construction costs reported in the financial statements include at least the **USD 40 million** "planned profit" hidden in construction costs (Tractebel equipment).

174. The Stati also stated in the financial statements that an advance of approximately **USD 37 million** had been repaid to the Kazakh Stati companies: *"Due to the planned sale of the Companies [KPM and TNG], the owners of the Companies [the Stati] decided to stop the construction of the LPG plant and agreed with Perkwood Investments Ltd. to cancel the delivery of the necessary equipment and to return the advance payment of*

**36,800,212"**<sup>54</sup> (**Exhibit 1.1**, p. 394) (emphasis added). It is now established that Perkwood never repaid this advance: it transferred the funds to Hayden for the Stati to use as they saw fit.

175. Moreover, there are still grey areas, in particular regarding the exorbitant amount of interest capitalised by Stati on the construction costs (around USD 60 million, i.e. an interest rate of 32%<sup>55</sup> !) and the service fees of more than USD 30 million charged by another company linked to Stati, Kaspay Asia Service Company ('Kasco').
176. It follows that the outsized CAPEX overrun was actually hiding the artificial and fraudulent inflation of the LPG Plant construction costs declared by Stati in the financial statements. Of course, KPMG did not see this as a problem, as it could not have known that the Stati were secretly using Azalia and Perkwood to artificially inflate the construction costs of the LPG Plant and embezzle several tens of millions of dollars.

#### (iv) Deception on the Laren Transaction

177. In the 2009 financial statements, Stati stated that "*KPM and TNG agreed to guarantee under a credit facility the obligations of Laren Holdings Ltd, an entity formed by some of Laren's creditors*"<sup>56</sup> (**Exhibit 1.1**, p. 389) (RoK emphasis added). This is now known to be a false statement as Laren was established at the request of Artur Lungu, the Stati's right-hand man (**Exhibit 1.132**). The Stati also stated that "*On 17 June 2009, Tristan issued additional bonds of USD 111,110,000, which were sold for USD 30 million to Laren Holdings Ltd*"<sup>57</sup> (**Exhibit 1.1**, page 379). At no point did the Stati disclose that these New Bonds were actually transferred to the Lenders with whom the Stati negotiated the possibility of making a huge profit in the Laren Transaction.
178. In the 2010 Audit Report, KPMG stated that Stati "*has not provided us with adequate documentation regarding the organisation and operation of Laren Holdings Ltd. to enable us to determine whether it is an SPV of Tristan Oil Ltd. and should be consolidated [with Tristan]*"<sup>58</sup> (**Exhibit 1.1**, p. 345) (RoK emphasis added). The documents now

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<sup>54</sup> "In the view of the expected sale of the Companies, owners of the Companies decided to stop construction of the LPG plant and agreed with Perkwood Investments Ltd. to cancel the delivery of the necessary equipment and to return the advance paid in the amount of USD 36,800,212.

<sup>55</sup> USD 248M - USD 60M = USD 188 and USD 60M/USD 188M = 0.32.

<sup>56</sup> Free translation of : "*KPM and TNG have agreed to guarantee credit facility obligations of Laren Holdings Ltd, an entity formed by certain of Laren's creditors [...]*".

<sup>57</sup> Free translation of : "*On June 17, 2009 Tristan issued additional notes of USD 111,110,000, which were sold for USD 30,000,000 to Laren Holdings Ltd*".

<sup>58</sup> "In addition, management has not provided us with adequate documentation relating to the organisation and operation of Laren Holdings Ltd. to enable us to determine whether it is a special purpose entity of Tristan Oil Ltd. and required to be consolidated in accordance with International Financial Reporting Interpretation SIC 12 Consolidation - Special Purpose Entities.

The available evidence shows that the Stati have again made false statements to KPMG and withheld information to prevent KPMG from analysing the Laren Transaction in detail:

178.1. By email of 13 August 2009, KPMG informed the Stati that "*We do not have sufficient information to make a final determination, but our preliminary conclusion is that Laren Holding Ltd ("Laren") is a special purpose vehicle of Tristan Oil Limited ("Tristan"), and that its balance sheet and income statement should therefore be included in the consolidated financial statements as at 30 June 2009*"<sup>59</sup> (**Exhibit 1.137**, p. 1). KPMG therefore considered that Laren and Tristan were related companies and therefore the accounts of both companies should be consolidated.

178.2. In an email dated 17 August 2009, Stati replied that "*Laren was not incorporated by Tristan, KPM and TNG (together "Tristan Group"). It was also not incorporated on behalf of the Tristan Group and is not a related company to the Tristan Group from a beneficial owner perspective*"<sup>60</sup> and that "*Laren's activities are not conducted on behalf of the Tristan Group and are not intended to produce profits for the Tristan Group*"<sup>61</sup> (**Exhibit 1.138**, p. 6).

178.3. In response, KPMG asked a series of follow-up questions in an email of 18 August 2009 (**Exhibit 1.138**, pp. 3-5) and insisted a few days later on "*a copy of the credit agreement*"<sup>62</sup> (**Exhibit 1.138**, p. 2). Stati made it appear that they would comply, "*provided that it is delivered to a specific KPMG partner that you can point to outside Kazakhstan, preferably in London or Moscow*" (**Exhibit 1.138**, p. 2). KPMG's statements in the 2010 Audit Report, however, demonstrate that Stati did not provide the documents to KPMG.

179. The Stati's statements about Laren and the Laren Transaction are fraudulent under the meaning reproduced by the Stati in their letters of representation since the term fraud includes misstatements resulting from fraudulent financial information.

#### **(b) Deception of noteholders and users of financial statements by the Stati**

180. As demonstrated above, the Stati diverted a substantial part of the funds lent by the Noteholders in the context of the issuance of the first two tranches of Tristan bonds (about USD 420 million in total) from their Kazakh Project.

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<sup>59</sup> "*We do not have enough information to reach a final decision, but our preliminary conclusion is that Laren Holding Ltd ('Laren') is a Special Purpose Entity of Tristan Oil Limited ('Tristan'), and therefore its balance sheet and income statement should be included in the combined financial statements at 30 June 2009.*"

<sup>60</sup> "*Laren has not been incepted by either Tristan Oil Ltd, Kazpolmunay LLP and Tolkyneftegaz LLP (together "Tristan Group"). Neither it has been incepted on behalf of Tristan Group, nor it is an affiliated party of Tristan Group from the perspective of ultimate beneficial owner.*"

<sup>61</sup> Free translation of : "*The activities of Laren are not being conducted on behalf of Tristan Group and are not intended to produce benefits for Tristan Group.*"

<sup>62</sup> "*Have you got the approval for the copy of the original credit facility agreement be provided to KPMG? "*"

181. They then doctored the financial statements that they were required to provide periodically to the Noteholders under the Trust Agreement (**Exhibit 1.46**, Articles 4.03 and 4.04.b), in order to mislead the Noteholders as to the actual use of the loaned funds.
182. More broadly, the Stati misled all users of the financial statements as they did not reflect the financial position of Tristan, KPM and TNG, whose main assets consisted of receivables from related parties (Terra Raf, Stadoil, General Affinity, Perkwood) through which the Stati had secretly siphoned them.

**(c) Deception of the partner Vitol by the Stati**

183. As part of its partnership with the Stati, Vitol FSU had made an equity contribution of USD 20 million to finance part of the costs of the Power Plant (**Exhibit 10.2**, pp. 748 and 892). Vitol had also agreed to finance more if necessary by increasing the advances paid in the framework of the Oil Sales (**Exhibit 3.5**, §§31, c and 36) but it did not know to what extent these funds were allocated to the construction of the LPG Plant since the Stati were the only ones to control the process (**Exhibit 3.5**, §67)
184. According to an internal Stati document, Stati had planned to "allocate" USD 45 million advanced by Vitol SA under the TNG COMSA Contract, in addition to the USD 20 million contribution from Vitol FSU (**Exhibit 1.143**, "Statements" sheet, line 1290)<sup>63</sup>. Yet, as Vitol FSU's expert in the arbitration against Stati pointed out a few years later (see *infra*, Section C), "*it is still not clear whether, and if so how, the 'TNG COMSA prepayments' are transferred to TNG for investment in the LPG Plant*"<sup>64</sup> (**Exhibit 3.6**, §5.30). The doubts of Vitol's expert were well founded. Since then, Stati's company account statements and other documents show that these funds **never** reached TNG because Stati had diverted them beforehand.

**(d) Deception of Kazakh customs authorities by the Stati**

185. The Stati also misled the customs authorities when importing the equipment into Kazakhstan. Anyone importing goods into Kazakhstan is required to complete a customs declaration. One of the requirements is to indicate whether the import transaction is between related parties by ticking the appropriate box ("yes  
"(e.g. "no" in response to question 7 on the second page of the statement).
186. In order to prevent the Kazakh authorities from examining the true cost of goods imported by Perkwood or Azalia, the Stati systematically ticked the "no" box instead of the "yes" box. For example:

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<sup>63</sup> This amount was confirmed by Artur Lungu in the ECT Arbitration (**Exhibit 2.35**, pp. 248:13-20).

<sup>64</sup> "*it is still unclear whether, and if so, how, the so-called 'TNG COMSA prepayments' are passed onto TNG in order to be invested in the LPG plant*".

186.1. Stati ticked the "no" box in five customs declarations of 10 September, 15 and 23 October, 5 November and 29 December 2007, even though the equipment was supplied by Perkwood to TNG, both of which are ultimately controlled by Anatolia Stati (**Exhibits 1.61, 1.63, 1.64, 1.84**, p. 2, Question 7).

186.2. The Stati also ticked the "no" box in a customs declaration of 26 June 2006, even though the equipment was supplied by Azalia to TNG, both of which are ultimately controlled by Anatolia Stati (**Exhibit 1.37**, p. 2, Question 7).

**(e) Deception of the KKB bank by the Stati**

187. As a lender to TNG and according to the loan agreement with Stati, KKB had the right to control TNG's financial situation. This control ended when in January 2007 Stati decided to repay the loan granted by KKB early (**Exhibit 2.39**, §575).

188. However, as the bank with which TNG had opened several accounts and in accordance with Kazakh regulations, KKB continued to supervise cross-border transactions to and from TNG accounts.

189. Under Kazakh currency control regulations, banks act as agents of the National Bank of Kazakhstan ("**BNK**") to oversee cross-border transactions involving the conversion of Kazakh currency (KZT) into foreign currency and vice versa. Under Kazakh regulations, companies that enter into contracts with foreign entities involving such funds transfers must open a "transaction passport" with the bank where it holds its bank accounts.

A "transaction passport" is an electronic register that contains information such as the identity of the parties to the contract and payment deadlines. Each passport is connected to a global banking system to which the tax authorities have access.

190. In this context, as early as February 2006, Stati informed the Kazakh authorities that the main supplier for the construction of the LPG Plant would be the company Perkwood with which TNG had signed a contract in February 2006 (the so-called Perkwood Contract):

190.1. On 20 February 2006, TNG applied to the National Bank of Kazakhstan for a licence to allow foreign currency transactions between TNG and Perkwood, which was presented as a third party supplier in connection with the construction of the LPG Plant (**Exhibit 1.29**).

190.2. On March 16, 2006, the National Bank of Kazakhstan issued the license to TNG stating:  
*"Any payment or cash transfer related to the above transaction (except for operating licenses) will be made through Kazkommertbank JSC which*

*is authorised to exercise exchange control over such payments and transfers* "<sup>65</sup> (**Exhibit 1.30**). The licence included the initial value of the Perkwood Contract, i.e. USD 115,000,000, and the obligation for TNG to provide NBK with monthly statements of account.

190.3. On 17 March 2006, KKB issued to TNG a "passport" purporting to record the transactions between Perkwood and TNG under the Perkwood Agreement ("**Perkwood Agreement Passport**") (**Exhibit 1.31**).

191. Of course, this audit would in no way have allowed KKB to realise that the Stati had manipulated the amounts charged by Perkwood to TNG to artificially inflate the costs of the LPG plant. Indeed, the Stati never made it clear to KKB or anyone else that Perkwood was in fact a **related company** that they secretly controlled.

**(f) Deception of potential buyers of Kazakh assets**

192. In the summer of 2008, after having looted their Kazakh companies (KPM, TNG) as they wished, the Stati decided to sell these companies and the LPG plant and leave the country. They hired the Renaissance Capital bank ("**Renaissance Capital**") as a consultant to conduct the sale operation, called "Zenith Project".

193. On 18 July 2008, Renaissance Capital sent a "preview" offer to 129 potential buyers, including the state-owned company KasMunaiGas ("**KMG**") (**Exhibit 2.1**, §280). Two key documents were then issued to the 41 potential buyers, including KMG, who expressed interest and signed a confidentiality agreement:

193.1. In mid-August, Renaissance Capital sent an "*Information Memorandum*" ("**Information Memorandum**") (**Exhibit 1.84**).

193.2. In mid-September, KPMG sent a comprehensive due diligence submission ("**2008 Due Diligence Report**") (**Exhibit 1.88**).

194. Both documents contain and relay **false information**.

195. First, the Information Memorandum stated that "as of <sup>1</sup> July 2008, TNG has spent approximately USD 193 million on the LPG Plant "<sup>66</sup> (**Exhibit 1.84**, p. 10). This amount comes directly from TNG's financial statements for the second quarter of 2008 (**Exhibit 1.1**, p. 9).

553) which are based on the fraudulent accounting of the Stati (**Exhibit 1.80**). In particular, it includes the

This is a "planned profit" of USD 40 million hidden in the Tractebel Equipment as well as the interest capitalised on these fictitious costs.

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<sup>65</sup> "Any payments or cash transfers related to the aforesaid transaction (except for operation licences) shall be effected via Kazkommertsbank JSC which is authorised to exercise foreign exchange control over such payments and transfers". <sup>66</sup> As of 1 July 2008, TNG had spent approximately USD 193 million on the LPG Plant.



196. Second, KPMG's 2008 Due Diligence Report also stated that "*USD 193 million had already been invested by 30 June 2008*"<sup>67</sup> (**Exhibit 1.88**, p. 89), and Perkwood and Azalia were presented as third party companies (**Exhibit 1.88**, pp. 11 and 72). The fraud perpetrated by Stati was exposed here by the discovery of the draft report that had originally been prepared by KPMG. In a draft sent to the Stati on 31 August 2008, based on its understanding, KPMG had identified Perkwood as a "related company" (**Exhibit 1.85**). However, on 8 September 2008, Artur Lungu sent handwritten comments to KPMG striking out the references identifying Perkwood as a related party, requesting KPMG to change the status of Perkwood to "third party" (**Exhibit 1.87**). On 15 September 2008, in accordance with these instructions, KPMG sent the Stati a second version of the report mentioning Perkwood as a third party (**Exhibit 1.88**). It was this disguised version that was distributed, on behalf of the Stati, to potential purchasers, with the clear intention to deceive.
197. *On the basis of documents containing false information, eight potential buyers submitted indicative offers in September 2008 (Exhibit 2.1, §290), including KMG, which valued the LPG Plant at USD 199 million ("Indicative Offer") (Exhibit 1.89). In its Indicative Offer, KMG insisted that it could conduct "standard and customary due diligence from the perspective of the acquirer, including a legal analysis (commercial, financial contracts with related parties)"<sup>68</sup> (Exhibit 1.89, p. 5). In July 2009, KMG withdrew from the Zenith Project in view of KPM's and TNG's indebtedness (Exhibit 2.1, §475).*
198. It has now been established that the Stati obtained the Indicative Offer **by fraud**, by presenting the construction costs as being much higher than the actual costs. However, this did not prevent them from presenting this offer to the Arbitral Tribunal as a reliable and absolute minimum for assessing the value of the LPG Plant. This point is developed below.

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<sup>67</sup> According to management, as of 30 June 2008 the plant has been 60% complete. As of 17 May 2008 total cost of the LPG plant construction was estimated to be approximately USD233 million out of which USD193 million had already been invested as at 30 June 2008. Total cost of the LPG plant construction is subject to periodic review over time".

<sup>68</sup> "KMG EP and its advisors are prepared to begin reviewing the electronic data room and the vendor due diligence reports immediately, and would anticipate, at the very least, performing the following additional due diligence: [...] Standard and customary due diligence from a buyer's point of view, including legal (commercial, financing and related parties' contracts, insurance, off-balance sheet commitments, litigations), tax&accounting, technical & IT, environmental, pension, employee benefits and regulatory reviews.

## **B. ECT arbitration: Stati deceived the RoK and the Arbitral Tribunal**

199. Having failed to sell their Kazakh companies under the Zenith Project, the Stati resorted to another opportunity, that of filing an "investment arbitration" against the RoK in July 2010 (1). In the course of this procedure, which lasted just over two years, the Stati deceived the RoK and the Arbitral Tribunal (2). In December 2012, the Stati and the Noteholders entered into an agreement to share the proceeds of this deception, namely the amount of their alleged "loss" in Kazakhstan (3). In December 2013, the Arbitral Tribunal issued the Award, finding RoK liable for breaching the ECT and ordering it to compensate the Stati for approximately USD 500 million, this amount being the alleged "loss" realised by the Stati (4).

### **1The premises of the ECT Arbitration (January to July 2010)**

200. After deceiving potential buyers of their Kazakh assets, but failing to complete the Zenith Project, the Stati bounced back by filing an arbitration against the RoK in July 2010. This was just one more option for them to repay the Noteholders without having to repatriate the hundreds of millions of dollars they had embezzled. The evidence now available shows that the Stati had been preparing this plan for several months. In order to cover their backs in case the Zenith Project failed, they made sure to contact the law firm King & Spalding ("**King & Spalding**") to prepare for a possible arbitration against the RoK, as evidenced by a record of a 13 May 2010 conference call between KPMG and Artur Lungu:

*"King & Spalding has provided certain legal services in connection with pre-arbitration work [...] King & Spalding has been engaged by [Ascom] to prepare an arbitration claim against the RoK government. The claim will be submitted in case the SPA transaction with the potential purchaser fails"*<sup>69</sup> (Exhibit 1.154, p. 3) (RoK emphasis added).

201. The investment arbitration against RoK was therefore only intended as a "Plan B" in case they failed to fool a buyer. The potential buyer referred to in the above passage was Cliffson ("**Cliffson**"), which had made a USD 920 million bid for KPM and TNG in February 2010 (Exhibit 2.1, §646 and 1428). Since Cliffson finally withdrew in June 2010, the Stati filed a request for arbitration with the Stockholm Chamber of Commerce on 26 July 2010 under Article 26(4)(c) of the Energy Charter Treaty ("**ECT**" and "**ECT Arbitration**").

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<sup>69</sup> "There were some legal services rendered "There were some legal services rendered by King&Spalldin in respect to pre-arbitration work [...] King & Spallding was hired bythe Company for preparation of arbitration claim against the government of RK. Claim will be submitted in case of failure of SPA transaction with potential buyer".

202. The frauds committed by the Stati in their Kazakh Project may not have been committed originally for the *purpose of* eventual arbitration, and this is not (and never has been) the RoK's case (contrary to the Stati's claim). The RoK's case, which is now established by incontrovertible evidence, is that the Stati committed fraud in order to deceive *other stakeholders* (see above), and that they later opportunistically decided to mobilise these frauds in an arbitration against the RoK. And to achieve this new evil purpose and avoid the discovery of their earlier deceptions, the Stati had to commit further deceptions.

## **2. The deceptions of the Stati in ECT Arbitration (2011 - 2013)**

### **(a) The origin of the dispute and the issues in dispute before the Arbitral Tribunal**

203. As the Arbitral Tribunal pointed out in its Award, the Parties agreed on the basic facts at the origin of the dispute between the parties:

203.1. On 6 October 2008, Mr Vladimir Voronin, then President of Moldova, wrote to Mr Nazarbayev, then President of the RoK, informing him that "*Anatolia Stati hides its profits from the states in which it made them and 'even uses these profits from deposits in Kazakhstan for investments in areas, for example in South Sudan, which are subject to sanctions by international organisations, in particular the UN*"<sup>70</sup> (**Exhibit 2.1**, §948-949).

203.2. In mid-October 2008, based on President Voronin's letter, "*President Nazarbayev issued an order dated 14/16 October 2008 to the Kazakh Deputy Prime Minister, U. Sukeev, and the Head of the Agency of the Republic of Kazakhstan for Combating Economic Crimes and Corruption (the "Financial Police"), S. Kalmurzaev ("the Order"). The Order used the words "[a]t the request of the Moldovan side", to "thoroughly check the company's work and make a decision on its future work in the best interest of the country"*"<sup>71</sup> (**Exhibit 2.1**, §950).

203.3. From 16 October 2008, "*the Financial Police ordered the opening of numerous audits and investigations into Anatolie Stati, KPM and TNG*"<sup>72</sup> (**Exhibit 2.1**, §952).

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<sup>70</sup> Free translation of : "*Anatolia Stati conceals profits from the states where he has earned them and even 'use[s] of his profits from the deposits in Kazakhstan for investments in areas, for example, in Southern Sudan, that are subject to sanctions by international organizations, in particular the U.N*".

<sup>71</sup> Free translation of : "*expressly based on the letter from President Voronin, President Nazarbayev issued an Order dated 14/16 October 2008 to the Kazakh Deputy Prime Minister, U. Sukeev, and the head of the Agency of the Republic of Kazakhstan for Fighting Economic and Corruption Crimes (the "Financial Police"), S. Kalmurzaev ("the Order"). The Order used the terms '[a]t the request of the Moldovan party', to 'thoroughly check company's work and to take decision on its further work in the best interests of the country'*".

<sup>72</sup> Free translation of : "*the Financial Police ordered the commencement of numerous audits and investigations of Anatolie Stati, KPM, and TNG*".

204. The Stati argued in the arbitration that these measures were unjustified, aimed at taking over their assets from the Stati and ultimately prevented them from continuing to operate, to the point of expropriating them.
205. In its Award, the Tribunal considered the following three basic questions:
- 205.1. As for its **competence**, it had to determine, among other things, whether the Stati had indeed carried out a  
It was the "investment" that was protected by the ECT (**Exhibit 2.1**, §§805 to 813).
- 205.2. As to the **liability of the RoK**, he had to determine whether the RoK had treated the Stati "fairly and equitably" within the meaning of Article 10(1) ECT (**Exhibit 2.1**, §§941 to 1095).
- 205.3. As to the **causal link** between the RoK's liability and the Stati's damage, it had to consider two questions: (i) "*Did the violations of the ECT by the [RoK] cause the damage alleged by the [Stati]?*"<sup>73</sup> (**Exhibit 2.1**, §§1333 to 1432) and (ii) "*Did the alleged inexperience of the [Stati] and their own actions lead to the collapse of KPM and TNG?*" (**Exhibit 2.1**, §§1433 to 1458).
- 205.4. As to the **quantum** of Stati's damage, he had to determine whether certain debts of Stati should be deducted from Stati's damage (**Exhibit 2.1**, §§1527 to 1542) and to assess the amount of "damage" allegedly suffered by Stati as a result of RoK's actions, including the value of Stati's "loss" in relation to the LPG plant (**Exhibit 2.1**, §§1743 to 1748).
206. In deciding these issues, the Arbitral Tribunal has relied on all the documents produced and statements made by the parties in the course of the arbitral proceedings.

**(b) Conduct of the arbitration proceedings**

207. In accordance with practice, the arbitration procedure was a hybrid procedure, mixing elements of *common law* and civil procedure. It was conducted in six successive stages: (i) first round of submissions; (ii) document production proceedings; (iii) second round of submissions; (iv) hearings; (v) post-hearing submissions; and (vi) Award.
208. For the purposes of the further demonstration of deception, it is useful to summarise in a table the main procedural documents, testimonies and expert reports filed by the parties at the various stages of the proceedings:

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<sup>73</sup> Free translation of : "*Whether Respondent's Breaches of the ECT Caused Claimants' Alleged Damages*".

<b>Date</b>	<b>Document</b>	<b>Part No.</b>
<b><i>Step 1 - First round of conclusions</i></b>		
26.07.2010	Request for Arbitration of the Stati	
05.2011	Memorandum of Application of the Stati	<b>Exhibit 2.25</b>
	First Expert Report by FTI Consulting	<b>Exhibit 2.24</b>
	First testimony of Anatolia Stati	<b>Exhibit 2.22</b>
	Artur Lungu's first testimony	<b>Exhibit 2.23</b>
11.2011	RoK's Statement of Claim	
	First Deloitte Expert Report	
	First GCA Expert Report	
<b><i>Step 2 - Procedure in document production</i></b>		
5.01.2012	Requests for production of documents from each party ( <i>Redfern Schedule</i> )	<b>Exhibit 2.26</b>
3.02.2012	Decision of the Arbitral Tribunal on requests for production of documents	
<b><i>Stage 3 - Second round of conclusions</i></b>		
04-05.2012	Stati's Reply Brief on Jurisdiction and Liability	<b>Exhibit 2.30</b>
	Second testimony of Anatolia Stati	<b>Exhibit 2.29</b>
	Second testimony of Artur Lungu	<b>Exhibit 2.28</b>
	Testimony of Catalin Broscaru	<b>Exhibit 2.27</b>
28.05.2012	Stati's Reply on quantum	<b>Exhibit 2.31</b>
	Second Expert Report by FTI Consulting	<b>Exhibit 2.32</b>
13.08.2012	RoK's Rejoinder on jurisdiction and liability	
1.12.2012	RoK's Rejoinder on quantum	
	Second Deloitte Expert Report	
	Second GCA Expert Report	
<b><i>Step 4 - Hearings</i></b>		
1-8.10.2012	Hearing on liability	<b>Parts 2.33</b>
28-31.01.2013	Quantum hearing	<b>Exhibit 2.35 to 2.38</b>
<b><i>Step 5 - Post-hearing conclusions</i></b>		
8.04.2013	First Post-Hearing Brief of the Stati	<b>Exhibit 2.39</b>
	Third Expert Report by FTI Consulting	<b>Exhibit 2.40</b>
	First RoK Post-Hearing Brief	
	Third Deloitte Expert Report	
	Third GCA Expert Report	
2-3.05.2013	Final hearing	<b>Exhibit 2.42 and 2.43</b>
3.06.2013	Second Post-Hearing Brief of the Stati	<b>Exhibit 2.44</b>
	Second RoK Post-Hearing Brief	
<b><i>Step 6 - Sentence</i></b>		
19.12.2013	Award	<b>Exhibit 2.1</b>

**(c) Deception by the Stati during the arbitration procedure**

209. It is now established that Stati impeded the proper conduct of the arbitration proceedings by withholding key documents (i), producing false evidence or evidence based on false information (ii), and making false statements and testimony (iii).

**(i) Retention of key documents**

*Retention in the document production process*

210. The document production procedure is an absolutely central step in any arbitration procedure. Inspired by the *common law*, it offers each party the possibility to ask the other party to produce documents it considers relevant to the resolution of the dispute. If the other party objects to the production of the requested documents, the arbitral tribunal decides whether to accept or reject the request for the documents concerned. Once the arbitral tribunal orders the production of documents, the parties are obliged to produce the requested documents, failing which the arbitral tribunal will sanction the recalcitrant parties.

211. In accordance with this procedure, on 5 January 2012, Stati requested RoK to produce 86 categories of documents (**Exhibit 2.26**, Annex I, pp. 5-71). On the same day, RoK asked Stati to produce 111 categories of documents (**Exhibit 2.26**, Appendix II, pp. 72-150), including documents relating to the construction costs of the LPG Plant via Applications no. 107-109 (**Exhibit 2.26**, pp. 147-148). In particular, the RoK asked Stati to produce three types of documents described as follows:

211.1. Request No. 107: "*Details of plant and equipment acquired, other assets with indication of suppliers*"<sup>74</sup>.

211.2. Request no. 108: "*Documents specifying the cost of construction and assembly operations, start-up work and adjustment of the basic plant installations*"<sup>75</sup>.

211.3. Request no. 109: "*Documents on the progress of work on all basic plant facilities as of 21 July 2010*"<sup>76</sup>.

212. The Stati opposed each of these applications on the grounds that they were allegedly "vague". On 5 February 2012, the Arbitral Tribunal ruled on this dispute by Procedural Order No. 2 (**Exhibit 2.26**), and granted RoK's Claims No. 107-109, requiring Stati to produce all related documents (**Exhibit 2.26**, pp. 147-148, <sup>3rd</sup> and <sup>4th</sup> columns).

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<sup>74</sup> Free translation of : "*Breakdown of acquired plant and equipment, other assets with indication of suppliers.*

<sup>75</sup> Free translation of : "*Documents specifying the cost of construction and assembly operations, start-up and adjustment works in respect of basic facilities of the plant.*

<sup>76</sup> Free translation of : "*Documents about the progress of works in respect of all basic facilities of the plant as of 21 July 2010.*

213. It has now been established that Stati **withheld** essential documents that were clearly covered by RoK's claims, including: (i) the contract with Tractebel (**Exhibit 1.28**), the contracts with Transeco (**Exhibits 1.47 and 1.57**), and the other contracts with the suppliers of the LPG Plant; (ii) the Azalia Contract (**Exhibit 1.25**); (iii) the Perkwood Contract (**Exhibit 1.32**); (iv) the Crudu Tables (**Exhibit 1.143**); and (v) the Crudu Analyses (**Exhibit 1.144**).
214. The reasons for this deliberate withholding are obvious: these documents, in particular the Stati's triple black bookkeeping (the Crudu Tables and Analyses), would have revealed that Azalia and Perkwood were companies linked to the Stati and that the Stati had inflated the construction costs of the LPG Plant by tens of millions of dollars.

***Retention of other documents related to the misdeeds of the Stati during the Kazakh Project***

215. More broadly, the Stati failed to produce (and therefore withheld) all documents that might reveal wrongdoing in their Kazakh Project. This concealment allowed the Stati to make false statements and testimony in the ECT Arbitration without arousing the suspicion of the RoK or the Arbitral Tribunal.

**(ii) Production of false evidence or evidence based on false information**

216. In addition to withholding true evidence, the Stati filed and relied on several pieces of evidence containing or based on false information, including (i) the KMG Indicative Offer as Exhibit C-19 (**Exhibit 1.89**), (ii) KPMG's Due Diligence Report as Exhibit C-69 (**Exhibit 1.88**), (iii) the Information Memorandum prepared by Renaissance Capital as Exhibit C-70 (**Exhibit 1.84**), (iv) the financial statements of Tristan, KPM and TNG from 2007 to 2009 as Exhibits C-706 to C-709 (**Exhibit 1.1**).
217. Stati also produced three expert reports prepared by Stati's financial expert, Mr Rosen of FTI Consulting ("FTI") (**Exhibits 2.24, 2.32 and 2.40**). The purpose of these reports was to assess the quantum of Stati's alleged damages. In carrying out its task, FTI relied on the documents provided by Stati, in particular Tristan's financial statements and the documents relating to the Zenith Project. This was expressly confirmed at the hearings by Stati (**Exhibit 2.44**, §354) and by Mr Rosen himself (**Exhibit 2.38**, pp. 55:8-25 and 57:4-8). However, these documents are completely unreliable as they are the result of fraud.
218. The Stati then used this evidence to deceive the RoK and the Arbitral Tribunal.

**(iii) False statements and false testimony by the Stati**

219. Through their dissembling, the Stati managed to deceive RoK and the Arbitral Tribunal by giving false testimony (1) and making false statements during the hearings (2) and in their post-hearing submissions (3). For the sake of brevity, only the most salient statements of the Stati are listed below.

## ***1. False testimony from the Stati***

220. Again inspired by the *common law*, witness statements are essential evidence in arbitration proceedings. They allow the key players in the dispute to tell their side of the story to the arbitral tribunal, which almost always places great weight on the content of such testimony. The basic obligation of a witness is not to misrepresent the truth. In the ECT Arbitration, the Stati blithely crossed this line.

221. In her first witness statement of 17 May 2011, Anatolie Stati stated that:

221.1. *"For ten years I invested heavily in Kazakhstan and successfully developed TNG and KPM. Within eighteen months, and despite all my efforts and those of my team, Kazakhstan devalued and eventually destroyed my investments in the country"*<sup>77</sup> (Exhibit 2.22, §44).

**This statement is false.** For years, the Stati have embezzled hundreds of millions of dollars from their Kazakh companies KPM and TNG, plunging the latter into financial distress.

221.2. *"After nearly ten years in business, I made the commercial decision in the summer of 2008 to sell the rights to the Tolkyln and Borankol fields, as well as the LPG Plant, which was under construction. At the time, the market was reasonably good and the high oil and gas prices provided incentives for buyers. In my view, it was the ideal time to attract investors"*<sup>78</sup> (Exhibit 2.22, §17).

**This statement is false.** By this point, the Stati had already embezzled around US\$300 million, which they had used to finance other projects and personal expenses. It was because they had pretty much finished stripping their Kazakh companies that they decided to sell them in the summer of 2008 under Project Zenith, trying to mislead potential buyers about the real value of their Kazakh assets.

222. In her second witness statement of 7 May 2012, Anatolie Stati stated that:

222.1. *"Faced with this climate of fear and uncertainty, I chose in May 2009 to postpone the LPG plant project, having already invested more than USD 245 million in its construction"*<sup>79</sup> (Exhibit 2.29, §40).

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<sup>77</sup> Translation of: *'For ten years, I heavily invested in Kazakhstan and successfully developed TNG and KPM. In eighteen months, and despite the best efforts of me and my team, Kazakhstan devalued and ultimately destroyed my investments in the country'*.

<sup>78</sup> *"After nearly ten years of operation, in the summer of 2008, I made a business decision to sell the rights to the Tolkyln and Borankol fields, as well as the LPG plant, which was in the process of being constructed. At the time, the market was reasonably good and the high oil and gas prices constituted incentives for buyers. In my mind, this was the perfect time to attract investors.*

<sup>79</sup> Free translation of: *"Faced with this climate of fear and uncertainty, I chose in May 2009 to postpone the LPG Plant project, having already spent more than USD 245 million toward its construction.*



**This statement is false.** The construction costs of the LPG plant were significantly lower, but the Stati had artificially inflated them.

222.2. *In the first half of 2009, "Kazakhstan's actions caused a severe liquidity crisis at TNG and KPM"*<sup>80</sup> (**Exhibit 2.29**, §41).

**This statement is false.** It was the embezzlement of hundreds of millions of dollars orchestrated by the Stati over the years that caused a "severe liquidity crisis" at KPM and TNG. According to the same testimony, RoK's actions began in October 2008 (**Exhibit 2.29**, §§7-9). **At the same time**, however, the Stati had already reported in the minutes of two Ascom meetings on 14 and 22 October 2008 that there was a cash shortfall of at least "USD 250-300 million" for their Kazakh operations (**Exhibit 1.92**, pp. 1 and 7). The RoK's actions could therefore not have caused this liquidity crisis.

222.3. *"Renaissance Capital finally found a group of lenders to provide emergency financing (Laren Credit). Although the terms were terrible (35% interest on a \$60 million loan, plus the issuance of \$111 million in new Tristan bonds), I had no choice but to accept this loan in order to keep the companies afloat while I tried to sell them"*<sup>81</sup> (**Exhibit 2.29**, §41).

**This statement is false.** If the terms of the Laren Transaction were 'terrible', it was primarily for KPM and TNG who had guaranteed Laren's obligations. The Stati, on the other hand, had planned to sell their Kazakh companies quickly in order to repay the Lenders and thus make a profit of tens of millions of dollars.

223. In his first witness statement of 17 May 2011, Artur Lungu stated that:

223.1. *"The commissioning of the LPG Plant was initially planned for 2009, with an estimated Capex of USD 233 million"*<sup>82</sup> (**Exhibit 2.23**, §27).

**This statement is false.** According to Stati's 2006 *Business Plan*, the LPG Plant's Capex was expected to be around **USD 105 million** (including taxes) and the LPG Plant was expected to be operational in the third quarter of **2007** (**Exhibit 1.35**, p. 2).

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<sup>80</sup> Free translation of : "Kazakhstan's actions contributed to a severe liquidity crisis in the companies [TNG and KPM] in the first half of 2009.

<sup>81</sup> "Renaissance Capital ultimately found a group of lenders to provide emergency financing (the Laren Facility). Although the terms were terrible (35% interest on a \$60 million note, plus the issuance of \$111 million of new Tristan notes), I had no choice but to proceed with that loan in order to jeeep the companies afloat while I tried to sell them).

<sup>82</sup> "The start up of the LPG Plant was originally intended to be in 2009, with an estimated capex requirement of USD 233 million".

223.2. *"When the State seized KPM and TNG and all their assets, including the LPG Plant, in July 2010, more than USD 245 million had been invested in the construction of the LPG Plant, which was more than 90% complete"*<sup>83</sup> (**Exhibit 2.23**, §27).

**This statement is false.** The construction costs of the LPG plant were significantly lower, but the Stati had artificially inflated them.

224. In his second witness statement of 5 May 2012, Artur Lungu stated that:

224.1. *"The harassment campaign by Kazakhstan also caused a liquidity crisis within TNG and KPM in the spring and summer of 2009"*<sup>84</sup> (**Exhibit 2.28**, §7).

**This statement is false.** As already explained, it was the embezzlement of hundreds of millions of dollars orchestrated by the Stati over the years that caused a "serious cash crisis" at KPM and TNG.

224.2. *"Oil and gas prices were falling sharply during this period, putting the companies' revenues under severe pressure. We had been in negotiations with Credit Suisse for an emergency bridge loan to provide additional working capital in connection with our decision to put the companies up for sale. On 5 December 2008, Credit Suisse sent us a proposal for a USD 150-175 million loan, and gave us every indication that it was ready to close the loan. On 18 December 2008, however, Credit Suisse sent me a press release from the MEMR [Kazakh Ministry of Energy and Mineral Resources] regarding Kazakhstan's decision to change its previous decision on its right of pre-emption and approval of Terra Raf's ownership of TNG, accusing Mr Sati of fraud. Credit Suisse stated that it "We would appreciate an explanation of the state's accusations. After Credit Suisse had sent us the press article, we had a discussion with them, and they informed us that they would not provide us with a loan until we resolved our dispute with the Kazakh government"*<sup>85</sup> (**Exhibit 2.28**, §7).

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<sup>83</sup> *When the State seized KPM and TNG and all of their assets, including the LPG Plant, in July of 2010, more than USD 245 million had been invested in construction of the LPG Plant and the LPG Plant was over 90% complete.*

<sup>84</sup> *"Kazakhstan's harassment campaign also caused a liquidity crisis for TNG and KPM in the spring and summer of 2009.*

<sup>85</sup> *"Oil and gas prices were falling sharply during this period, putting significant pressure on the companies' revenues. We had conducted negotiations with Credit Suisse for a bridge loan to provide additional working capital in connection with our decision to put the companies on the market. On December 5, 2008, Credit Suisse sent us a term sheet for a US \$150-175 million facility, and gave us every indication that it was ready to close the loan. On December 18, 2008, however, Credit Suisse sent us a press release from the MEMR relating to Kazakhstan's decision to reverse its prior pre-emptive rights decision and approval of Terra Raf's ownership of TNG, and accusing Mr. Stati of fraud. Credit Suisse stated that it "[w]ould appreciate some colour on the [State's accusations]." After Credit Suisse sent us the press release, we had a follow-up discussions with them, and they informed us that they would not provide the bridge loan until we resolved our disputed with the Kazakhstan government.*

In his second testimony, Anatolie Stati added that "*Credit Suisse withdrew from the negotiations precisely because of Kazakhstan's actions [...]*"<sup>86</sup> (Exhibit 2.28, §41).

**This statement is false.** According to an internal Stati document dated **11 December 2009**, it was Stati that took the decision to reject the Credit Suisse offer as too expensive: "*We believe that this financing offer is very expensive and restrictive in its structure. Given the current constraints and the uncertainty surrounding the further evolution of oil prices on the international markets and implicitly our revenues and the repayability of our loans, we recommend rejecting it*"<sup>87</sup> (Exhibit 1.99, p. 2) (Stati emphasise). The article of **18 December 2008** referred to by Artur Lungu obviously could not have influenced the Stati's decision to reject the Credit Suisse offer. More fundamentally, the Stati would not have needed to resort to borrowing if they had not previously diverted hundreds of millions of dollars from KPM and TNG.

## ***2. Misrepresentation and deception by the Stati during the hearings***

225. In arbitration proceedings, particularly in investment cases, hearings usually last several days, sometimes even weeks. These hearings are the crux of any arbitration procedure, i.e. the moment when contradiction is supposed to be fully expressed. This is especially true since these hearings are usually the occasion for counsel to *cross-examine* the opposing party's witnesses in order to verify the veracity of their version of the facts as presented in their statements.
226. In the ECT Arbitration, this contradiction could not take place. As the Stati were the only ones aware of their illegal and fraudulent actions, they turned the hearings into a mock debate, multiplying false statements and deceptions.

### *Hearings on jurisdiction and liability (October 2012)*

227. During the jurisdictional and liability hearings, the Stati insisted on the legality of their investment, relying in particular on the fact that the financial statements of their companies had been audited by members of the *Big Four*, including KPMG:

*"Kazakhstan argues that the [Stati] investments were opaque, suggesting that they were structured to conceal profits and disguise the 'real investor'. Either this position is completely disingenuous, or the [RoK] does not understand the*

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<sup>86</sup> "*Credit Suisse backed out of those negotiations precisely because of Kazakhstan's actions, particularly the pre-emptive rights reversal, which put our ownership of TNG in jeopardy.*"

<sup>87</sup> "*We believe that this funding offer is very expensive and restrictive as a structure. In light of the current constraints and the uncertainty surrounding the subsequent evolution of oil prices on international stock exchanges, and implicitly our income and loan repayability, we recommend rejecting it.*"

*finance. These companies filed annual financial statements between 2003 and 2009 that were audited by Big Four audit firms. They raised money in the public debt markets, and banks such as Goldman Sachs and UBS deemed these companies transparent and reliable enough to lend them hundreds of millions of dollars. ... The fact is that the [Stati] made substantial investments in KPM and TNG in the form of their acquisition of shares, shareholder loans to the companies, reinvestment of profits, and then risking their investments to guarantee the companies' debts* <sup>88</sup> (Exhibit 2.33, 45:1-46:4) (RoK emphasis).

228. **The Stati narrative is false and misleading.** First, the Stati did not do everything to protect their Kazakh companies: they stripped them of hundreds of millions of dollars and then decided to sell them. Then, to prove the legality of their investment, the Stati rely on the certification of their companies' financial statements "by Big Four auditing firms" that they had managed to cheat for years. Today, this certification, the cornerstone of the Stati narrative, no **longer exists** as KPMG withdrew all its audit reports after realising that the Stati had deceived it (see *below*).

*Hearings on the quantum of damage (January 2013)*

229. During the quantum hearings, the Stati misled the Arbitral Tribunal, inter alia, about the reliability of the indicative offers (including KMG's offer), the circumstances and terms of the Laren Transaction, and the use of the funds raised by the Stati to finance their Kazakh Project.
230. Firstly, the Stati have heavily emphasised the importance and reliability of the various offers made by potential buyers to value their Kazakh assets, including the LPG Plant:

**230.1.** *"After the potential purchasers signed a non-disclosure agreement and reviewed a detailed Information Memorandum prepared by the [Stati] and their investment bank, Renaissance Capital, eight indicative offers were received. All were received immediately prior to <sup>1</sup> October 2008, shortly before the [damage] assessment date proposed by the [Stati] in mid-October 2008. Now, while it is true that the interested companies had not yet had access to the [KPM and TNG] companies' data, they had a detailed Information Memorandum which itself provided a great deal of information - the Tribunal has in the*

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<sup>88</sup> "Kazakhstan argues that claimants' investments were opaque, suggesting that they were structured to conceal profits and disguise who was the 'real investor'. This position either is completely disingenuous, or the respondent understands nothing about finance. These companies created annual financial statements between 2003 and 2009 that were audited by "Big Four" accounting firms. They raised debt on the public debt markets, and banks such as Goldman Sachs and UBS deemed the companies to be transparent and reliable enough to loan hundreds of millions of dollars to them. [...] The fact is that claimants made substantial investments in KPM and TNG through the form of their acquisition of the shares, shareholder loans to the companies, the reinvestment of profits, and then by risking their investments to secure the companies' debts.

*file [Exhibit C-70] and can review it - to make a meaningful indicative offer for [KPM and TNG]"<sup>89</sup> (Exhibit 2.35, p. 28:2-16) (RoK emphasis added).*

230.2. Stati then insisted that RoK had "not suggested that the information contained in the Information Memorandum distributed to potential buyers was in any way inaccurate or incomplete in October 2008"<sup>90</sup> (Exhibit 2.35, pp. 28:24-29:3) (RoK emphasis added).

230.3. A few minutes later, the Stati continued their presentation as follows: "Another way of summarising the indicative bid data that may be useful to the Tribunal is to note that the indicative bids provided the following ranges of values [...] **For the LPG Plant**, the value was between USD 70 million and USD 280 million, with an average of USD 151 million. Now, the [Stati] acknowledge that these are indicative offers, that they are not binding; they also acknowledge that the potential buyers had not yet accessed the data. **But they are indicative of the potential value of the assets for companies whose seriousness and credibility no one can dispute, and they are all in the oil and gas sector. There's a really good cross-section of companies that you look at. You have a state-controlled company with KMG [...]"<sup>91</sup> (Exhibit 2.35, pp. 31:17-32:11) (RoK emphasis added).**

230.4. After emphasising the reliability of the process that led to the indicative offers, including KMG's Indicative Offer, the Stati concluded their presentation by stating:  
"Given that KMG made an Indicative Offer in September 2008, we know that it was for USD 754 million, we believe that the Tribunal should infer, **as an absolute minimum**, that the September asset investment submission, which [RoK] refused to produce, concluded that Borankol, Tolkyn and the LPG Plant had a minimum value of USD 754 million "<sup>92</sup> (Exhibit 2.35, pp. 49:9-15) (RoK emphasis).

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<sup>89</sup> Free translation of : "After the prospective purchasers had signed a nondisclosure agreement and reviewed a detailed information memorandum that was prepared by the claimants and by their investment bank, Renaissance Capital, eight indicative offers were received. Those were all received immediately prior to October 1<sup>st</sup> 2008; again, shortly before the valuation date proposed by the claimants. Now, while it's correct that the offering companies had not yet had access to the data room of the companies, they did have a detailed information memorandum that itself provided a great deal of information -- the Tribunal has it in the record and can review it -- to make a meaningful indicative offer for the companies.

<sup>90</sup> "the respondent has not suggested that any of the information that was contained in the information memorandum that was distributed to prospective purchasers was in any way inaccurate or incomplete as of October 2008".

<sup>91</sup> Another way to cut the indicative offer data that may be useful to the Tribunal is to note that the indicative offers provided the following value ranges [...] For the LPG plant, the value was \$70 million to \$280 million, with an average of \$151 million. Now, the claimants acknowledge that these are indicative offers, they are not binding; they further acknowledge that the prospective purchasers had not yet accessed the data room. But they do present indications of the potential value of the assets to companies that I think no one can dispute are serious and credible, and they are all in the oil and gas business. There is really a nice cross-section of companies that you look at. You've got a state-controlled company with KMG".

<sup>92</sup> "Since KMG made an indicative offer in September 2008, we know of \$754 million, we believe that the Tribunal should infer, at an absolute minimum, that the September presentation on asset investment that the respondent has refused to produce found that Borankol, Tolkyn and the LPG plant had a minimum value of \$754 million.

231. **The Stati statement is false and misleading.** It is now known that the documents on which the potential buyers based their bids (the Information Memorandum and the Due Diligence Report of 2008) contained false information, in particular the construction costs of the LPG Plant which were artificially inflated by tens of millions of dollars.

At the hearing, Stati's financial expert, Mr. Rosen, confirmed that KMG, which had offered USD 199 million for the LPG plant, had relied precisely on the false construction costs declared by Stati in these documents. Rosen, confirmed that KMG, which had offered USD 199 million for the LPG Plant, had based itself precisely on the **false** construction costs declared by Stati in these documents: *"I also noted that in KMG's value analysis for their indicative bid, they had also approached the LPG Plant on the basis of costs, and at the time of the valuation, they were closer to USD 200 million, because that was the cost information for the plant at that time"* (**Exhibit 2.38**, p. 57:4-8).

The Stati therefore expressly invited the Arbitral Tribunal to rely on an offer that they had obtained fraudulently, by deceiving KMG.

232. Second, the Stati addressed the Laren Transaction, which they described as follows: *"In the summer of 2009, the [Stati] were forced, due to government misconduct, to obtain a loan, known as the Laren Loan, for \$60 million in order to continue to finance operations during the period of government interference. The interest rate on this loan was 35%, and the plaintiffs had to issue additional Tristan bonds to the Laren lenders for a nominal amount of US\$ 111 million. It should be remembered that only six months earlier Credit Suisse had considered providing interim financing to the claimants at a rate of 15% (see file C-21), which is another indicator of the claimants' cost of borrowing. But this was not successful because of the media coverage of the Government's revocation [a press article of 18 December 2008] of its pre-emptive right of waiver, as well as its unsubstantiated allegations against Mr. Stati"*<sup>94</sup> (**Exhibit 2.35**, pp. 118:3-19).

233. **Stati's statement is false and misleading.** Firstly, it is now known that it was the Stati that rejected Credit Suisse's offer on 11 December 2008 (**Exhibit 1.99**, p. 2), i.e. one week before the publication of the press article referred to by the Stati (published on 18 December 2008). Secondly, and more fundamentally, KPM and TNG's need for refinancing is a direct consequence of the illegal actions **of Stati**, not of RoK. In early 2009, when the

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<sup>93</sup> *"I further noted that in KMG's analysis of value for their indicative offer, they had also approached the LPG plant on a cost basis, and at the valuation date it was closer to \$200 million, because that was the information on the cost of the plant at that time.*

<sup>94</sup> *"in the summer of 2009, claimants were forced, as a result of the state's misconduct, to secure a loan, which has been referred to as the Laren loan, of \$60 million in order to continue financing the operations during the period of governmental interference. The rate of interest on this loan was 35%, plus the claimants were required to issue additional Tristan notes to the Laren lenders in the face amount of an additional \$111 million. Recall that only six months earlier, Credit Suisse was considering bridge financing to the claimants at a rate of 15% -- that is in the record at C-21 -- which would be another indicator of the claimants' borrowing cost. But that fell through as a result of the press coverage regarding the government's revocation of its preemptive right of waiver, as well as its unsubstantiated allegations against Mr Stati".*

When the Stati turned to the Laren Transaction Lenders, the Stati had already embezzled over USD 300 million from their Kazakh companies. The equation is therefore very simple: without these misappropriations, the Stati would **not have** needed to refinance KPM and TNG.

234. Thirdly, the Stati were asked about the use of external sources of funding, in particular the funds lent by the Noteholders. In particular, Artur Lungu was asked "*What happened to the funds that the companies [Tristan, KPM and TNG] had raised from the Tristan bond issue?*"<sup>95</sup>.

Mr Lungu replied: '*a large part [of these funds] was used to repay the loans we had at the time with the Kazakh banks [KKB], which carried interest and, I think, a penalty, something like \$150 million; and the rest was used to invest in the development programme, so the two [oil] fields*'.<sup>96</sup> (Exhibit 2.35, p. 198:23 to p. 199:5) (RoK emphasis).

235. **This statement is false.** With the balance, Stati granted a loan of USD 76 million to Terra Raf, of which USD 70 million was to be transferred to KPM and TNG. However, Stati diverted at least USD 20 million to related companies with no connection to the Kazakh Project (see *above* and Annex, Part 2, Chapter I).

### ***3. Misrepresentation and deception by the Stati in the post-hearing conclusions***

236. In arbitration proceedings, the arbitral tribunal often invites the parties to file 'post-hearing submissions'. These submissions are similar to the summary submissions we are familiar with, except that the parties include in them all the developments that took place during the hearings, which are fully and accurately transcribed. These post-hearing pleadings will be one of the main sources of information for the arbitral tribunal, which will find in them a summary of the parties' claims based on the evidence written and discussed during the hearings.
237. In the ECT Arbitration, the parties each filed two post-hearing submissions, passages of which were largely reproduced by the Arbitral Tribunal in the Award. Unsurprisingly, the Stati made numerous false statements in order to mislead the Arbitral Tribunal.

*First post-hearing conclusions on jurisdiction and liability (8 April 2013)*

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<sup>95</sup> Free translation of : "*What happened to all of the cash that the companies had raised in the Tristan note offering?*"

<sup>96</sup> Free translation of : "*Well, it was in all -- a large part was used to refinance the loans that we had at the time from the Kazakh banks, loans that accrued interest and I think a penalty, something in the range of \$150 million; and the rest was used to invest in the development programme, so both fields.*"

238. In their initial post-hearing submissions, the Stati have, inter alia, misled the Arbitral Tribunal as to the circumstances and terms of the Laren Transaction and their true motives for extending the payment terms in the Oil Sales.

239. Firstly, the Stati denied any connection with the Laren company after RoK had raised this possibility at the hearing (**Exhibit 2.33**, p. 179:11-22):

*"RBS and PwC are expressing some confusion about the terms of the Laren transaction, suggesting that Laren is a company related to Mr Stati and that it still holds USD 111 million of securities issued in connection with this transaction. Let there be no confusion here, **this is not correct**. Laren is a special purpose vehicle established in the British Virgin Islands to facilitate the emergency credit transaction" (**Exhibit 2.39**, §354)<sup>97</sup> (RoK underlines).*

240. **This statement is false.** First, the evidence now available shows that Laren was indeed incorporated at the request of the Stati (**Exhibit 1.132**). The Stati would vainly try to hide behind the fact that Laren was an alleged "orphan company" administered by a Trust: the purpose of this manoeuvre was precisely to prevent a third party from examining the Laren Transaction in detail and discovering the potential profit that the Stati could make (see *supra* and Annex, Part 2, Chapter IV). Secondly, this statement is purely misleading because, at the time these statements are made, i.e. in **April 2013**, Laren was fully controlled by the Stati. Indeed, in a transaction between the Lenders and the Stati that took place in **December 2011**, it was Eldar Kasumov, Anatolie Stati's personal driver (**Exhibit 1.157**, p. 4), who signed the contract as Laren's director (**Exhibit 1.162**, p. 25).

241. Secondly, the Stati claimed that the doubling of payment terms granted to Stadoil and General Affinity by KPM and TNG in 2009 was perfectly justified because of the global financial crisis and insisted that the extension of these terms was not voluntary at all:

*"Kazakhstan's insinuation that the **extension of payment terms** for buyers of [oil and liquefied gas] was anything other than a reasonable decision in the normal course of business is unfounded. According to the KPMG auditors' report, "the management of Tolkyneftegaz LLP and Kazpolmunay LLP agreed to extend the payment terms of their largest customers, Stadoil Ltd. and General Affinity Ltd. who are related parties, after being informed that these customers would not be able to meet the existing contractual payment terms". Not surprisingly, with the onset of the global financial crisis and the resulting rapid decline in prices in 2009, late payments were a major concern for the company.*

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<sup>97</sup> Free translation of : "RBS and PWC express some confusion regarding the terms of the Laren transactions, suggesting that Laren is an affiliate of Mr Stati and still holds the USD 111 million in notes issued in connection with that transaction. Lest



*there be any confusion here, that is not correct. Laren was a special-purpose entity that was organized in the British Virgin Islands to facilitate the emergency financing transaction".*

*The [Stati] fully recognise that slow payment by buyers was one of the factors that contributed to the tight liquidity situation in mid-2009. The [Stati] fully acknowledge that slow payment by buyers was one of the factors that contributed to the tight liquidity situation in mid-2009, but **the suggestion that this was voluntary - which would mean that claimants preferred the highly unattractive Laren transaction rather than simply collecting from their customers - is absurd**"<sup>98</sup> (Exhibit 2.39, §417) (RoK emphasis added).*

242. **This statement is false.** It is now known that between the end of 2005 and June 2010, Stati deprived KPM and TNG of at least USD 255 million of revenue from the Oil Sales by diverting funds paid by Vitol SA **before** they reached KPM and TNG (see *above* and **Table 1** attached to these submissions). The situation in which Stadoil and General Affinity found themselves, i.e. unable to honour their debts to KPM and TNG, was therefore **entirely "voluntary"** and had nothing to do with the financial crisis of 2008.

The real reason why Stati doubled the payment terms to Stadoil and General Affinity in 2009 was that at the same time Vitol SA had significantly reduced the amount of advances it was paying to Stati. Indeed, at the quantum hearings, Artur Lungu confirmed that Vitol "*started to reduce its advances*" and that this had a "*direct negative impact*" on KPM and TNG's cash flow "*because you don't get the money*" (Exhibit 2.35, pp. 184:19-185:21).

The mystery becomes clearer. By tightening the floodgates, Vitol AG reduced the cash available. Instead of dipping into the hundreds of millions of dollars they had embezzled, the Stati decided to double the payment terms to Stadoil and General Affinity to prevent them from defaulting and their auditor KPMG from starting to look closer and discover the reasons for the default.

*Second post-hearing conclusions on quantum (3 June 2013)*

243. In their second post-hearing submission, the Stati misled the Arbitral Tribunal, inter alia, about the financial situation of KPM and TNG and about the construction costs of the LPG Plant.

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<sup>98</sup> Free translation of : "*Kazakhstan's insinuation that the extension of credit terms for the liquid buyers was anything other than a reasonable decision in the ordinary course of business is unfounded. According to KPMG's Auditors' Report, "the management of Tolkynneftegaz LLP and Kazpolmunay LLP agreed to extend the payment terms for their largest customers, Stadoil Ltd. and General Affinity Ltd. which are related parties, after they were informed that these customers would not be able to comply with existing contractual payment terms. It is hardly surprising that with the onset of the global financial crisis and the associated rapid price declines in 2009, slow payments and defaults cascaded through the industry. Claimants fully acknowledge that slow payment by buyers was one of the factors that contributed to the tight liquidity situation in the middle of 2009, but the suggestion that that situation was voluntary - which would mean that Claimants preferred the highly unattractive Laren transaction to simply collecting receivables from their customers - is absurd.*"

244. Firstly, the Stati claimed that KPM and TNG's low liquidity was just a facade and that they had significant receivables, including from Stadoil and General Affinity, which made them "far from insolvent":

*"The core of Kazakhstan's causation argument is that KPM and TNG were over-indebted before any state action was taken, which condemned them to bankruptcy when oil prices fell during the global financial crisis. There is no credible evidence to support this argument, which is belied by all objective facts. If KPM and TNG experienced a liquidity shortage in the first half of 2009, it was temporary and surmountable. Moreover, Kazakhstan itself contributed significantly to this problem. Kazakhstan presents no credible evidence that KPM and TNG were over-indebted before 14 October 2008"<sup>99</sup> (Exhibit 2.44, §§249-250; Exhibit 2.1, §1434).*

*"In support of its argument that KPM and TNG were not financially unstable, Kazakhstan emphasises that they had only USD 9 million in cash at the end of September 2008. However, Kazakhstan is unaware that KPM and TNG also held USD 22 million in inventory and USD 296 million in trade receivables at the end of September 2008. In total, the companies' net working capital (current assets minus current liabilities) amounted to USD 222 million at that date. Thus, the companies had a significant working capital "cushion" from past operations to meet their current obligations, in addition to substantial equity in the companies' fixed assets and subsurface agreements (which had the capacity to generate hundreds of millions of dollars per annum in future cash flows). They were far from insolvent "<sup>100</sup> (Exhibit 2.44, §§254; Exhibit 2.1, §1435) (RoK emphasis added).*

245. **Stati's statement is false and misleading.** The main trade receivables that KPM and TNG had were those held by them against Stadoil and General Affinity. On the basis of the evidence now available, it is known that these claims were worthless because of the massive embezzlement orchestrated by Stati. If there had been no intermediaries between the real sellers (KPM and TNG) and the real buyer (Vitol

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<sup>99</sup> Free translation of : *"The crux of Kazakhstan's causation argument is that KPM and TNG were overleveraged prior to any actions of the State, which doomed them to fail when oil prices dropped during the global financial crisis. No credible evidence supports this argument, and it is belied by all objective facts. While KPM and TNG experienced a liquidity shortage in the first half of 2009, that problem was temporary and surmountable. Moreover, Kazakhstan itself contributed significantly to that problem. Kazakhstan presents no credible evidence that KPM and TNG were overleveraged prior to October 14, 2008"*.

<sup>100</sup> Translation of : *"In support of its argument that KPM and TNG were financially unsound, Kazakhstan focuses on the fact that they had only US \$9 million in cash on hand at the end of September 2008. Kazakhstan ignores, however, that KPM and TNG also held US \$22 million in inventory and US \$296 million in trade receivables at the end of September 2008.<sup>389</sup> In total, the companies' net working capital (short-term assets minus short-term liabilities) was US \$222 million on that date.<sup>390</sup> Thus, the companies had a substantial working capital "cushion" built up from past operations to meet their ongoing obligations, in addition to the substantial equity in the companies' fixed assets and subsoil use agreements (which had the ability to generate hundreds of millions of dollars in future cash flows). They were a very long way from insolvent"*.

SA), or at least if the Stati had not embezzled more than USD 255 million in revenues from KPM and TNG, there would have been no worthless claims but hard cash in the accounts of KPM and TNG.

Furthermore, it is doubtful that the Stati could have quickly bailed out KPM and TNG. This is especially true since when the situation became worrisome, the Stati turned to **external** sources of funding (Credit Suisse, Transaction Laren Lenders) rather than dipping into the hundreds of millions of dollars they had diverted.

246. Second, the Stati requested that the Arbitral Tribunal award them at least USD 245 million in damages for the LPG Plant, on the grounds that this amount corresponded to the
- The Court also found that Stati's "capital costs" were based on "KPMG audited" financial statements that were not prepared "for litigation":

*"The Tribunal should award damages for the LPG Plant based on : (1) the [Stati's] investment costs of USD 245 million, and (2) a portion of the additional value they could have realized had Kazakhstan not deprived them of the opportunity to make the project a commercial success "*<sup>101</sup> (Exhibit 2.44, §§345).

*"Kazakhstan also criticises FTI's assessment of the investment value of the LPG Plant as being based solely on information provided by the Claimants. This is not correct. FTI based its assessment of the book value of the LPG Plant as of 14 October 2008 on TNG's financial statements for the third quarter of 2008. These financial statements were prepared in the ordinary course of business, not for litigation, and were audited by KPMG. In updating the value of the LPG Facility to reflect investments after 14 October 2008, FTI relied on Tristan Oil's Annual Report for 2009. This report too was prepared for investors in the ordinary course of business, not for litigation. Furthermore, TNG's 2009 financial statements, which are the source of the annual report, set the net book value of the LPG Plant at USD 248 million as at 31 December 2009, which corroborates FTI's valuation of USD 245 million. The data from [Stati's] financial records, especially the data from the audited financial statements, is perfectly reliable evidence, and it is not simply FTI copying Stati like a parrot "*<sup>102</sup> (Exhibit 2.44, §§354) (RoK emphasis added).

<sup>101</sup> "the Tribunal should award damages for the LPG Plant based on "the Tribunal should award damages for the LPG Plant based on: (1) Claimants' out-of-pocket investment costs of US \$245 million; plus (2) a portion of the prospective additional value they could have realised if Kazakhstan had not deprived them of the opportunity to make a commercial success of the project.

<sup>102</sup> The text reads: "Finally, Kazakhstan also criticises FTI's assessment of the investment value of the LPG Plant as simply relying on information provided by Claimants. That is not correct. FTI based its assessment of the book value of the LPG Plant as of October 14, 2008, on TNG's Third Quarter 2008 financial statements. Those financial statements were prepared in the ordinary course of business, not for litigation, and were reviewed by KPMG. In its update to the LPG Plant value to reflect investments after October 14, 2008, FTI relied on the Tristan Oil Annual Report for 2009. That report likewise was prepared for investors in the ordinary course of business, and not for the purposes of litigation. Moreover, TNG's audited 2009 financial statements, which are backup to the annual report, list the net book value of the LPG Plant as US \$248 million at December 31, 2009, which corroborates FTI's assessment of US \$245 million. Data from the Claimants' historical financial records, particularly data from audited financial statements, is perfectly reliable evidence, and is not simply FTI parroting the Claimants".

247. **Stati's presentation is false and misleading.** The construction costs of the LPG Plant were significantly lower than the amounts declared by Stati in the financial statements. Moreover, Stati relied on KPMG's audit of the financial statements to attest to the reliability of its valuation. Today, these audit reports **no longer exist**: KPMG withdrew them after realising that Stati had misled it (see *below*).

### **3. The profit-sharing agreement between the Stati and the Noteholders (December 2012)**

248. On 17 December 2012, the Stati and the Noteholders holding the majority of Tristan's bonds signed a profit-sharing agreement ("*Sharing Agreement*"). Under this agreement, it is provided that the compensation awarded by the Arbitral Tribunal will be shared between the Stati (30%) and the Noteholders (70%) (**Exhibit 2.1**, §§133 and 631).

### **4The Award (December 2013)**

249. It was on the basis of misleading pleadings, false testimony, biased evidence and expert reports, and hearings with no real contradiction that the Arbitral Tribunal issued its Award in December 2013.

250. **As to its jurisdiction**, the Tribunal decided that the illegality of Stati's investment could not affect its jurisdiction and that "*while it has inspected and monitored [Stati's] investments and corporate structures for years, [the RoK] did not allege that anything was illegal or improper before October 2008*"<sup>103</sup> (**Exhibit 2.1**, §812).

251. **As for Kazakhstan's liability**, the Tribunal decided that the RoK had breached its obligations to treat the Stati "fairly and equitably" under Article 10.1 of the ECT from 14-16 October 2008 (**Exhibit 2.1**, §1095).

252. **As for the causal link between the liability and the damage**, the Court decided that :

252.1. The measures taken by the RoK from October 2008 onwards "*prejudiced the [Stati's] investments and prevented the [Stati] from continuing their investment from that time onwards*"<sup>104</sup> (**Exhibit 2.1**, §1408).<sup>104</sup> (Exhibit 2.1, §1408). In particular, the Arbitral Tribunal considered that these measures had "*affected the [Stati's] search for interim financing, which it began in November 2008 on the recommendation of Renaissance Capital*".<sup>105</sup>

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<sup>103</sup> The translation of : "*while inspecting and monitoring Claimants' investments and their corporate structures for years, Respondent failed to allege that anything was illegal or improper prior to October 2008.*"

<sup>104</sup> Translation of : "*the Tribunal considers that Respondent's series of actions starting in October 2008, which are breaches of the FET standard of the ECT as found above in this Award and which were publicized beginning in December 2008, harmed Claimants' investments and prevented Claimants from proceeding with their investment from that moment, forward*".

<sup>105</sup> This affected Claimants' search for bridge financing which they began in November 2008 on the recommendation of Renaissance Capital: "*This affected Claimants' search for bridge financing, which they began in November 2008 on recommendation from Renaissance Capital.*"

(**Exhibit 2.1**, §1409), "prevented" the Stati from obtaining financing before June 2009<sup>106</sup> and had "forced the [Stati] to accept the 'horrible Laren Transaction'"<sup>107</sup> (**Exhibit 2.1**, §1416).

252.2. Conversely, RoK "has not presented sufficient evidence that [Stati's] own inexperience or actions caused or significantly contributed to the damage to [Stati's] investment"<sup>108</sup> (**Exhibit 2.1**, §1458).

**253. As to the quantum of Stati's damages**, the Tribunal decided that RoK should compensate Stati in the amount of USD 497,685,101, plus interest for late payment (**Exhibit 2.1**, §§1859), considering in particular that KMG's Indicative Offer of USD 199 million constituted "the best source of relative information for the valuation of the LPG Plant among the various sources of information submitted by the Parties concerning the valuation of the LPG Plant during the relevant period of the valuation date accepted by the Tribunal"<sup>109</sup> (**Exhibit 2.1**, §1747).

254. Clearly, the Award would have been completely different if RoK and the Arbitral Tribunal had known about the Stati's unlawful and fraudulent actions **before** it was rendered. In such a scenario, the Stati would certainly not have been able to deceive the Arbitral Tribunal with impunity and, even more fundamentally, the RoK would have been able to make a whole series of arguments relating to (i) the jurisdiction of the Arbitral Tribunal, (ii) the appropriateness of its measures which the Arbitral Tribunal found to be contrary to the ECT, (iii) the absence of a causal link between its measures and the alleged damage suffered by the Stati, particularly because it was primarily the Stati that caused damage to their Kazakh companies by diverting hundreds of millions of dollars, and (iv) the quantum of the Stati's damage, including the valuation of the LPG plant, whose costs had been artificially inflated by several tens of millions of dollars

255. This scenario never came to pass because of the Stati's deceptions which completely vitiated the arbitral proceedings. Symbolising the success of the Stati's malicious enterprise throughout the arbitration, Perkwood, which is mentioned only once in the Award, appears as a "third party" (**Exhibit 2.1**, §1450), not as a company related to the Stati.

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<sup>106</sup> The Tribunal finds that the Laren Facility, with its onerous terms, was arranged in June 2009 because it was necessary for KPM and TNG to secure these funds and because Respondent's actions prevented them from doing so sooner: "The Tribunal finds that the Laren Facility, with its onerous terms, was arranged in June 2009 because it was necessary for KPM and TNG to secure these funds and because Respondent's actions prevented them from doing so sooner."<sup>107</sup> Free translation of : "While the worldwide economic crisis was affecting these companies in late 2008 and early 2009, the State's aggressive and concerted actions, including the inspections, the criminal charges, and the asset seizures - even before Mr. Cornegruta's trial in August and September 2009 - forced Claimants to accept the "horrendous" Laren Facility.

<sup>108</sup> The Tribunal concludes that "the Tribunal concludes that Respondent has not submitted sufficient evidence that Claimants' inexperience or own actions caused or contributed in a relevant way to the damages that occurred to Claimants' investment".

<sup>109</sup> The Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by state- owned KMG at that time for USD 199 million: "the Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by state- owned KMG at that time for USD 199 million. The Tribunal considers that to be the relatively best source of

*information for the valuation of the LPG Plant among the various sources of information submitted by the Parties regarding the valuation for the LPG Plant during the relevant period of the valuation date accepted by the Tribunal.*

**C. Post-arbitration period: the Stati misled the courts and tribunals seized of the annulment and exequatur proceedings of the Award**

256. In the course of 2014, the RoK discovered the existence of two parallel arbitrations between Stati and its former partner Vitol. In 2015, it was able to obtain certain documents produced by Stati in one of these arbitrations, which concerned the construction costs of the LPG plant, and discovered the first evidence of fraud committed by Stati (1). In 2014, the RoK filed an application for annulment of the ECT Arbitration before the Swedish courts (2). At the same time, the Stati initiated exequatur proceedings in England in which an English court ruled that new evidence discovered by the RoK indicated the existence of fraud committed by the Stati (3). Immediately after this judgment, the Stati initiated four proceedings on the continent in which they continued their deceptions in order to frustrate the control of the Award (4).

**1.the discovery of the first evidence of Stati fraud (2015)**

257. The first evidence of Stati's fraud was uncovered when it became apparent that in other arbitrations against their partner Vitol, Stati had taken a position contrary to that presented in the arbitration against RoK.

258. Based on the information available, there have been at least two disputes between Stati and Vitol regarding the Kazakh Project, which have resulted in two separate arbitration proceedings:

258.1. First, Vitol filed an arbitration against the Stati and Montvale to obtain the reimbursement of the USD 47 million due to Vitol SA under the TNG COMSA Contract ("**Vitol SA Arbitration**") (Exhibit 3.5, §105). In the course of these proceedings, it appears that the arbitral tribunal ordered Stati to reimburse Vitol for the outstanding balance of approximately USD 45 million (Exhibit 3.6, §2.31; Exhibit 3.4, §71).

258.2. Secondly, the Stati filed an arbitration against Vitol FSU to obtain payment of 50% of the costs of the LPG Plant under the JOA ("**Vitol FSU Arbitration**").

259. In this second Vitol FSU Arbitration, the Stati argued an inconsistency with their argument in the TCE Arbitration regarding the construction costs of the LPG Plant (a). Unfortunately, this contradiction only surfaced in 2015, after the arbitral tribunal had rendered its award against RoK in the TCE Arbitration (b).

**(a) The double game of the Stati in the Vitol FSU Arbitration and the TCE Arbitration**

260. While the Vitol FSU Arbitration dealt with the construction costs of the same LPG Plant and the Stati were represented by the same counsel (King & Spalding) as in the TCE Arbitration, the Stati claimed different construction costs, based on different evidence:



- In the TCE Arbitration, the Stati claimed to have spent more than USD 245 million on the construction of the LPG Plant (**Exhibit 2.44**, §345). To prove this, they relied on TNG's 2009 financial statements (**Exhibit 1.1**, pp. 336 and 495), a witness statement by Anatolia Stati (**Exhibit 2.29**, §40), a witness statement by Artur Lungu (**Exhibit 2.28**, 27) and on several expert reports written by their financial expert, Mr Rosen of the firm FTI.
  - In the Vitol FSU Arbitration, the Stati commissioned another financial expertise firm, Charles River Associates ("**CRA**"), to evaluate the construction costs of the same LPG Plant. On 11 October 2013, CRA filed a first expert report (CRA Report 1). Unlike FTI, CRA had access to the "*accounting data underlying the financial statements [...] maintained by TNG in Kazakhstan using accounting software developed by the Russian company, 1C Company*"<sup>110</sup> ("**1C database**") (**Exhibit 3.4**, §3.2.5) and was instructed to rely on a witness statement by Artur Lungu also dated 11 October 2013 (**Exhibit 3.4**). In this attestation, it was conceded that Perkwood is "*a subsidiary of Ascom*" and that "*Perkwood issued invoices to TNG for equipment and services based on a contract that included **Perkwood's management fee [...] in the amount of USD 43,852,108***"<sup>111</sup> (**Exhibit 3.3**, §61) (RoK emphasises).
261. Prior to 11 October 2013, the Stati had **never** acknowledged that Perkwood was a related company. Indeed, the Award issued two months later in the ECT Arbitration identifies Perkwood as a "*third party*" (**Exhibit 2.1**, §1450). Moreover, the Stati **never** mentioned the existence of a management fee charged by Perkwood in the TCE Arbitration.
262. In the Belgian exequatur proceedings, the Stati stated that "*in the Vitol arbitration, Mr Lungu had expressly acknowledged the existence of this management committee. **Vitol was moreover perfectly aware of it and never questioned its existence [...]***" (Stati's conclusions of 25 October 2019, §693) (RoK underlines). The report filed on 23 January 2014 by David Stern ("**Stern Report**"), the financial expert commissioned by Vitol FSU, reveals that these statements are entirely **untrue**:

<sup>110</sup> The accounting data underlying the financial statements was maintained by TNG in Kazakhstan using an accounting software package developed by a Russian company, 1C Company.

<sup>111</sup> Free translation of : "*First, TNG engaged an Ascom affiliate, Perkwood Investments, to manage the acquisition of most of the equipment and services for the LPG Plant Project. Perkwood charged TNG for the equipment and services under an agreement that included Perkwood's management fee. Ascom and Vitol agreed, however, that the shared investment amount and profit distribution formula would be based on the original cost of the services and equipment, excluding any management fees. Accordingly, for purposes of calculating the shared investment amount, TNG's total expenses must be reduced by the amount of management fees charged by Perkwood. Those fees, which are not part of Ascom's claim and must be deducted from TNG's total capital expenses reflected in its financial systems and statements, total USD 43,852,108*".

*There is nothing in these official [Perkwood] company documents linking Perkwood to Ascom, Mr Stati or other members of the Stati family".*<sup>112</sup> *"Apart from Mr Lungu's statement that these fees amount to USD 43,852,108, there appears to be no documentation to support the value of the fees incurred by TNG".*<sup>113</sup> *"It is not possible, with the information available, to verify Mr Lungu's assertion that the construction cost management fees paid to Perkwood amounted to USD 43,852,108.*<sup>113</sup> *"It is not possible, with the information available, to verify Mr Lungu's assertion that the construction cost management fees paid to Perkwood amounted to USD 43,852,108"*<sup>114</sup> (**Exhibit 3.6**, §§4.31, 4.42, 4.52 and 6.11) (RoK emphasis added).

263. On 28 February 2014, Stati's expert in the Vitol arbitration (CRA) filed a supplementary expert report ("**CRA Report 2**") after being "*instructed by King & Splading to review the expert report of Mr David Stern dated 23 January 2014*" (**Exhibit 3.7**, § 1.2.1). In this supplementary report, CRA admits that it was not able to verify for itself the reality of the costs recharged by Perkwood to TNG:

*"In preparing my First Report, I was informed that copies of Perkwood's underlying contracts with third parties were not available and, as a result, I was unable to verify the extent of Perkwood's costs (and, therefore, the value of Perkwood's management fee referred to by Mr Lungu in his witness statement dated 11 October 2013)"*<sup>115</sup> (**Exhibit 3.7**, § 2.3.5) (RoK emphasises).

264. This is an absolutely devastating admission: Stati were unable to provide their own expert with the necessary documentation to demonstrate the reality and extent of the costs (i) charged by the third parties to Perkwood and (ii) (re)charged by Perkwood to TNG. This failure is incomprehensible as Perkwood, based in the **UK**, could not have been affected by the departure of Stati from **Kazakhstan**.

**(b) Obtaining documents produced by the Stati in the Vitol FSU Arbitration (2015)**

265. In the summer of 2014, Vitol SA contacted RoK to request assistance in the enforcement in Kazakhstan of the award obtained against the Stati at the end of the Vitol SA Arbitrator (**Exhibit 5.12**,

§5). On this occasion, the RoK questioned Vitol and discovered the existence of the Vitol FSU Arbitration.

266. In February 2015, the RoK formally requested from Vitol certain documents produced in the Vitol FSU Arbitration. The Stati formally objected. RoK was obliged to seek permission from a New York court, which it obtained in June 2015 (**Exhibit 3.10**). This is not

<sup>112</sup> Nothing within these official corporate documents links Perkwood to either Ascom, Mr Stati or other members of the Stati family.

<sup>113</sup> "Aside from Mr Lungu's representation that this fee amounts to US\$43,852,108, there appears to be no documentary evidence to support the value of such costs incurred by TNG.

<sup>114</sup> "In short, it is not possible, with the information made available, to test Mr Lungu's representation that the management fee element of those construction costs paid to Perkwood amounted to US\$43,852,108.

<sup>115</sup> "In preparing my First Report I was advised that copies of Perkwood's underlying third party contracts were not available and therefore, I was unable to verify the extent of the underlying third-party costs incurred by Perkwood (and thereby the value of the Perkwood management fee referred to by Mr Lungu in his witness statement dated 11 October 2013).

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It was **only in the second half of 2015** that the RoK was able to discover the existence of the fraud committed by the Stati in connection with the construction of the LPG plant. At the time, however, it was unaware that the Stati's misdeeds were in fact much more extensive.

## 2. The deception of the Swedish courts

### (a) First appeal for annulment (2014 - 2017)

267. On 19 March 2014, RoK filed an action for annulment of the Award before the Svea Court ("**SVEA Court**"), based inter alia on the irregular constitution of the Arbitral Tribunal. Subsequently, in October 2015, after having obtained the forced production of documents produced by the Stati in the Vitol FSU Arbitration, RoK filed a second summons to set aside the Award and invoked, as an additional ground, the circumstance that the said Award had been obtained by fraud.
268. However, taking advantage of the relatively limited information obtained by the RoK at this stage, the Stati refused in the annulment proceedings in Sweden to admit that they controlled Perkwood. They filed a declaration stating in black and white:  
*"Stati] do not admit the fact that Perkwood was a related party in any way - not yet specified by Kazakhstan"*<sup>116</sup> (**Exhibit 4.2**). This was a blatant lie considering that at the time, Stati CFO Artur Lungu had admitted exactly the opposite in the Vitol arbitration.
269. Subsequently, with legal assistance from the Latvian Prosecutor's Office, the RoK obtained access to numerous Rietumu Banka documents, including the hidden warrants giving the Stati control over Perkwood (**Exhibit 1.20**) and Perkwood's account statements (**Exhibit 10.8**).
270. Confounded by this new evidence, the Stati were forced to admit that Perkwood was a related company, but claimed that KPMG was fully "aware" of this and that there was no deception: *"there was no deceptive agreement or fraudulent arrangement between TNG and Perkwood. When TNG's auditors, KPMG, reviewed the annual financial accounts, they had full access to all accounting records. **KPMG was aware of Perkwood's function**", and that they "did **not present false evidence** (witness statements, testimonies and expert opinions), nor did they mislead Kazakhstan, the SCC or the Arbitral Tribunal, nor did they withhold information **regarding the valuation of the LPG plant**" (Stati Exhibit 2.1, pp. 21 and 24) (RoK emphasis added).*

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<sup>116</sup> Translation of : "*they do not concede to the fact that Perkwood was an affiliate in some - yet unspecified by Kazakhstan - way*".

271. It is now known that this is another **blatant lie**: the Stati had indeed concealed Perkwood's status from KPMG (see above and also below), produced false evidence and testimony in the TCE Arbitration and withheld information regarding the valuation of the LPG Plant.
272. By a decision of 9 December 2016, the Svea Court dismissed the annulment action brought by RdK, taking a very narrow interpretation of the grounds for annulment, specific to Swedish law, without conducting an examination of the merits of the fraud and at that point still being misled by Stati as indicated above ("**Swedish Decision**").
273. In addition to the fact that the Svea Court's judgment was given without the Court having been informed of the evidence now available, the Svea Court adopted a reasoning that is open to criticism in two respects, and which was subsequently criticised by the English judge in the exequatur proceedings in England:
- 273.1. First, it held "*that a party in an adjudicable case such as arbitration cannot be required to provide the opposing party with information prejudicial to its own case*" (Stati Exhibit 2.1 at 37). In fact, as will be shown in the Second Plea, the Stati were **required by** a procedural order of the Arbitral Tribunal to produce a series of key documents relating to the Centrale LPG, but they did not do so in order to prevent their illegal and fraudulent conduct from being discovered.
- 273.2. Second, the Svea Court held that "*Since the court based its decision on [KMG's] Indicative Offer, the evidence relied upon by the Investors in the form of oral testimony, witness statements and expert reports regarding the amount of the investment cost - evidence which Kazakhstan declared to be false - **did not directly affect the outcome***" (Exhibit 2.1 of Stati, p. 36). In fact, as demonstrated above, Stati deliberately insisted on the reliability of KMG's Indicative Offer on numerous occasions in the TCE Arbitration, even telling the Arbitral Tribunal that it should be a bare minimum for the valuation of the LPG Plant, even though they knew perfectly well that they had deceived KMG.
274. Furthermore, on the grounds that the Arbitral Tribunal had relied on KMG's Indicative Offer to value the LPG Plant, the Svea Court did **not** examine the factual evidence of fraud committed by Stati to inflate the costs of the LPG Plant: "*This circumstance alone [the fact that the Arbitral Tribunal relied on KMG's Indicative Offer] means that this evidence in itself, **even if it proves to be false**, cannot constitute sufficient grounds, in the Court's view, to consider the award invalid*" (Stati Exhibit 2.1 of Stati, p. 36).

275. Under Swedish procedural law, no ordinary appeal is allowed against a decision rejecting the setting aside of an arbitration award.

276. On 3 February 2017, the RoK therefore sought permission to pursue an appeal

"The Supreme Court of Sweden rejected this extraordinary appeal in one line, without giving any reasons. By decision of 24 October 2017, the Swedish Supreme Court rejected this extraordinary appeal in one line, without giving any reasons.

**(b) Second annulment appeal (2019 - 2020)**

277. On 25 November 2019, the RoK requested permission to file a second annulment appeal before the SVEA Court on the basis of new evidence obtained by the RoK in the meantime.

278. On 9 March 2020, the SVEA Court dismissed this appeal on the grounds that the Swedish Decision of December 2016 was res judicata (Stati Exhibit 2.9).

279. Very surprisingly, the SVEA Court considered that the RoK could have invoked the new elements in its previous appeal:

*"In the previous case, Kazakhstan asked the Court of Appeal to declare the award invalid in its entirety. In the present case, Kazakhstan again requests that the award be declared invalid. The award which is the subject of the invalidity action is the same in both cases and the parties are also the same. The legal consequence in the present case is therefore identical to that sought in the previous case and determined by a judgment which has acquired the force of res judicata. Furthermore, **the information provided by Kazakhstan shows that the appeal is based on circumstances that could have been invoked in the previous case**"<sup>117</sup> (Stati Exhibit 2.9, p. 4).*

280. It is difficult to understand the reasoning of the SVEA Court insofar as many of the elements invoked by the RoK in its second action for annulment were **obtained after** or **subsequent to** the Swedish Decision of December 2016. The RoK did not therefore invoke them in its first action for annulment and it is difficult to see why it should have refrained from invoking all the elements that were in its possession at the time.

281. In any case, the appeal was rejected on the basis of a procedural ground within the Swedish legal system, that of the res judicata effect of the first decision. The idea on which

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<sup>117</sup> *In the previous case, Kazakhstan requested that the Court of Appeal should declare the award invalid in its entirety. In this case, Kazakhstan again requests that the award shall be declared invalid. The award that is the subject of the invalidity action is the same in both cases and the parties are also the same. The legal consequence in the present case is thus identical to that sought in the previous case and determined by a judgment that has acquired legal force. In addition, the information provided by Kazakhstan shows that the action is based on circumstances which could have been relied on in the previous case".*

the decision is based on the fact that the party seeking to set aside an award can only appeal once. Too bad if new evidence emerges later.

282. The RoK was therefore not given permission to present the new evidence to the Svea Court, and no adversarial debate was held on it.
283. Again, no ordinary appeal was available in Sweden against the Svea Court's decision.
284. On 3 April 2020, RoK requested permission to file an extraordinary appeal for review with the Swedish Supreme Court (Stati Exhibit 2.10). On 18 May 2020, the Swedish Supreme Court rejected this appeal with a two-line decision: "*RoK has not shown any facts that could give rise to the review of the case*"<sup>118</sup> (Stati Exhibit 2.11).
285. Again, the decision is a one-line decision, and there has been no adversarial debate in Sweden on the new evidence of the Stati fraud.

### **3The failure of deception in the English courts (2014 - 2017)**

286. The Stati's deception failed in England where the High Court in London ruled in June 2017 that there was *prima facie* evidence of fraud (a). However, the Stati abandoned these proceedings to avoid a full trial that would have exposed their fraud in all its elements (b).

#### **(a) The English Judgment of 6 June 2017 concludes that there is sufficient prima facie evidence that the Award was obtained by fraud**

287. On 24 February 2014, the Stati applied to the High Court in London, UK, for the enforcement of the Award. On 7 April 2015, the RoK filed an application to set aside the decision authorising the enforcement of the Award. Following the discovery of the first elements of fraud in the course of 2015, the RoK supplemented its grounds for annulment to include the refusal of enforcement based on the violation of public policy, in particular with regard to the fraud committed by the Stati.
288. In February 2017, counsel for the Stati expressly admitted at a hearing in the High Court in London that the SVEA Court had **not** considered the issue of whether the Stati had committed fraud: "*I accept that the Swedish decision does not decide whether or not the Perkwood management memo, and the transfer pricing, et cetera... was a fraud. I accept that it did not decide that*"<sup>119</sup> (Exhibit 5.6, p. 99:4-9).

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<sup>118</sup> Free translation of: "*The Republic of Kazakhstan has not shown any facts that can give rise to review of the case*".

<sup>119</sup> Free translation of: "*So my Lord, if I can turn to estoppel, and perhaps I can start with some common ground. I accept that the Swedish decision does not decide whether the Perkwood management fee and the transfer pricing and so on and so forth was a fraud or not. I accept it did not decide that*".

289. By judgment of 6 June 2017 ("**English Judgment**"), 6 months **after** the Swedish Decision, the High Court in London held that there was "*sufficient prima facie evidence that the Award was obtained by fraud*"<sup>120</sup> (**Exhibit 5.8**, §92). In accordance with English procedure, the judge ordered a full trial on the merits of the fraud, which was to take place in November 2018.

290. In reaching this conclusion, the English judge considered, inter alia, that :

290.1. "*If KMG's Indicative Offer was in fact the result of misrepresentations by the [Stati], it seems to me, at this stage of the examination of the English claim, that there is the necessary force of a prima facie case that **the Tribunal would no longer consider it** (to use its words) **to be of "particular relevance"** in "the best sources of relative information for the assessment of the LPG Plant"; let alone as the offer from which they drew the amount of damages*"<sup>121</sup> (**Exhibit 5.8**, §47) (RoK emphasis added).

290.2. "*[The Stati] argue that the alleged cost fraud could not have foreseen KMG's Indicative Offer, nor the effect of that offer on the arbitration. I think this is a misreading of [RoK's] case ... **The conduct itself, and the concealment of what was done, had subsequent consequences, including on the audited or revised financial statements and on KMG's Indicative Offer, and therefore on the Award***"<sup>122</sup> (**Exhibit 5.8**, §49) (RoK emphasis added).

290.3. "*With respect, I do not believe that the Swedish Court has considered the question of the indirect impact [of the frauds on the Award]*"<sup>123</sup> (**Exhibit 5.8**, §64) (RoK emphasis added).

290.4. "*RoK] did **not have access**, prior to the Award, to the evidence of the alleged fraud on which it now wishes to rely, and that the evidence of the alleged fraud **could not, with reasonable diligence, have been discovered** prior to the Award*"<sup>124</sup> (**Exhibit 5.8**, §79) (RoK emphasis added).

291. In his judgment, the English judge also disagreed with the reasoning of the SVEA Court in two very important aspects:

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<sup>120</sup> Free translation of : "*sufficient prima facie case that the Award was obtained by fraud*".

<sup>121</sup> Free translation of : "*If the KMG Indicative Bid was in fact the result of the Claimants' dishonest misrepresentation then it seems to me, at this stage of scrutiny on the English Application, there is the necessary strength of prima facie case that the Tribunal would no longer (to use its words) consider it as taking a place of "particular relevance" within "the relatively best sources of information for the valuation of the LPG Plant"; still less being the one offer from which they took the damages figure.*"<sup>122</sup> He argues that the alleged fraud was committed by the company: "*He argues that the alleged fraud in relation to costs could not have foreseen the KMG Indicative Bid, and the effect of the KMG Indicative Bid on the Arbitration. I think this misunderstands the State's case. The original motives for the fraud are not all known but three are summarised by Ms Nacimiento: defrauding investors, extraction of funds from the State without paying taxes, and defrauding a joint venture partner. The conduct itself, and the concealment of what had been done, had later consequences including for the audited or reviewed financial statements and the KMG Indicative Bid, and in turn the Award.*"<sup>123</sup> Free translation of : "*I do not, with respect, believe that the Swedish Court has dealt with the issue of indirect impact (i.e. ground (b) under Swedish Law).*"

<sup>124</sup> Free translation of : "*I am satisfied that the State did not have access before the Award to the evidence of the alleged fraud on which it now seeks to rely, and that the evidence of the alleged fraud could not with reasonable diligence have been discovered before the Award had the State used reasonable diligence*".



- 291.1. On the alleged lack of impact of the Stati statements on the Award, the English judge stated that "*the Swedish Court also found that the KMG Indicative Offer was not (in itself) false evidence. This conclusion is valid at the time the KMG Indicative Offer was made, but I doubt that it is still valid when the KMG Indicative Offer is subsequently deployed by a party who knows (but continues to conceal) that it is the product of that party's fraud*"<sup>125</sup> (Exhibit 5.8, §66) (RoK emphasis added).
- 291.2. On the alleged lack of obligation on the part of the Stati to produce potentially incriminating documents in the ECT Arbitration, the English judge stated that "*the Swedish Court expresses the view (as expressed in the translation) that 'in an extra-judicial procedure such as arbitration, a party cannot be required to provide the opposing party with information that is contrary to its own case'. This view is stated in very general terms, and I respectfully admit that it disturbs me. But for the purposes of this case, that view cannot be an answer if the State is correct that in this case the claimants encouraged the Tribunal to rely on an indicative offer which the [Stati] knew to be misleading because it was based on false information provided by them. Moreover, in this case, the Tribunal expressly required disclosure of certain documents. None of the parties suggested that the requirement would not include disclosure of adverse documents of the type described in the Tribunal's requirement (i.e. including the Perkwood Contract)*"<sup>126</sup> (Exhibit 5.8, §66) (emphasis added).
292. Of course, the English Judgment turned out to be a disaster for the Stati: it was the first time they failed to deceive a judge in their dispute with RoK. And the worst was yet to come for the Stati. In the first half of 2018, they were forced to undergo a document production procedure in the UK. In the process, they were forced to produce more than 70,000 documents that shed light on a range of new evidence of fraud in their Kazakh Project.
293. On 26 February 2018, in the midst of this *disclosure* procedure, the Stati introduced a "This is the "*notice of discontinuance*" of the English exequatur procedure. This

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<sup>125</sup> As mentioned, the Swedish Court also reasoned that the KMG Indicative Bid was not (itself) false evidence. That assessment holds at the time the KMG Indicative Bid was made, but I respectfully question whether it still holds when the KMG Indicative Bid is later deployed by a party who knows (but continues to conceal) that it is the product of that party's fraud. ". <sup>126</sup> At paragraph G the Swedish Court expresses the view (as expressed in translation) that "in a procedure amenable to out-of-court settlement such as arbitration, it cannot be demanded that a party provide the opposing party with information which speaks against the party's own case". The view is stated very broadly, and I respectfully admit it troubles me. But for present purposes the view cannot be an answer if the State is correct that the present case is one where the Claimants encouraged the Tribunal to rely on an indicative offer that the Claimants knew was misleading because it was based on false information that they had provided. And further, in the present case the Tribunal expressly required the disclosure of certain documents. Neither party has suggested that the requirement would not include disclosure of adverse documents of the type described in the Tribunal's requirement (i.e. including the Perkwood Contract)".

The withdrawal allowed them to avoid the trial on the merits, where the debates and questioning of witnesses would have focused precisely on the misdeeds committed by the Stati before and during the ECT Arbitration. In other words, the Stati got away with it!

294. By an order of 21 May 2018, the High Court in London found that the grounds put forward to justify this application to withdraw were not sufficiently credible, and ruled that the fraud trial should proceed as scheduled in November 2018. The Stati have appealed this order in an attempt to avoid a retrial of their fraud.
295. By a decision of 10 August 2018, the English Court of Appeal allowed the Stati to terminate the exequatur proceedings, on condition that they definitively renounce to pursue the enforcement of the Award in the UK. In addition, the Court stated that the RoK was entitled to use the documents that had been produced in the *disclosure* procedure in exequatur proceedings abroad (**Exhibit 5.21**).
296. The Stati's calculation was simple: a trial in England would expose them to extensive investigations of their illegal and fraudulent actions, whereas continental judicial practices (they hope) are more superficial.
297. In a judgment of 2 July 2019 ordering the Stati to pay the costs of the English proceedings, the High Court in London made no mistake when it stated: "*clearly the Stati have decided - in accordance with their decision to withdraw - that the risk of going to trial with witness statements that might be subject to cross-examination was not a risk worth taking*"<sup>127</sup> (**Exhibit 5.22**, §20) (RoK emphasis added).

#### **4. The deception of Italian, Luxembourg, Dutch and Belgian courts (2017 - 2021)**

298. In the months following the English Judgment of 6 June 2017, Stati suddenly introduced four new exequatur procedures on the continent: on 24 August 2017 in Luxembourg, on 26 September 2017 in the Netherlands, on 13 November 2017 in Belgium and on 11 December 2017 in Italy.
299. In all these proceedings (including in Belgium), the Stati have been imaginative in complicating the dispute while asking the courts to conduct a superficial formal review of the Award. Initially, the Stati took advantage of the fact that the RoK's findings were only fragmentary to put forward a series of justifications for Perkwood's concealment and the artificial inflation of the costs of the LPG Plant. As the evidence surfaced, the Stati changed their justifications or invented new ones, often contradicting the previous ones.

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<sup>127</sup> "in all probabilities, the Stati has decided - consistently with their decision to discontinue - that the risk of proceeding to trial with witness statements upon which there could be cross-examination was not a risk that was worth taking: "*in all probabilities, the Stati has decided - consistently with their decision to discontinue - that the risk of proceeding to trial with witness statements upon which there could be cross-examination was not a risk that was worth taking*".

300. As the noose tightened on the Stati, they added a new layer to their deception by arguing that KPMG was fully aware of all the elements invoked by the RoK and had found nothing wrong with them. Thus, in **Belgium**, the Stati wrote in their summary conclusions of 25 October 2019 that "*Let us note in passing that the seriousness of the allegations ("forgery") that Kazakhstan maintains (Kazakhstan's summary conclusions, §492) amounts to seriously questioning the role played by KPMG, which, according to Kazakhstan, was manipulated from start to finish by the Stati without a word*" (Stati's conclusions of 25 October 2019, §650) (RoK underlines).
301. This claim is seriously misleading. It is nothing more and nothing less than an attempt to deceive the Belgian courts.
302. Similarly, in **Luxembourg**, Stati stated in their summary conclusions of 6 June 2019 that "*the seriousness of the allegations ("fabrication of false documents") that Kazakhstan puts forward calls into serious question the role played by KPMG, which, according to Kazakhstan, was manipulated from start to finish by Stati. TNG, which is therefore alleged to be a co-contractor in the allegedly sham contract, was also independently audited by KPMG Audit LLC ("KPMG"), which therefore had access to all accounting records relating to Perkwood. KPMG never made any comment on the existence of Perkwood or the contract in question*" (**Exhibit 6.7**, §§145 and 150) (RoK underlines).
303. However, by letter dated 21 August 2019, KPMG informed RoK of its decision to withdraw all its audit reports (**Exhibit 9.11**). By letter dated the same day, KPMG informed the Stati of its decision and instructed them to "*immediately take all necessary measures to prevent any further - or future - credit being given to the audit reports issued by KPMG*"<sup>128</sup> (**Exhibit 9.10**, p. 2) (RoK emphasises). In October 2019, RoK also obtained a copy of correspondence between Stati and KPMG in 2016 and 2019 ("**KPMG Correspondence**"), which demonstrates that Stati deliberately misled KPMG about the true status of Perkwood and the construction costs of the LPG Plant (see *below*).
304. These new developments completely undermined the Stati's line of defence, which could no longer invoke the KPMG certification card to stifle discussion of the fraud they had committed. The RoK therefore logically requested the production of these crucial documents in the Luxembourg and Belgian proceedings, but the Stati strongly objected on procedural grounds:

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<sup>128</sup> "you should immediately take all necessary steps to prevent any further, or future, reliance on the following audit reports issued by KPMG Audit LLC".

304.1. In **Luxembourg**, the RoK requested the production of the KPMG Correspondence by letter dated 19 November 2019. The Stati objected by letter dated 21 November 2019.

In a judgment of 19 December 2019, the Luxembourg Court of Appeal ruled that RdK's third-party objection was admissible but unfounded. It also ruled on the scope of KPMG's decision to invalidate its audit reports and on the KPMG Correspondence, even though this evidence had not been subject to an adversarial debate (Exhibit 3.18 of the Stati, p. 40).

304.2. In **Belgium**, despite KPMG's clear injunction, the Stati took no steps to disavow their KPMG audit reports. Worse, Stati **maintained** in their conclusions that it was "*incorrect to claim that Stati misled their own auditors (KPMG and others) about the nature of their relationship with Perkwood, by falsely claiming that Perkwood was a third party*" (Stati Conclusions of 25 October 2019, §650).

This misleading claim was made **without mentioning the KPMG Correspondence**, which predated the submission of these findings.

At the end of October 2019, after having obtained the judicial production of the KPMG Correspondence, RoK requested the production of the said correspondence. However, in several letters to the French-speaking Court of First Instance in Brussels, Stati strongly objected to this production (**Exhibit 7.6 and 7.8**).

The Stati maintained this refusal to produce on the first day of the hearing before the first judge. On the second day of the hearing, **after** the closure of the time allocated to RoK for oral argument, the Stati "suddenly" changed their mind and accepted the filing of the KPMG Correspondence. The consequence of this manoeuvre was that the exhibits were not filed until the third day, after the end of the pleadings.

In the judgment under appeal, rendered on 20 December 2019, the French-speaking Court of First Instance of Brussels declared the third-party claim admissible but unfounded. The Court did not rule on the KPMG Correspondence, which does **not appear once in the judgment**.

305. However, the most recent developments indicate that the tide is turning as KPMG's decision to invalidate its audit reports and the KPMG Correspondence will be subject to a (truly) adversarial debate:

305.1. In **Luxembourg**, in a judgment of 11 February 2021, the Luxembourg Court of Cassation overturned the decision of the Court of Appeal on the grounds that the KPMG Correspondence had been

It therefore referred the case back to the same court, composed as follows (Exhibit 6.8): "The Court of First Instance of the European Communities has decided to refer the case back to the Court of First Instance of the European Communities. It therefore referred the case back to the same Court with a different composition (**Exhibit 6.8**).

Furthermore, in the criminal part of the case, the Luxembourg Court of Appeal, in a judgment of 28 January 2020, decided in substance that false documents had been used in the Luxembourg exequatur procedure, i.e. the financial statements invalidated by KPMG, and that this founded the international jurisdiction of the Luxembourg courts to investigate criminally the facts committed by the Stati (**Exhibit 6.9**)

- 305.2. In **Belgium**, Your Court has already ruled, by an order of 3 December 2019 made on the basis of Article 748§2, of the Judicial Code in another part of this dispute (relating to the third party opposition of the RdK to the protective attachment carried out by the Stati in the hands of the bank BNY Mellon), that KPMG's decision to withdraw its audit reports is both "new" and "relevant" insofar as it relates to the "quality of the title", i.e. the validity of the Award. Following Your Court's judgment of 17 November 2020 declaring the present appeal admissible, the Stati can no longer escape a debate on the enormity of the evidence of fraud that is now available.
306. In the end, the Stati's manoeuvres in the post-arbitration proceedings, from the SVEA Court's deceptions, through the flight from England to the withholding of the KPMG Correspondence, will have prevented RoK from asserting the contradiction on absolutely crucial facts. They will have considerably lengthened the duration of this litigation, which could (and should) have been concluded in the full trial scheduled almost three years ago in England. The Stati cannot, therefore, complain at length about the alleged behaviour of the
- In the meantime, they have been doing their utmost to avoid a real debate on this issue for years, and the RoK has been "dilatatory" in "recycling their fraud allegations".

**D. The Stati can no longer hide: they have embezzled hundreds of millions of dollars from their Kazakh Project, deceived all stakeholders and then deceived the Arbitral Tribunal and the courts and tribunals responsible for reviewing the Award**

307. Fortunately, the Stati can no longer hide as the evidence now available incontrovertibly confirms their vast deception:

307.1. Obtaining the Stati's triple blind accounting establishes that the Stati artificially inflated the construction costs of the LPG Plant by tens of millions of dollars and that the Perkwood management fee does not exist (1).

307.2. Obtaining the account statements of several Stati companies, in particular those of Terra Raf, Stadoil, General Affinity and Hayden, indisputably reveals the embezzlement of hundreds of millions of dollars by the Stati as well as the existence of corruption (2).

307.3. KPMG's decision to withdraw its audit reports in August 2019 and the obtaining of the KPMG Correspondence in October 2019 confirmed that the Stati had indeed falsified the financial statements of their Kazakh companies and misled their auditor for years (3).

**1. Obtaining the Stati's triple black book and confirming that the Perkwood management fee does not exist**

308. In their submission of 31 January 2019, Stati had first argued that the existence of Perkwood's management fee was justified by the fact that Perkwood bore the costs of transport, services and currency conversion: "*These 'management fees and charges' were first of all perfectly legitimate, insofar as Perkwood bore, inter alia, all the costs and charges relating to deliveries, storage, insurance and charges relating to the conversion of EUR/USD currencies in connection with equipment deliveries from Europe to Kazakhstan. They corresponded to about one third of the value of the Perkwood contract*" (Stati's conclusions of 31 January 2019, §273) (RoK underlines). Stati also insisted that these management costs had been incurred by Perkwood and not Azalia: "*Unlike Azalia, Perkwood also had to insure the goods concerned, as well as organise their storage to enable delivery to Kazakhstan*" (Stati's submission of 31 January 2019, §263) (RoK underlines).

309. In its conclusions of 29 March 2019, RoK pointed out, in response, that the inflated price of Tractebel's Equipment resulted in particular "*from Stati's desire to receive a 'planned profit' of USD 40 million (USD 39.5 million for Azalia, and USD 0.5 million for Perkwood)*" (**Exhibit 1.144**, cells ABC340-341) (RoK conclusions of 29 March 2019, §301).

310. In their conclusions of 15 April 2019, Stati asserted **for the first time** that the cost inflation of the Tractebel Equipment was due to an alleged "management fee" from Perkwood: *"Kazakhstan, by allegedly identifying a fictitious creation of a 'management' fee note and a 'tripling of the price of the [Tractebel] equipment', is in fact confusing one and the same amount"* (Stati conclusion of 15 April 2019, §486).
311. The Stait explanation is, however, inconsistent with their triple hidden internal accounting in two respects:
- 311.1. According to the triple blind accounting, the "planned profit" incorporated in the price of the Tractebel Equipment amounted to **USD 40 million (Exhibit 1.144, ABC340 and 341)**. In the Vitol FSU arbitration, Artur Lungu testified that Perkwood's management fee amounted to **USD 43,852,108 (Exhibit 3.3, §61)**. The amounts do not match.
- 311.2. According to the triple blind accounting, the 'planned profit' was mainly located at **Azalia** (USD 39.5 million) (**Exhibit 1.144, ABC340**) and not at Perkwood (UD 0.5 million) (**Exhibit 1.144, ABC341**). The entities also do not match.
312. In an attempt to make their new justification stand up, the Stati also asserted **for the first time** that *"the management fees were charged by Azalia and Perkwood as entities of the Stati group"* (Stati conclusion of 15 April 2019, §488). However, they had deliberately minimised the role of Azalia in their conclusions of 31 January 2019!
313. Before the Court, Stati put forward a different but equally misleading explanation: *"the 'alleged inflation' of the construction costs of the LPG Plant is explained on the one hand by the management fee charged by Stati and on the other hand by the costs of transport, insurance and services and the conversion of currencies (from the euro to the US dollar)"* (Stati's conclusion of 26 February 2021, §618). In other words, the Stati claim to **distinguish between** two causes of the inflated costs of the LPG Plant: (i) Perkwood's management fee and (ii) transport, services and currency conversion costs. In so doing, Stati once again denies the explanations it put forward at first instance in its pleadings of 31 January 2019, consisting in justifying the existence of the management fee **by the** costs of transport, services and currency conversion!
314. Clearly, the Stati do not know what to do. And with good reason. When we analyse in detail the Stati's threefold hidden accounting system, we see that it includes a tab entitled "This tab was not intended to be disclosed to anyone. This tab was not intended to be disclosed to anyone as it reveals the amount of **pumping** by the Stati of almost USD 108 million "via TNG" and "via Terra Raf and Montvale" (**Exhibit 1.143, "Pump" tab**):

	A	B	C	D
1	<b>SOLD PROJECT</b>			
2				
3	<b>SOLD in PROIECT</b>	<b>PLANIFICAT</b>	<b>INSUȘITE PÂNĂ ÎN PREZENT</b>	<b>URMEAZĂ A FI VALORIFICATE</b>
4	by Statements	44'772'067	107'878'796	-63'106'729
5				
6	by CAPEX	44'772'067	107'878'796	-63'106'729
7	via TNG	44'772'067	52'878'796	-5'106'729
8	via TERRA/MONTALE only	0	55'000'000	-55'000'000

← ▶ ▶ Pump / CAPEX (TNG) / CAPEX / CAPEX VITOL / TOTAL Balance (Vitol) / CAPEX Evolution / Statements

A close analysis of this tab shows that the Stati had "planned" ("Planificat") the "pumping" of USD 44,772,067 (Exhibit 1.143, tab "Pump", cell B7). It is probably no coincidence that this amount corresponds more or less to the amount of the alleged management fee mentioned by Artur Lungu in the Vitol FSU Arbitration (USD 43,852,108) (Exhibit 3.3, §61). And it is known that the "pumping" comes essentially from the "planned profit" included in the price of the Tractebel Equipment (USD 40 million) and the doubling of the price of the Transeco Equipment (USD 3.5 million).

315. The RoK also draws Your Court's attention to the fact that the High Court in London, by an order of 29 September 2014 sought by Vitol, upheld the freezing of the Stati's assets due to the Stati's refusal to perform the arbitration they had lost (Exhibit 3.9). On that occasion, the English court concluded that the "management fee" was nothing more than an amount that had been paid "at the pleasure" of the Stati :

*"Ascom claimed to have paid a management fee of more than USD 33 [43] million to an English company called Perkwood. A contract was produced which makes no mention of any management fee or method of calculating such a fee. Other evidence shows that a surcharge was applied to the price of equipment delivered to the LPG Plant. It appears that this 'commission' was simply paid at their [Stati's] discretion "*<sup>129</sup> (Exhibit 3.9, §39).

<sup>129</sup> "Ascom has asserted that it paid a management fee of over USD 33 million to an English company called Perkwood. An agreement has been disclosed which makes no mention of any management fee nor any formula for calculating it. It appears from other evidence that there was a mark-up on prices for equipment supplied to the LPG Plant. It appears that this 'fee' was simply paid at will".



## 2. Obtaining statements of account from Stati companies and uncovering embezzlement and corruption by Stati

316. After obtaining the account statements of Perkwood and Azalia, the RoK obtained the account statements of about thirty companies controlled by the Stati through the assistance of the Latvian Prosecutor's Office.
317. Cross-checking these account statements revealed that the Stati had embezzled hundreds of millions of dollars from their Kazakh Project via several companies. It has now been established that the Stati diverted at least \$20 million via the Terra Raf Loan (via Terra Raf), \$255 million via Oil Sales (via Terra Raf, Montvale, Sadoil, General Affinity and Hayden) and \$81 million via the LPG Plant (via Perkwood, Azalia, Terra Raf and Hayden).
318. These account statements also reveal how the funds diverted from the Kazakh project were used. They were used for three main types of expenditure:
- 318.1. First, the Stati made lavish personal expenditures: buying luxury cars such as a BMW X6 at EUR 72,000 (**Exhibit 10.4**, p. 188) or another BMW X6 at EUR 89,000 (**Exhibit 10.4**, p. 291), shopping at Harrods in London for GBP 325,457 (**Exhibit 10.4**, p. 170) or deposit of USD 3 million for a private jet (**Exhibit 10.4**, p. 506).
- 318.2. Second, the Stati transferred millions of dollars to a multitude of companies they controlled to finance activities unrelated to the Kazakh Project with funds that belonged to or were loaned to the Stati to be transferred to KPM and TNG.
- For example, the Stati, through their company Komet Group SA ("**Komet Group**"), signed a contract with the Kurdish government in June 2008 to operate the Barda Rash oil field ("*Product Sharing Contract*") ("**Kurdish Contract**") (**Exhibit 1.79**). In the summer of 2008, the Stati transferred over USD 125 million to Lenwell Solutions Inc. ("**Lenwell**") and Pellat International ("**Pellat**") to finance their Kurdish (not Kazakh) operations.
- In addition, Jepson acted as an intermediary between Terra Raf/Hayden and the companies holding Stati's personal assets in Moldova. From 20 November 2006 to 26 July 2007, Terra Raf transferred a net amount of USD 5.2 million to Jepson. From 3 August 2007 to 9 June 2015, Hayden transferred a net amount of USD 47.3 million to Jepson (**Exhibit 10.20**). The Stati then transferred the bulk of these funds to Vila Demetra SC, which owns, among other things, the Stati castle in Truseni, Moldova.
- 318.3. Thirdly, Stati made dubious payments to various politicians in Moldova, Congo, Romania, Sudan, Kurdistan and Kazakhstan. The Stati have

In 2007 and 2008<sup>130</sup>, for example, it paid approximately USD 1.1 million to Yekaterina Lyazzatova, the daughter of the former Deputy Minister of Energy of Kazakhstan, USD 100,000 in 2008<sup>131</sup> to Olowo Lungudi, a Congolese politician and senator, and USD 1.5 million between 2010 and 2013<sup>132</sup> to Sarbaz N. Hawrami, a consultant to the then Kurdish Prime Minister.

According to PwC, which has thoroughly audited these payments, "*the examples presented above highlight a number of transactions with potentially Politically Exposed Persons (PEPs) and also provide further examples of transactions with individuals located in high-risk geographical areas. While the scope of my work does not include further investigation of these specific transactions, I note that these are transactions that carry an **increased risk of money laundering under this 'red flag'***"<sup>133</sup> (**Exhibit 12.12**, p. 38) (RoK emphasis).

319. It is therefore not surprising that the Stati had opened all these accounts with Rietumu Banka, which has since become notorious for being involved in money laundering operations (**Exhibit 1.169**) and was convicted as such by the Paris Court in 2017 (**Exhibit 1.168**).

320. Furthermore, other documents reveal that the existence of the embezzlement of Stati funds is **confirmed** in substance by people well informed of the Stati's actions:

320.1. First, in a witness statement filed in the Vitol FSU Arbitration, Vitol employee Raymond Martin testified that the Stati were involved in projects in Iraq and Sudan at the same time as their Kazakh Project and that Vitol suspected that the money it was injecting into the Kazakh Project was being diverted by the Stati: "*We were aware that Ascom was involved in capital-intensive E&P projects in **Iraq and South Sudan** for which Mr. Stati needed to raise funds and we were increasingly concerned that the funds received by Vitol were being used by Ascom to finance these projects instead, resulting in delays in the construction of the LPG Plant. We knew that Ascom was involved in capital-intensive E&P projects in Iraq and South Sudan for which Mr. Stati needed to raise funds and we were increasingly concerned that the funds received from Vitol were being used by Ascom to finance these projects instead, resulting in delays in the construction of the LPG plant. Vitol's concerns in this regard were heightened when the extent of Ascom's financial difficulties became apparent in early 2009*"<sup>134</sup> (**Exhibit 3.5**, §72) (RoK emphasis added).

<sup>130</sup> **Exhibit 10.4**, pp. 51, 78, 84, 101, 106, 137, 144, 174, 198.

<sup>131</sup> **Exhibit 10.4**, pp. 105.

<sup>132</sup> **Exhibit 10.4**, pp. 469, 470, 586, 750 and 766.

<sup>133</sup> "*The examples set out above highlight a number of transactions with potentially Politically Exposed Persons and also provide further examples of transactions with individuals located in higher risk geographies. Whilst the scope of my work has not included any further investigation into these specific transactions, I note that they are transactions which result in an increased risk of money laundering under this 'red flag'.*

<sup>134</sup> "*We were aware that Ascom was involved in capital intensive E&P projects in Iraq and South Sudan for which Mr Stati was needing to raise funding and became increasingly concerned that funds received from Vitol were being used by Ascom to fund those projects instead, causing delays in construction of the LPG plant. Vitol's concerns in this regard became acute when the*

*full extent of Ascom's financial difficulties became apparent in early 2009.*

320.2. Secondly, in an internal email of 25 November 2008, an employee of Standard Bank, a bank from which the Stati had sought a loan of USD 60 million at the end of 2008, wrote: "*the reason [the Stati] need this financing is that they **have previously used the cash from the British Virgin Islands company [Tristan] to purchase other assets (a service company in Kurdistan, oil equipment for their refinery in Kurdistan, land in Moldova) and therefore cannot pay the amounts owed to their local companies in Kazakhstan [KPM and TNG] who own the fields that require OpEx and CapEx investments***"<sup>135</sup> (**Exhibit 1.95**) (RoK emphasis added).

320.3. Thirdly, in the order of 29 August 2014 already referred to above, the High Court in London confirmed that the Stati had **deliberately attempted to conceal the diversions of funds to Hayden :**

*"Montvale is therefore in liquidation, at the request of Vitol. It is clear from the trustee's comments that Mr Stati, the chairman of Ascom and the ultimate owner of the Ascom group, has not cooperated with the trustee in his attempts to determine the true assets and liquidate them. They appear to have included a debt of another Ascom-related company, Hayden Intervest Ltd, of approximately USD 158 million and an advance to another Ascom-related entity of USD 3 million. **Vitol rightly argues that Mr Stati did what he could to avoid payment of Montvale's debts under the Partial Award and to conceal [Montvale's] assets***"<sup>136</sup> (**Exhibit 3.9**, §32).

*"I am satisfied on the basis of the evidence before me that Mr Stati not only has a **propensity to move assets between his group companies as he sees fit, but he and Ascom have a propensity to give information to the court or tribunal about his assets according to what he [Anatolia Stati] or she [Ascom] thinks is in his or her best interests at the time***"<sup>137</sup> (**Exhibit 3.9**, §43) (emphasis added by RoK)

321. It is therefore undeniable that the Stati embezzled hundreds of millions of dollars from their Kazakh Project, and hid it from all project stakeholders and later from the ECT arbitration tribunal.

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<sup>135</sup> *the reason they need this facility is because they have previously used cash from the BVI company [Tristan] to acquire other assets (a service company in Kurdistan, oil equipment for their refinery in Kurdistan, land in Moldova) and hence cannot pay the monies owed to their local Kazakh companies that hold the fields to carry out OpEx and CapEx requirements.* <sup>136</sup> Free translation of : "*Montvale is in liquidation in consequence, at Vitol's instigation. What appears clearly from the comments of the liquidator is that Mr Stati, the president of Ascom and the ultimate owner of the Ascom group, failed to cooperate with the liquidator in his attempts to ascertain the true assets of Montvale and to realise them. They appear to have included an outstanding debt from another Ascom related company Hayden Intervest Ltd of \$158 million approximately and an advance to another Ascom related entity of \$3 million. Vitol justifiably contends that Mr Stati has done what he could to avoid payment of Montvale's liabilities under the Partial Award and to conceal company assets.*

<sup>137</sup> *"I am satisfied on the basis of all the material put before me that Mr Stati not only has a propensity to move assets around his group companies as he thinks fit but he and Ascom has a propensity to give information to the tribunal or the court about its assets according to what he or it thinks suits its interests at the time".*

### **3.obtaining the KPMG Correspondence and the confirmation of KPMG's deception by the Stati**

322. Informed by the RoK of the facts affecting the integrity of their audit reports, KPMG first asked Stati for an explanation (a). After being informed of the sworn statement of Stati's CFO (Artur Lungu) confirming the deception (b), KPMG returned to Stati in 2019 (c). In October 2019, the RoK obtained judicial production of correspondence between KPMG and the Stati in 2016 and 2019 ("**KPMG Correspondence**"), uncovering the pressure exerted by the Stati on KPMG to try to prevent it from drawing the consequences of the Stati's deception (e).

#### **(a) 2016 KPMG correspondence: KPMG's unanswered questions**

323. In late 2015, while the Swedish annulment proceedings were in full swing, counsel for RdK provided KPMG with information from the Vitol FSU Arbitration showing that Perkwood was a party connected to the Stati.

324. By letter of 15 February 2016, alerted by the Stati's statements in the Vitol FSU Arbitration, KPMG had addressed a series of questions to the Stati regarding Perkwood's status and management fee: (i) "*what was the basis for the management fee charged by Perkwood*"<sup>138</sup>, (ii) "*if there was no basis for the management fee and these costs were not necessary for the construction of the LPG Plant under IAS 16, should such construction costs have been treated as implicit dividends paid to the ultimate beneficiary of these Companies [Anatolia Stati]?*"<sup>139</sup> and why (iii) "*is there a significant difference between the costs of the LPG Plant equipment charged by Perkwood to TNG and the costs actually charged by Tractebel Gas GmbH, the ultimate supplier of the equipment? Can such a cost difference be justified for TNG given the eligibility of the LPG Plant construction costs under IAS 16?*"<sup>140</sup> KPMG also reserved the right to "*withdraw our audit reports*"<sup>141</sup> if Stati did not provide answers to its questions (**Exhibit 9.2**, p. 6).

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<sup>138</sup> "*what was the underlining substance of the management fee charged by Perkwood*".

<sup>139</sup> "*If there was no substance for the management fee and this fee was not necessary for construction of the LPG Plant under IAS 16, should such costs have been treated as constructive dividends paid to ultimate beneficiary of the Companies.*"

<sup>140</sup> "*is there a material difference in costs of the equipment for the LPG Plant charged to TNG by Perkwood and those actually charged by TGE Gas GmbH, the ultimate supplier of the equipment? Can such difference in cost be substantiated for TNG in terms of eligible costs of the construction of the LPG Plant in accordance with IAS 16?*"

<sup>141</sup> "*In case we receive no explanations or additional representations, we remain our rights to seek to prevent future reliance on our audit reports and in particular to withdraw our audit reports and to inform about such withdrawal all parties who are still, in our view, relying on these reports, including but not limited, Ministry of Justice of the Republic of Kazakhstan and the Svea Court of Appeals.*"

325. Instead of answering KPMG's legitimate questions, Stati, in a letter dated 26 February 2016, **threatened KPMG with** "*holding your company accountable should you choose not to cooperate with us and/or withdraw your audit reports*"<sup>142</sup> (**Exhibit 9.3**).
326. By two emails of 29 February and 10 March 2016, KPMG explained that its "*professional obligation is to protect the quality of their audit work to their client and the parties who use [their] reports*"<sup>143</sup> and reiterated the questions posed in their letter of 15 February (**Exhibit 9.4**). Exchanges continued in March 2019 but, by Stati's own admission, they "*did not follow up on KPMG Audit LLC Kazakhstan's request to reopen the matter*" (Stati's Conclusions of 26 February 2021, §318).

**(b) Artur Lungu's deposition (April 2019): Admission of KPMG's deception**

327. The intentional concealment of Perkwood's true status is the cornerstone of the fraudulent scheme set up by the Stati to embezzle tens of millions of dollars in the construction of the LPG Plant.
328. In the Belgian exequatur proceedings, the Stati claimed that they had "*never sought to conceal the status of Perkwood as part of the group of companies they controlled/owned, contrary to what Kazakhstan repeats over and over again*" and that the documents produced by the RoK in no way proved that "*Artur Lungu was deliberately trying to conceal the correlation between Perkwood and the Stati's companies*" (Stati's conclusions of 31 January 2019, §§251 and 252). These assertions, which were already contradictory to the position of the Stati in Sweden (**Exhibit 4.2**), were furthermore contradicted by a multitude of documents produced by RoK (**Exhibits 1.1, 1.83, 1.88, 1.122, 1.140, 1.142**).
329. On 7 February 2019, RoK filed a motion in a US court to obtain the sworn testimony of Artur Lungu to verify the veracity of the implausible claims made by the Stati in Belgium and other countries (**Exhibit 8.1**).
330. On 20 February 2019, the US federal court granted RoK's motion and ordered the sworn deposition of Mr Lungu (**Exhibit 8.2**).
331. This deposition was finally held on 3 April 2019 ("**Lungu deposition**"). It was conducted by Mr Matthew Kirtland of Norton Rose Fulbright, counsel for RoK in the United States, while Artur Lungu was assisted by Mr Kevin Mohr, counsel for King & Spalding. The Deposition was filmed and recorded in a full transcript which includes the verbatim questions put to Mr Lungu and his responses (**Exhibit 8.5**, with a full translation in **Exhibit 8.6**).

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<sup>142</sup> "*In the meantime, we expressly reserve the right to hold your firm accountable should you choose not to co-operate with us and/or proceed to withdraw your audit reports.*"

<sup>143</sup> "*Our professional obligation is to protect the quality of our audit work to our client and to the parties using our audit report.*"

332. In this sworn statement, Artur Lungu confirmed, inter alia, that the **specific intention** in the contacts with KPMG was to present Perkwood as if it were a **third party company**, and that this information was misleading (**Exhibit 8.5**, pp. 269:16 to 271:3). Mr. Lungu also acknowledged that this deception of KPMG resulted in a "material *misstatement*" that tainted the audit reports and financial statements (**Exhibit 8.5**, p. 183).
333. As a symbol of the disastrous impact of the Lungu Deposition on the Belgian proceedings, the Stati **deleted** in their summary conclusions of 15 April 2019 the misleading statements in their previous conclusions that there had been no Perkwood cover-up. The cover-up was indeed established. However, the Stati continued to assert at this point, hoping to capitalise on their refusal to answer questions posed by KPMG in 2016, that there was no fraud against KPMG because it is inconceivable that KPMG would have "not breathed a word" if there was such fraud (**Exhibit 7.3**, §84). In fact, by this time KPMG had already done more than "whisper", and KPMG's position has escalated in 2019.

**(c) 2019 KPMG correspondence: confirmation by KPMG that they were misled and invalidation of all audit reports**

334. Shortly after obtaining Mr Lungu's sworn deposition, on 5 July 2019, RoK's counsel wrote to KPMG informing them of Mr Lungu's deposition and the position defended by the Stati in various court proceedings that KPMG had always been aware of Perkwood's role (**Exhibit 9.5**).
335. On 17 July 2019, KPMG responded that in light of this information it would "*thoroughly review the information contained in the letter*" from RoK (**Exhibit 9.6**).
336. On 5 August 2019, after conducting these investigations, KPMG, without informing the RoK, stated to the Stati that it had received documents stating that "*findings have been filed by you in several court proceedings which contain statements that Perkwood Investments Ltd ("Perkwood") is part of the group of Companies that are controlled/owned by Anatolia and Gabriel Stati. These documents also contain the sworn statement of Artur Lungu that the management of the audited entities made false statements to KPMG. Our audit documents indicate that the transactions with Perkwood were not disclosed in the financial statements of the Companies [Tristan, KPM and TNG] and that Perkwood was not included in the list of parties*

*management provided to us during our audits* "<sup>144</sup> (Exhibit 9.8, p. 1). (RoK emphasis added).

337. On this basis, KPMG asked the Stati to provide, by 16 August 2019, "*your analysis, based on the documents listed above, of whether Perkwood was a related party to the Companies according to the definitions specified in IAS 24 and therefore whether the disclosure requirements of IAS 24 should have been followed in the Companies' financial statements with respect to all transactions with Perkwood*"<sup>145</sup> (Exhibit 9.8, p. 2) (RoK emphasises).
338. Not being aware of KPMG's 5 August 2019 letter to the Stati, RoK's counsel sent a reminder to KPMG on 15 August 2019, asking it to confirm whether, after reviewing the facts, it maintained that third parties could rely on the audit reports issued on the financial statements of the Stati's Kazakh companies (Exhibit 9.9).
339. On 21 August 2019, KPMG sent a letter to RoK of its decision to substantially withdraw all of its audit reports (Exhibit 9.11, with French translation). This letter to RoK did not contain any substantial additional information.
340. It later emerged (see below) that KPMG had sent a second letter on the same day, addressed to Mr Anatolie Stati. In this letter, KPMG expressly states that "*the management*" of Tristan, KPM, TNG, which includes Anatolie Stati, had "*made misrepresentations to KPMG*". This statement is clear and important: **KPMG confirms that it was misled by the Stati.**

KPMG justified its decision as follows:

*"Our audit documentation indicates that TNG had transactions with Perkwood in 2007, 2008 and 2009. These transactions should have been disclosed in these annual and interim financial statements covering these reporting periods in accordance with IAS 24. Having carried out an independent review of the documentation provided by Herbert Smith Freehills [counsel to RoK] and our own working papers, we consider this material omission, both for TNG's financial statements for the years ended 31 December*

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<sup>144</sup> These materials inter alia indicate that the submissions were made by you in various court proceedings which contain statements that Perkwood Investments Ltd ("Perkwood") is part of the group of Companies which are controlled/owned by Anatolia and Gabriel Stati. These materials also contain Artur's Lungu testimony under oath that KPMG was misrepresented by the management of the audited entities. Our audit files indicate that transactions with Perkwood were not disclosed in the financial statements of the Companies, and that Perkwood was not included in the list of related parties which management provided to us during our audits.

<sup>145</sup> "We are therefore writing to you in order to request your assessment, with reference to the documents listed above, whether Perkwood was a related party of the Companies within the meaning specified by IAS 24 and therefore whether the disclosure requirements of IAS 24 should have been followed in the companies' financial statements in respect of any transactions with Perkwood.



2007, 2008 and 2009 and for the consolidated financial statements of KPMG, TNG and Tristan for those periods.

As a result, KPMG instructed Stati to "*immediately take all necessary steps to prevent any further or future reliance on audit reports issued by KPMG*"<sup>147</sup> (**Exhibit 9.10**, p. 2).

341. Faced with confirmation of their deception by their own auditors, Stati went on the offensive against KPMG in an attempt to have KPMG reverse its decision to invalidate the audit reports. In a letter dated 6 September 2019, the Stati attacked this decision on the grounds that it had been taken in a hurry. But, as in 2016 (one wonders how hasty KPMG's decision was when the same questions had been asked three years earlier), Stati continued to refuse to answer KPMG's legitimate questions (**Exhibit 9.14**).
342. In response, in a letter dated 3 October 2019, KPMG emphasised this complete lack of response from Stati on the substance, and stated that its action was in full compliance with its obligations as auditor:

*"More than 8 weeks after we asked you for an explanation, we have not received any substantive response to the matters referred to in our letter of 5 August (in fact, you have not even sought to challenge these matters). It is inappropriate for you to criticise the actions of KPMG, when those actions were induced in part by your failure to provide any response, as outlined in our letter of 21 August, while at the same time continuing to refuse to answer our questions [...]. Your changing explanations for your refusal to answer are unfounded [...]. As we have already explained to you, our action in this matter is in full compliance with our obligations under international auditing standards, the IESBA Code, and the contractual agreements between us"* (**Exhibit 9.16**).

343. Following KPMG's decision, the RoK asked another member of the Big Four, PwC, to examine the meaning and scope of the decision taken by KPMG in its letter of 21 August 2019 to the Stat. In an expert report dated 21 January 2020, PwC explained the following:

343.1. *"The measures taken by KPMG do not only relate to specific transactions, such as those between Perkwood and TNG, but in fact represent a*

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<sup>146</sup> *Our audit working papers indicate that Tolkyneftegaz LLP undertook transactions with Perkwood during 2007, 2008 and 2009. These transactions should have been disclosed in its annual and interim financial statements for those reporting periods, in accordance with IAS 24. Having concluded an independent assessment of the documents provided by Herbert Smith Freehills and our own workpapers, we consider this omission to be material, both to the financial statements of Tolkyneftegaz LLP the years ended 31 December 2007, 2008 and 2009, and the combined financial statements of Kazpolmunay Tolkyneftegaz LLP and Tristan Oil Ltd for said periods".*

<sup>147</sup> *"you should immediately take all necessary steps to prevent any further, or future, reliance on the following audit reports issued by KPMG Audit LLC".*

**KPMG's complete "withdrawal" of its audit reports on all financial information from the financial statements** <sup>148</sup>.

- 343.2. *"The actual 'withdrawal' of an audit report is a **last resort** for an auditor and occurs only in rare circumstances [...]. To put KPMG's actions in perspective, we consulted our own auditing standards team at PricewaterhouseCoopers LLP. They informed us that in the UK there has only been one occasion that they can recall in the last 15 years, during which PricewaterhouseCoopers LLP has issued tens of thousands of audit reports, where PricewaterhouseCoopers LLP has had to take similar action to 'withdraw' a previously issued audit report.*
- 343.3. *"The above, combined with KPMG's withdrawal of its audit reports, makes the financial statements totally unreliable.*
- 343.4. *"KPMG's actions and their subsequent actions **eliminate any confidence in the reliability of all of Tristan's, TNG's and KPM's financial information and anything derived from or based on it** (including, but not limited to, all written and oral testimony in the TCE arbitration, expert opinions and statements of counsel based on that financial information).*
- 343.5. *"The KPMG Correspondence confirms KPMG's position that **Stati falsified their related party disclosures** to KPMG, thereby giving the false impression to KPMG and any other user of the financial statements that Perkwood was an independent third party when it was in fact a company controlled by Mr. Stati <sup>152</sup> (**Exhibit 12.8**, pp. 11-13) (RoK emphasis added).*

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<sup>148</sup> *"The actions taken by KPMG do not only go to specific transactions, for example in relation to those between Perkwood and TNG, but represent in effect a complete 'withdrawal' by KPMG of its audit opinions over all of the financial information of the Financial Statements.*

<sup>149</sup> *"The effective 'withdrawal' of an audit opinion is a last resort by an auditor and only arises in rare circumstances [...]. To put the actions of KPMG in context, we have consulted with our own audit standards team at PricewaterhouseCoopers LLP. They have informed us that in the UK, there has only been one occasion that they can recall over the past fifteen years, a period during which PricewaterhouseCoopers LLP has issued tens of thousands of audit opinions, when PricewaterhouseCoopers LLP has had to take similar actions to 'withdraw' a previously issued audit opinion.*

<sup>150</sup> *The above, coupled with the withdrawal by KPMG of its audit opinions, renders the Financial Statements to be entirely unreliable.*

<sup>151</sup> *"the actions taken by KPMG and their subsequent actions would entirely remove confidence in the reliability of Tristan's, TNG's and KPM's overall financial information and anything derived therefrom or based thereon (including, but not limited to, any written and oral testimony in the ECT Arbitration, expert opinions and statements from counsel based on such financial information).*

<sup>152</sup> *The KPMG Correspondence confirms KPMG's position that the Stati Parties falsified their related party disclosures to KPMG, thus creating the false impression on the part of KPMG and any other users of the Financial Statements that Perkwood was an independent third party when in reality it was a company controlled by Mr Stati.*

**(d) Stati pressure on KPMG to reinstate audit reports**

344. As the Stati refused (as usual) to produce the KPMG Correspondence, the RoK had to file an application for production of documents in the Kazakh courts to obtain a copy. This application was granted by two Kazakh court decisions of 17 October 2019 (ordering KPMG to produce the correspondence) and 25 October 2019 (allowing the use of the documents in foreign proceedings) (**Exhibit 9.17**).

The RoK then realised that as early as 2016, the Stati had threatened KPMG in case KPMG decided to withdraw its audit reports, and that these threats were repeated in 2019. After KPMG took the decision to withdraw the audit reports, the Stati continued to put pressure on KPMG to reinstate the audit reports. This pressure is evident from the correspondence itself. For example, in a 14-page letter sent to Stati on 6 September 2019, Stati pressured KPMG to "withdraw" its letter of 21 August 2019<sup>153</sup> (**Exhibit 9.14**, p. 11, §39).

345. When caught red-handed, the best (or only) defence is often attack. The bigger the attack, the more you can hope to make people forget your own guilt. This is clearly the strategy of the Stati. Quite extraordinarily, the Stati claim in the present proceedings that KPMG took the decision to withdraw its audit reports because of the

This is the first time that KPMG's Kazakh subsidiary has been subjected to "*pressure from Kazakhstan*".

346. This claim can be answered briefly.

347. First of all, it can be noted that this is a totally gratuitous claim, devoid of any evidence whatsoever.

348. Secondly, Stati claim that the pressure exerted by Kazakhstan is apparent from the correspondence itself. Your Court is respectfully invited to review the contents of the correspondence in question (**Exhibit 9.1**). A reading of this correspondence belies any idea of pressure from RoK on KPMG. Firstly, RoK took the trouble to point out at each stage that it would be up to KPMG to form its own opinion on the basis of the documents available. Secondly, KPMG stressed that it had carried out an independent review of the material, including its internal documents.

On the other hand, the correspondence does show pressure on KPMG, but from **Stati**. And in a way that is totally devastating to Stati's position, the correspondence shows that despite KPMG's repeated requests to simply answer the questions posed, Stati has *steadfastly* refused to provide any explanation.

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<sup>153</sup> Free translation of : "*we request your firm to withdraw [the letter of 19 August 2019] with immediate effect*".

349. In desperation, Stati try to justify their silence by the fact that KPMG had given them less than two weeks to answer its questions (Stati's Conclusions of 26 February 2021, §§326 to 330). The same questions had already been asked by KPMG to Stati in 2016, without finding any answer. And the Stati do not explain why to this day, 18 months later, they have still not provided KPMG with an answer.
350. A final argument put forward by Stati is that KPMG's decision to withdraw is allegedly contrary to Kazakh law, specifically "*Article 18, paragraph 3, of the Law of the Republic of Kazakhstan on Audit Reports*". They claim that this provision would prevent such a decision from being taken '*without a prior court decision in this regard*' and that, therefore, '*it should in fact be considered that the financial statements are still valid*' (Stati Conclusions of 26 February 2021, §§336-338).

The Stati explanation does not hold water for several reasons:

350.1. KPMG's decision was taken in accordance with the **international auditing standards** with which it is bound, in particular under the contracts signed with Stati (**Exhibit 1.97**, p. 19, Article 5). KPMG also reiterated this in its letter of 5 August 2019 to the Stati, which emphasises that "***under ISA 560 on Post-Audit Events [...], if we become aware of facts that might have led to an amendment of the audit reports, had these facts been known to us at the date of the audit report, we are required to discuss the matter with management and those charged with governance***" (**Exhibit 9.8**). It was in this context and in accordance with its obligations as auditors that KPMG gave Stati two weeks to provide explanations regarding matters of which it was unaware at the time it carried out its audits, namely the fact that Perkwood was an affiliated company and that Perkwood had allegedly charged a management fee.

It was **because of Stati's failure to respond** that KPMG enjoined Stati by letter dated 21 August 2019 to "*immediately take all necessary measures to prevent any further - or future - credit being given to audit reports issued by KPMG*"<sup>154</sup> (**Exhibit 9.10**, p. 2).

350.2. On the point of Kazakh law, if it were true, as the Stati claim, that KPMG could not withdraw its audit reports without judicial review (and the Stati do not produce the provision of Kazakh law they rely on), the Stati would be free to challenge this decision on the grounds they claim to apply. However, to date, the RoK

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<sup>154</sup> "*you should immediately take all necessary steps to prevent any further, or future, reliance on the following audit reports issued by KPMG Audit LLC*".

is not aware of any initiative by the Stati in this respect, and the KPMG decision therefore remains in full force to this day.

351. Finally, it should be noted that, in arguing before the Court that "*it must in fact be considered that the financial statements of Stati are still valid*", Stati are in essence relying on the content of those financial statements. They thus violate KPMG's firm decision that KPMG's audit reports and the related financial statements can no longer be relied upon in any context.
352. Even more seriously, Stati's invocation of their financial statements in their submissions in the present proceedings represents nothing less than a further attempt to recycle the proceeds of their fraud, this time before Your Court.

#### IV. CLAIMS OF THE PARTIES

353. In their first submission of 26 February 2021, Stati make the following demands:

*"Primarily: to dismiss the main appeal of Kazakhstan and to allow the cross-appeal of the Stati*

*;*

*- In the alternative: dismiss Kazakhstan's main appeal;*

*- In any case, therefore :*

- *whether by substituting its own reasons or by confirming the judgment under appeal in whole or in part, confirm the exequatur of 11 December 2017 in its entirety;*
- *order Kazakhstan to pay the costs of both sets of proceedings, as hereinafter set out.*

354. In the context of these submissions, the Republic of Kazakhstan respectfully invites Your Court to :

354.1. To declare the appeal of the Republic of Kazakhstan well founded.

354.2. To reform the judgment under appeal, except insofar as it declared the third party opposition against the enforcement order of 11 December 2017 admissible and, ruling by way of new provisions,

354.2.1. Granting the original third party opposition against the exequatur order of 11 December 2017 ;

354.2.2. Find that the Award could not, and cannot, be recognised or enforced in Belgium on the basis of Article 1723, 2° of the Judicial Code and/or Articles 1723, 3° and 1704, 3°, c) of the Judicial Code and/or Articles 1723, 3° and 1704, 3°, a) of the Judicial Code and/or Articles 1723, 3° and 1704, 3°, b) of the Judicial Code - these provisions being referred to as in force before their amendment by the law of 24 June 2013;

354.2.3. Order the annulment and withdrawal of the exequatur order of 11 December 2017.

354.3. Declare the cross-appeal of the Stati unfounded.

354.4. Order the Stati to pay all the costs and expenses of the two sets of proceedings, including the procedural indemnity calculated, for each of the two sets of proceedings, at its maximum amount for disputes not assessable in money, namely EUR 36 000.

## V. IN LAW: PRESENTATION OF THE GROUNDS FOR REFUSING EXEQUATUR

355. In its judgment of 17 November 2020, Your Court decided that "*the provisions of Part VI of the Judicial Code before their amendment by the Act of 24 June 2013 are applicable*".

References to the articles of the Judicial Code should therefore be understood, in the remainder of these conclusions, as referring exclusively to the provisions of the former Part VI of the Judicial Code, as in force before <sup>1</sup> September 2013.

356. These provisions stem from the transposition into Belgian law of the "Uniform Law" contained in the Strasbourg Convention of 20 January 1966<sup>155</sup> ("Uniform Law"). This law, read in conjunction with its "Explanatory Report",<sup>156</sup> is therefore a relevant reference for determining the scope of the articles of the former Part VI of the Judicial Code.

Although it is not explicitly applicable in this case (given the choice of the Stati to rely on the national exequatur law regime), the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 ("**New York Convention**")<sup>157</sup> is nevertheless closely related to the principles of the Judicial Code regarding the enforcement of arbitral awards - particularly with regard to the grounds for refusal of exequatur set out in Article V of the Convention.<sup>158</sup> Its provisions and the teachings to which they have given rise in doctrine and case law may therefore also be a source of interpretation of the grounds for refusal of exequatur. Its provisions and the teachings to which they have given rise in doctrine and case law may, therefore, also be a source of interpretation of the grounds for refusing enforcement.

357. It will be recalled that, as regards the grounds for refusing to enforce an arbitral award, the Judicial Code is as follows:

- On the one hand, Article 1723(1) and (2) of the Judicial Code sets out three grounds for refusal of exequatur that must be examined ex officio by the court seised<sup>159</sup>.
- *On the other hand, Article 1723, 3°, of the Judicial Code also specifies that 'the judge shall refuse the exequatur (...) if it is established that there is a cause for annulment provided for in Article 1704', which sets out various additional grounds that should lead to the refusal of the exequatur at the request of a party.*

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<sup>155</sup> European Convention providing a Uniform Law on Arbitration, signed at Strasbourg on 20 January 1966.

<sup>156</sup> Explanatory Report on the European Convention providing a Uniform Law on Arbitration, Council of Europe, Strasbourg, 1967 (the "**Explanatory Report**").

<sup>157</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded in New York on 10 June 1958 and approved in Belgium by the law of 5 June 1975 (*M.B.*, 15 November 1975, p. 14411).

<sup>158</sup> This is recognised by the Stati: "*the Belgian law on arbitration and the New York Convention are two inextricably linked texts (...), the Belgian law being based on - and influenced by - the New York Convention and the principles deriving from these two texts are similar*" (their First submissions on the second, third and fourth grounds of appeal, p. 75, § 216) and "*The grounds for refusal of exequatur provided for in the Judicial Code (...) are in fact very similar to those provided for in the New York Convention*" (*idem*, p. 49, § 131).

<sup>159</sup> See G. Keutgen and G.-A. Dal. G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> edn, Brussels, Bruylant, 2006, p. 532.

358. On the basis of the above-mentioned provisions, the RoK puts forward four separate pleas for refusal of exequatur below:

358.1. **First plea:** the recognition and enforcement of the award is contrary to public policy and/or the RoK has not been given the opportunity to assert its rights and remedies on the evidence now available.

358.2. **Secondly,** documents and evidence were discovered which would have had a decisive influence on the sentence and which had been withheld by the Stati.

358.3. **Third plea:** the Arbitral Award is based on evidence that is proven false.

358.4. **Fourth plea:** the Arbitral Award was obtained by fraud.

359. It should be noted that the grounds for refusal of exequatur that are the subject of the second, third and fourth pleas, based on Article 1704 of the Judicial Code, express principles which, according to the unanimous doctrine, "*correspond [to the cases] that can give rise to a civil claim against ordinary judgments*"<sup>160</sup> on the basis of Article 1133 of the Judicial Code, or which are, at the very least, "*very close*"<sup>161</sup> to them. The doctrinal and jurisprudential teachings relating to the aforementioned provision may therefore usefully be taken into account in order to clarify the scope of the grounds for refusing exequatur concerned.

#### **A. First plea: breach of public policy and violation of the rights of the defence**

##### **1. Principles**

360. According to Article 1723, 2°, of the Judicial Code, "*the judge shall refuse the enforcement (...) if the award or its enforcement is contrary to public policy*". This ground for refusing enforcement based on the violation of public policy is confirmed, if necessary, by Article 1704(2)(a) of the Judicial Code, to which Article 1723(3) of the same Code refers.

361. The latter provision, read in conjunction with Article 1704(2)(g) of the Judicial Code, further provides that "*the judge shall refuse the exequatur (...) if the parties have not been given the opportunity to assert their rights and means*".

362. These two grounds for refusal of exequatur are to some extent related (as we shall see), and they are also inspired by similar principles laid down in European or international instruments.<sup>162</sup>

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<sup>160</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> edn, Brussels, Bruylant, 2006, p. 484.

<sup>161</sup> G. Matray, "La fraude et la sentence", in D. Matray and E. Van Campenhoudt (eds.), *L'Arbitrage & la Fraude - Actes du colloque du CEPANI du 26 novembre 2020*, Liège, Kluwer, 2020, p. 176. Similarly, Ph. De Bourmonville, *L'arbitrage*, Brussels, Larcier, 2000, p. 213.

<sup>162</sup> See, for example, Article 29 of the Uniform Law and Article V, §1, b and §2, b of the New York Convention.



363. The regime of these grounds for refusal of exequatur can be summarised as follows.

**(a) The concept of public policy**

364. The concept of public policy referred to in the above-mentioned articles has not been defined by the legislator - which is hardly surprising insofar as "*public policy is (...) a functional concept, (...) an institution, resistant to any abstract definition, which can only be identified through its concrete applications and the objectives they pursue*"<sup>163</sup>.

365. The objective pursued in this context is essentially to give the Belgian judge a means of controlling foreign arbitral awards and to set a certain limit to the degree of openness of the national legal system: "*the function of public policy will in this case be to refuse recognition or enforcement (...) of an arbitral award made under foreign law*"<sup>164</sup>.

366. In particular in connection with this function, it is accepted that the concept contained in Articles 1704(2)(a) and 1723(2) of the Judicial Code should be understood as referring to international public policy<sup>165</sup>.

The concept can be understood as referring to "*fundamental values which a national legal order cannot allow to be disregarded, even in situations of an international character*"<sup>166</sup>.

More specifically, the national character of international public policy must be taken into account: what is meant here is "*the host State's conception of international public policy and not (...) a 'truly international public policy' which would have its roots in the community of States*".<sup>167</sup>

If an application for exequatur is made against a foreign arbitral award, the Belgian court is required to examine its conformity with *Belgian international public policy*<sup>168</sup>. The latter can be understood as encompassing all principles that are considered "*essential to the moral, political or economic order established in Belgium*".<sup>169</sup>

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<sup>163</sup> R. Jafferali, "L'ordre public, de l'arbitrage international aux conflits de juridiction", *Liber Amicorum Nadine Watté*, Brussels, Bruylant, 2017, p. 311.

<sup>164</sup> R. Jafferali, "L'ordre public, de l'arbitrage international aux conflits de juridiction", *Liber Amicorum Nadine Watté*, Brussels, Bruylant, 2017, p. 312. Similarly, EKELMANS p.286

<sup>165</sup> As opposed to domestic public policy. See E. Krings, "L'exécution des sentences arbitrales", *Rev. E. Krings, "L'exécution des sentences arbitrales", Rev. dr. int. dr. comp.* 1976, p. 199; Ph. De Bournonville, *L'arbitrage*, Brussels, Larcier, 2000, p. 219; G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> ed., Brussels, Bruylant, 2006, p. 531. Similarly, concerning Article V, §2, b) of the New York Convention, which expresses a rule similar to these two provisions, see G. B. Born, *International Commercial Law*, vol. G. B. Born, *International Commercial Arbitration*, 3rd edn, Kluwer Law International, 2021, pp. 4009 et seq.

<sup>166</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome II: "Le droit international", 2<sup>nd</sup> edn, Brussels, Bruylant, 2012, p. 900 and references cited.

<sup>167</sup> Ph. Fouchard, E. Gaillard and B. Goldman, *Traité de l'arbitrage commercial international*, Paris, Dalloz, 1996, p. 1013. Similarly, in particular, J.-Fr. Poudret and S. Besson, *Droit comparé de l'arbitrage international*, Brussels, Bruylant, 2002, p. 908. <sup>168</sup> See, for example, G. B. Born, *International Commercial Arbitration*, 3rd edn, Kluwer Law International, 2021, p. 4007.

<sup>169</sup> Cass. 29 April 2002, RG S.01.0035.F, [www.cass.be](http://www.cass.be).

367. In order to be able to determine more precisely the content of public policy as a ground for refusing exequatur, it is necessary to recall that, as is the case for domestic public policy,<sup>170</sup> international public policy is divided into two parts<sup>171</sup> : substantive public policy and procedural public policy.<sup>172</sup> The first part of public policy, which is based on the law of the country of origin, is based on the law of the country of the domicile.

To summarise these two aspects, we can recall, with J.-Fr. Poudret and S. Besson, that public policy "does not have the *sole function of enabling the exequatur judge to ensure that the content of the award is compatible with the fundamental concepts of the law of the requested State*" but that it "*also has a procedural dimension which justifies a review (...) of the way in which the procedure was conducted*".<sup>173</sup>

368. At this stage, it can therefore be said that "*in international arbitration, it is not with regard to the domestic public policy of the court seized that the award must be assessed but with regard to international public policy, which includes respect for the fundamental rights of the procedure*"<sup>174</sup>.

#### **(b) The Belgian judge must exercise real control over the award**

369. The question of the intensity of the control that the judge is entitled to exercise over the award with regard to international public policy is not an easy one, despite its "*undeniable practical importance*".<sup>175</sup> Authoritative doctrine has, however, identified clear principles, which can be summarised as follows.

370. First of all, it should be remembered that, under the aegis of both the Judicial Code and supranational instruments such as the New York Convention, conflict with public policy is one of the grounds for refusal of exequatur that must be examined *ex officio* by the judge<sup>176</sup>.

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<sup>170</sup> See for example Ch. Marquet, "Les défenses en droit judiciaire : vers un ordre public procédural", in H. Boularbah and J.-Fr. van Drooghenbroeck (eds.), *Les défenses en droit judiciaire*, coll. CJBB, Brussels, Larcier, 2010, pp. 40 ff.

<sup>171</sup> See, for example, B. Kohl, "La loyauté dans les procédures arbitrales", *Hommage à Guy Keutgen*, Brussels, Bruylant, 2012, p. 657.

<sup>172</sup> While there may have been some discussion as to whether this aspect is actually included in international public policy and is therefore likely, in the event of violation, to constitute a ground for refusing exequatur, there is now little doubt. Thus, with regard to the UNCITRAL Model Law, it has been pointed out that "*it has been confirmed that the public policy thus referred to includes both the fundamental principles of procedure and substantive law*" (see J.-Fr. Poudret and S. Besson, *Comparative Law of International Arbitration*, 2<sup>nd</sup> edn, London, Sweet & Maxwell, 2007, p. 746; "*it was confirmed that public policy included the fundamental procedural principles as well as the substantive issues*").

<sup>173</sup> J.-Fr. Poudret and S. Besson, *Droit comparé de l'arbitrage international*, Brussels, Bruylant, 2002, p. 908 and references cited.

<sup>174</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome II: "Le droit international", 2<sup>nd</sup> edn, Brussels, Bruylant, 2012, p. 899.

<sup>175</sup> J.-Fr. Poudret and S. Besson, *Droit comparé de l'arbitrage international*, Brussels, Bruylant, 2002, p. 911.

<sup>176</sup> See G. Keutgen and G.-A. Dal, G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> edn, Brussels, Bruylant, 2006, p. 532. See also Cass. 28 November 2014, RG C.12.0517.N, www.cass.be, where the Court of Cassation recalls that Article 1704, 2<sup>o</sup>, a) of the Judicial Code "*does not oblige the judge (...) to re-examine the dispute in the light of the public policy provisions applied in the contested decision, but only to verify whether the award is contrary to public policy*". Attention is also drawn to the UNCITRAL Secretariat's Guide to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), ed. 2016, pp. 272-273, via www.uncitral.org, where it is stated that

*"the ability to review an award ex officio [on the basis of public policy infringement] (...) is linked to the very essence of the*

*concept of public policy which allows national courts to oppose the violation of the most fundamental norms of justice".*

371. Secondly, it should be noted that according to the very terms of Articles 1704, §2, a) and 1723, 2°, of the Judicial Code, the contrariety referred to concerns the award itself and not only its execution or its effects: "if the award **or** its execution is contrary to public policy" (RoK underlines).
372. Last but not least, it should be noted that although "*the judge to whom an application for enforcement is made does not have the power to examine the merits of the dispute*" and that "*it is not for him to refuse the enforcement formula on the grounds that the arbitrators were mistaken in law or in fact*", the fact remains that he must exercise a "*real control*" over the award<sup>177</sup>.

As explained in the literature<sup>178</sup>, among the different theses, Belgian law has opted for the so-called "*maximalist*" approach, which implies a concrete apprehension of the award by the exequatur judge.

The comments of B. Hanotiau and O. Caprasse<sup>179</sup> are enlightening in this respect. Following the teachings of the reference works by Ph. Fouchard, E. Gaillard and B. Goldman<sup>180</sup>, they explain that the Belgian judge must carry out a full review<sup>181</sup>: "the Belgian judge is not the only one who has the right to make a decision. Goldman<sup>180</sup>, they explain that the Belgian judge must carry out a full and complete review<sup>181</sup>: "*the nature of the review exercised requires the conclusion that the courts responsible for exercising it have complete freedom of appreciation of the circumstances of the case both in fact and in law. This review is in fact the necessary counterpart of the liberal attitude shown by the courts on the arbitrability of disputes (...); a minimalist approach cannot be followed insofar as it amounts, in the final analysis, to reviewing only the appearance of conformity of the award with public policy*".

### (c) Respect for the rights of the defence as an expression of procedural public policy

373. It is neither possible nor relevant to elaborate exhaustively on the content of the concept of public policy referred to in Articles 1704(2)(a) and 1723(2) of the Judicial Code.

It is nevertheless useful to emphasise, for the Court's understanding and in the circumstances of this case, one of the most important applications of the concept, in its

<sup>177</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> ed.

<sup>178</sup> See in particular P. Lefebvre and M. Servais, "Vers une conception large de l'ordre public à l'instar de la portée qui lui est conférée dans le cadre de l'annulation de sentences arbitrales", *b-Arbitra*, 2014/02, pp. 333-334 and the references cited; C. Verbruggen, "Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717", in N. Bassiri and M. Draye (eds), *Arbitration in Belgium*, Kluwer Law International, 2016, pp. 480-481, § 87. Similarly, G. Closset-Marchal, "Le juge étatique et l'instance arbitrale", *J.T.* 2010, p. 251, who states that the control of the exequatur judge is "*very extensive in relation to the respect of public policy*" since the formulation of the reason for refusal leaves the judge "*a wide margin of appreciation*".

<sup>179</sup> B. Hanotiau and O. Caprasse, "L'annulation des sentences arbitrales", *J.T.* 2004, n° 6136, pp. 418-419.

<sup>180</sup> See Ph. Ph. Fouchard, E. Gaillard and B. Goldman, *Traité de l'arbitrage commercial international*, Paris, Dalloz, 1996, p. 939. <sup>181</sup> The approach differs, of course, from State to State - in such a way that it is of little relevance to refer to what prevails in other legal systems. See J.-Fr. J.-Fr. Poudret and S. Besson, *Droit comparé de l'arbitrage international*, Brussels, Bruylant, 2002, p. 913.

procedural, as a ground for refusing exequatur: the requirement of respect for the adversarial process (and the rights of the defence).

374. Although international public policy is, as indicated above, dependent on the conceptions of the States and therefore subject to certain variations, there is nevertheless a base of common values that the exequatur judge must in all circumstances ensure respect for, in particular with regard to procedural public policy.

As underlined by G. Keutgen and G.-A. Dal<sup>182</sup>, "with regard to *the rules that should govern an arbitral trial, (...) beyond national approaches, there is a broad consensus on the fundamental principles to be respected in any procedure*", which "essentially boil down to guaranteeing respect for the rights of the defence, the adversarial process and the equality of the parties", it being understood that "the violation of these principles almost always leads (...) to the refusal of the award to be enforced".

375. For an arbitral award to be in conformity with public policy, within the meaning of Articles 1704, §2, a) and 1723, 2°, of the Judicial Code, it must therefore have been made at the end of a procedure in which respect for the rights of the defence and the adversarial process was ensured.

The imperative thus summarised is also in line with Article 1704(2)(g) of the Judicial Code, read in conjunction with Article 1723(3) of the same Code: insofar as it enshrines the need for the parties to have "the possibility of asserting their rights and means", this Article sets out a ground for refusing exequatur which applies, in substance, "where the award infringes the rights of the defence".<sup>183-184</sup>

376. Belgian law adopts a so-called "all-encompassing" presentation, aiming to analyse the principle of contradiction as one of the consequences - perhaps the most important<sup>185</sup> - of the principle imposing respect for the rights of the defence, which has other essential applications<sup>186</sup>.

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<sup>182</sup> See G. Keutgen and G.-A. Dal. G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome II: "Le droit international", 2<sup>nd</sup> edn, Brussels, Bruylant, 2012, p. 901.

<sup>183</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> edn, Brussels, Bruylant, 2006, p. 474.

<sup>184</sup> It should also be noted that this reason is similar to that expressed in Article V, §1, b) of the New York Convention, the scope of which must be understood in a broad sense. See on this subject G. B. Born, *International Commercial Arbitration*, 3<sup>rd</sup> edition, Kluwer Law International, 2021, pp. 3820 et seq.

<sup>185</sup> See G. Closset-Marchal, "L'autorité de la chose jugée, le principe dispositif et le principe contradictoire". G. Closset-Marchal, "L'autorité de la chose jugée, le principe dispositif et le principe du contradictoire", under Cass. 8 October 2001, *R.C.J.B.*, 2002, p. 242.

<sup>186</sup> See thus G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 39 and the references cited.

Whatever the scope of these concentric circles, the fact remains that they express "*fundamental procedural guarantees of any trial*"<sup>187-188</sup>, recognised as constituting a general principle of Belgian law<sup>189</sup> and unquestionably falling within the scope of Belgian international public policy<sup>190</sup>.

377. In substance, it should be noted that "*the right to be heard in adversarial proceedings concerns not only the ability of each party to present its case and to adduce all the necessary evidence, but also the ability to decide on its opponent's case*"<sup>191</sup>.

378. The rule thus stated must also be compared with the principle of procedural loyalty, which is recognised as a general principle of law in that it requires the parties to cooperate loyally in the taking of evidence<sup>192</sup> and which, in the classical sense, is part of the principle of respect for the rights of the defence<sup>193</sup>.

Firmly anchored in Belgian doctrine and case law, the principle is fundamental: "*the law, by stating the obligation for all parties to collaborate in the administration of evidence, enshrines the duty of each of them to make its contribution to the work of judicial truth. No litigant can hide behind silence and abstention, on the pretext that the burden of proof lies with his opponent, if he has elements that the latter could use. On the contrary, he must loyally assist his opponent, under the judge's supervision, in the administration of evidence*"<sup>194</sup>.

379. In connection with the above, it is necessary to recall that the adoption of manoeuvres or, more broadly, dishonest behaviour intended to hinder the establishment of the truth, either by disrupting the fair administration of evidence or by preventing the other party from making

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<sup>187</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome II: "Le droit international", 2<sup>nd</sup> edn, Brussels, Bruylant, 2012, p. 1079. In the same sense, notably, B. Hanotiau and O. Caprasse, "Les droits de la défense dans la procédure arbitrale", obs. under Cass. 25 May 2007, *R.C.J.B.*, 2010, p. 453, who start their analysis by recalling that "[r]espect for the rights of the defence is the cornerstone of Belgian procedural law. While it is a requirement for civil proceedings before the state courts, it is just as important for arbitration proceedings".

<sup>188</sup> It is interesting to read the enlightening words of A. Fettweis: '*Careful respect for the right of defence of each of the parties is the fundamental principle which dominates the whole of the civil trial from the document initiating the proceedings to the judgment. All other procedural rules must be applied without ever losing sight of this requirement (...). Any procedural step taken by a party, whether plaintiff or defendant, must respect the opponent's right to defend himself and to be freely contradicted. The latter is entitled to all the necessary information, must be given all the documents relied on, must be given the necessary time to respond, and may demand that in all fairness all the useful elements be brought to the debate so that the judge is fully and correctly informed*'. See A. Fettweis, *Manuel de procédure civile*, 2<sup>nd</sup> edn, Liège, 1987, pp. 13-14.

<sup>189</sup> See G. de Leval (ed.), *Droit judiciaire*, vol. G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 40.

<sup>190</sup> In this sense, A. Fettweis, *Manuel de procédure civile*, 2<sup>nd</sup> ed. Similarly, B. Hanotiau and O. Caprasse, "Les droits de la défense dans la procédure arbitrale", obs. under Cass. 25 May 2007, *R.C.J.B.* 2010, p. 455.

<sup>191</sup> B. Hanotiau and O. Caprasse, "Les droits de la défense dans la procédure arbitrale", under Cass. 25 May 2007, *R.C.J.B.*, 2010, pp. 458-459; Ph. De Bournonville, *L'arbitrage*, Bruxelles, Larcier, 2000, p. 180.

<sup>192</sup> See. Cass., 14 November 2013, RG C.13.0015.N, [www.cass.be](http://www.cass.be); Cass., 7 June 2019, RG C.18.0523.N, [www.cass.be](http://www.cass.be).

<sup>193</sup> See G. de Leval (ed.), *Droit judiciaire*, vol. G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 42 and the reference to the writings of H. Motulsky.

<sup>194</sup> A. Fettweis, *Manuel de procédure civile*, 2<sup>nd</sup> edn, Liège, 1987, p. 353.

The fact that the court is not able to prove its contradiction implies a violation of the rights of the defence and, therefore, of procedural public policy.

Thus, in arbitration law, "it is *clear that the ground for refusal relating to violation of public policy covers, inter alia, the possibility of challenging an award if the arbitral tribunal (...) has been misled by tainted documents*".<sup>195</sup>

The procedural fraud referred to here can be understood to include the situation where "as a *result of dishonest procedural manoeuvres, the judge whose decision has become res judicata was unable to take cognisance of facts that could be decisive for the resolution of the dispute*" or, similarly, where it has the effect of "*preventing the opposing party from putting forward its contradiction*"<sup>196</sup>.

More broadly, procedural fraud, in the context of arbitration, "*refers to conduct aimed at favouring one of the parties to the proceedings in order to obtain a procedural order or award in its favour*".<sup>197</sup>

380. The violation of international public policy, in its procedural aspect, does not, however, require the demonstration of fraud: there is a violation of international public policy leading to the refusal of exequatur as soon as, in the arbitration procedure, a party has been deprived of the guarantees of "*respect for the rights of the defence, the adversarial process and the equality of the parties*"<sup>198</sup>.

**(d) The judge must refuse the exequatur as soon as he finds that the rights of the defence have been violated**

381. It is unanimously accepted that the violation of the rights of the defence constitutes a ground for refusing enforcement which has no further effect: as the Court of Cassation has taught, it prevents enforcement "*without it having to be shown that this disregard for the rights of the defence had an influence on the arbitral award*".<sup>199</sup> The Court of Cassation has also stated that the violation of the rights of the defence is a ground for refusing enforcement.

382. The rules in question are so fundamental that the mere fact that they have been disregarded is sufficient to justify refusal of enforcement, without any need to consider the actual impact of such a violation on the award.<sup>200</sup>

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<sup>195</sup> A. Redfern and M. Hunter, *Law and Practice of International Commercial Arbitration*, 4th edn, London, Sweet & Maxwell, 2004, p. 412 (free translation and partial quotation of "the *travaux préparatoires of the Model Law make it clear that the public policy provision is intended inter alia to cover the possibility of setting aside an award if the arbitral tribunal has been corrupted in some way, or if it has been misled by corrupt evidence*")

<sup>196</sup> Cass., 11 May 2001, RG C.99.0351.N, www.cass.be.

<sup>197</sup> S. Greenberg and A. Foucard, "L'arbitrage et les différents types de fraude", in D. Matray and E. Van Campenhout (eds.), *L'Arbitrage & la Fraude - Actes du colloque du CEPANI du 26 novembre 2020, Liège*, Kluwer, 2020, p. 26.

<sup>198</sup> See G. Keutgen and G.-A. Dal. G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome II: "Le droit international", 2<sup>nd</sup> edn, Brussels, Bruylant, 2012, p. 901.

<sup>199</sup> Cass., 25 May 2007, RG C.04.0281.N, www.cass.be.

<sup>200</sup> See, for example, G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> ed., Brussels, Bruylant, 2006, p. 475 and the references cited; G. Closset-Marchal, "Le juge étatique et l'instance arbitrale", *J.T.* 2010, p. 250; B. Hanotiau and O. Caprasse, "Les droits de la défense dans la procédure arbitrale", obs. under Cass. 25 May

2007, *R.C.J.B.*, 2010, p. 465.



**(e) Summary of the violation of public policy as a ground for refusal of exequatur**

383. It follows from the above that, both on the basis of Article 1723, 2°, of the Judicial Code and, where applicable, on the basis of Article 1704, §2, a) or g), of the Judicial Code, to which Article 1723, 3°, of the same Code refers, the finding that the arbitration proceedings were conducted in violation of the adversarial principle or, more broadly, of the rights of the defence, must imperatively lead to the refusal of the award's exequatur.

384. The Antwerp Court of Appeal summarised this principle and we can conclude by reproducing its enlightening words: "*if the parties have not had the opportunity to participate in an adversarial debate (...) there is no valid arbitration, because this absence of an adversarial debate represents a violation of the rights of the defence*", it being understood that "*the violation of the rights of the defence is a matter of public order and is a cause of nullity within the meaning of Article 1704, 2(a) of the Judicial Code*"<sup>201</sup>.

**2In this case**

385. As will be shown in the explanations that follow, due to the Stati's shenanigans described in the factual part, the RoK was deprived of the right to present its contradiction and its rights of defence were violated (a). The violation of the RoK's rights of defence automatically entails the refusal to enforce the Award (b).

**(a) The RoK has been deprived by the Stati of the right to assert its contradiction and its rights of defence**

386. As explained, for the Award to be in conformity with public policy, within the meaning of Articles 1704(2)(a) and 1723(2) of the Judicial Code, it must therefore have been made at the end of a procedure in which the rights of the defence and the adversarial process were respected.

387. In the present case, the arbitration proceedings between Stati and RoK, which lasted for more than two years, clearly do not meet this requirement. The RoK was deprived by the Stati of the right to put forward its arguments on all the new factual elements that were described in the factual part. There was no proper debate on these elements.

388. The adversarial debate was vitiated by the Stati at all stages of the proceedings. The RoK was deprived of its right to argue the contradiction on the impact on the dispute of the innumerable acts and deceptions committed by the Stati in the realisation of their Kazakh Project (i) as well as, more specifically, on the construction costs and value of the LPG Plant (ii).

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<sup>201</sup> Antwerp, 26 June 2000, *R.D.J.P.* 2001, pp. 183-184.

**(i) The RoK has been deprived of an adversarial debate on the actions and deceptions of the Stati in the realisation of their Kazakh Project**

389. The acts and deceptions committed by the Stati in carrying out their Kazakh Project have been described in detail in the factual part, by reference to the documents in the file. No discussion of any kind took place before the arbitral tribunal on these acts and deceptions.
390. Without it being necessary to draw up an exhaustive list of the elements that were not discussed before the Arbitral Tribunal, it should be noted that no adversarial debate took place on the following crucial points
- 390.1. The fact that the Stati intentionally misled their independent auditor (KPMG), who explicitly confirmed in his letter of 21 August 2019 that Perkwood's concealment of the financial statements was a "material omission" (**Exhibit 9.10**).
- 390.2. The fact that the representation letters signed by Anatolie Stati, which included the key information on which KPMG relied to audit the financial statements prepared by Stati, were materially inaccurate and misleading, in particular because they did not mention Perkwood in the list of companies related to Stati KPMG (**Exhibits 1.83, 1.122, 1.140, 1.142**).
- 390.3. The fact that, in his April 2019 deposition, Artur Lungu acknowledged that the section of the financial statements relating to transactions between Stati's related companies was systematically affected by material misstatements, in particular the concealment of the true status of Perkwood and the transactions between Perkwood and TNG (**Exhibit 8.5**, pp. 134, 163, 197, 205, 212-214).
- 390.4. The fact that the Stati established an opaque network of companies in 2005, including secretly taking control of Perkwood, Azalia and Hayden (**Exhibits 1.15, 1.18 and 1.20**).
- 390.5. The fact that the Stati used this opaque network of companies to embezzle hundreds of millions of dollars raised from their investors, as evidenced by the account statements of several of their related companies (**Exhibits 10.1 to 10.8**).
- 390.6. The fact that they themselves caused a liquidity crisis in their Kazakh companies due to their embezzlement of funds, before the so-called "Kazakhstan harassment campaign" began, on the basis of which the Tribunal found the RoK in breach of the so-called "fair and equitable treatment" clause of the ECT (**Exhibit 1.92**).
- 390.7. The fact that the Stati themselves had decided to reject the Credit Suisse offer (**Exhibit 1.99**).

- 390.8. The fact that the Stati entered into the Laren Transaction because they hoped to make a substantial profit from it (**Exhibits 1.107, 1.115, 1.117, 1.120**).
- 390.9. The fact that the Stati had set up a threefold hidden accounting system to artificially inflate the construction costs of the LPG Plant (**Exhibits 1.143 and 1.144**).
- 390.10. The fact that Perkwood, the main "independent" supplier of the Centrale LPG to which TNG paid approximately USD 180 million between 2006 and 2009, was in reality a shell company with "dormant accounts" and no employees, secretly controlled by the Stati (**Exhibit 1.20**), which the Stati expressly admitted in October 2013 in a parallel arbitration against Vitol (**Exhibit 3.3**, §61)
- 390.11. The fact that Stati did not provide the same information to FTI, the financial expert engaged by Stati in the TCE Arbitration, as to Charles Rivers Associates, the financial expert engaged by Stati in the parallel arbitration against Vitol (**Exhibits 3.4 and 3.6**), even though both firms were to evaluate the value of the same LPG Plant.
391. If RoK had not been deprived of its right to argue against the above and other acts and deceptions committed by Stati, it would have put forward a whole series of defences in the ECT Arbitration based on these acts and deceptions. In order to demonstrate the type of defence that the RoK would have put forward, it is sufficient to have regard to the expert reports that the RoK is *now putting* forward in the exequatur proceedings before your Court to demonstrate the extent and seriousness of the Stati's deceptions.

The RoK currently relies in particular on the following expert reports by independent experts:

- 391.1. **Expert report by Professor Christoph Schreuer on the impact of Stati deceptions in investment arbitration.** A renowned expert on international investment law and arbitration, Prof. Schreuer explains that "*the evidence that is now available, including the KPMG Correspondence and the false financial statements, clearly demonstrates the wrongful conduct and bad faith of the Stati. The disclosure of this evidence to the Arbitral Tribunal would have been essential for the determination of its jurisdiction, the admissibility of the Stati's claims and the liability of Kazakhstan*"<sup>202</sup> (**Exhibit 12.9**, §72).

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<sup>202</sup> "*The evidence that has now become available, including the KPMG Correspondence and the false Financial Statements, clearly demonstrates the Stati Parties' illicit conduct and bad faith. The availability of this evidence to the Arbitral Tribunal would have been critical for the determination of its jurisdiction, the admissibility of the Stati Parties' claims and the liability of Kazakhstan*".

391.2. **PricewaterhouseCoopers (PwC) report on the KPMG Correspondence.** As one of the "Big Four" audit firms (along with KPMG), the four most reputable audit firms in the world, **PwC has** independently reviewed the KPMG Correspondence, and has concluded that *"the actions taken by KPMG and their subsequent actions eliminate any confidence in the reliability of all of Tristan's, TNG's and KPM's financial information and anything derived from or based on it (including, but not limited to, all written and oral testimony in the TCE arbitration, expert opinions and statements of counsel based on such financial information)"*<sup>203</sup> and that *"The KPMG Correspondence confirms KPMG's position that the Stati's falsified their KPMG related party statements, thereby giving the false impression to KPMG and any other user of the financial statements that Perkwood was an independent third party when it was in fact a company controlled by Mr. Stati"*<sup>204</sup> (Exhibit 12.1). *Stati*<sup>204</sup> (Exhibit 12.8, pp. 11-13).

391.3. **PricewaterhouseCoopers (PwC) report on the misappropriation of funds by the Stati.**

The same **PwC** firm, again acting as an independent expert, carried out an extensive audit of the Stati's company statements and prepared two expert reports on its findings. In the first report, PwC concludes that the Stati embezzled several tens of millions of dollars via Terra Raf in connection with the Terra Raf Loan (Exhibit 12.11, §4.23), approximately USD 81 million via Perkwood in connection with the construction of the LPG Plant (Exhibit 12.11, §4.43) and approximately USD 263 million via Terra Raf and Montvale in connection with the Oil Sales (Exhibit 12.11, §5.22). In the second report, PwC concludes that the companies' account statements reveal the existence of transactions with *Politically Exposed Persons (PEPs)* in high-risk geographical areas, which entail an increased risk of money laundering (Exhibit 12.11, p. 38)

391.4. **Report by Stefan D. Cassella on money laundering.** Stefan D. Cassella is a renowned money laundering expert and former Deputy Chief of the *U.S. Justice Department's Asset Forfeiture and Money Laundering Section*. Cassella conducted a thorough analysis of the Stati schemes, concluding that *"it appears that the Stati could be criminally prosecuted in Latvia for money laundering offences relating to the proceeds of the Tristan Bonds scheme, the Oil and Gas Sales scheme, and the scheme [set up via]*

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<sup>203</sup> *"the actions taken by KPMG and their subsequent actions would entirely remove confidence in the reliability of Tristan's, TNG's and KPM's overall financial information and anything derived therefrom or based thereon (including, but not limited to, any written and oral testimony in the ECT Arbitration, expert opinions and statements from counsel based on such financial information).*

<sup>204</sup> *The KPMG Correspondence confirms KPMG's position that the Stati Parties falsified their related party disclosures to KPMG, thus creating the false impression on the part of KPMG and any other users of the Financial Statements that Perkwood was an independent third party when in reality it was a company controlled by Mr Stati.*

*Perkwood, as well as in the United States and other jurisdictions for any future financial transactions involving the Award of the ECT Arbitration Tribunal* <sup>205</sup> (**Exhibit 12.14**, pp. 20-21).

392. None of the above-mentioned reports were submitted to the arbitral proceedings. None of the aforementioned reports were taken into account by the Arbitral Tribunal. None of the elements addressed in these reports were even known to the Arbitral Tribunal. However, if the elements in question had been known, RoK would not have failed to put forward the defences developed in these reports. The adversarial debate was completely truncated.
393. In the ECT Arbitration, the Stati were careful not to produce any evidence that would have drawn the attention of the RoK to their wrongful acts in connection with their alleged investment (**Exhibits 1.15, 1.18, 1.20 and 10.1 to 10.8**), including the deception of KPMG (**Exhibits 1.83, 1.122, 1.140, 1.142**). They also withheld all evidence that would have shown that they themselves had driven their Kazakh companies into bankruptcy (**Exhibit 1.92**), decided to reject the Credit Suisse offer (**Exhibit 1.99**) and decided to enter into the Laren Transaction in order to make a profit at the expense of their Kazakh companies (**Exhibits 1.107, 1.115, 1.117, 1.120**).

The production of these documents would have inexorably led to an adversarial debate on these issues, which the Stati wished to avoid at all costs. For this reason, all of the evidence identified above was not discovered until after the Award had been made.

394. After withholding a range of key documents, Stati produced the consolidated financial statements of Tristan, KPM and TNG from 2007 to 2009 as Exhibits C-706 to C-709. These financial statements are false: Stati wrote in black and white that they had "*prepared them in accordance with IFRS*" <sup>206</sup> (**Exhibit 1.1**, pp. 26, 193 and 353) when in fact they knowingly violated these standards. Indeed, the transactions between Perkwood and TNG, which amounted to approximately USD 180 million between 2006 and 2009, should have been included in the list of related party transactions since they were both controlled by Stati. However, these transactions do not appear anywhere (**Exhibit 1.1**, pp. 62-63, 225-226 and 392-393).

Stati has since admitted, in substance, that these documents were false. In his testimony in the US, former Stati CFO Artur Lungu acknowledged that this systematic omission constituted a material misstatement that rendered the financial statements false (**Exhibit 8.5**, pp. 134, 163, 197, 205, 212-214).

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<sup>205</sup> For all of these reasons, it appears that the Stati Parties could be prosecuted criminally in Latvia for money laundering offences involving the proceeds of the Tristan Notes scheme, the Sales of Oil and Gas scheme, and the Perkwood scheme, and in the United States and in other jurisdictions for conducting any future financial transaction involving the Award from the Tribunal in the ECT Arbitration.

<sup>206</sup> Free translation of : "*These combined financial statements have been prepared in accordance with International Financial Reporting Standards.*"

As a reminder, ISA 320 states that misstatements (or "anomalies") are material

*"In the TEC Arbitration, RoK became one of those users, and consequently another victim of the Stati's deception. In the context of the ECT Arbitration, RoK became one of these users, and consequently another victim of Stati's deception.*

395. Taking advantage of the blatant information asymmetry between the Parties, the Stati were free to distort reality as they saw fit.

In his first witness statement of 17 May 2011, Anatolie Stati claimed that *"For ten years I invested heavily in Kazakhstan and successfully developed TNG and KPM. Within eighteen months, and despite all my efforts and those of my team, Kazakhstan devalued and eventually destroyed my investments in the country"*<sup>207</sup> (**Exhibit 2.22**, §44). He also claimed that he decided to sell his assets in the summer of 2008 because *"[a]t the time, the market was reasonably good and the high oil and gas prices were incentives for buyers. In my opinion, it was the right time to attract investors"*<sup>208</sup> (**Exhibit 2.22**, §17).

In his second witness statement of 7 May 2012, Anatolie Stati claimed that *'the Kazakhstan shares caused a severe liquidity crisis in TNG and KPM in the first half of 2009'*<sup>209</sup>, that *'Credit Suisse pulled out of the negotiations precisely because of the Kazakhstan shares [.]'*<sup>210</sup> and that he had *"no choice but to accept this loan [the Laren Transaction] in order to keep the companies afloat while I tried to sell them"*<sup>211</sup> (**Exhibit 2.29**, §41). For his part, Artur Lungu only supported his boss's claims (**Exhibit 2.28**, §§7 and 41).

During the jurisdictional and liability hearing, the Stati made another point, citing the audit of their financial statements to demonstrate the legality of their investment: *'Kazakhstan argues that the [Stati] investments were opaque, suggesting that they were structured to hide profits and disguise the "real investor". Either this position is completely disingenuous or the [RoK] does not understand finance. These companies filed annual financial statements between 2003 and 2009 that were audited by*

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<sup>207</sup> *"For ten years, I heavily invested in Kazakhstan and successfully developed TNG and KPM. In eighteen months, and despite the best efforts of me and my team, Kazakhstan devalued and ultimately destroyed my investments in the country".*

<sup>208</sup> *After nearly ten years of operation, in the summer of 2008, I made a business decision to sell the rights to the Tolkyin and Borankol fields, as well as the LPG plant, which was in the process of being constructed. At the time, the market was reasonably good and the high oil and gas prices constituted incentives for buyers. In my mind, this was the perfect time to attract investors.*

<sup>209</sup> Free translation of : *"Kazakhstan's actions contributed to a severe liquidity crisis in the companies [TNG and KPM] in the first half of 2009.*

<sup>210</sup> *"Credit Suisse backed out of those negotiations precisely because of Kazakhstan's actions, particularly the pre-emptive rights reversal, which put our ownership of TNG in jeopardy.*

<sup>211</sup> *"Renaissance Capital ultimately found a group of lenders to provide emergency financing (the Laren Facility). Although the terms were terrible (35% interest on a \$60 million note, plus the issuance of \$111 million of new Tristan notes), I had no choice but to proceed with that loan in order to keep the companies afloat while I tried to sell them).*

*Big Four. They raised funds in the public debt markets, and banks such as Goldman Sachs and UBS considered these companies transparent and reliable enough to lend them hundreds of millions of dollars* <sup>212</sup> (**Exhibit 2.33**, 45:1-46:4) (RoK emphasis).

396. In the Award, the Arbitral Tribunal found that "*as the above chronology demonstrates, while it inspected and monitored the [Stati] investments and their corporate structures for years, the [RoK] did not allege that anything was illegal or improper until October 2008*"<sup>213</sup> (**Exhibit 2.1**, §812).

This contrasts with the conclusions of all the expert reports referred to above, according to which the Stati acted both illegally and improperly in their alleged investment well before October 2008.

397. It must therefore be concluded that the Stati prevented the holding of an adversarial debate on their actions and on the impact of these actions on the questions of jurisdiction, liability and causality, in particular by concealing vital information and by producing documents which they have since acknowledged to be false.

If RoK had been aware of this evidence during the arbitration proceedings, it could have argued, inter alia, that the unlawful and dishonest conduct of Stati should lead to the rejection of Stati's claim.

398. As Professor Bernard Hanotiau points out, "*The facts set out above demonstrate that the Stati Consortium has consistently used every opportunity to siphon hundreds of millions of dollars from KPM and TNG through illicit means. In other words, they demonstrate a pattern of behaviour from which it can be inferred that when they acquired KPM and TNG, they did not do so with a view to carrying out bona fide business activities but to use the two companies as their personal slot machines. This is not the kind of good faith behaviour one would expect from an investor. Quite the contrary. It is the very type of investment made in bad faith that investment treaties are not designed to protect*" (**Exhibit 12.23**, §122).

The RoK could also have argued that it was the malicious actions of the Stati that had caused a liquidity crisis at KPM and TNG, which the Stati had already

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<sup>212</sup> "Kazakhstan argues that claimants' investments were opaque, suggesting that they were structured to conceal profits and disguise who was the 'real investor'. This position either is completely disingenuous, or the respondent understands nothing about finance. These companies created annual financial statements between 2003 and 2009 that were audited by "Big Four" accounting firms. They raised debt on the public debt markets, and banks such as Goldman Sachs and UBS deemed the companies to be transparent and reliable enough to loan hundreds of millions of dollars to them. [...] The fact is that claimants made substantial investments in KPM and TNG through the form of their acquisition of the shares, shareholder loans to the companies, the reinvestment of profits, and then by risking their investments to secure the companies' debts.

<sup>213</sup> Free translation of : "*Whether that aspect is also relevant for the merits of the case, will have to be examined later in this Award. In addition, the Tribunal notes that, as the timeline above demonstrates, while inspecting and monitoring Claimants' investments and their corporate structures for years, Respondent failed to allege that anything was illegal or improper prior to October 2008.*

It **could also** have argued that the Stati had themselves decided to reject the Credit Suisse offer (**Exhibit 1.99**) and that the Stati had entered into the Laren Transaction because they hoped to make money from it. It could also have argued that the Stati had themselves decided to reject Credit Suisse's offer (**Exhibit 1.99**) and that the Stati had entered into the Laren Transaction because they hoped to make a substantial profit (**Exhibits 1.107, 1.115, 1.117, 1.120**).

However, the Stati have denied her the right to do so.

**(ii) The Stati have prevented an adversarial debate on the construction costs and value of the LPG plant**

399. As demonstrated above, the truncation of the adversarial debate affected the whole arbitration procedure and the content of the award on a number of points.

400. As an illustration of a more specific point of this truncation, reference can be made to the violation of the RoK's rights of defence in relation to the determination of the construction costs and the value of the LPG Plant.

401. As demonstrated in the statement of facts, since the end of the ECT arbitration, RoK has obtained a series of documents and other evidence which demonstrate that Stati artificially inflated the construction costs of the LPG Plant through fictitious contracts with Perkwood, which was misrepresented as a related company.

402. If RoK had not been deprived of its right to argue the contradiction on these documents, it would have put forward a whole series of defences on this issue in the ECT arbitration. In order to demonstrate the type of defence that RoK would have put forward, it is sufficient to consider once again the expert reports that RoK is *now putting* forward in the exequatur proceedings before your Court to demonstrate the existence of a fictitious inflation of the costs of the LPG Plant. These reports include the following:

**402.1. Deloitte & Touch expert report on construction costs.** Independent auditing firm Deloitte & Touche ("Deloitte") conducted an initial review in 2015 of the alleged construction costs. Deloitte found, among other things, that the "*historical costs*" of the construction of the LPG Plant of USD 193 million set out in the Information Memorandum submitted in 2008 to the potential purchasers of the Kazakh Stati companies (**Exhibit 1.84**, p. 11) had been inflated "*by up to approximately USD 130 million*"<sup>214</sup> (**Exhibit 12.4**, §28.e). Deloitte also concluded that "*due to the clear valuation formula set out in the KMG Indicative Offer and its mathematical accuracy, it can be concluded that the amount of the KMG Indicative Offer is not in excess of the amount of the KMG Indicative Offer.*"

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<sup>214</sup> Translation of : "*With these inevitable limitations, with regard to the situation as at 30 June 2008, we conclude that the Information Memorandum inflated the 'historical costs' of the LPG Plant by an amount of up to approx. USD 130 million; plus the respective capitalized interest expenses thereon; plus the portion of the management fee not relating to Annex 2*"



*equipment".*

*KMG has been significantly affected by any inaccuracy in historical costs* <sup>215</sup> (**Exhibit 12.4**, §29).

402.2. **Expert report by Steef Guibregtse on transfer pricing.** Renowned expert on transfer pricing issues and CEO of Transfer Pricing Associates Global B.V. ("**TPA Global**"), a global network of more than 5,000 tax professionals, Mr **Steef Huibregtse** examined the explanation given by the Stati that the inflated construction costs were justified by a *transfer pricing* strategy. After noting the discrepancies between the amounts invoiced by the main supplier of the LPG Plant (Tractebel) and the amounts re-invoiced by Azalia and Perkwood to TNG for the same equipment, Mr Huibregtse concluded that the procurement structure devised by the Stati between Azalia, Perkwood and TNG was "*clearly a sham*" and violated the taxable income reporting standards of the countries concerned<sup>216</sup>. Mr Huibregtse emphasised the exceptional nature of the Stati's actions: *'In my 30+ years of career, I have rarely seen such a huge mismatch between the three realities [economic, financial and legal]. Since no documents have been provided [by Stati] to justify such a mismatch, I have no difficulty in classifying the resale of Tractebel's equipment by Azalia and Perkwood and the charging of a management fee by Perkwood as a series of fake transactions* <sup>217</sup> (**Exhibit 12.7**, §§107-109).

403. The aforementioned expert reports by Deloitte and Mr Huibregtse could not be produced before the Arbitral Tribunal, and the analyses they contain could not be the subject of an adversarial debate before this Tribunal, and for good reason, since the elements on which they are based had been concealed from the Tribunal.

404. While retaining in arbitration the evidence examined by these experts, Stati produced in the arbitration several documents representing the costs of supply from Perkwood, TNG's main "supplier", as costs incurred with an independent company. The Stati have since admitted that these documents were false:

404.1. First, the Stati produced their false financial statements in which they fraudulently concealed the transactions between Perkwood and TNG, which amounted to

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<sup>215</sup> "Because of the clear valuation formula stated in KMG's indicative offer letter and its mathematical precision it can be concluded that *"Because of the clear valuation formula stated in KMG's indicative offer letter and its mathematical precision it can be concluded that KMG's indicative offer amount was significantly affected by any such misstatement of the historical costs.*

<sup>216</sup> Free translation of : *"The actions by Stati et al. to minimise the taxable base of the corporate income tax in Russia (Azalia), England (Perkwood) and Kazakhstan (TNG) (and potentially Moldova (Ascom)), are without any economic substance and therefore clearly a sham.66 Moreover, the conduct of Stati et al. in this case is not in line with the standards of reporting taxable income in each of the countries.*

<sup>217</sup> Free translation of : *"In my 30+ years of experience, I have rarely seen such a large discrepancy between the three realities. Without any documentary evidence provided to support such a mismatch, I have no difficulty in classifying the resale of TGE equipment by Azalia and Perkwood and the charging of a management fee by Perkwood as a "series of sham transactions".*

180 million between 2006 and 2009. These transactions do not appear anywhere in the section on Stati's related companies (**Exhibit 1.1**, pp. 62-63, 225-226 and 392-393). Thanks to this sleight of hand, Stati was able to declare construction costs of USD 248,084,113 as at 31 December 2009 without arousing the suspicions of financial users (**Exhibit 1.1**, p. 495)

404.2. Secondly, the Stati produced a KPMG Due Diligence Report as Exhibit C-69. This document stated that "*USD 193 million had already been invested by 30 June 2008*"<sup>218</sup> (**Exhibit 1.88**, p. 89) and presented Perkwood as an independent company (**Exhibit 1.88**, pp. 11 and 72). During his deposition, Artur Lungu admitted that he instructed KPMG to present Perkwood as an independent company and that this made the Due Diligence Report false (**Exhibit 8.5**, p. 263).

404.3. Third, the Stati produced the Information Memorandum as Exhibit C-70. This document stated that as of "*1 July 2008, TNG has spent approximately USD 193 million on the LPG Plant*"<sup>219</sup> (**Exhibit 1.84**, p. 10) and repeatedly stated that KPM and TNG's financial statements "*have been prepared in accordance with IFRS*"<sup>220</sup> (**Exhibit 1.84**, p. 60). During his testimony, Artur Lungu admitted that the Information Memorandum was false insofar as it was based on the financial statements, which were themselves false (**Exhibit 8.5**, pp. 244-245).

405. The RoK has been denied the right to challenge these documents on the basis of the evidence that is now available.

406. Taking advantage of the glaring information asymmetry that existed between the Parties, the Stati had strongly insisted during the October 2012 quantum hearing that RoK had "*not suggested that the information contained in the Information Memorandum distributed to potential acquirers was in any way inaccurate or incomplete in October 2008*"<sup>221</sup> (**Exhibit 2.35**, pp. 28:24-29:3). They had also presented the indicative offers received in connection with the Zenith Project as "*indications of the potential value of the assets to companies whose seriousness and credibility no one can dispute, and they are all in the oil and gas sector. There's a really good cross-section of companies that you*

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<sup>218</sup> According to management, as of 30 June 2008 the plant has been 60% complete. As of 17 May 2008 total cost of the LPG plant construction was estimated to be approximately USD233 million out of which USD193 million had already been invested as at 30 June 2008. Total cost of the LPG plant construction is subject to periodic review over time".

<sup>219</sup> As of 1 July 2008, TNG had spent approximately USD 193 million on the LPG Plant.

<sup>220</sup> Free translation of : "The Companies' and Tristan Oil's financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS").

<sup>221</sup> The respondent has not suggested that any of the information that was contained in the information memorandum that was distributed to prospective purchasers was in any way inaccurate or incomplete as of October 2008.

look at "<sup>222</sup> (Exhibit 2.35, pp. 31:17-32:11) (RoK emphasis added). They had also stated that the Arbitral Tribunal should in any event rely on KMG's Indicative Offer which valued the LPG Plant at USD 199 million "as an absolute minimum "<sup>223</sup> (Exhibit 2.35, pp. 49:9-15).

407. Two months before the Arbitral Tribunal issued its Award, Artur Lungu filed a witness statement in the Vitol FSU Arbitration dated 11 October 2013. In this attestation, Artur Lungu stated that Perkwood was "a subsidiary of Ascom" and that "Perkwood issued invoices to TNG for equipment and services based on a contract that included Perkwood's management fee [...] in the amount of USD 43,852,108"<sup>[1]</sup> (Exhibit 3.3, §61) (RoK emphasis added).
408. Neither this witness statement nor its contents were filed or brought to the attention of the Arbitral Tribunal in the ECT arbitration, and RoK was unable to develop the defences it would have relied on had it been informed of them.
409. In the Award, the Arbitral Tribunal found that the indicative offers produced by Stati were "uncontested "<sup>224</sup> (Exhibit 2.1, §1746). Particularly symptomatically, Perkwood, which is mentioned only once in the Award, appears as an independent ("third party") company (Exhibit 2.1, §1450) and not as a company related to Stati.
410. It is therefore clear that Stati prevented the holding of an adversarial debate on the value of the LPG Plant and on the relevance and reliability of the indicative tenders, in particular by withholding crucial information on the costs of the LPG Plant in breach of the rules of procedure for the production of documents and by producing documents which they have since acknowledged to be false.

If RoK had been aware of this information in good time, it could have argued that the construction costs declared by Stati were not reliable. It could also have shown that the indicative bids that were based on the false financial information of the Stati, such as the KMG Indicative Bid, were also unreliable.

In his expert opinion, Professor Bernard Hanotiau also points out that "if Kazakhstan had had the documents and evidence of which it is aware today, it would have been

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<sup>222</sup> "For the LPG plant, the value was \$70 million to \$280 million, with an average of \$151 million. Now, the claimants acknowledge that these are indicative offers, they are not binding; they further acknowledge that the prospective purchasers had not yet accessed the data room. But they do present indications of the potential value of the assets to companies that I think no one can dispute are serious and credible, and they are all in the oil and gas business. There is really a nice cross-section of companies that you look at".

<sup>223</sup> "Since KMG made an indicative offer in September 2008, we know of \$754 million, we believe that the Tribunal should infer, at an absolute minimum, that the September presentation on asset investment that the respondent has refused to produce found that Borankol, Tolkyn and the LPG plant had a minimum value of \$754 million.

<sup>1</sup> Free translation of : "First, TNG engaged an Ascom affiliate, Perkwood Investments, to manage the acquisition of most of the equipment and services for the LPG Plant Project. Perkwood charged TNG for the equipment and services under an agreement that included Perkwood's management fee. Ascom and Vitol agreed, however, that the shared investment amount and profit distribution formula would be based on the original cost of the services and equipment, excluding any management fees. Accordingly, for purposes of calculating the shared investment amount, TNG's total expenses must be reduced by the amount of management fees charged by Perkwood. Those fees, which are not part of Ascom's claim and must be deducted from TNG's total capital expenses reflected in its financial systems and statements, total USD 43,852,108".

<sup>224</sup> This is reflected in the undisputed indicative offers made by interested buyers in 2008 [...].

*in a position to give further instructions to its quantum expert" (Exhibit 12.23, §144.ii).*

However, the Stati have denied her the right to do so.

**(b) Violation of the RoK's rights of defence automatically leads to the refusal of the award to be enforced**

411. As has just been demonstrated, the Stati prevented an adversarial debate in the ECT Arbitration on a range of issues central to the dispute between the Parties.
412. This truncation of the adversarial debate, intentionally provoked by the Stati in order to obtain the Award, marked all stages of the proceedings, from the procedure for the production of documents, in which the Stati did not respect the rules in order to conceal their misdeeds, to the hearings in which the RoK had no insight into the Stati's actions and deception.
413. The violation of the RoK's rights of defence affected the entire Award, from the question of the Arbitral Tribunal's jurisdiction to the assessment of the quantum of damages, liability and causality.

While the impact on the award is clear, it is not a condition for the application of this ground for refusing enforcement. As the Court of Cassation teaches, the rights of the defence are so fundamental that their violation prevents exequatur "*without it having to be shown that this disregard of the rights of the defence has had an influence on the arbitral award*"<sup>225</sup>.

414. This finding of a lack of adversarial debate and violation of the rights of defence of the RoK during the arbitration procedure automatically leads to the rejection of the exequatur of the resulting Award, both on the basis of Article 1723, 2°, of the Judicial Code and, where applicable, on the basis of Article 1704, §2, a) or g), of the Judicial Code, to which Article 1723, 3° of the same Code refers.

**B. Second plea: withholding of decisive evidence by the Stati**

**1. Principles**

415. A combined reading of Articles 1704(3)(c) and 1723(3) of the Judicial Code shows that "*the judge shall refuse to grant exequatur (...) if, since [the award] was made, it has been discovered that a*

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<sup>225</sup> Cass., 25 May 2007, RG C.04.0281.N, www.cass.be.

*document or other evidence which would have had a decisive influence on the award and which had been withheld by the other party".*

The regime for this ground for refusal of exequatur can be summarised as follows.

**(a) Parallel with Article 1133, 2° of the Judicial Code**

416. The above-mentioned provisions are based on the rule laid down in Article 1133(2) of the Judicial Code for civil applications - a point not disputed by the Stati<sup>226</sup>.
417. *It follows from this article that "the civil claim is open (...) if, since the decision, decisive documents have been recovered which had been withheld by the party".*
418. In essence, three conditions are laid down for the exercise of this remedy: (i) documents have been discovered after the closure of the hearing, (ii) because they have been withheld by the opposing party,  
**(iii)** even though they are decisive.

The meeting of these conditions means that the party concerned *"misleads the court, with the result that the court has decided on documents and submissions that misrepresent the case"*<sup>227</sup>.

419. In order to assess the scope of this ground for refusing enforcement, it is therefore necessary to consider, by analogy, the principles that follow from the three conditions mentioned above as interpreted by the doctrine and the case law.

**(b) Examination of the conditions for refusing exequatur**

420. The term "document or other evidence", used by Article 1704, §3, c) of the Judicial Code, must be interpreted broadly: it *"encompasses all means of evidence"*<sup>228</sup>, with the exception of evidence resulting from the hearing of a person.
421. Such evidence must have been "withheld by the other party", according to the above-mentioned provision. This can be understood as referring to material that has been *"hidden, concealed"*<sup>229</sup>.

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<sup>226</sup> See their First Submission on the second, third and fourth grounds of appeal, p. 201, §588: "*Article 1704, 3(c) was inspired by Article 1133(2) of the Judicial Code (...). Consequently, the regime applicable to civil claims can shed light on the scope of Article 1704, §3, c).*"

<sup>227</sup> H. Boularbah and M. Philippet, "La requête civile", in P. Moreau (ed.), *La jurisprudence du Code judiciaire commentée*, vol. II-B under the coordination of H. Boularbah: "Les voies de recours", Brussels, La Charte, 2020, p. 320 and the reference to Gand, 15 May 1975, *R.W.*, 1975-76, p. 361.

<sup>228</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> ed.

<sup>229</sup> See Brussels, 18 February 2004, RG 2000/AR/2255 (unpublished). Brussels, 18 February 2004, RG 2000/AR/2255 (unpublished), cited by H. Boularbah and M. Philippet, "La requête civile", in P. Moreau (ed.), *La jurisprudence du Code judiciaire commentée*, vol. II-B under the coordination of H. Boularbah: "Les voies de recours", Brussels, La Charte, 2020, p. 320.

It is unanimously agreed that this condition does not require proof of malice or fraudulent manoeuvres: *"involuntary retention is sufficient.*

Consequently, *"the simple abstention of a party from producing, in good faith and spontaneously, documents before the court that are likely to help the opposing party to prevail"*<sup>231</sup> may constitute the retention required.

422. The evidence concerned must, in particular in view of this retention, have been discovered after the award has already been made.

*The question here is whether the party invoking Article 1704(3)(c) of the Judicial Code could "reasonably have discovered or obtained them in the course of the proceedings".*<sup>232</sup> Or, to put it another way, whether the documents in question were "reasonably accessible".<sup>233</sup> The question is whether the party invoking Article 1704(3)(c) of the Judicial Code could have *"reasonably discovered or obtained them in the course of the proceedings".*<sup>234</sup> *The question is whether the documents in question were "reasonably accessible".*<sup>232</sup> Or, to put it another way, whether the documents in question were *"reasonably accessible".*<sup>233</sup>

The scope of this condition should not be extrapolated. By analogy with the situation in civil claims, only specific situations are covered: in particular, where the party concerned *"knew of the document and could have required its production or could only have been unaware of its existence through his own negligence"*<sup>234</sup> or where that party *"deliberately refrained from taking steps which would have enabled him to produce the document in question in the course of the examination of the original claim"*<sup>235</sup>.

423. Finally, it is necessary to clarify the scope of the condition relating to the impact on the decision of the arbitral tribunal of the evidence adduced by the other party.

Article 1704, §3, c) of the Judicial Code refers in this respect to evidence "which would have had a decisive influence on the sentence".

It follows from this wording that, in order to grant the ground for refusal under consideration here, the exequatur judge must be able to reasonably find that the evidence withheld by the opposing party was likely to have an impact on the decision taken by the arbitral tribunal.

It should be noted that the analogy with the civil claim is not complete in this respect.

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<sup>230</sup> J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 24, who also states that *"to maintain the contrary would in fact be to confuse in a single cause of action for civil damages clearly distinguished by the Code of Judicial Procedure"*, i.e. the withholding of decisive documents (article 1133, 2° of the Code of Judicial Procedure) and the existence of personal fraud (article 1133, 1° of the Code of Judicial Procedure). See in the same sense in particular G. de Leval (ed.), *Droit judiciaire*, tome 2 : "Manuel de procédure civile", Bruxelles, Larcier, 2015, p. 1184 as well as, already, J. Linsmeau, "Quelques réflexions sur l'article 1133, 1° et 2° du Code judiciaire", obs. sous Mons, 1<sup>er</sup> juin 1982, *J.T.* 1985, pp. 610-611, which refers to *"a retention committed in good faith (involuntarily or unconsciously)"*.

<sup>231</sup> J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 22.

<sup>232</sup> G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1184.

<sup>233</sup> Civ. Brussels, 1<sup>er</sup> March 2011, *J.T.*, 2011, p. 366.

<sup>234</sup> P. Depuydt, "La requête civile", *Droit judiciaire - Commentaire pratique*, Liège, Kluwer, 2008, p. VII.6-12 and references cited.

<sup>235</sup> Cass. 16 May 1974, RG 6515, [www.cass.be](http://www.cass.be).



The textual scope of the two provisions is different. Article 1133, 2° of the Judicial Code requires, in order to open this specific recourse, that it be shown that the documents are  
The term "decisive evidence" is used in Article 1704(3)(c) of the Judicial Code to refer to evidence that "would have had a decisive influence" on the award.

The difference between the two texts can be explained by the significant difference in the powers conferred on the exequatur judge and the judge hearing the civil claim: Whereas the latter is authorised, in accordance with Article 1139(2) of the Judicial Code and the devolving effect of the civil claim,<sup>236</sup> to rule on the merits of the dispute and can therefore verify *in concreto* that the documents concerned 'are' decisive, the exequatur judge cannot substitute himself for the arbitral tribunal and must therefore be satisfied with finding that the evidence relied on 'would have had' a decisive influence on the award.

In any event, it may be pointed out that the condition set out in Article 1133(2) of the Judicial Code has not really attracted the interest of Belgian legal writers, who are content, in terms of principles, to emphasise that regard must be had to "*the discovery, subsequent to the decision, of new material elements*"<sup>237</sup>.

#### **(c) Summary of the withholding of evidence as a ground for refusing exequatur**

424. It follows from the above that there is a ground for refusing the exequatur of an arbitration award, on the basis of articles 1704, §3, c) and 1723, 3°, of the Judicial Code, if, by analogy with article 1133, 2° of the Judicial Code "*After the final decision, it is discovered that there has been an error in the situation in dispute, i.e. that the facts submitted to the arbitrator could not, because of their inaccuracy or incompleteness, enable him to make a decision based on reality*".<sup>238</sup>
425. The RoK demonstrates below that the conditions laid down by the above-mentioned provisions are fulfilled in the present case and therefore justify the Court's refusal to grant exequatur.

#### **2In this case**

426. In the ECT Arbitration, the Stati retained several pieces of evidence **(a)** which the RoK only discovered after the Award had been made **(b)** and which would have had a decisive influence on the Award **(c)**. This finding should lead to the refusal to enforce the Award **(d)**.

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<sup>236</sup> See G. de Leval (ed.), G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1199.

<sup>237</sup> See e.g. J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 25 and G. de Leval (ed.), *Droit judiciaire*, tome 2: 'Manuel de procédure civile', Brussels, Larcier, 2015, p. 1185.

<sup>238</sup> J. Linsmeau, "Quelques réflexions sur l'article 1133, 1° et 2° du Code judiciaire", obs. under Mons, <sup>1</sup> June 1982, *J.T.* 1985, p. 613 and the reference to R. Boyer, "Réflexions sur la requête civile", *R.T.D.Civ.* 1956, p. 75.

**(a) Stati withheld evidence in ECT Arbitration**

427. The Stati retained a range of documents in the ECT Arbitration. These documents include documents that the Stati were specifically ordered to produce relating to the construction costs of the LPG Plant (i) and, more broadly, a range of other documents relating to the way in which they had conducted their Kazakh business prior to the ECT Arbitration (ii).

**(i) The Stati withheld documents in violation of the Arbitral Tribunal's Procedural Order No. 2**

428. In the document production proceedings, both Stati and RoK were required to produce various documents in accordance with the Arbitral Tribunal's Procedural Order No. 2 of 5 February 2012.

The document production procedure is an absolutely central stage in any arbitration procedure. Inspired by the "*discovery proceedings*" of *common law* jurisdictions, it offers each party the possibility to ask the other party to produce documents it considers relevant to the resolution of the dispute. If the other party refuses, the arbitral tribunal accepts or rejects the contested request(s).

On 5 January 2012, Stati asked RoK to produce 86 categories of documents (**Exhibit 2.26**, Annex I, pp. 5-71). On the same day, RoK asked Stati to produce 111 categories of documents (**Exhibit 2.26**, Annex II, pp. 72-150).

On 5 February 2012, the Arbitral Tribunal ruled on the contested claims in Procedural Order No. 2 (**Exhibit 2.26**).

In this order, the Arbitral Tribunal expressly recalled that the parties were required to produce the required documents (**Exhibit 2.26**, Articles 3.1 and 3.4, pp. 2 and 3):

*"all documents identified in the "accepted" applications in Annexes I [Stati's Applications] and II [RoK's Applications] to this Order shall be produced by 17 February 2012 to the other Party in these proceedings [...]"<sup>239</sup>.*

*"The term "documents" should be understood to include "permanent records in any form, including paper and electronic" (RoK emphasis added).*

<sup>239</sup> Free translation of : "*All documents identified in requests to be "admitted" in the Annexes I and II attached to this Order shall be produced by 17 February 2012 to the other Party in this procedure, but not yet to the Tribunal, subject to the further qualifications and limitations in this Order*".

<sup>240</sup> Free translation of : "*Documents' should be understood to include permanent records in any form, including on paper and electronic*".

With respect to the documents ordered to be produced, the parties had an obligation to produce them unless there was a compelling reason among those referred to by the court that the document (i) does not (yet) exist, (ii) is not in the possession, custody or control of the party, (iii) has already been sent to the other party, (iv) contains commercially sensitive information, (v) contains third party information that is covered by a confidentiality obligation; (vi) is privileged because of the attorney-client relationship; or (vii) reflects a request for or the result of legal advice from in-house or outside counsel (**Exhibit 2.26**, section 3.2, p. 2).

In the event that a party withheld a document for one of these reasons, it was incumbent on the party concerned to identify this reason: "*the reason for such non-production must be clearly identified*"<sup>241</sup> (**Exhibit 2.26**, Article 3.2, p. 2) (RoK emphasis added).

Therefore, once a request for production of documents had been accepted by the Arbitral Tribunal (or voluntarily by the Stati) and the Stati had not identified one of the limited reasons for non-production, the Stati were under an **absolute obligation** to produce the documents requested.

429. Among the requests accepted by the court, the RoK had asked the Stati to produce the following documents (**Exhibit 2.26**, pp. 147-148):

429.1. Request No. 107: "*Details of plant and equipment acquired, other assets with indication of suppliers*"<sup>242</sup>.

429.2. Request no. 108: "*Documents specifying the cost of construction and assembly operations, start-up work and adjustment of the basic plant installations*"<sup>243</sup>.

429.3. Request no. 109: "*Documents on the progress of work on all the basic facilities of the plant as of 21 July 2010*"<sup>244</sup>.

430. The Stati objected to each of these requests on the grounds that they were "vague". The Tribunal nevertheless compelled them to produce the requested documents, to the extent that they were in the possession, custody or control of the Stati (**Exhibit 2.26**, pp. 147-148, <sup>3rd</sup> and <sup>4th</sup> columns).

431. It has now been established that Stati withheld several key documents that were undoubtedly covered by these applications, in particular Application No. 108: (i) the Tractebel Contract (**Exhibit 1.28**), and more generally all contracts concluded with the

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<sup>241</sup> Free translation of : "*Of the documents ordered by the Tribunal, the following documents or categories of documents need not be produced, but the reason for the non-production must be identified*".

<sup>242</sup> Free translation of : "*Breakdown of acquired plant and equipment, other assets with indication of suppliers*".

<sup>243</sup> Free translation of : "*Documents specifying the cost of construction and assembly operations, start-up and adjustment works in respect of basic facilities of the plant*".

<sup>244</sup> Free translation of : "*Documents about the progress of works in respect of all basic facilities of the plant as of 21 July 2010*".

LPG Plant; **(ii)** the Azalia Contract (**Exhibit 1.25**); **(iii)** the Perkwood Contract (**Exhibit 1.32**); **(iv)** the Crudu Tables (**Exhibit 1.143**); **(v)** the Crudu Analyses (**Exhibit 1.144**); **(vi)** the 1C database ;

**(vii)** the documents relating to the so-called "management fee", if they exist, since Stati argue that "It is therefore *appropriate to consider this management fee as an investment cost*" (Stati's Conclusions of 26 February 2021, §624).

432. In the document production proceedings, the Stati were necessarily in possession of documents **(ii)** to **(vi)** since they produced them in proceedings concurrent with or subsequent to the ECT Arbitration:

- The Stati produced the Azalia Contract, the Perkwood Contract, the Crudu Tables (in part) and the 1C database in the Vitol FSU Arbitration which was taking place at the **same time** as the TCE Arbitration and in which Artur Lungu had testified that Perkwood was "*a subsidiary of Ascom*" (**Exhibit 3.3**, §61)
- Stati produced the full version of the Crudu Tables and Crudu Analyses as part of the document production process in England in 2018.

The Stati also had documents **(i)**, i.e. the various contracts between Azalia or Perkwood on the one hand and the "external suppliers" of the LPG plant (including Tractebel) on the other.

The Stati have hammered home since the annulment proceedings in Sweden that "*Azalia and Perkwood paid approximately USD 94.5 million to various third parties during the construction of the LPG Plant*" (Stati's Summary Conclusions of 25 October 2019, §718). Since Azalia and Perkwood are established in Russia and the UK respectively, the Stati cannot seriously claim, as they did in the Vitol FSU Arbitration, that "*much of the relevant documentation created during the construction of the LPG Plant was stored in Kazakhstan and is therefore no longer available as a result of the alleged expropriation of the LPG Plant*"<sup>245</sup> (**Exhibit 3.6**, §§8.2 and 8.4) (RoK emphasis added).

As for the documents **(vii)**, it is clear that they do not exist as the Perkwood Management Board itself never existed. It should be recalled in this regard that the High Court in London, in its order of 29 September 2014 confirming the continued freezing of assets

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<sup>245</sup> "In a dispute of this nature I would expect to have been able to review the following types of document in respect of the construction plant: (i) Purchase orders; (ii) Invoices, (iii) Supplier contracts; (iv) Delivery notes; and (v) Architects' / Surveyors' reports in respect of certificates of completion. (...) I understand from my instructing solicitors that Ascom maintains that much of the relevant documentation that was created in the course of the construction of the LPG Plant was stored in Kazakhstan and that as a result, it is no longer available following the alleged expropriation of the LPG Plant.

of Ascom, which Vitol requested, concluded that "*this 'commission' was simply paid to them [the Stati]*"<sup>246</sup> (**Exhibit 3.9**, §32).

433. It should be noted at this stage that all the documents referred to in Applications no. 107-109 that were not produced were necessarily withheld by the Stati since they were required to produce them in accordance with Procedural Order no. 2, and they produced them at the same time in another arbitration.

**(ii) The Stati retained other documents relating to the manner in which they conducted their Kazakh business prior to the ECT Arbitration**

434. In addition, the Stati withheld a range of evidence relating to the manner in which they had conducted their Kazakh activities prior to the ECT Arbitration. While there is no doubt about the intentional nature of this retention, there is no need to dwell on this issue as it is unanimously accepted that "*involuntary retention is sufficient*".<sup>247</sup>

435. Without claiming to be exhaustive, a whole series of essential documents that the Stati retained during the ECT arbitration procedure, when these documents were "*of such a nature as to make the [RoK's] claim triumph*", are identified below.<sup>248</sup>

436. Thus, the Stati have retained in particular:

436.1. The hidden warrants that gave them full control over Perkwood (**Exhibit 1.20**), Azalia (**Exhibit 1.15**), Hayden (**Exhibit 1.18**).

436.2. The documents relating to the incorporation of Laren (**Exhibit 1.132**) and the 2011 settlement agreement between the Stati and the Lenders (**Exhibit 1.162**).

436.3. The First Draft Due Diligence Report prepared by KPMG (**Exhibit 1.85**) and the Stati's written instructions to KPMG to present Perkwood as an independent company and not as an affiliated company (**Exhibit 1.87**).

436.4. The representation letters to KPMG in which the Stati deliberately concealed Perkwood and Azalia in order to deceive KPMG (**Exhibits 1.83, 1.122, 1.140, 1.142**).

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<sup>246</sup> "Ascom has asserted that it paid a management fee of over USD 33 [43] million to an English company called Perkwood. An agreement has been disclosed which makes no mention of any management fee nor any formula for calculating it. It appears from other evidence that there was a mark-up on prices for equipment supplied to the LPG Plant. It appears that this 'fee' was simply paid at will".

<sup>247</sup> J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 24, who also states that "*to maintain the contrary would in fact be to confuse in a single cause of action for civil damages clearly distinguished by the Code of Judicial Procedure*", i.e. the withholding of decisive documents (Article 1133, 2° of the Code of Judicial Procedure) and the existence of personal fraud (Article 1133, 1° of the Code of Judicial Procedure). See in the same sense in particular G. de Leval (ed.), *Droit judiciaire*, tome 2 : "Manuel de procédure civile", Bruxelles, Larcier, 2015, p. 1184 as well as, already, J. Linsmeau, "Quelques réflexions sur l'article 1133, 1° et 2° du Code judiciaire", obs. sous Mons, 1<sup>er</sup> juin 1982, *J.T.* 1985, pp. 610-611, which refers to "*a retention committed in good faith (involuntarily or unconsciously)*".

<sup>248</sup> J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 22.

- 436.5. Terra Raf, Montvale and Hayden's account statements which established that they had diverted hundreds of millions of dollars from their Kazakh companies to be used for purposes unrelated to their Kazakh Project, including Kurdistan, Sudan and Moldova (**Exhibits 10.2-10.4**).
- 436.6. The account statements of Lenwell, Pellat and Komet Group SA which establish that the Stati diverted more than USD 125 million from their Kazakh Project to their Kurdish activities between June and August 2008, exactly at the time when they decided to sell their Kazakh companies in the framework of the Zenith Project (**Exhibits 10.11 to 10.13**).
- 436.7. Two Ascom minutes of 14 and 22 October 2008, which reported a severe cash crisis of around USD 250-300 million, including due to major investments in Kurdistan, even though the so-called "Kazakhstan harassment campaign" had not started (**Exhibit 1.92**).
- 436.8. An internal document of 11 December 2008 revealing that Stati had decided to refuse the Credit Suisse loan proposal as too expensive before the Interfax article was published on 18 December 2008 (**Exhibit 1.99**).
- 436.9. Communications between the Stati and the Laren Transaction Lenders which establish that the Stati had negotiated a secret profit from the issuance of a new tranche of Tristan bonds in June 2009 and at the expense of their Kazakh companies (**Exhibits 1.107, 1.115, 1.117, 1.120**).
437. The above list is fragmentary, as the Stati certainly retained a whole series of other documents. However, this list is sufficient to demonstrate clearly and indisputably the enormity of the documentary evidence that was withheld by the Stati and which was consequently totally absent from the adversarial debate.

**(b) RoK discovered this evidence after the award was made**

438. All the documents withheld by the Stati identified above were discovered by the RoK after the Award was made:
- 438.1. In the second half of 2015 (2 years after the Award), RoK obtained documents from the Vitol FSU Arbitration, after obtaining permission from a New York court in June 2015. It was on this occasion that it discovered that the Stati had concealed the fact that Perkwood was a related company and had artificially inflated the costs of the LPG Plant.
- 438.2. In the second half of 2016 (3 years after the Award), the RoK obtained the hidden mandate for the Stati to control Perkwood, with the assistance of

legal office of the Prosecutor's Office of the Republic of Latvia. It also obtained several account statements of companies controlled by the Stati and opened at Rietumu Banka.

438.3. In the first half of 2018 (4.5 years after the Award), RoK obtained various documents in the context of the document production proceedings in England to which the Parties had to submit.

438.4. In the course of 2019 (6 years after the Award), the RoK obtained several account statements of companies controlled by the Stati and opened at Rietumu Banka.

439. In their submissions, the Stati single out **one of** the documents referred to above, namely the Perkwood Contract, and claim that the RoK could have identified the existence of this contract during the arbitration proceedings. They rely on a witness statement filed by RoK in the exequatur proceedings in England (by Mr Philip Carrington, counsel for the Stati), which states that RoK "*had the Perkwood Contract in its possession during the arbitration, as it was passed on to its legal counsel, the Boloshak Consulting Group*". The Stati claim that this statement is an "*admission*" that "*undermines Kazakhstan's main claim - which it repeats in every court - that it 'could only have discovered' the alleged fraud and the Perkwood Contract in the summer of 2015 and thereafter*" (Stati's submission 26 February 2021, §481).

This claim is totally wrong for three reasons.

First, the Stati were obliged to produce the Perkwood Contract during the ECT arbitration as it responded to the RoK's Request No. 108 in the document production proceedings (**Exhibit 2.26**, pp. 147-148). The Stati did not produce it (by design), thus violating the Arbitral Tribunal's injunction.

Secondly, in the aforementioned witness statement of 16 March 2018, Mr Carrington explains that in the context of the exequatur procedure in England (after the decision constant prima facie fraud committed by the Stati), the RoK submitted to the document production procedure in early 2018. In this context, in accordance with the English *disclosure* procedure, which requires each party (and thus also the RoK) to search for all documents relevant to the proceedings, the RoK's English counsel reviewed thousands of electronic documents transmitted by Bolashak, the RoK's Kazakh counsel since April 2013. During this exercise, English counsel for RoK noted that a copy of the Perkwood Contract was among the thousands of documents submitted (**Exhibit 5.15**, §47). After interviewing Bolashak and a former Ministry of Justice employee involved in the conduct of the ECT Arbitration, it emerged that this former employee "*was not aware of the electronic copy of the Perkwood Contract during the Arbitration, and would not have been aware of its relevance in any event*

and that "*counsel for [RoK] did not receive a copy of the Perkwood Agreement during the Arbitration*"<sup>249</sup> (**Exhibit 5.15**, §48).

Given the mass of documents and the efforts made by the Stati to keep Perkwood out of the financial statements and to conceal its true function, the RoK cannot be accused of having "*deliberately refrained from taking the steps that would have enabled it to produce the Perkwood Contract in the proceedings*"<sup>250</sup> in the TCE Arbitration.

Thirdly, and most fundamentally, the Perkwood Contract **alone does not** uncover the shenanigans orchestrated by the Stati. The document reveals that Perkwood, a supposedly independent company, invoiced TNG for approximately USD 190 million worth of equipment between 2006 and 2009 and then cancelled the delivery of approximately USD 37 million worth of equipment in early 2010 (**Exhibit 1.32**). As Mr Carrington points out in his witness statement, "*without the knowledge that Perkwood was a company related to the Stati, mere possession of the Perkwood Contract would not have been sufficient to uncover [the Stati's] fraud*"<sup>251</sup> (**Exhibit 5.15**, §49). However, this knowledge that Perkwood was a related company, knowledge that RoK only acquired in 2015. It was initially denied by the Stati (including in the Swedish proceedings), and it was only in 2016, when confronted with irrefutable evidence of their wrongdoing, that the Stati were forced to admit to the concealment of Perkwood's true status.

**(c) The evidence uncovered would have had a decisive influence on the Award**

440. The reason why the Stati withheld a whole series of documents during the ECT Arbitration was of course because they knew that these documents would have had a disastrous impact on them in the arbitration. As will be shown, this influence would have been decisive on a whole series of issues that were in dispute between the parties, in particular concerning the jurisdiction of the Arbitral Tribunal (i), the (alleged) liability of RoK and the causal link with the alleged damage (ii), and the assessment of the quantum of the damage claimed by the Stati (iii).

**(i) Decisive influence on the jurisdiction of the Arbitral Tribunal**

441. The withheld documents would have revealed the existence of embezzlement and massive fraud committed by the Stati for years in the framework of their Kazakh Project:

441.1. The concealed warrants would have revealed that Perkwood (**Exhibit 1.20**), Azalia (**Exhibit 1.15**) and Hayden (**Exhibit 1.18**) were companies linked to the Stati.

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<sup>249</sup> Free translation of : "*To the best of his recollection, he was not aware of that electronic copy of the Perkwood Contract during the Arbitration, and would not have been aware of its significance in any event. Furthermore, I am informed that the Defendant's legal counsel in the Arbitration were not provided with a copy of the Perkwood Contract during the Arbitration.*"

<sup>250</sup> Cass. 16 May 1974, RG 6515, www.cass.be.

<sup>251</sup> Without the knowledge that Perkwood was a related party to the Statistical, the mere possession of the Perkwood Contract would not have been sufficient to enable the discovery of the Claimant's fraud: "*Without the knowledge that Perkwood was a related party to the Statis, the mere possession of the Perkwood Contract would not have been sufficient to enable the discovery of the Claimant's fraud.*"



- 441.2. The Laren incorporation documents from 2009 (**Exhibit 1.132**) and the settlement agreement with the Laren Transaction Lenders in 2011 (**Exhibit 1.162**) would have revealed that Laren was a Stati-related company.
- 441.3. Terra Raf, Montvale and Hayden's account statements would have revealed that the Stati had embezzled several hundred million dollars from their Kazakh Project between 2005 and 2010.
- 441.4. Account statements from Lenwell, Pellat and Komet Group SA reportedly reveal that the Stati diverted more than USD 125 million from their Kazakh Project to their Kurdish activities between June and August 2008, exactly at the time they decided to sell their Kazakh companies under the Zenith Project.
- 441.5. The Crudu Tables (**Exhibit 1.143**) and the Crudu Analysis (**Exhibit 1.144**), allegedly reveal the existence of a triple accounting scheme designed to inflate the construction costs of the LPG Plant by at least several tens of millions of dollars.
442. Therefore, the Arbitral Tribunal would necessarily have found that the financial statements produced by Stati were false.

The Stati's representation letters to KPMG (**Exhibits 1.83, 1.122, 1.140, 1.142**), the First Draft Due Diligence Report prepared by KPMG (**Exhibit 1.85**) and the Stati's written instructions to KPMG to present Perkwood as an independent company and not as an affiliated company (**Exhibit 1.87**) would have further revealed that the Stati deliberately misled their own auditor in order to legitimise their false financial statements to third parties.

443. The Arbitral Tribunal would also have found that the Stati had given false testimony, and it would have given no credence to this evidence. In particular, it would have given no credence whatsoever to the following statements by Anatolie Stati:

443.1. *"For ten years I invested heavily in Kazakhstan and successfully developed TNG and KPM. Within eighteen months, and despite all my efforts and those of my team, Kazakhstan devalued and eventually destroyed my investments in the country"*<sup>252</sup> (**Exhibit 2.22**, §44).

443.2. *"After nearly ten years in business, I made the commercial decision in the summer of 2008 to sell the rights to the Tolkyln and Borankol fields, as well as the LPG Plant, which was under construction. At the time, the market was reasonably good and prices*

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<sup>252</sup> Translation of: 'For ten years, I heavily invested in Kazakhstan and successfully developed TNG and KPM. In eighteen months, and despite the best efforts of me and my team, Kazakhstan devalued and ultimately destroyed my investments in the country'.

*The high oil and gas prices were incentives for buyers. In my view, it was the right time to attract investors* <sup>253</sup> (**Exhibit 2.22**, §17).

444. On the basis of all these considerations, the Arbitral Tribunal should have found that the Stati had made their alleged investment in breach of the principle of good faith.
445. According to Professor Bernard Hanotiau, this conclusion should normally have led the Arbitral Tribunal to decline jurisdiction (**Exhibit 2.23**, §129).

**(ii) Decisive influence on the question of the liability of the RoK and on the causality with the alleged damage of the Stati**

446. In addition to revealing the existence of embezzlement and massive fraud committed by the Stati over the years, the withheld documents would also have revealed that it was the Stati's actions that drove their Kazakh companies into bankruptcy:
- 446.1. Ascom's two minutes of 14 and 22 October 2008 reportedly revealed that Stati was already facing a severe cash crisis of around USD 250-300 million (**Exhibit 1.92**) due in particular to its recent investment in Kurdistan (**Exhibit 1.79**). Crucially, these minutes date from October 2008, just **before** the so-called "Kazakhstan harassment campaign" allegedly causing Stati's financial difficulties began (**Exhibit 1.92**).
- 446.2. The internal document of 11 December 2008 reportedly revealed that Stati had themselves decided to refuse the loan proposal from Credit Suisse as too expensive (**Exhibit 1.99**). It is again crucial to note that this decision was taken **before the** publication of the Interfax article of 18 December 2008 which allegedly was the cause of Stati's inability to obtain financing on ordinary market terms.
- 446.3. Communications between the Stati and the Laren Transaction Lenders allegedly revealed that the Stati had negotiated a secret profit to be shared with the Lenders through the issuance of a new tranche of Tristan bonds in June 2009 (**Exhibits 1.107, 1.115, 1.117, 1.120**).
447. Therefore, the Arbitral Tribunal would also have found that the Stati had given false testimony and would have given no credence whatsoever to this evidence. In particular, it would have given no weight to the following statements of Anatolie Stati:

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<sup>253</sup> *After nearly ten years of operation, in the summer of 2008, I made a business decision to sell the rights to the Tolkyn and Borankol fields, as well as the LPG plant, which was in the process of being constructed. At the time, the market was reasonably good and the high oil and gas prices constituted incentives for buyers. In my mind, this was the perfect time to attract investors.*

447.1. *In the first half of 2009, "Kazakhstan's actions caused a severe liquidity crisis at TNG and KPM"*<sup>254</sup> (**Exhibit 2.29**, §41).

447.2. *"Renaissance Capital finally found a group of lenders to provide emergency financing (Laren Credit). Although the terms were terrible (35% interest on a \$60 million loan, plus the issuance of \$111 million in new Tristan bonds), I had no choice but to accept this loan in order to keep the companies afloat while I tried to sell them"*<sup>255</sup> (**Exhibit 2.29**, §41).

447.3. *"Credit Suisse withdrew from the negotiations precisely because of Kazakhstan's actions [...]"*<sup>256</sup> (**Exhibit 2.29**, §41).

Nor would the Arbitral Tribunal have given any credence to the following statements by Artur Lungu:

447.4. *"Kazakhstan's harassment campaign also caused a liquidity crisis within TNG and KPM in the spring and summer of 2009"*<sup>257</sup> (**Exhibit 2.28**, §7).

447.5. *"On 18 December 2008, however, Credit Suisse sent me a press article [Interfax article of 18 December 2018] from MEMR [Kazakh Ministry of Energy and Mineral Resources] regarding Kazakhstan's decision to change its previous decision on its right of pre-emption and approval of Terra Raf's ownership of TNG, accusing Mr Sati of fraud. Credit Suisse said it would "appreciate an explanation of the state's accusations". After Credit Suisse sent us the press article, we had a discussion with them, and they informed us that they would not provide us with a loan until we resolved our dispute with the Kazakh government"*<sup>258</sup> (**Exhibit 2.28**, §7).

448. On the basis of all these considerations, the Arbitral Tribunal could never have concluded that the measures taken by the RoK had "affected the [Stati]'s search for financing

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<sup>254</sup> Free translation of : "Kazakhstan's actions contributed to a severe liquidity crisis in the companies [TNG and KPM] in the first half of 2009.

<sup>255</sup> "Renaissance Capital ultimately found a group of lenders to provide emergency financing (the Laren Facility). Although the terms were terrible (35% interest on a \$60 million note, plus the issuance of \$111 million of new Tristan notes), I had no choice but to proceed with that loan in order to keep the companies afloat while I tried to sell them)".

<sup>256</sup> "Credit Suisse backed out of those negotiations precisely because of Kazakhstan's actions, particularly the pre-emptive rights reversal, which put our ownership of TNG in jeopardy.

<sup>257</sup> "Kazakhstan's harassment campaign also caused a liquidity crisis for TNG and KPM in the spring and summer of 2009.

<sup>258</sup> "Oil and gas prices were falling sharply during this period, putting significant pressure on the companies' revenues. We had conducted negotiations with Credit Suisse for a bridge loan to provide additional working capital in connection with our decision to put the companies on the market. On December 5, 2008, Credit Suisse sent us a term sheet for a US \$150-175 million facility, and gave us every indication that it was ready to close the loan. On December 18, 2008, however, Credit Suisse sent us a press release from the MEMR relating to Kazakhstan's decision to reverse its prior pre-emptive rights decision and approval of Terra Raf's ownership of TNG, and accusing Mr. Stati of fraud. Credit Suisse stated that it "[w]ould appreciate some colour on the [State's accusations]." After Credit Suisse sent us the press release, we had a follow-up discussions with them, and they informed us that they would not provide the bridge loan until we resolved our disputed with the Kazakhstan government.

*It would also have found that the RoK 'did not present sufficient evidence to show that the inexperience or the [Stati's] own actions caused or significantly contributed to the damage suffered by the [Stati]' (Exhibit 2.1, §1409). Nor would it have found that RoK "failed to present sufficient evidence that the [Stati's] own inexperience or actions caused or significantly contributed to the damage to the [Stati's] investment "<sup>262</sup> (Exhibit 2.1, §1458).*

449. According to Professor Bernard Hanotiau, the Arbitral Tribunal instead "*concluded that the Laren Loan was not the consequence of Kazakhstan's actions but rather the consequence of an independent decision by the Stati Parties*" and "*in view of the evidence of the fraudulent manoeuvres perpetrated by the Stati Parties, the Arbitral Tribunal did not conclude that Kazakhstan failed to prove that the Stati Parties had themselves caused, or contributed to, the damage suffered by their investment*" (Exhibit 12.23, §141).

**(iii) Decisive influence on the assessment of the quantum of the damage invoked by the Stati**

450. The evidence that Stati was required to produce in the document production proceedings would have allowed the precise determination of the actual construction costs incurred by TNG:

450.1. All the contracts concluded between Stati's related companies and the actual suppliers would have made it possible to determine the real amount of the services provided in connection with the construction of the LPG plant (equipment, services, transport and insurance).

450.2. The Crudu Tables (Exhibit 1.143) and the Crudu Analyses (Exhibit 1.144) would have revealed that Perkwood, the main supplier of the LPG Plant, was in fact a related company and that through the Perkwood Contract, the Stati had artificially inflated the costs of certain services by tens of millions of dollars.

451. On this basis alone, the Arbitral Tribunal would necessarily have found that the costs declared by Stati in the financial statements were false.

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<sup>259</sup> Free translation of : "*This affected Claimants' search for bridge financing, which they began in November 2008 on recommendation from Renaissance Capital.*

<sup>260</sup> The Tribunal finds that the Laren Facility, with its onerous terms, was arranged in June 2009 because it was necessary for KPM and TNG to secure these funds and because Respondent's actions prevented them from doing so sooner: "*The Tribunal finds that the Laren Facility, with its onerous terms, was arranged in June 2009 because it was necessary for KPM and TNG to secure these funds and because Respondent's actions prevented them from doing so sooner*". <sup>261</sup> Free translation of : "*While the worldwide economic crisis was affecting these companies in late 2008 and early 2009, the State's aggressive and concerted actions, including the inspections, the criminal charges, and the asset seizures - even before Mr. Cornegruta's trial in August and September 2009 - forced Claimants to accept the "horrendous" Laren Facility.*

<sup>262</sup> Free translation of : "*the Tribunal concludes that Respondent has not submitted sufficient evidence that Claimants' inexperience or own actions caused or contributed in a relevant way to the damages that occurred to Claimants' investment*".

452. Therefore, the Arbitral Tribunal would have found that the Stati had given false testimony and would have given no weight to this evidence. In particular, it would have given no credence to the following statements by Anatolia Stati and Artur Lungu:

452.1. *"Faced with this climate of fear and uncertainty, I chose in May 2009 to postpone the LPG plant project, having already invested more than USD 245 million in its construction"*<sup>263</sup> (**Exhibit 2.29**, §40).

452.2. *"When the State seized KPM and TNG and all their assets, including the LPG Plant, in July 2010, more than USD 245 million had been invested in the construction of the LPG Plant, which was more than 90% complete"*<sup>264</sup> (**Exhibit 2.23**, §27).

453. In addition, the Arbitral Tribunal would have found that the Information Memorandum, which was based on Stati's false financial statements, relayed false information, including the historical expenses of USD 193 million that Stati claimed to have already incurred (**Exhibit 1.84**, p. 11).

As this was the document on which the potential purchasers based their offers, the Arbitral Tribunal would never have accepted the statements made by the Stati at the hearing on quantum, in particular

453.1. The statement that the Information Memorandum was a "very detailed" document and that RoK had "not suggested that the information contained in the Information Memorandum distributed to potential purchasers was in any way inaccurate or incomplete in October 2008"<sup>265</sup> (**Exhibit 2.35**, pp. 28-29).

453.2. The statement that the indicative bids they had produced, including KMG's, "present indications of potential asset values for companies whose seriousness and credibility no one can dispute, and they are all in the oil and gas sector. There's a really good cross-section of companies that you look at. You have a state-controlled company with KMG [...]"<sup>266</sup> (**Exhibit 2.35**, pp. 31:17-32:11).

453.3. The statement that KMG's Indicative Offer was to be an "absolute minimum" for assessing the value of the LPG Plant (**Exhibit 2.35**, pp. 49:9-15),

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<sup>263</sup> Free translation of : *"Faced with this climate of fear and uncertainty, I chose in May 2009 to postpone the LPG Plant project, having already spent more than USD 245 million toward its construction.*

<sup>264</sup> *When the State seized KPM and TNG and all of their assets, including the LPG Plant, in July of 2010, more than USD 245 million had been invested in construction of the LPG Plant and the LPG Plant was over 90% complete.*

<sup>265</sup> *The respondent has not suggested that any of the information that was contained in the information memorandum that was distributed to prospective purchasers was in any way inaccurate or incomplete as of October 2008.*

<sup>266</sup> *Another way to cut the indicative offer data that may be useful to the Tribunal is to note that the indicative offers provided the following value ranges [...] For the LPG plant, the value was \$70 million to \$280 million, with an average of \$151 million. Now, the claimants acknowledge that these are indicative offers, they are not binding; they further acknowledge that the prospective purchasers had not yet accessed the data room. But they do present indications of the potential value of the assets to companies that I think no one can dispute are serious and credible, and they are all in the oil and gas business. There is really a nice cross-section of companies that you look at. You've got a state-controlled company with KMG".*

454. On the basis of all these considerations, the Arbitral Tribunal would never have found that the "uncontested indicative offers made by interested purchasers in 2008"<sup>267</sup> and would never have decided that KMG's Indicative Offer of USD 199 million constituted "the best relative source of information for the valuation of the Centrale LPG among the various sources of information submitted by the Parties regarding the valuation of the Centrale LPG during the relevant period of the valuation date accepted by the Tribunal"<sup>268</sup> (**Exhibit 2.1**, §§1746-1747).

Furthermore, the Arbitral Tribunal should necessarily have examined the impact of the Stati's actions on the financial situation of KPM and TNG, as there was no reason for RoK to compensate the Stati for damage that they themselves had caused.

According to Professor Bernard Hanotiau, the Arbitral Tribunal "would not have relied on this document to establish the market value of the LPG Plant; or it would have sought other evidence to establish this value" and "the Arbitral Tribunal would have deducted from the assessment of the damage the amounts they [the Stati] had siphoned off from KPM and TNG, these amounts being in the order of hundreds of millions of dollars" (**Exhibit 12.23**, §145).

**(d) Conclusion: Your Court must reject the exequatur of the Award**

455. The Stati withheld a whole series of "crucial" documents during the ECT Arbitration, including in violation of the rules of the arbitration procedure. The RoK only discovered (and was able to discover) these elements from the summer of 2015. The production of the documents withheld by the Stati would have revealed the unlawful and fraudulent conduct of the Stati and would have had a decisive influence on the entire proceedings and the Award. This finding should lead to the rejection of the award on the basis of Articles 1704(3)(c) and 1723(3) of the Judicial Code.

**C. Third plea: the Award is based on evidence found to be false**

**1. Principles**

456. A combined reading of Articles 1704(3)(b) and 1723(3) of the Judicial Code shows that "the judge shall refuse to grant exequatur (...) if the award is based (...) on evidence that is recognised as false".

The regime for this ground for refusal of exequatur can be summarised as follows.

**(a) Parallel with Article 1133, 4° of the Judicial Code**

457. The aforementioned provisions express a rule that is inspired by the cause of the opening of the civil claim set out in article 1133, 4° of the Judicial Code, from which it follows that "the civil claim is

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<sup>267</sup> This is reflected in the undisputed indicative offers made by interested buyers in 2008 [...].

<sup>268</sup> Free translation of : "the Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by

*state- owned KMG at that time for USD 199 million. The Tribunal considers that to be the relatively best source of information for the valuation of the LPG Plant among the various sources of information submitted by the Parties regarding the valuation for the LPG Plant during the relevant period of the valuation date accepted by the Tribunal.*

*open (...) if the trial was conducted on the basis of documents, testimony, expert reports or oaths that have been recognised or declared false since the decision was made".*

458. In order to assess the scope of the ground for refusal of enforcement based on evidence recognised as false, one may therefore have regard in particular to the developments in case law and doctrine on the conditions laid down by this provision.

**(b) Examination of the conditions for refusing exequatur**

459. Firstly, it is accepted that, in assessing the existence of evidence recognised as false, "[a]ll means of evidence are covered: exhibits or documents, testimony, expert reports, oaths, etc. "269 . »<sup>269</sup>.
460. The travaux préparatoires of the Judicial Code offer no guidance as to the meaning of "false" of the evidence concerned.

The doctrine teaches, with regard to Article 1133, 4<sup>o</sup> of the Judicial Code, that the notion of forgery must be understood as that referred to in Article 196 of the Criminal Code<sup>270</sup> - i.e. "*forgery of authentic and public documents, commercial documents, bank documents or private documents*". In the absence of further clarification, this reference can be used, by analogy, in relation to Article 1704, §3, b) of the Judicial Code.

In essence, Article 196 of the Penal Code, together with the other provisions relating to the offence of forgery, seeks to prohibit "*lying, altering the truth, deceiving or attempting to deceive others and, in the case in point, preventing the truth from coming out*".<sup>271</sup>

More specifically, the Court of Cassation teaches that, for there to be a forgery, "*it is required, on the one hand, that the writing is proof to a certain extent of what it contains or establishes, i.e. that it is binding on public confidence, so that the authority or private individuals who take note of it or to whom it is presented can be convinced of the reality of the legal act or fact established by this writing or are entitled to give it credence, and, on the other hand, that the alteration of the truth, committed with fraudulent intent or with the intention of causing harm, in one of the ways provided for by the law, either by inaccurate statements or by intentionally omitting to mention certain elements when drawing up the writing, can cause harm*"<sup>272</sup>.

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<sup>269</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> ed.

<sup>270</sup> See J.-Fr. van Drooghenbroeck, *Requête civile*, coll. J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 28; G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1187.

<sup>271</sup> A. Masset, 'La preuve en procédure pénale et le faux en droit pénal', in S. Boufflette (coord.), *La preuve et le faux*, coll. CLJB, Limal, Anthémis, 2017, pp. 185-186.

<sup>272</sup> Cass., 13 September 2005, RG P.05.0372.N, www.cass.be; in the same sense, see F. F. Lugentz, "Faux en écritures authentiques et publiques, en écritures de commerce ou de banque et en écritures privées et usage de ces faux", *Les infractions*, vol. 4: "Les infractions contre la foi publique", Coll. Droit Pénal, Brussels, Larcier, 2012, p. 55.



With A. Masset<sup>273</sup>, it should be noted that falsification must be understood broadly since it may involve both "*material forgeries*" and "*intellectual forgeries*", which concern "*either the form or the substance of the writing*", and the forgery may result from "*a manual or mechanical process*".

It should also be noted that the required intention "*is achieved when the author, betraying the common trust in the writing, seeks to obtain, for himself or for another, an advantage or profit of any kind which would not have been obtained if the truth or sincerity of the writing had been respected*".<sup>274</sup>

461. The words "admittedly false" in Article 1704(3)(b) of the Judicial Code "*refer to evidence admittedly false by the party who relied on it or by the party in whose favour it was relied upon*".<sup>275</sup> The term "admittedly false" is used in the same way as the term "false" in Article 1704(3)(b) of the Judicial Code.

The provision does not impose any specific formality on this acknowledgement<sup>276</sup>, which may therefore refer to any confession in the common sense of the term.

462. Finally, the criterion of the impact on the decision of the arbitral tribunal of evidence that is found to be false must be clearly defined. In particular, how is Article 1704, §3, b) of the Judicial Code to be understood when it states that the award is "based" on such evidence? By analogy with what prevails for Article 1133, 4° of the same Code, and in the absence of other details offered by the legislator, the criterion is that "*the element declared or recognised to be false must have forged the conviction of the judge*", in the sense that he would not, "*without this element, have ruled in the same way*".<sup>277</sup>

In other words, the award must be considered to be based on evidence that has been found to be false as soon as that evidence has in some way influenced the decision of the arbitral tribunal.

### (c) Summary of evidence found to be false as a ground for refusing exequatur

463. It follows from the above that an arbitral award based on false evidence cannot be given effect, since it is not permissible to allow one of the parties to alter the truth and betray the common trust in the writing in order to obtain for himself an advantage which he would not have obtained in the absence of such devices.

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<sup>273</sup> See A. Masset, 'La preuve en procédure pénale et le faux en droit pénal', in S. Boufflette (coord.), *La preuve et le faux*, coll. CLJB, Limal, Anthémis, 2017, p. 190.

<sup>274</sup> Cass., 27 January 2010, RG P.09.0770.F, [www.cass.be](http://www.cass.be).

<sup>275</sup> G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> edn, Brussels, Bruylant, 2006, p. 485.

<sup>276</sup> In the same sense, in the area of civil applications: G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1188 ("*la reconnaissance de la fausseté de la pièce n'obéit à aucune forme particulière*").

<sup>277</sup> See G. de Leval (ed. G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1188 and J.- Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 28.

464. The RoK demonstrates below that the above-mentioned conditions are fulfilled in the present case and therefore justify the Court's refusal to grant exequatur.

**2In this case**

465. The Stati produced several false pieces of evidence in the ECT Arbitration **(a)**. Since the Award was made, the Stati have admitted that several of these were false **(b)**. The Arbitral Tribunal clearly relied on this evidence as a basis for its decision **(c)**, which should lead to the refusal of the Award **(d)**.

**(a) The Stati produced false evidence in the ECT Arbitration**

466. During the arbitration proceedings, Stati produced at least three false pieces of evidence that qualify as forgery within the meaning of the above-mentioned criterion used in Belgian law.

467. First, Stati produced in the arbitration the **financial statements** of Tristan, KPM and TNG from 2007 to 2009 as Exhibits C-706 to C-709 (**Exhibit 1.1**). These financial statements are false: Stati wrote in black and white that they had "*prepared them in accordance with IFRS*"<sup>278</sup> (**Exhibit 1.1**, pp. 26, 193 and 353), whereas they knowingly violated these standards. In particular, Stati deliberately failed to include the transactions between Perkwood and TNG in the list of related party transactions (**Exhibit 1.1**, pp. 62-63, 225-226 and 392-393). They were required to do so because Perkwood was a related company under IAS 24, which was reproduced *in extenso* by Stati in their representation letters to KPMG (**Exhibit 1.83**, p. 11; **1.122**, p. 7; **1.140**, p. 7; **1.142**, p. 10).

This misrepresentation was intended to conceal from users of the financial statements the fact that the costs of the LPG Plant reported by Stati in its financial statements (USD 248,084,113 as at 31 December 2009, see **Exhibit 1.1**, p. 495) had in fact been inflated by at least several tens of millions of dollars.

In 2019, KPMG confirmed that the omission of Stati was a material misstatement: '*Our audit documentation indicates that TNG entered into transactions with Perkwood in 2007, 2008 and 2009. These transactions should have been disclosed in these annual and interim financial statements covering these reporting periods in accordance with IAS 24. Having carried out an independent review of the documentation provided by Herbet Smith Freehills [counsel to RoK] and our own working papers, we consider this omission to be material, both to TNG's financial statements for the years ended 31 December 2007, 2008 and 2009*

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<sup>278</sup> Free translation of : "*These combined financial statements have been prepared in accordance with International Financial Reporting Standards.*

and for the consolidated financial statements of KPMG, TNG and Tristan for those periods "<sup>279</sup> (Exhibit 9.10, p. 1).

On this basis, KPMG withdrew all of these audit reports and instructed Stati to "immediately take all necessary measures to prevent any further or future reliance on the audit reports issued by KPMG "<sup>280</sup> (Exhibit 9.10, p. 2).

468. Secondly, Stati produced in the arbitration the **KPMG Due Diligence Report** prepared in September 2008 in connection with the Zenith Project as Exhibit C-69 (Exhibit 1.88). This is also a false document since, on the instructions of the Stati and Artur Lungu (Exhibit 1.87), KPMG presented Perkwood as a third party (Exhibit 1.88, pp. 11 and 72).

Again, this distortion of the truth was intended to mislead potential buyers about the construction costs of the LPG Plant mentioned in the report (USD 193 million allegedly invested as of 30 June 2008, see Exhibit 1.88, p. 89), which had in fact been inflated by at least several tens of millions of dollars.

469. Third, the Stati produced in the arbitration the **Information Memorandum** prepared by Renaissance Capital in August 2008 in connection with the Zenith Project as Exhibit C-70 (Exhibit 1.84). This document repeatedly states that the financial statements of KPM and TNG "have been prepared in accordance with IFRS "<sup>281</sup> (Exhibit 1.84, p. 60). It also states that "Prior to <sup>1</sup> January 2007, the consolidated and separate financial statements of Tristan Oil, KPM and TNG were audited by Deloitte. Following the good practice [of] periodically changing auditors, the Companies and Tristan Oil turned to KPMG as their auditor for the year ended 31 December 2007 and [subsequent years]"<sup>282</sup> (Exhibit 1.84, p. 60). Finally, the document states that if Tristan, KPM and TNG "enter into a transaction with related companies, they are required : [...] if the aggregate consideration is greater than USD 10 million, to provide an independent fairness opinion "<sup>283</sup> (Exhibit 1.84, p. 67).

This is a triple lie:

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<sup>279</sup> Our audit working papers indicate that Tolkynneftegaz LLP undertook transactions with Perkwood during 2007, 2008 and 2009. These transactions should have been disclosed in its annual and interim financial statements for those reporting periods, in accordance with IAS 24. Having concluded an independent assessment of the documents provided by Herbert Smith Freehills and our own workpapers, we consider this omission to be material, both to the financial statements of Tolkynneftegaz LLP the years ended 31 December 2007, 2008 and 2009, and the combined financial statements of Kazpolmunay Tolkynneftegaz LLP and Tristan Oil Ltd for said periods".

<sup>280</sup> "you should immediately take all necessary steps to prevent any further, or future, reliance on the following audit reports issued by KPMG Audit LLC".

<sup>281</sup> Free translation of : "The Companies' and Tristan Oil's financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS")".

<sup>282</sup> Free translation of : "Prior to 01 January 2007, the combined and individual financial statements of Tristan Oil, KPM and TNG were audited by Deloitte. Following the best practice to change auditors periodically, the Companies and Tristan Oil changed to KPMG as auditor for the year ended 31 December 2007 and thereafter.

<sup>283</sup> Free translation of : "If Tristan Oil, KPM or TNG -enter into any transaction with affiliates, they are required: [...] If aggregate consideration is in excess of US\$10.0 million, to provide an independent fairness opinion.

- First, the Stati violated IFRS by failing to include the transactions with Perkwood in the financial statements.
- Secondly, the evidence now available reveals that Stati changed auditors during 2007 following a dispute with Deloitte over the presentation of financial information relating to related party transactions (**Exhibits 1.40** and **1.50**).
- Finally, the Stati did not obtain a *fairness opinion* for the transactions between Perkwood and TNG, even though the amounts were well over USD 10 million: USD 191 million according to the Perkwood Contract (**Exhibit 1.32**) and USD 181 million according to Perkwood's account statements (**Exhibit 10.8**).

Again, this distortion of the truth was intended to mislead potential buyers about the construction costs of the LPG Plant mentioned in the Information Memorandum (USD 193 million allegedly invested as of <sup>1</sup> July 2008, see **Exhibit 1.84**, p. 11), which had in fact been inflated by at least several tens of millions of dollars.

470. It should be noted that Stati also produced **KMG's Indicative Offer** in the arbitration as Exhibit C-19 (**Exhibit 1.89**), even though they knew full well that KMG had formulated its offer on the basis of false documents.

*Indeed, KMG made it clear that "in formulating our Indicative Offer, we have relied on the information contained in the Information Memorandum and certain other publicly available information"*<sup>284</sup>. 284 KPMG also stated that it had calculated the value of the LPG Plant "*as an arithmetic average between the Comparative and Cost Approach value matrix*" and that "*Historical costs of USD 193 million were used as the basis for the Cost Approach*". KMG therefore insisted that its Indicative Offer was based on several

*In addition, the Commission has made a number of "key assumptions", including that "Historical production, revenues, costs and capital expenditure [CAPEX] are consistent with those set out in the Information Memorandum"* (**Exhibit 1.89**, pp. 3-4).

KMG therefore relied on the construction costs declared by Stati in the Information Memorandum, in which it was stated that all figures were derived from financial statements prepared in accordance with IFRS, which was false.

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<sup>284</sup> Free translation of : "*In formulating our Indicative Offer, we have relied upon the information contained in the Information Memorandum and certain other publicly available information.*"

**(b) The Stati have admitted that some of the evidence produced in the arbitration was false**

471. Since the Award was made, the Stati have admitted that much of the evidence they produced in the ECT Arbitration was false.

472. After years of concealing the true status of Perkwood and Azalia and presenting these companies as third parties to their auditor, users of the financial statements, their partner Vitol, the KKB bank, customs authorities, potential buyers, the RoK, the Arbitration Tribunal and the Swedish courts, the Stati finally admitted that this claim was false and that they actually controlled these two companies:

472.1. In 2016, in the Swedish proceedings, the Stati first attempted to deny their control over Perkwood by stating, "*What has been said by the [Stati] is that they do not concede the allegation that Perkwood was a related company in some way, not specified by Kazakhstan*"<sup>285</sup> (**Exhibit 4.2**).

472.2. After the production in the proceedings of the secret mandates given to the Stati to act for Perkwood (**Exhibit 1.20**), the Stati finally had to admit, on the first day of the hearing in the Swedish proceedings, that they controlled Perkwood: "*the [mandates] that we have, these documents that you present here, we don't dispute that it is a related company. We don't need to argue that, because it is a related company*"<sup>286</sup> (**Exhibit 4.5**, p. 31:12-16).

472.3. In 2017, in the English exequatur proceedings, the Stati also admitted that Azalia was "*another company within the Stati Group of companies*"<sup>287</sup> (**Exhibit 5.11**, §16.1).

473. At his deposition in the US in April 2019, Artur Lungu, the former CFO of Stati, expressly acknowledged that as a result of this concealment, the financial statements, the KPMG Due Diligence Report and the Information Memorandum were "materially misstated" and were "materially false".

474. On the **financial statements**, Artur Lungu first acknowledged that Perkwood and Azalia were related companies under IAS/IFRS:

« *Q. Explain for the record what IFRS is?*

*R. It is a set of international financial reporting rules under which the company's financial statements are presented.*

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<sup>285</sup> *What has been stated by the Investors is that they do not concede to the fact that Perkwood was an affiliate in some - yet unspecified by Kazakhstan - way.*

<sup>286</sup> *The [powers of attorneys] that we have, those documents that you are presenting here, we are not contesting that it is an affiliate company. We don't need to argue on this case, because it is an affiliate company".*

<sup>287</sup> Free translation of: "*another company within the Stati Companies*".

*Q. As you understand it, Azalia, like Perkwood, qualified as a related company under IAS 24, right?*

*R. Yes, I understand that* <sup>288</sup> **(Exhibit 8.5, p. 134:4-11)**.

After admitting this crucial point, Artur Lungu was asked whether the omission of Perkwood and Azalia from the financial statements of Tristan, KPM and TNG made them false. On each occasion, Artur Lungu confirmed that it was a material misstatement that rendered the financial statements false.

*« Q. To the best of your current knowledge, Mr. Lungu, the omission [of Perkwood and Azalia] from the list of related companies and related company transactions in Exhibit 14 [financial statements of Tristan, KPM and TNG for the first three quarters of 2008] is false; correct?*

*R. To the best of my knowledge, yes* <sup>289</sup> **(Exhibit 8.5, p. 163:16-20)**.

*« Q. And again, because the company did not disclose to KPMG that Perkwood was a related company, Perkwood is not identified in the [Tristan, KPM and TNG first six months of 2009] financial statements as a related company, nor are Perkwood's transactions; correct?*

*R. That's right. [...]*

*Q. And this makes the disclosure of the linked company false; correct?*

*R.* <sup>290</sup> **(Exhibit 8.5, pp. 197:15 to 198:4)**.

*« Q. And -- and this is page F-51 and F-52, and like the previous financial statements, the lack of disclosure to KPMG that Perkwood was a related company resulted in Perkwood and its transactions not being included in these [Tristan, KPM and TNG's 2009 financial statements]; correct?*

*R. That's right.*

*Q. And as with the previous financial statements, this is a materially false omission, correct?*

*R. Correct* <sup>291</sup> **(Exhibit 8.5, p. 205:10-18)**.

*« Q. And as with the other financial statements we've reviewed today, there are no disclosures of Perkwood or transactions with Perkwood; correct?*

*R. That's right.*

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<sup>288</sup> Free translation of : *“Q. Just explain for the record what IFRS is? A. It a set of international financial reporting rules by which the financial statements of the company are reported. Q. To your understanding, Azalia, also like Perkwood, met the test for being a related party under IAS 24; right? A. Yes, I understand that”*.

<sup>289</sup> Free translation of : *Q. “With your present knowledge, Mr. Lungu, the omission from the list of related parties and related party transactions in Exhibit 14 is false; correct? A. With my present knowledge, yes”*.

<sup>290</sup> Free translation of: "

*Q. And, again, as a result of the company not disclosing to KPMG that Perkwood is a related party, Perkwood is not identified in the financials as a related party, nor are the Perkwood transactions; correct? A. Correct. [...] Q. And it makes the related party disclosure false; correct? A. With the current knowledge, this is correct”*.

<sup>291</sup> Free translation of : *“Q. And -- and it's page F-51 and F-52, and like the prior financials, the absence of disclosure to KPMG that Perkwood was a related party resulted in Perkwood and its transactions not being included in these disclosures; correct? A. Correct. Q. And as with the prior financials, that's a materially false omission; correct? A. Correct”*.

*Q. And as with other financial documents, this is a significant omission, and it -- makes the disclosure [in the 2007 financial statements of Tristan, KPM and TNG] materially false, correct?*

*R. Correct* <sup>292</sup> (**Exhibit 8.5**, pp. 212:24 to 213:6).

*« Q. And again, no reference to Perkwood in the related company transactions [in the 2009 financial statements of Tristan, KPM and TNG]. Perkwood's transactions are not referenced in section 30, and Perkwood is not identified as a related company; correct?*

*R. Correct. [...]*

*Q. And this is a material omission, yes?*

*R. That's right.*

*Q. And this omission by Perkwood is, in your experience, a -- a violation of IAS 24, yes?*

*R. Yes, that is correct* <sup>293</sup> (**Exhibit 8.5**, pp. 213:19 to 214:7).

The Stati therefore expressly acknowledged that the financial statements of Tristan, KPM and TNG were materially false due to material omissions and misstatements affecting the information relating to transactions between their related companies.

475. Regarding the **KPMG Due Diligence Report**, Artur Lungu first acknowledged that the initial version of the report prepared by KPMG presented Perkwood as a related company:

*« Q. And in this initial draft, KPMG identifies Perkwood as a related party; correct? A.*

*Yes, that is correct* <sup>294</sup> (**Exhibit 8.5**, p. 263:6-8).

He also acknowledged that this initial version of the report was correct:

*« Q. It says here that Perkwood is the main contractor for the new LPG plant, right?*

*R. That's right.*

*Q. And then the last sentence, please read it into the record for us.*

*R. "We understand from the management that these companies are related companies under the control of the owners of the group [the Stati]."*

*Q. That's a true statement at that time, isn't it?*

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<sup>292</sup> Free translation of : "*Q. And as with the other financials we looked at today, there's no disclosure of Perkwood or transactions with Perkwood; correct? A. Correct. Q. And as with the other financials, this is a material omission, and it's a -- makes the disclosure materially false; correct? A. Correct.*"

<sup>293</sup> Free translation of : "*Q. And, again, no reference to Perkwood in the related party transactions. The Perkwood transactions are not referenced in Section 30, and Perkwood is not identified as a related party; correct? A. Correct. [...] Q. And that is a false material omission, yes? A. This is correct. Q. And that omission of Perkwood is based on your experience a -- a breach of IAS 24, yes? A. Yes, this is correct.*"

<sup>294</sup> Free translation of : "*And in this initial draft KPMG identifies Perkwood as a related party; correct? A. Yes, that's correct.*"



R. With current knowledge, yes <sup>295</sup> (**Exhibit 8.5**, p. 263:12-21).

Artur Lungu then admitted that he had specifically asked KPMG to reconsider and present Perkwood as an independent company and not as a related company:

« Q. Okay. And you cross out the reference to Perkwood as being a related party; correct?

R. That's right.

Q. Why did you do this?

R. Because it was not consistent with the financial statements. [...]

Q. And your intention, therefore, was that the seller's due diligence report would indicate that Perkwood was not a related party, yes?

R. The intention was to make it consistent with the -- the financial statements <sup>296</sup> (**Exhibit 8.5**, p. 263:6- 8).

In admitting that he had instructed KPMG to amend the original version of the report, which he has now acknowledged to be true, Artur Lungu essentially admitted that the amended version of KPMG's Due Diligence Report was false.

476. Regarding the **Information Memorandum**, Artur Lungu first admitted that the financial information presented in this document was taken from the financial statements:

« Q. It says that the financial information presented in the memorandum is taken from, and it lists various balance sheets and statements from KPM, TNG and Tristan. And it refers to certain financial statements; is this correct?

R. That is correct <sup>297</sup> (**Exhibit 8.5**, p. 244:15-20).

Artur Lungu then admitted that the Information Memorandum was false because the financial statements were themselves false:

« Q. Do you agree with me on the general principle that to the extent that the referenced financial statements are false, the Information Memorandum is false as a general principle?

R. Well, it is not false in its entirety. It may -- it may be false in reference to this particular issue that was omitted from the financial statements" (**Exhibit 8.5**, pp. 244:24-245:5).

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<sup>295</sup> Free translation of : "Q. Perkwood is said here to be the main contractor for the new LPG print -- plant; correct? A. This is correct. Q. And then the final sentence, just read that into the record for us, please. A. "We understand from the management that these companies are related parties under the control of the Group's owners." Q. That's a true statement at the time; right? A. With the current knowledge, yes".

<sup>296</sup> Free translation of : "Q. Okay. And you strike the reference to Perkwood as being a related party; correct? A. This is correct. Q. Why did you do that? A. Because it was not consistent with the financial statements. [...] Q. And your intention, therefore, was to have the Vendor Due Diligence report state that Perkwood was not a related party, yes? A. The intention was to make it consistent with the -- the financial statements".

<sup>297</sup> Free translation of : "Q. It states that the financial information presented in the memorandum is derived from, and it lists various balance sheets and statements of KPM, TNG and Tristan. And it refers to certain financial statements; is that right? A. This is correct".

In their summary submissions of 6 June 2009 filed in the exequatur proceedings in Luxembourg, Stati confirmed that "*Mr Lungu did state that the Information Memorandum was false insofar as it relied on the financial statements, but only 'with reference to this particular issue'*" (**Exhibit 6.7**, §221). This "particular issue" concerns information about transactions between Stati's related companies, notably between Perkwood and TNG.

477. In conclusion, it can be inferred from the above that Stati expressly acknowledged that the financial statements, the KPMG Due Diligence Report and the Information Memorandum were false insofar as the financial information relating to transactions between their related companies was affected by material omissions and misstatements.

**(c) The Arbitral Tribunal based its decision on admittedly false evidence**

478. The Tribunal based its decision at least in part on the above-mentioned evidence now recognised as false by the Stati. As stated above, a tribunal must be considered to have relied on evidence that has been found to be false as soon as that evidence has had an influence, in one way or another, on the content of the arbitral tribunal's decision. In the present case, the above-mentioned admittedly false evidence had an influence on the arbitral award both at the stage of assessing the causal link between the liability of the RoK and the damage **(i)** and at the stage of assessing the quantum of the damage invoked by the Stati **(ii)**.

**(i) The Arbitral Tribunal decided the issue of causation on the basis of the false financial statements of the Stati**

479. It should be recalled that the arbitration award obtained by the Stati relates to an *investment arbitration*. The Stati made this alleged investment by purchasing the Kazakh companies KPM and TNG in the early 2000s and conducting various activities through them until 2010. The Stati's activities intensified from 2005 onwards, during which time they built an opaque network of related companies that enabled them to embezzle hundreds of millions of dollars from their Kazakh companies.

480. The financial situation of their alleged investment, the financial situation of KPM and TNG, was reflected in the financial statements prepared by the Stati and audited between 2007 and 2009 by KPMG. The financial statements state that Stati conducted the bulk of their 'investment' through related company transactions: '*A substantial part of the business of the companies [Tristan, KPM and TNG] is conducted through related company transactions and the effect of these, on*

*The ultimate controlling party of the Companies is Anatolia Stati* "298 (Exhibit 1.1, pp. 62, 225 and 392). *The ultimate controlling party of the Companies is Anatolia Stati* "298 (Exhibit 1.1, pp. 62, 225 and 392) (RoK emphasis added).

The problem is that the Stati have now admitted that the section on related party transactions, the core of their alleged investment, was systematically *materially* misstated, that it was simply wrong.

481. As a reminder, ISA 320 states that misstatements are material "*when it is reasonable to expect that, individually or in the aggregate, they could influence the economic decisions that users of the financial statements make on the basis of the financial statements*" (Exhibit 11.3, §2) (RoK emphasises). In the ECT Arbitration, the Arbitral Tribunal became one of those users. The Stati had repeatedly invited it to rely on their false financial statements.
482. On the issue of causation, the Stati's contention was, in the words of Anatolie Stati in her second written witness statement filed in the arbitration, that "*Kazakhstan's actions caused a severe liquidity crisis within TNG and KPM in the first half of 2009*"<sup>299</sup> (Exhibit 2.29, §41). Artur Lungu further stated in his second witness statement: "*Kazakhstan's harassment campaign also caused a liquidity crisis within TNG and KPM in the spring and summer of 2009*"<sup>300</sup> (Exhibit 2.28, §7).
483. The Stati then used their financial statements to challenge the RoK's contention that the Stati had themselves driven their Kazakh companies into bankruptcy **before** the start of the alleged "Kazakhstan harassment campaign", i.e. before mid-October 2008:

*"The core of Kazakhstan's causation argument is that KPM and TNG were over-indebted before any state action was taken, which condemned them to bankruptcy when oil prices fell during the global financial crisis. There is no credible evidence to support this argument, which is belied by all objective facts. If KPM and TNG experienced a liquidity shortage in the first half of 2009, it was temporary and surmountable. Moreover, Kazakhstan itself contributed significantly to this problem. The*

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<sup>298</sup> Free translation of : "*A significant proportion of the Companies' business is conducted through transactions with related parties and the effect of these, on the basis determined between the related parties is reflected below. The Companies' ultimate controlling party is Anatol Stati*".

<sup>299</sup> Free translation of : "*Kazakhstan's actions contributed to a severe liquidity crisis in the companies [TNG and KPM] in the first half of 2009.*

<sup>300</sup> From: "*Kazakhstan's harassment campaign also caused a liquidity crisis for TNG and KPM in the spring and summer of 2009*".

*Kazakhstan presents no credible evidence that KPM and TNG were over-indebted before 14 October 2008*<sup>301</sup> (**Exhibit 2.44**, §§249-250).

At the hearing on jurisdiction and liability, the Stati insisted heavily on the reliability of their financial statements to demonstrate the reality and legality of their alleged "investment":

*"Kazakhstan argues that the [Stati] investments were opaque, suggesting that they were structured to conceal profits and disguise the 'real investor'. Either this position is completely disingenuous or the [RoK] does not understand finance. These companies filed annual financial statements between 2003 and 2009 that were audited by Big Four audit firms. They raised money in the public debt markets, and banks such as Goldman Sachs and UBS deemed these companies transparent and reliable enough to lend them hundreds of millions of dollars. ... The fact is that the [Stati] made substantial investments in KPM and TNG in the form of their acquisition of shares, shareholder loans to the companies, reinvestment of profits, and then risking their investments to guarantee the companies' debts* <sup>302</sup> (**Exhibit 2.33**, 45:1-46:4)

Again relying on their financial statements, and in particular the section on related party transactions, Stati argued in their post-hearing submissions that their Kazakh companies "were far from insolvent" <sup>303</sup> (**Exhibit 2.44**, §254) (RoK emphasis added). They explained that the accumulation of debts of the related companies owing KPM and TNG was due to external factors beyond the control of the Stati:

*"Kazakhstan's insinuation that the extension of payment terms for buyers of [oil and liquefied gas] was anything other than a reasonable decision in the normal course of business is unfounded. According to the KPMG auditors' report, "the management of Tokynneftegaz LLP and Kazpolmunay LLP agreed to extend the payment terms of their largest customers, Stadoil Ltd. and General Affinity Ltd. which are related companies, after being informed that these customers would not be able to meet the existing contractual payment terms. It is not surprising that with the onset of the global financial crisis and*

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<sup>301</sup> Translation of : "The crux of Kazakhstan's causation argument is that KPM and TNG were overleveraged prior to any actions of the State, which doomed them to fail when oil prices dropped during the global financial crisis. No credible evidence supports this argument, and it is belied by all objective facts. While KPM and TNG experienced a liquidity shortage in the first half of 2009, that problem was temporary and surmountable. Moreover, Kazakhstan itself contributed significantly to that problem. Kazakhstan presents no credible evidence that KPM and TNG were overleveraged prior to October 14, 2008".

<sup>302</sup> Kazakhstan argues that claimants' investments were opaque, suggesting that they were structured to conceal profits and disguise who was the "real investor". This position either is completely disingenuous, or the respondent understands nothing about finance. These companies created annual financial statements between 2003 and 2009 that were audited by "Big Four" accounting firms. They raised debt on the public debt markets, and banks such as Goldman Sachs and UBS deemed the companies to be transparent and reliable enough to loan hundreds of millions of dollars to them. [...] The fact is that claimants made substantial investments in KPM and TNG through the form of their acquisition of the shares, shareholder loans to the companies, the reinvestment of profits, and then by risking their investments to secure the companies' debts.

<sup>303</sup> Free translation of : "They were a very long way from insolvent.

*the resulting rapid price decline in 2009, late payments and defaults have become widespread in the sector* "<sup>304</sup> (Exhibit 2.39, §417) (RoK emphasises).

484. The Arbitral Tribunal relied on these allegations, and thus on Stati's financial statements, to decide the issue of causation, as it reproduced them in the Award (see in particular Exhibit 2.1, "Financial Statements"). **Exhibit 2.1**, §§1434-1435). On this basis, the Arbitral Tribunal decided that RoK *"has not presented sufficient evidence that the inexperience or the [Stati's] own actions caused or significantly contributed to the damage to the [Stati's] investment* "<sup>305</sup> (Exhibit 2.1, §1458).
485. The Stati have since admitted that the part of their financial statements that related to transactions between their related companies, which reflected the "substantial part" of their business in Kazakhstan and reflected the financial position of their Kazakh companies, was materially misstated. The Stati admitted to concealing Perkwood from their financial statements, a company that received approximately US\$180 million from TNG in connection with the construction of the LPG Plant.
486. In order to appreciate the impact that this admission would have had on the Arbitral Tribunal's decision, it is worth going back briefly to Artur Lungu's deposition in April 2019. On that occasion, Artur Lungu acknowledged that the safeguards put in place by the Tristan Trust Agreement were intended, inter alia, to protect investors (the *Noteholders*) from inappropriate transactions between related companies of the Stati :

*« Q. And the purpose of these covenants and restrictions is to protect investors -- these are Tristan's Noteholders -- from inappropriate or otherwise inflated transactions between related companies, yes?*

*R. That is correct* "<sup>306</sup> (Exhibit 8.5, p. 239:12-16).

He then acknowledged that the Trust Agreement would require an independent third party *fairness opinion* for all transactions over USD 10 million between related companies of the Stati :

*« Q. And then the third threshold is for "consideration in excess of US\$10 million, to provide an independent fairness opinion". Do you see that?*

*R. Yes, I see it.*

*Q. Do you know what an independent fairness opinion is, Mr Lungu?*

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<sup>304</sup> Free translation of : "Kazakhstan's insinuation that the extension of credit terms for the liquid buyers was anything other than a reasonable decision in the ordinary course of business is unfounded. According to KPMG's Auditors' Report, "the management of Tokynneftegaz LLP and Kazpolmunay LLP agreed to extend the payment terms for their largest customers, Stadoil Ltd. and General Affinity Ltd. which are related parties, after they were informed that these customers would not be able to comply with existing contractual payment terms. It is hardly surprising that with the onset of the global financial crisis and the associated rapid price declines in 2009, slow payments and defaults cascaded through the industry."

<sup>305</sup> "the Tribunal concludes that "the Tribunal concludes that Respondent has not submitted sufficient evidence that Claimants' inexperience or own actions caused or contributed in a relevant way to the damages that occurred to Claimants' investment".

<sup>306</sup> Free translation of : "Q. And the purpose of these covenants and restrictions is to protect the investors -- these are the Tristan noteholders -- from improper or otherwise inflated related -- related party transactions, yes? A. That's correct".

R. Yes.

Q. What is it?

R. This is an opinion that is normally provided by a qualified consultant who reviews a transaction and expresses his or her personal or professional opinion as to whether the transaction is at market price.

Q. Market price and usually fair market value, yes?

R. Fair market value, yes <sup>307</sup> (**Exhibit 8.5**, p. 240:9-23).

Artur Lungu logically confirmed that the Perkwood Contract far exceeded this USD 10 million threshold. He stated, however, that the Stati had never obtained a *fairness opinion* for the transactions between Perkwood and TNG (**Exhibit 8.5**, p. 241:8-16). He acknowledged that by concealing Perkwood's true status, the Stati avoided the need for a third party to review the transactions between Perkwood and TNG:

« Q. And by not disclosing Perkwood as a related company, the company - speaking of Tristan, KPM and TNG - avoided getting an independent fairness opinion, correct?

R. That's right. That is what it looks like <sup>308</sup> (**Exhibit 8.5**, p. 242:5-9).

487. In conclusion, the Stati admitted that the core of their financial statements was false because of material misstatements. They also admitted that these misstatements were intended to prevent an independent third party from examining the transactions between their related companies, which constituted the

"If the Arbitral Tribunal had known this, it would not have relied on Stati's financial statements. Had the Arbitral Tribunal known this, it would not have relied on the Stati's financial statements, accepted the Stati's contention that they had done everything possible to protect their "investment", and decided that there was *"insufficient evidence to show that the [Stati's] own inexperience or actions caused or significantly contributed to the damage to the [Stati's] investment"* <sup>309</sup> (**Exhibit 2.1**, §1458). Instead, he would have found that Stati's financial statements did not accurately reflect the financial position of their Kazakh companies and that Stati had deliberately concealed vital information about the way they had conducted their business in Kazakhstan.

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<sup>307</sup> Free translation of : "Q. And then the third threshold is for "consideration in excess of U.S. \$10 million, to provide an independent fairness opinion." Do you see that? A. I do. Q. Do you know what an independent fairness opinion is, Mr. Lungu? Q. Tell us what that is. A. It's an opinion that is normally provided by a qualified consultant looking at a transaction and expressing his or her personal opinion or professional opinion about whether that transaction is at arm's length basis. Q. Arm's length and usually fair market value, yes? A. Fair market value, yes".

<sup>308</sup> Free translation of : "Q. And by not disclosing Perkwood as a related party, the company -- talking about Tristan, KPM and TNG -- avoided getting an independent fairness opinion; correct? A. This is correct. This is what it looks like".

<sup>309</sup> Translation of : "the Tribunal concludes that Respondent has not submitted sufficient evidence that Claimants' inexperience or own actions caused or contributed in a relevant way to the damages that occurred to Claimants' investment".

**(ii) The Arbitral Tribunal assessed the quantum of Stati's damages on the basis of the false financial statements, the false KPMG Due Diligence Report and the false Information Memorandum**

488. In assessing the damage claimed by Stati, the Arbitral Tribunal had to assess the value of the LPG Plant.
489. In his second witness statement, Anatolia Stati said he "*chose in May 2009 to postpone the LPG Plant project, having already invested more than USD 245 million in its construction*"<sup>310</sup> (**Exhibit 2.29**, §40). Artur Lungu confirmed his boss's statement in his second witness statement: "*When the State seized KPM and TNG and all their assets, including the LPG Plant, in July 2010, more than USD 245 million had been invested in the construction of the LPG Plant, which was more than 90% complete*"<sup>311</sup> (**Exhibit 2.23**, §27).
490. At the quantum hearing, the Stati insisted heavily on the adequacy of the various indicative offers made by the potential buyers to value their Kazakh assets, including the LPG Plant, and the reliability of the process by which they had obtained these offers:

*"After the potential purchasers signed a confidentiality agreement and reviewed a detailed Information Memorandum prepared by the [Stati] and their investment bank, Renaissance Capital, eight indicative offers were received. All were received immediately before <sup>1</sup> October 2008, shortly before the [damage] assessment date proposed by the [Stati]. Now, while it is true that the interested companies had not yet had access to [KPM and TNG]'s data, they had a detailed Information Memorandum which itself provided a great deal of information - the Tribunal has it on file [Exhibit C-70] and can review it - to make a meaningful indicative offer for [KPM and TNG]"<sup>312</sup> (**Exhibit 2.35**, p. 28:2-16) (Emphasis added.)*

The Stati therefore insisted on the "detailed" nature of the Information Memorandum, even inviting the Arbitral Tribunal to "examine" it. They also stressed that RoK had "*not suggested that the information contained in the Information Memorandum distributed to potential purchasers was in any way inaccurate or incomplete in October 2008*"<sup>313</sup> (**Exhibit 2.35**, pp. 28:24-29:3) (RoK emphasis added).

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<sup>310</sup> Free translation of : "*Faced with this climate of fear and uncertainty, I chose in May 2009 to postpone the LPG Plant project, having already spent more than USD 245 million toward its construction.*"

<sup>311</sup> "*When the State seized KPM and TNG and all of their assets, including the LPG Plant, in July of 2010, more than USD 245 million had been invested in construction of the LPG Plant and the LPG Plant was over 90% complete.*"

<sup>312</sup> Free translation of : "*After the prospective purchasers had signed a nondisclosure agreement and reviewed a detailed information memorandum that was prepared by the claimants and by their investment bank, Renaissance Capital, eight indicative offers were received. Those were all received immediately prior to October 1<sup>st</sup> 2008; again, shortly before the valuation date proposed by the claimants. Now, while it's correct that the offering companies had not yet had access to the data room of the companies, they did have a detailed information memorandum that itself provided a great deal of information -- the Tribunal has it in the record and can review it -- to make a meaningful indicative offer for the companies.*"

<sup>313</sup> Free translation of: "*the respondent has not suggested that any of the information that was contained in the information memorandum that was distributed to prospective purchasers was in any way inaccurate or incomplete as of October 2008*".

491. In relation to the LPG Plant, the Stati expressly invited the Arbitral Tribunal to rely on the indicative bids they had produced, including that of KMG, as these bids "*present indications of the potential value of the assets for companies whose seriousness and credibility no one can dispute, and they are all in the oil and gas sector. There's a really good cross-section of companies that you look at. You have a state-controlled company with KMG [...]*"<sup>314</sup> (**Exhibit 2.35**, pp. 31:17-32:11) (RoK emphasis added). The Stati concluded their statement of claim at the hearing by stating that KMG's Indicative Offer should be "*an absolute minimum*" for valuing their assets<sup>315</sup> (**Exhibit 2.35**, pp. 49:9-15).

492. In their post-hearing submission, the Stati argued that "*the Tribunal should award damages for the LPG Plant based on : (1) the [Stati's] investment costs of USD 245 million, and (2) a portion of the additional value they could have realised had Kazakhstan not deprived them of the opportunity to make the project a commercial success*"<sup>316</sup> (**Exhibit 2.44**, §§345). On this occasion, Stati insisted on the reliability of their financial statements, arguing inter alia that they had been prepared "*in the ordinary course of business, and not with a view to litigation*" against the RoK:

*"TNG's 2009 financial statements, which are the source of the annual report, set the net book value of the LPG Plant at USD 248 million as at 31 December 2009, which corroborates FTI's valuation of USD 245 million. The data from [Stati's] financial records, especially the data from the audited financial statements, is perfectly reliable evidence, and it is not simply FTI copying Stati like a parrot"*<sup>317</sup> (**Exhibit 2.44**, §§354) (RoK emphasis added).

493. The Arbitral Tribunal relied on Stati's arguments and the evidence to which they referred (audited financial statements, KPMG Due Diligence Report, KMG Information Memorandum and Indicative Offer) to assess the value of the LPG Plant as it reproduced them in the Award (see in particular **Exhibit 2.1**, §§641, 1694, 1699 and 1700). As the

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<sup>314</sup> Another way to cut the indicative offer data that may be useful to the Tribunal is to note that the indicative offers provided the following value ranges [...] For the LPG plant, the value was \$70 million to \$280 million, with an average of \$151 million. Now, the claimants acknowledge that these are indicative offers, they are not binding; they further acknowledge that the prospective purchasers had not yet accessed the data room. But they do present indications of the potential value of the assets to companies that I think no one can dispute are serious and credible, and they are all in the oil and gas business. There is really a nice cross-section of companies that you look at. You've got a state-controlled company with KMG".

<sup>315</sup> "Since KMG made an indicative offer in September 2008, we know of \$754 million, we believe that the Tribunal should infer, at an absolute minimum, that the September presentation on asset investment that the respondent has refused to produce found that Borankol, Tolkyn and the LPG plant had a minimum value of \$754 million.

<sup>316</sup> Free translation of : "*the Tribunal should award damages for the LPG Plant based on: (1) Claimants' out-of-pocket investment costs of US \$245 million; plus (2) a portion of the prospective additional value they could have realised if Kazakhstan had not deprived them of the opportunity to make a commercial success of the project.*"

<sup>317</sup> Translation of : "*In its update to the LPG Plant value to reflect investments after October 14, 2008, FTI relied on the Tristan Oil Annual Report for 2009. That report likewise was prepared for investors in the ordinary course of business, and not for the purposes of litigation. Moreover, TNG's audited 2009 financial statements, which are backup to the annual report, list the net book value of the LPG Plant as US \$248 million at December 31, 2009, which corroborates FTI's assessment of US \$245 million. Data from the Claimants' historical financial records, particularly data from audited financial statements, is perfectly reliable evidence, and is not simply FTI parroting the Claimants"*.



Stati had expressly invited it to do so, the Arbitral Tribunal relied on the "*uncontested indicative offers made by interested purchasers in 2008*"<sup>318</sup> and decided that KMG's Indicative Offer of USD 199 million constituted "*the best relative source of information for the valuation of the Centrale LPG among the various sources of information submitted by the Parties regarding the valuation of the Centrale LPG during the relevant period of the valuation date accepted by the Tribunal*"<sup>319</sup> (**Exhibit 2.1**, §§1746-1747).

494. In reaching such a conclusion, the Arbitral Tribunal necessarily relied on evidence which the Statute has now recognised as false.

495. In its Indicative Offer, KMG expressly stated that it had relied on several "*key assumptions*", including that "*Historical production, revenues, costs and capital expenditure [CAPEX] are consistent with those set out in the Information Memorandum*" (**Exhibit 1.89**, pp. 3-4).

At the quantum hearing, Stati's financial expert, Mr Rosen, confirmed that KMG had relied precisely on the historical construction costs reported by Stati in its financial statements and in the Information Memorandum. Rosen, confirmed that KMG had relied precisely on the historical construction costs reported by Stati in their financial statements and in the Information Memorandum: "*I also noted that in the analysis of KMG's value for their indicative bid, they had also addressed the LPG Plant on a cost basis, and at the date of valuation, they were closer to USD 200 million, because that was the cost information of the plant at that time*"<sup>320</sup> (**Exhibit 2.38**, pp. 57:4-8).

According to the Information Memorandum, all financial data, including the historical expenses of USD 193 million that Stati claimed to have already incurred (**Exhibit 1.84**, p. 11), came from Stati's financial statements (**Exhibit 1.84**, p. 4). Also according to this document, the financial statements of KPM and TNG had "*been prepared in accordance with IFRS*"<sup>321</sup> (**Exhibit 1.84**, p. 60), which Stati had stated in the financial statements themselves (**Exhibit 1.1**, pp. 26, 193 and 353).

496. Since then, the Stati have recognised that the financial statements they had presented as The companies' financial statements, which were presented as "*IFRS compliant*" to KMG (**Exhibit 1.84**, p. 60) and as "*fully reliable*" to the Arbitral Tribunal (**Exhibit 2.44**, §§354), are in fact false because they are materially misstated. They have admitted that they concealed Perkwood from their financial statements, in clear violation of IFRS, in particular to avoid the transactions between Perkwood and TNG being subject to a

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<sup>318</sup> "*This is reflected in the undisputed indicative offers made by interested buyers in 2008 [...]*".

<sup>319</sup> Free translation of : "*the Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by state-owned KMG at that time for USD 199 million. The Tribunal considers that to be the relatively best source of information for the valuation of the LPG Plant among the various sources of information submitted by the Parties regarding the valuation for the LPG Plant during the relevant period of the valuation date accepted by the Tribunal.*"

<sup>320</sup> "*I further noted that in KMG's analysis of value for their indicative offer, they had also approached the LPG plant on a cost basis, and at the valuation date it was closer to \$200 million, because that was the information on the cost of the plant at that time.*"

<sup>321</sup> Free translation of : "*The Companies' and Tristan Oil's financial statements have been prepared in accordance with*"

*International Financial Reporting Standards ("IFRS").*

review by an independent third party (see *above*). This is an absolutely crucial admission, especially given that Perkwood was the main "supplier" for the construction of the LPG Plant and thus the main source of the "historical capital expenditure" on which KMG based its bid.

The Stati have also acknowledged that the Information Memorandum is false insofar as it is based on the financial statements which are themselves false. One can only emphasise the Stati's about-face in stating at the time of the arbitration that RoK had "*not suggested that the information contained in the Information Memorandum distributed to potential purchasers was in any way inaccurate or incomplete in October 2008*"<sup>322</sup> (**Exhibit 2.35**, pp. 28:24-29:3).

497. Had the Arbitral Tribunal been aware of all this, it would not have accepted Stati's contention that the indicative offers provided an indication of the value of the LPG Plant "*whose seriousness and credibility no one can dispute*" (**Exhibit 2.35**, pp. 32:5-8) and KMG's Indicative Offer was to be an "*absolute minimum*" (**Exhibit 2.35**, pp. 49:9-15), and he would not have concluded that the indicative offers were "*uncontested*" (**Exhibit 2.1**, §1746).
498. On the contrary, the Arbitral Tribunal would have found that the Stati had deliberately concealed the true status of Perkwood, the main "supplier" of the LPG Plant, in order to avoid third party scrutiny of the transactions between Perkwood and TNG. He would necessarily have inferred that the bulk of the capital expenditure declared by Stati in the Information Memorandum on which KMG had based its Indicative Offer was unreliable. Therefore, he would not have accepted KMG's Indicative Offer as "*the best source of relative information for the valuation of the LPG Plant*" (**Exhibit 2.1**, §1747).

**(d) Conclusion: Your Court must reject the exequatur of the Award**

499. As requested by the Stati, the Arbitral Tribunal relied on several documents to determine the causal link between RoK's actions and the Stati's alleged damage and to assess the value of the Centrale LPG. Since the Award was rendered, the Stati have expressly acknowledged that these documents are false. This alone should lead your Court to reject the exequatur of the Award on the basis of Articles 1704, §3, b) and 1723, 3°, of the Judicial Code.

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<sup>322</sup> *The respondent has not suggested that any of the information that was contained in the information memorandum that was distributed to prospective purchasers was in any way inaccurate or incomplete as of October 2008.*

## **D. Fourth way: the Award was obtained by fraud**

### **1. Principles**

500. A combined reading of Articles 1704(3)(a) and 1723(3) of the Judicial Code shows that "*the judge shall refuse the exequatur (...) if [the award] has been obtained by fraud*".

The scope of this provision can be summarised as follows.

#### **(a) Parallel with Article 1133, 1° of the Judicial Code**

501. The ground for refusing enforcement referred to in the above-mentioned provisions can again be compared with one of the grounds for opening a civil claim, namely that set out in Article 1133(1) of the Judicial Code, which provides that "*the civil claim is open (...) if there has been personal fraud*".

502. The principles deduced by doctrine and case law from the latter provision can be taken into account in order to understand the scope of Article 1704, §3, a) of the Judicial Code.

#### **(b) Examination of the conditions for refusing exequatur on the grounds of fraud**

##### **(i) The concept of fraud**

503. The concept of fraud in Article 1704(3)(a) of the Judicial Code is not defined by the legislator.

The travaux préparatoires of Part VI of the Judicial Code state that "*the expression fraud implies fraud*".<sup>323</sup> This interpretation, which is based on the Uniform Law,<sup>324</sup> has been confirmed many times.<sup>325</sup> It is not clear whether the term "fraud" is used in this context.<sup>323</sup> This interpretation, which has its source in the Uniform Act,<sup>324</sup> has been repeatedly confirmed.<sup>325</sup>

In this context, it should be recalled, as H. De Page explains, that "*generally speaking, fraud is the genus, and deceit the species. Both start from the same idea: malicious intent, intentional deception, disloyalty with the aim of harm or gain. Technically, fraud refers to any disloyalty in the performance of legal acts; fraud, in their conclusion. On the other hand, deceit requires manoeuvres; fraud, not necessarily. The main thing to remember is that, since any unfair act is essentially dangerous, it must be vigorously combated. Fraud is an exception to all the rules. It is necessary not only to facilitate proof, but also to destroy its effects*"<sup>326</sup>.

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<sup>323</sup> Draft law approving the European Convention providing a Uniform Law on Arbitration done at Strasbourg on 20 January 1966 and introducing into the Judicial Code a sixth part concerning arbitration, *Doc. Parl.* Ch. repr. 1970-71, doc. no. 988, p. 26.

<sup>324</sup> See the Explanatory Report on the European Convention providing a Uniform Law on Arbitration, Council of Europe, Strasbourg, 1967, § 121.

<sup>325</sup> See in particular Ph. De Bournonville, *L'arbitrage*, Brussels, Larcier, 2000, p. 213; B. Hanotiau and O. Caprasse, "L'annulation des sentences arbitrales", *J.T.* 2004, n° 6136, p. 425; G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> ed., Brussels, Bruylant, 2006, p. 484; B. Kohl, "La loyauté dans les procédures arbitrales", *Hommage à Guy Keutgen*, Brussels, Bruylant, 2012, p. 657.

<sup>326</sup> H. De Page, *Traité élémentaire de droit civil belge*, t. I, 3<sup>rd</sup> ed., Brussels, Bruylant, 1962, pp. 71-72, no. 55.

504. More broadly, the doctrine and case law offer the following insights into the concept of fraud in the light of the above.

505. According to the case law of the Court of Cassation, fraud "*implies malicious intent, intentional deception, disloyalty with the aim of harm or gain*"<sup>327</sup>.

This definition, whose relevance has been confirmed and approved by the doctrine, makes it possible to highlight the only two elements constituting fraud:

505.1. On the one hand, its material ("objective") element presupposes the existence of manoeuvres understood in the broad sense as covering "*all kinds of artifice and actions likely to mislead, including silence constituting fraudulent concealment and lies, even verbal ones*".<sup>328</sup> On the other hand, the "objective" element presupposes the existence of manoeuvres that are not "objective", but rather "subjective".

505.2. On the other hand, its intentional ("subjective") element implies that the said manoeuvres were carried out "*with the intention of causing damage or obtaining gain*", it being understood, however, that "*it is not necessary that the perpetrator was aware that the damage would occur as it did*"<sup>329</sup>.

506. On the basis of these principles, the case law has been able to decide, in particular, that "*the assertion of a fact which is known to be inaccurate, for the purpose of deceiving the judge*"<sup>330</sup> is constitutive of fraudulent manoeuvres or that "*the mere fact of lying is sufficient to retain fraud*" in the sense that "*the confirmation or denial of a fact which is known to be false constitutes in itself an unfair artifice*"<sup>331</sup>.

507. Arbitration law, both Belgian and international, confirms the content of the above developments.

It has been taught that "*fraud may be defined as the misrepresentation or concealment of a material fact in order to induce another person to act to his detriment*"<sup>332</sup>.

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<sup>327</sup> See. Cass. 3 October 1997, RG C.96.0318.F, [www.cass.be](http://www.cass.be); also, in particular, Cass. 16 November 2015, RG S.14.0097.F, [www.cass.be](http://www.cass.be), Cass. 3 March 2011, RG C.07.0312.F, [www.cass.be](http://www.cass.be) and Cass. 6 November 2002, RG P.01.1108.F, [www.cass.be](http://www.cass.be).

<sup>328</sup> F. Glansdorff, "L'intention frauduleuse requise par l'adage *fraus omnia corrumpit*", obs. under Cass., 16 November 2015, *R.C.J.B.*, 2018, p. 72.

<sup>329</sup> F. Glansdorff, "L'intention frauduleuse requise par l'adage *fraus omnia corrumpit*", obs. under Cass. 16 November 2015, *R.C.J.B.*, 2018, pp. 73-74, which further specifies that "*the Cour de cassation does not require the intention to cause such and such a specific damage, intended from the outset, but only to cause damage (or to realise a gain) whatever it may be*". Likewise, cf.

A. Lenaerts, "Le principe général du droit *fraus omnia corrumpit* : difficultés et possibilités en droit privé belge", in P. Wéry (ed.), *Théorie générale des obligations et contrats spéciaux - Questions choisies*, coll. CUP, Bruxelles, Larcier, 2016, p. 17, who stresses that "*(...) fraud always requires an intention to harm, i.e. the awareness of the damage to the other party and the will to cause it nevertheless. This conception is equivalent to the only definition of fraud that we retain and of which the subjective element is an integral part*".

<sup>330</sup> Brussels, 26 October 1983, *Rev. not. b.*, 1984, p. 95.

<sup>331</sup> Antwerp, 22 March 2010, *Limb. Rechtsl.*, 2010, p. 262.

<sup>332</sup> A. Llamzon and A. Sinclair, "Investor Wrongdoing in Investment Arbitration: Standards Governing Issues of Corruption, Fraud, Misrepresentation and Other Investor Misconduct", in A. J. Van den Berg (eds.), *Legitimacy: Myths, Realities, Challenges*, ICCA Congress Series, vol. 18, Kluwer Law International, 2015, p. 469 (free translation of "*Fraud has been defined as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment*").

Similarly, fraud is *"any claim based on an omission or statement which has the effect of deceiving the other party or distorting the truth in order to circumvent a rule.*

It should also be noted, with C. Verbruggen, that fraud or deceit are *"manoeuvres to lead the arbitral tribunal to believe in something that does not exist or to conceal a fact"*<sup>334</sup>.

508. This last lesson makes it possible to make the connection with one of the illustrations which is, in view of the circumstances of the case and by analogy with what prevails in matters of civil claims on the basis of Article 1133, 1° of the Judicial Code, particularly relevant.

According to the Court of Cassation, there is a question of fraud *"when, as a result of dishonest procedural manoeuvres, the judge whose decision has become res judicata has been unable to take cognisance of facts likely to be decisive for the solution of the dispute; this is also the case when the fraud is intended to prevent the opposing party from putting forward his contradiction"*<sup>335</sup>.

This lesson must be read in conjunction with the established case law<sup>336</sup> according to which the violation of the duty to cooperate loyally in the taking of evidence may degenerate into fraud. As the Antwerp Court of Appeal<sup>337</sup> points out, *"all parties to the proceedings are expected to participate in the search for the truth in an honest, correct and fair manner"*, so as to enable *"the judge to be informed seriously, honestly and sincerely"*, it being understood that *"by withholding certain information, the judge may be misled and this misinformation of the judge may, in the person of the party who withheld or withheld the documents, constitute fraud"*.

Finally, generally speaking, in this context, it is accepted that there is fraud *"when a party deceives the judge by a misleading statement and fraudulent concealment of documents"*<sup>338</sup>

## **(ii) The impact of fraud on the award**

509. Article 1704, §3, a), of the Judicial Code, read in conjunction with Article 1723, 3°, of the same Code, merely emphasises that the judge must refuse exequatur in the event that the arbitration award *"was obtained by fraud"*, without any indication as to the nature and intensity of the causal relationship between the fraudulent manoeuvres observed and the scope of the award.

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<sup>333</sup> S. Greenberg and A. Foucard, "L'arbitrage et les différents types de fraude", in D. Matray and E. Van Campenhoutd (eds.), *L'Arbitrage & la Fraude - Actes du colloque du CEPANI du 26 novembre 2020, Liège*, Kluwer, 2020, p. 5.

<sup>334</sup> C. Verbruggen, "Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717", in N. Bassiri and M. Draye (eds), *Arbitration in Belgium*, Kluwer Law International, 2016, p. 484, § 100 (free translation of *"manoeuvres so as to lead the arbitral tribunal to believe in something that does not exist or so as to hide a fact"*).

<sup>335</sup> Cass., 11 May 2001, RG C.99.0351.N, www.cass.be.

<sup>336</sup> See thus for example Mons, 1 June 1982, *J.T.* 1985, p. 608 or Brussels, 5 November 2012, *Rev. not. b.*, 2014, p. 133.

<sup>337</sup> See. Antwerp, 19 December 1986, *R.W.*, 1986-87, p. 2029.

<sup>338</sup> J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 22; G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1182.

510. However, according to the above-mentioned doctrine, causality is established as soon as the fraudulent conduct found has caused an "error" on the part of the arbitral tribunal, which "*had an impact on the award*"<sup>339</sup>.

511. In view of the proximity of the ground for refusal of exequatur studied here to fraud as a ground for opening a civil claim, the rules applicable in this area may be taken into account. In this context, the test is whether the fraudulent manoeuvres have  
*In this case, the judge was "determined to rule as he did"*.<sup>340</sup>

In particular, facts hidden from the arbitrator as a result of such procedural manoeuvres will be taken into consideration if they are "*likely to be decisive for the resolution of the dispute*"<sup>341</sup>.

### (c) Refutation of the Stati thesis on causality

512. The Stati defend a much more restrictive view of causality. They argue that causality must be understood '*with reference to contract law*' and that '*the deception which causes the error must have been the determining cause of the act*'<sup>342-343</sup>. 342-343 The Stati also developed this thesis of 'determining causality' before the first judge, who accepted it.

513. The RoK's respectful view is that this "decisive causality" test is wrong, and that the reference to this test originated in a confusion in a doctrinal article.

514. The idea that 'determining causality' should be taken into account was first mentioned in 1981 in a book<sup>344</sup> without any explanation, justification or reference. It was simply reproduced later by a few other authors in (mostly equally old) studies who never saw fit to criticise its relevance.

515. However, to require that fraud be the "determining cause" of the award is to add a condition to Article 1704(3)(a) of the Judicial Code, read in conjunction with Article 1723(3) of the same Code, which it does not provide for. The addition of this condition is, moreover, in contradiction with subsequent doctrinal and jurisprudential developments, particularly in the area of civil applications, the relevance of which in assessing the scope of the ground for refusing exequatur is hardly disputed.

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<sup>339</sup> C. Verbruggen, "Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717", in N. Bassiri and M. Draye (eds), *Arbitration in Belgium*, Kluwer Law International, 2016, p. 484, § 100 (partial quotation and free translation of "*manoeuvres so as to lead the arbitral tribunal to believe in something that does not exist or so as to hide a fact, and that the error this provoked on the part of the tribunal had an impact on the award*").

<sup>340</sup> See G. de Leval (ed.), *Droit judiciaire*, vol. G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1183 and the references cited.

<sup>341</sup> Cass., 11 May 2001, RG C.99.0351.N, www.cass.be.

<sup>342</sup> See their First submissions on the second, third and fourth grounds of appeal, p. 175, § 504.

<sup>343</sup> The quotation is taken from G. Keutgen and G.-A. Dal, *L'arbitrage en droit belge et international*, tome I: "Le droit belge", 2<sup>nd</sup> edn, Brussels, Bruylant, 2006, p. 484.

<sup>344</sup> See M. Huys and G. Keutgen. M. Huys and G. Keutgen, *L'arbitrage en droit belge et en droit international*, Bruylant, Brussels, 1981, p. 365, n° 541.

516. Moreover, the fallacy of the 'determinative causation' test becomes apparent when one seeks to determine what exactly it covers. The Stati have themselves been confronted with the illogicality of their thesis by having to revisit their earlier procedural writings:

516.1. In the first instance, Stati argued that RoK had to show that "*without the fraud, the Arbitral Award would not have been made*" (Stati's submission of 25 October 2019, §491), seemingly shifting the debate, at least partially, to considerations of arbitrability.

516.2. Now they argue that the RoK should "*establish that, without the fraud, the Arbitral Award, as issued on 19 December 2013, would not have been made*" (Stati's submission of 26 February 2021, §504).

This new approach suggests that in the Stati thesis itself, the condition of

The "decisive causality" requirement is met as soon as it is shown that without the fraud the award would not have been made in *the same way*.

Thus understood, the notion of "decisive causality" comes closer to the correct test recognised by the most recent doctrine, which is that the fraud caused an "*error*" on the part of the arbitral tribunal so that it "*had an impact on the award*".<sup>345</sup>

#### **(d) Summary of fraud as a ground for refusing exequatur**

517. It follows from the above that there is a ground for refusing the exequatur of an arbitral award on the basis of Articles 1704(3)(a) and 1723(3) of the Judicial Code when a party, during the arbitration, has committed "*manoeuvres to lead the arbitral tribunal to believe in something that does not exist or to conceal a fact*", and that these manoeuvres have "*had an impact on the award*"<sup>346</sup>.

518. It is worth recalling, for all intents and purposes, that it is accepted in the context of international arbitration that "*full fraud universally leads state judges to refuse to give effect to the award*".<sup>347</sup>

519. The RoK demonstrates below that the conditions laid down in Article 1704, §3, a), of the Judicial Code, read in conjunction with Article 1723, 3°, of the same Code, are fulfilled in the present case and therefore justify Your Court's refusal of the exequatur.

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<sup>345</sup> C. Verbruggen, "Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717", in N. Bassiri and M. Draye (eds), *Arbitration in Belgium*, Kluwer Law International, 2016, p. 484, § 100 (partial quotation and free translation of "*manoeuvres so as to lead the arbitral tribunal to believe in something that does not exist or so as to hide a fact, and that the error this caused on the part of the tribunal had an impact on the award*").

<sup>346</sup> C. Verbruggen, "Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717", in N. Bassiri and M. Draye (eds), *Arbitration in Belgium*, Kluwer Law International, 2016, p. 484, § 100 (partial quotation and free translation of "*manoeuvres so as to lead the arbitral tribunal to believe in something that does not exist or so as to hide a fact, and that the error this caused on the part of the tribunal had an impact on the award*").

<sup>347</sup> S. Greenberg and A. Foucard, "L'arbitrage et les différents types de fraude", in D. Matray and E. Van Campenhoudt (eds.), *L'Arbitrage & la Fraude - Actes du colloque du CEPANI du 26 novembre 2020, Liège*, Kluwer, 2020, p. 20.



## **2In this case**

520. Throughout the arbitral proceedings, the Stati committed frauds designed to deceive the Arbitral Tribunal **(a)**. These frauds had an impact on the Award **(b)**, **which** should lead to the refusal of exequatur **(c)**.

### **(a) The Stati committed fraud in the ECT Arbitration**

521. The evidence now available shows that the Stati committed multiple frauds by intentionally deceiving the Arbitral Tribunal in order to obtain a (more) favourable award.

522. As demonstrated in the Second Plea, the Stati deliberately withheld all documents that could have revealed the acts and deceptions they had committed in their Kazakh Project. The Stati even withheld certain documents in flagrant violation of the Arbitral Tribunal's orders to produce them (**Exhibit 2.26**, pp. 2 and 147-148).

As demonstrated in the Third Plea, the Stati also produced false evidence: their falsified and now invalidated financial statements, the false KPMG Due Diligence Report and the false Memorandum of Reversal which did not accurately reflect the financial situation of their Kazakh companies.

Through these manoeuvres, the Stati sought to obtain a (more) favourable award, by presenting to the Arbitral Tribunal a totally erroneous and distorted image of their alleged investment, by concealing a whole series of elements (deception of their auditor KPMG, deception of the Noteholders from whom part of the loaned funds were misappropriated, deception of their partner Vitol, deception of the potential purchasers of their Kazakh companies in the framework of the Zenith Project, deception on the impact of these misdeeds on their Kazakh companies, namely a liquidity crisis of the latter).

523. All of these manoeuvres clearly qualify as fraud in the above sense, i.e. fraud whereby a party deliberately violates the duty of loyal cooperation in the administration of evidence,<sup>348</sup> "*deceives the judge by false assertion and fraudulent concealment of documents*"<sup>349</sup> and uses "*manoeuvres to lead the arbitral tribunal to believe in something that does not exist or to conceal a fact*".<sup>350</sup>

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<sup>348</sup> See. Antwerp, 19 December 1986, *R.W.*, 1986-87, p. 2029.

<sup>349</sup> J.-Fr. van Droogenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 22; G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1182.

<sup>350</sup> C. Verbruggen, "Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717", in N. Bassiri and M. Draye (eds), *Arbitration in Belgium*, Kluwer Law International, 2016, p. 484, § 100 (partial quotation and free translation of "*manoeuvres so as to lead the arbitral tribunal to believe in something that does not exist or so as to hide a fact, and that the error this caused on the part of the tribunal had an impact on the award*").

524. It should be emphasised at this point that the Stati's fraudulent manoeuvres were primarily aimed at concealing the fact that they had set up an opaque network of related companies which had enabled them to divert a substantial part of the funds raised from third parties to carry out their Kazakh Project, which had inexorably plunged KPM and TNG into financial distress.

As the Stati admitted in their financial statements, transactions between related companies were at the heart of their Kazakh Project: "*A substantial part of the business of the Companies [Tristan, KPM and TNG] is carried out through transactions with related companies and the effect of these, on the basis determined between the related companies, is shown below. The ultimate controlling party of the Companies is Anatolia Stati*"<sup>351</sup> (**Exhibit 1.1**, pp. 62, 225 and 392) (RoK emphasis added).

For this reason, following Artur Lungu's admissions during his deposition in the United States about the concealment of related party transactions, KPMG decided to invalidate all the audit reports relating to the alleged Stati investment in Kazakhstan, considering that these reports and the financial statements are tainted by material irregularities.

As a reminder, ISA 320 states that an irregularity (or "misstatement") is material

"*The Arbitral Tribunal has become one of those users in the ECT Arbitration, and the Arbitral Tribunal has become one of those users in the ECT Arbitration. In the context of the ECT Arbitration, the Arbitral Tribunal has become one of those users. And like all the actors that Stati had deceived before it, the Arbitral Tribunal did not have reliable information about the transactions between Stati's related companies, the core of their alleged investment.*

525. Since then, extensive evidence of transactions between Stati's related companies has been uncovered and analysed by PricewaterhouseCoopers (PwC). These reports demonstrate the extent of misappropriation by Stati through these related party transactions (**Exhibit 12.11**, §4.23, 4.43, §5.22; **Exhibit 12.12**, p. 38).

526. At the time of the arbitration, the RoK and the Arbitral Tribunal had no insight into the actions of the Stati. The Stati therefore took advantage of this to make false or misleading statements throughout the arbitration proceedings, again with a view to obtaining a (more) favourable award.

As there is no shortage of lies and false testimony by the Stati, the focus of the evidence of fraud will be on the statements contained in two witness statements filed in May 2011 and May 2012 by the main protagonist, Anatolia Stati.

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<sup>351</sup> Free translation of : "*A significant proportion of the Companies' business is conducted through transactions with related parties and the effect of these, on the basis determined between the related parties is reflected below. The Companies' ultimate controlling party is Anatol Stati*".

These statements summarise the main lies uttered by the Stati during the arbitration proceedings concerning the legality and regularity of their alleged investment (i), the origin of the liquidity crisis facing their Kazakh companies (ii), the Credit Suisse loan offer and the terms of the Laren Transaction (iii) and the construction costs of the LPG Plant and the reliability of the indicative offers (iv).

**(i) Stati lies about their "massive investment in Kazakhstan**

527. In his first witness statement, Anatolie Stati stated that "*For ten years I invested heavily in Kazakhstan and successfully developed TNG and KPM. Within eighteen months, and despite all my efforts and those of my team, Kazakhstan devalued and eventually destroyed my investments in the country*"<sup>352</sup> (Exhibit 2.22, §44).

At the hearings, in order to establish these alleged investments, Stati referred to the financial statements of their companies TNG and KPM, pointing out that they had been "*audited by Big Four auditing firms*"<sup>353</sup>, namely Deloitte and then KPMG (Exhibit 2.33, 45:1-46:4).

528. The Stati statements are false and now contradicted by the evidence in the case file. They did not "massively invest" but massively misappropriated the sums they had raised from third parties and which never arrived in Kazakhstan. If their financial statements had been "*audited by Big Four audit firms*", they had misled and have now withdrawn their audit reports.

**(ii) Stati lies about the origin of the liquidity crisis at KPM and TNG**

529. In his first witness statement, Anatolia Stati said that he had "*made the business decision*" to sell his Kazakh companies "*in the summer of 2008*" as part of Project Zenith because "*At the time, the market was reasonably good and high oil and gas prices provided incentives for buyers*"<sup>354</sup> (Exhibit 2.22, §17).

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<sup>352</sup> Translation of: '*For ten years, I heavily invested in Kazakhstan and successfully developed TNG and KPM. In eighteen months, and despite the best efforts of me and my team, Kazakhstan devalued and ultimately destroyed my investments in the country*'.

<sup>353</sup> Kazakhstan argues that claimants' investments were opaque, suggesting that they were structured to conceal profits and disguise who was the "real investor". This position either is completely disingenuous, or the respondent understands nothing about finance. These companies created annual financial statements between 2003 and 2009 that were audited by "Big Four" accounting firms. They raised debt on the public debt markets, and banks such as Goldman Sachs and UBS deemed the companies to be transparent and reliable enough to loan hundreds of millions of dollars to them. [...] The fact is that claimants made substantial investments in KPM and TNG through the form of their acquisition of the shares, shareholder loans to the companies, the reinvestment of profits, and then by risking their investments to secure the companies' debts.

<sup>354</sup> After nearly ten years of operation, in the summer of 2008, I made a business decision to sell the rights to the Tolkyn and Borankol fields, as well as the LPG plant, which was in the process of being constructed. At the time, the market was reasonably good and the high oil and gas prices constituted incentives for buyers. In my mind, this was the perfect time to attract investors.

This statement is false and is now contradicted by the evidence in the file. The Stati did not  
They "*made the business decision*" to sell their Kazakh companies "*in the summer of 2008*"  
because the market was favourable. They made this decision at that time because they had just  
signed a contract with the Kurdish government in June 2008 (**Exhibit 1.79**) and had diverted  
between June and August 2008 more than USD 125 million of the Oil Sales proceeds normally  
destined for KPM and TNG to finance this new project (**Exhibits 10.4**, pp. 204-252; **10.11**, pp.  
1- 2; **10.12**, pp. 4-6; **10.4**, pp. 197-216; **10.13**, pp. 1-2). In fact, by the time Anatolia Stati "*made*  
the business decision" to sell its Kazakh companies, it had already embezzled around USD 300  
million.

530. In his second witness statement, Anatolie Stati added that "*Kazakhstan's actions caused a severe liquidity crisis at TNG and KPM in the first half of 2009*"<sup>355</sup> (**Exhibit 2.29**, §41).

This statement by Stati is false and now contradicted by the evidence in the case file. The RoK's  
actions did not "*cause a serious liquidity crisis at KPMG and TNG in the first half of 2009*".  
This liquidity crisis was caused by the Stati themselves, due to the misappropriation of a  
substantial part of the money raised on the financial markets to implement the Kazakh Project.  
Therefore, the Stati already referred to this liquidity crisis in two Ascom minutes dated 14 and  
22 October 2008 (**Exhibit 1.92**), i.e. **before** the  
"*the start of the [alleged] campaign of harassment of Kazakhstan which began on 14/16*  
*October 2008*" (Stati Conclusions of 26 February 2021, §149).

**(iii) The Stati lies about the Credit Suisse offer and the real terms of the  
Laren Transaction**

531. By the end of 2008, the Stati began seeking credit to refinance their Kazakh companies that they  
had stripped. After being turned down for a loan by Standard Bank in November 2008 (**Exhibit**  
**1.95**, p. 1), the Stati received an offer from Credit Suisse in early December 2008.
532. In his second witness statement, Anatolie Stati stated that '*Credit Suisse withdrew from the*  
*negotiations precisely because of Kazakhstan's actions [...]*'<sup>356</sup> (**Exhibit 2.29**, §41). In his second  
witness statement of 5 May 2012, Artur Lungu stated that "*On 18 December 2008, however,*  
*Credit Suisse sent me a press article from MEMR [Interfax article] regarding Kazakhstan's*  
*decision to change its previous decision on its right of pre-emption and approval of Terra Raf's*  
*ownership of TNG, accusing Mr Sati of fraud.*

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<sup>355</sup> Free translation of : "*Kazakhstan's actions contributed to a severe liquidity crisis in the companies [TNG and KPM] in the first half of 2009.*

<sup>356</sup> '*Credit Suisse backed out of those negotiations precisely because of Kazakhstan's actions, particularly the pre-emptive rights reversal, which put our ownership of TNG in jeopardy.*'

*Credit Suisse said it would "appreciate an explanation of the state's accusations". After Credit Suisse had sent us the press article, we had a discussion with them, and they informed us that they would not provide us with a loan until we resolved our dispute with the Kazakh government* <sup>357</sup> **(Exhibit 2.28, §7)**.

These statements by Stati are false and now contradicted by the documents in the file. According to an internal Stati document dated **11 December 2009**, it was Stati that took the decision to reject the Credit Suisse offer as too expensive: "*We believe that this financing offer is very expensive and restrictive in its structure. Given the current constraints and the uncertainty surrounding the further evolution of oil prices on the international markets and implicitly our revenues and the repayability of our loans, we recommend rejecting it*" <sup>358</sup> **(Exhibit 1.99)** (Stati emphasise). The article of **18 December 2008** referred to by Artur Lungu obviously could not have influenced Stati's decision to reject the Credit Suisse offer.

533. As explained, in April 2009 the Stati's approached Renaissance Capital, already in charge of the Zenith Project, to set up a financing operation with various Lenders which later became known as the "Laren Transaction". In his second witness statement to the Arbitral Tribunal, Anatolie Stati stated that "*Renaissance Capital finally found a group of lenders to provide emergency financing (the Laren Credit). Although the terms were terrible (35% interest on a USD 60 million loan, plus the issuance of USD 111 million in new Tristan bonds), I had no choice but to accept this loan in order to keep the companies afloat while I tried to sell them*" <sup>359</sup> **(Exhibit 2.29, §41)**.

In their post-hearing submission to the arbitration, the Stati's denied that Laren was a related company and that they had benefited in any way from the Laren Transaction: "*RBS and PwC are expressing some confusion about the terms of the Laren Transaction, suggesting that Laren is a company related to Mr. Stati and that it still holds USD 111 million of securities issued in connection with that transaction. Let there be no confusion here, this is not*

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<sup>357</sup> *Oil and gas prices were falling sharply during this period, putting significant pressure on the companies' revenues. We had conducted negotiations with Credit Suisse for a bridge loan to provide additional working capital in connection with our decision to put the companies on the market. On December 5, 2008, Credit Suisse sent us a term sheet for a US \$150-175 million facility, and gave us every indication that it was ready to close the loan. On December 18, 2008, however, Credit Suisse sent us a press release from the MEMR relating to Kazakhstan's decision to reverse its prior pre-emptive rights decision and approval of Terra Raf's ownership of TNG, and accusing Mr. Stati of fraud. Credit Suisse stated that it "[w]ould appreciate some colour on the [State's accusations]." After Credit Suisse sent us the press release, we had a follow-up discussions with them, and they informed us that they would not provide the bridge loan until we resolved our dispute with the Kazakhstan government.*

<sup>358</sup> *"We believe that this funding offer is very expensive and restrictive as a structure. In light of the current constraints and the uncertainty surrounding the subsequent evolution of oil prices on international stock exchanges, and implicitly our income and loan repayability, we recommend rejecting it.*

<sup>359</sup> *"Renaissance Capital ultimately found a group of lenders to provide emergency financing (the Laren Facility). Although the terms were terrible (35% interest on a \$60 million note, plus the issuance of \$111 million of new Tristan notes), I had no choice but to proceed with that loan in order to jeeep the companies afloat while I tried to sell them).*

*correct. Laren is a special vehicle established in the British Virgin Islands to facilitate the transaction of emergency credit" (Exhibit 2.39, §354)<sup>360</sup> (RoK emphasis added).*

534. These statements by the Stati are false and now contradicted by the evidence in the case file.

First, it is now established that Laren was indeed a company related to the Stati. It is true that the Stati took care to disguise Laren as an "orphan company" (Exhibits 1.114, 1.118, 1.119 and 1.124) in order to prevent the Laren Transaction from being classified as a "related party transaction", as this would have required them to have an independent third party review the details of the transaction (Exhibit 1.46, section 4.12). However, it was Artur Lungu who instructed a BVI law firm to incorporate Laren (Exhibit 1.132), it was Artur Lungu to whom Renaissance Capital sent its invoice in September 2009 for the costs of organising the Laren Transaction (Exhibit 1.141), and that it was again Eldar Kasumov, Anatolia Stati's personal driver (Exhibit 1.157, p. 4), who signed a settlement agreement with the Laren Transaction Lenders as Laren's director in 2011 (Exhibit 1.162, p. 25).

Second, while the terms of the Laren Transaction were "terrible" for KPM and TNG, they were not terrible for Stati. As explained in the Statement of Facts (see *supra*, Title III), the Stati had planned to make a large kickback on the transaction (Exhibits 1.107, p. 6; 1.115, p. 2; 1.117, p. 2 and 1.120). But they had arranged to leave the debts resulting from these terrible terms of the Laren Transaction to KPM and TNG, which were already in a disastrous financial situation due to the misappropriation of funds, anyway.

535. In the arbitration proceedings, the Stati merely produced a contract relating to the Laren Transaction which made no mention of the arrangement made (Exhibit 1.130, Articles 6.2 and 7, produced as Exhibit C-734 in the ECT Arbitration). While producing this contract, the Stati deliberately concealed from RoK and the Arbitral Tribunal that Laren was a related company and that the transaction with Laren was entered into with full knowledge of the facts in order to achieve a secret commission while leaving the debts to KPM and TNG.

**(iv) Stati's lies about the construction costs of the LPG plant and the reliability of indicative bids**

536. In his second witness statement, Anatolie Stati said that he had "*already invested more than USD 245 million*"<sup>361</sup> in the construction of the LPG plant when he decided to stop the construction.

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<sup>360</sup> Free translation of : "RBS and PWC express some confusion regarding the terms of the Laren transactions, suggesting that Laren is an affiliate of Mr Stati and still holds the USD 111 million in notes issued in connection with that transaction. Lest there be any confusion here, that is not correct. Laren was a special-purpose entity that was organized in the British Virgin Islands to facilitate the emergency financing transaction".

<sup>361</sup> Free translation of : "Faced with this climate of fear and uncertainty, I chose in May 2009 to postpone the LPG Plant project, having already spent more than USD 245 million toward its construction.

construction in 2009 (**Exhibit 2.29**, §40). Artur Lungu confirmed his boss's statements in his second witness statement as well (**Exhibit 2.28**, §27). The Stati subsequently repeated this assertion at the quantum hearing and in their post-hearing submissions (**Exhibit 2.44**, §§345).

These statements by the Stati are false and now contradicted by the evidence in the case file.

First, Stati's statements were based entirely on their financial statements (**Exhibit 1.1**, pp. 336 and 495). Since then, Stati have admitted, through the deposition of Artur Lungu, that their financial statements were false, and this was confirmed by KPMG's decision to invalidate all audit reports.

Secondly, according to the evidence now available but concealed by the Stati in the TCE Arbitration, the Stati inflated the costs of the LPG Plant by tens of millions of dollars (or more), notably through the Azalia Contract and the Perkwood Contract. Taking advantage of the interposition of these two empty shells between the service providers and the final buyer (TNG), the Stati included, in particular, a "planned profit" of USD 40 million in Annex 2 relating to the Tractebel Equipment, inflated the price of the Transeco Equipment by approximately USD 3.5 million in Schedules 1 and 4, duplicated Tractebel Equipment in Schedules 14 and 15 under which TNG made "advances" of nearly USD 30 million to Perkwood which Perkwood never repaid. These fraudulent manoeuvres allowed the Stati to embezzle tens of millions of dollars via Perkwood (more than USD 80 million according to PwC: **Exhibit 12.11**, §4.43). The details were provided in the Statement of Facts.

Finally, it is worth recalling the dishonest double-dealing that the Stati conducted in the ECT Arbitration and in the Vitol FSU Arbitration. In October 2013, two months before the Award was rendered in the TCE Arbitration, Artur Lungu had stated in the parallel arbitration against Vitol that Perkwood was "*a subsidiary of Ascom*" and that it "*issued invoices to TNG for equipment and services based on a contract that included Perkwood's management fee [...] in the amount of USD 43,852,108*"<sup>[1]</sup> (**Exhibit 3.3**, §61). The Stati never mentioned these two items in the TCE Arbitration. Subsequently, they never managed to demonstrate the existence of this management fee, and for good reason. In an order of 29 September 2014 upholding the freezing of Ascom's assets sought by Vitol, the High Court in London definitively destroyed the Stati's explanation by concluding that the "management fee" was nothing more than an amount paid "*at will*" by the Stati (**Exhibit 3.9**, §39). He

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<sup>1]</sup> Free translation of : "*First, TNG engaged an Ascom affiliate, Perkwood Investments, to manage the acquisition of most of the equipment and services for the LPG Plant Project. Perkwood charged TNG for the equipment and services under an agreement that included Perkwood's management fee. Ascom and Vitol agreed, however, that the shared investment amount and profit distribution formula would be based on the original cost of the services and equipment, excluding any management fees. Accordingly, for purposes of calculating the shared investment amount, TNG's total expenses must be reduced by the amount of management fees charged by Perkwood. Those fees, which are not part of Ascom's claim and must be deducted from TNG's total capital expenses reflected in its financial systems and statements, total USD 43,852,108*".

It is therefore wrong to assert, as Stati do before the Court, that "*It is therefore appropriate to consider this management fee as an investment cost*" (Stati's Opinion of 26 February 2021, §624).

It follows from the above that the costs declared by Stati in their financial statements and then in the ECT Arbitration did not correspond at all to reality.

537. At the hearing on the quantum of their alleged "damages", Stati also emphasised the relevance of the indicative offers they had received in connection with the Zenith Project, which they presented as "*indications of the potential value of the assets for companies whose seriousness and credibility no one can dispute, and they're all in the oil and gas sector. There's a really good cross-section of companies that you look at*"<sup>362</sup> (**Exhibit 2.35**, pp. 31:17-32:11). They had insisted to the Arbitral Tribunal that KMG's Indicative Offer, which valued the LPG Plant at USD 199 million, should be seen "*as an absolute minimum*"<sup>363</sup> (**Exhibit 2.35**, pp. 49:9-15). Stati had insisted on the reliability of the process by which the indicative offers were issued, stressing that RoK had "*not suggested that the information contained in the Information Memorandum distributed to potential buyers was in any way inaccurate or incomplete in October 2008*"<sup>364</sup> (**Exhibit 2.35**, pp. 28:24-29:3).

These statements by the Stati are false and now contradicted by the evidence in the case file.

In light of the evidence now available, the statement in the Information Memorandum that "*as of 1 July 2008, TNG has spent approximately USD 193 million on the LPG Plant*"<sup>365</sup> (**Exhibit 1.84**, p. 10) is false as it is based directly on financial statements that reported costs far in excess of reality.

Since KMG relied on the construction costs declared by Stati in formulating its offer (**Exhibit 1.89**, p. 3-4), which Stati's financial expert, Mr. Rosen, confirmed at the quantum hearing (**Exhibit 2.38**, p. 57:4-8), Stati knew very well that it had obtained this offer by deceiving KMG.

By inviting the Arbitral Tribunal to rely on KMG's Indicative Offer as an "absolute minimum", the Stati deliberately misled the Arbitral Tribunal. As the

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<sup>362</sup> "*For the LPG plant, the value was \$70 million to \$280 million, with an average of \$151 million. Now, the claimants acknowledge that these are indicative offers, they are not binding; they further acknowledge that the prospective purchasers had not yet accessed the data room. But they do present indications of the potential value of the assets to companies that I think no one can dispute are serious and credible, and they are all in the oil and gas business. There is really a nice cross-section of companies that you look at*".

<sup>363</sup> "*Since KMG made an indicative offer in September 2008, we know of \$754 million, we believe that the Tribunal should infer, at an absolute minimum, that the September presentation on asset investment that the respondent has refused to produce found that Borankol, Tolkyng and the LPG plant had a minimum value of \$754 million.*

<sup>364</sup> "*The respondent has not suggested that any of the information that was contained in the information memorandum that was distributed to prospective purchasers was in any way inaccurate or incomplete as of October 2008.*

<sup>365</sup> "*As of 1 July 2008, TNG had spent approximately USD 193 million on the LPG Plant.*



The English judge stated in his judgment of 6 June 2017 finding a *prima facie* case of fraud by the Stati: "*If KMG's [indicative offer] is in fact the result of the [Stati's] misrepresentations then it seems to me, at this stage of the examination of the English claim, that there is a sufficient likelihood that the [Arbitral] Tribunal would no longer have considered (to borrow from the words used) that [this indicative offer] had 'particular relevance' and was 'the best relative source of information for the valuation of the LPG Plant' ; let alone that it would be the offer that in particular should be taken into account in assessing the damage*"<sup>366</sup> (Exhibit 5.8, §§44-48).

The English Tribunal goes on to point out that "*The Tribunal showed interest in the 'undisputed indicative offers made by interested buyers in 2008'. It critically examined them to determine whether they were 'strategic offers to gain access to the database', and concluded that they were not (...) In my view, there is sufficient likelihood that the alleged fraud would have made a difference to the Tribunal. And that by asking the Tribunal to rely on KMG's indicative offer in the circumstances (concealed from the Tribunal, as from the offeror) of the alleged fraud, there has been deception of the Tribunal.*"<sup>367</sup> (Exhibit 5.8, §66).

#### (v) Conclusion on the lies of the Stati in the ECT Arbitration

538. During the TCE Arbitration, the Stati fraudulently withheld documents that would have revealed their wrongdoing, and produced false documents that gave a totally false picture of their alleged investment. They took advantage of this asymmetry of information to make false or misleading statements throughout the arbitration proceedings, again with a view to obtaining a (more) favourable award. These manoeuvres are fraudulent when there is fraud "*when a party deceives the judge by a false statement [...]*"<sup>368</sup>.

#### (b) The Stati frauds had a (significant) impact on the Award

539. In order to meet the requirements of Articles 1704, §3, a) and 1723, 3°, of the Judicial Code, the award must have been obtained "by fraud", i.e. the frauds

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<sup>366</sup> As mentioned, the Swedish Court also reasoned that the KMG Indicative Bid was not (itself) false evidence. That assessment holds at the time the KMG Indicative Bid was made, but I respectfully question whether it still holds when the KMG Indicative Bid is later deployed by a party who knows (but continues to conceal) that it is the product of that party's fraud. ". <sup>367</sup> Free translation of: "*If the KMG Indicative Bid was in fact the result of the Claimants' dishonest misrepresentation then it seems to me, at this stage of scrutiny on the English Application, there is the necessary strength of prima facie case that the Tribunal would no longer (to use its words) consider it as taking a place of 'particular relevance' within 'the relatively best source of information for the valuation of the LPG Plant'; still less being the one offer from which they took the damages figure. The Tribunal showed its interest in 'undisputed indicative offers made by interested buyers in 2008'. It looked at them critically, so as to assess whether these were 'strategic offers to gain access to the data room', concluding that they were not (...) In my judgment there is the necessary strength of prima facie case that the alleged fraud would have made a difference to the Tribunal. And that, in asking the Tribunal to rely on the KMG Indicative Bid in circumstances (concealed from the Tribunal, as from the bidder) of the alleged fraud, there was a fraud on the Tribunal.*

<sup>368</sup> J.-Fr. van Drooghenbroeck, *Requête civile*, coll. RPDB, Brussels, Bruylant, 2012, p. 22; G. de Leval (ed.), *Droit judiciaire*, tome 2: "Manuel de procédure civile", Brussels, Larcier, 2015, p. 1182.

identified above have "*had an impact on the award*".<sup>369</sup> It is sufficient to demonstrate an "impact", as demonstrated above. In this case, there was not only a mere impact, the influence of the fraud committed by the Stati was absolutely decisive.

540. In considering the impact of fraud on the Award, it is necessary to distinguish between the impact on the assessment of evidence by the Arbitral Tribunal **(i)**, the issue of jurisdiction of the Arbitral Tribunal **(ii)**, the issue of liability and causation **(iii)** and the assessment of the quantum of the alleged damage of the Stati **(iv)**.

541. For each of these aspects, RoK will rely on the expert opinion of Professor Hanotiau. As mentioned in the introduction, Professor Hanotiau has the experience of having acted as arbitrator in more than 500 arbitration proceedings. He is therefore well placed, as an expert, to assess the concrete impact of the facts now established on each of the above points.

#### **(i) Impact of fraud on the assessment of evidence by the Arbitral Tribunal**

542. By concealing documents, producing false documents, giving false testimony and making false statements during the hearings, the Stati presented the Arbitral Tribunal with a false image of their alleged investment.

543. In his expert opinion, Professor Hanotiau considers that if the Arbitral Tribunal had had before it the evidence now available, "*it would have drawn negative inferences about the credibility of the Stati Parties in general*" and "*would have treated their testimony as completely unreliable*" (**Exhibit 12.23**, §137).

In other words, the decision-making process would have been completely different. The Arbitral Tribunal would not have relied on, or would have given very little weight to, the statements of the Stati (in particular those of the main protagonist, Anatolie Stati, and those of his right-hand man, Artur Lungu) in deciding the issues of jurisdiction, liability and causation, as well as in assessing the quantum of damage claimed by the Stati. As a result, the outcome of this decision-making process (the Award) would have been quite different.

#### **(ii) Impact of fraud on the jurisdiction of the Arbitral Tribunal**

544. On the question of its jurisdiction, the Arbitral Tribunal considered that "*while it has inspected and monitored the [Stati] investments and corporate structures for*

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<sup>369</sup> C. Verbruggen, "Commentary on Part VI of the Belgian Judicial Code, Chapter VII: Article 1717", in N. Bassiri and M. Draye (eds), *Arbitration in Belgium*, Kluwer Law International, 2016, p. 484, § 100 (partial citation and free translation of *In this context, the term "manoeuvres so as to lead the arbitral tribunal to believe in something that does not exist or so as to hide a fact, and that the error this provoked on the part of the tribunal had an impact on the award"*).

years, [RoK] did not allege that anything was illegal or improper before October 2008"<sup>370</sup> (**Exhibit 2.1**, §812).

Through their fraudulent manoeuvres, the Stati managed to conceal their misdeeds from the RoK and the Arbitral Tribunal and to make it appear that they had made their investment in good faith.

545. The evidence now available paints a very different picture, where the Stati set up an opaque network of companies to strip their Kazakh companies of hundreds of millions of dollars before putting them up for sale in the summer of 2008.

In his expert opinion, Professor Hanotiau considers these elements "in other words, a pattern of behaviour from which it can be inferred that when they acquired KPM and TNG, they did not do so with a view to carrying out bona fide business activities but to use the two companies as their personal slot machines. This is not the kind of good faith behaviour one would expect from an investor. Quite the contrary. It is the very type of investment made in bad faith that investment treaties are not intended to protect" (**Exhibit 12.23**, §122).

He adds that these elements "would have had a fundamental impact on the question of whether the Tribunal had jurisdiction to hear the dispute. Indeed, it is highly likely that, as other arbitral tribunals have decided before it, the Arbitral Tribunal would have declined jurisdiction, as the Stati Consortium had made their investment in breach of the principle of good faith" (**Exhibit 12.23**, §129).

### (iii) Impact of the frauds on the liability of the RoK and the causality with the alleged damage of the Stati

546. On the issue of liability and causation, the Arbitral Tribunal decided that :

546.1. The measures taken by the RoK from October 2008 onwards "prejudiced the [Stati's] investments and prevented the [Stati] from continuing their investment from that time onwards "<sup>371</sup> (**Exhibit 2.1**, §1408). <sup>371</sup> (Exhibit 2.1, §1408). In particular, the Arbitral Tribunal considered that these measures "affected the [Stati's] search for interim financing, which they began in November 2008 on the recommendation of Renaissance Capital".<sup>372</sup>

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<sup>370</sup> "while inspecting and monitoring Claimants' investments and their corporate structures for years, Respondent failed to allege that anything was illegal or improper prior to October 2008: "while inspecting and monitoring Claimants' investments and their corporate structures for years, Respondent failed to allege that anything was illegal or improper prior to October 2008.

<sup>371</sup> Translation of : "the Tribunal considers that Respondent's series of actions starting in October 2008, which are breaches of the FET standard of the ECT as found above in this Award and which were publicized beginning in December 2008, harmed Claimants' investments and prevented Claimants from proceeding with their investment from that moment, forward".

<sup>372</sup> Free translation of : "This affected Claimants' search for bridge financing, which they began in November 2008 on

*recommendation from Renaissance Capital.*

(**Exhibit 2.1**, §1409), "*prevented*" the Stati from obtaining financing before June 2009<sup>373</sup> and had "*forced the [Stati] to accept the 'horrible Laren Transaction'*"<sup>374</sup> (**Exhibit 2.1**, §1416).

546.2. Conversely, RoK "*has not presented sufficient evidence that [Stati's] own inexperience or actions caused or significantly contributed to the damage to [Stati's] investment*"<sup>375</sup> (**Exhibit 2.1**, §1458).

In deciding all these fundamental issues, the Arbitral Tribunal relied on the evidence presented by Stati during the arbitration.

547. Again, the evidence now available depicts a very different reality, namely a reality where the Stati themselves damaged their so-called "investment" in Kazakhstan and plunged their Kazakh companies into financial disaster, long before the so-called "*Kazakhstan harassment campaign*" began, where the Stati themselves turned down Credit Suisse's offer in December 2008, and where the Stati themselves decided to enter into the Laren Transaction in order to earn a kickback.

548. If the Arbitral Tribunal had been aware of all these fraudulent manoeuvres by Stati, it would never have given so much weight to the evidence submitted by Stati.

Professor Hanotiau's conclusion on the impact of the Stati's fraudulent manoeuvres on the issue of causation is particularly illuminating: "*If the Arbitral Tribunal had had the evidence available to it today, it would not have reached the same conclusions on the issue of causation. It would have found that the Laren Loan was not the consequence of Kazakhstan's actions but rather the consequence of an independent decision by the Stati Parties. Furthermore, in view of the evidence of the fraudulent schemes perpetrated by the Stati Parties, the Arbitral Tribunal would not have concluded that Kazakhstan had failed to prove that the Stati Parties had themselves caused or contributed to the damage to their investment*" (**Exhibit 12.23**, §141).

#### **(iv) Impact of fraud on the assessment of the quantum of the alleged damage of the Stati**

549. On the issue of quantum assessment, the Tribunal decided, inter alia, that the indicative offers "*made by the interested purchasers in 2008*" and produced by Stati in the arbitration were "*not in dispute*".<sup>376</sup> As invited by Stati, the Arbitral Tribunal found that the indicative offers were "*not in dispute*".<sup>376</sup> As requested by Stati, the Arbitral Tribunal

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<sup>373</sup> Translation of : "*The Tribunal finds that the Laren Facility, with its onerous terms, was arranged in June 2009 because it was necessary for KPM and TNG to secure these funds and because Respondent's actions prevented them from doing so sooner.*" <sup>374</sup> Free translation of : "*While the worldwide economic crisis was affecting these companies in late 2008 and early 2009, the State's aggressive and concerted actions, including the inspections, the criminal charges, and the asset seizures - even before Mr. Cornegruta's trial in August and September 2009 - forced Claimants to accept the 'horrendous' Laren Facility.*"

<sup>375</sup> Translation of : "*the Tribunal concludes that Respondent has not submitted sufficient evidence that Claimants' inexperience or own actions caused or contributed in a relevant way to the damages that occurred to Claimants' investment*".

<sup>376</sup> This is reflected in the undisputed indicative offers made by interested buyers in 2008 [...].

decided that KMG's Indicative Offer valuing the LPG Plant at USD 199 million constituted *The Tribunal has determined that "the best relative source of information for the assessment of the LPG Plant among the various sources of information submitted by the Parties regarding the assessment of the LPG Plant during the relevant period of the assessment date accepted by the Tribunal"*<sup>377</sup> (**Exhibit 2.1**, §§1746-1747).

550. Again, the evidence now available paints a very different picture. The Stati artificially inflated the construction costs of the LPG Plant by tens of millions of dollars (or more), presented these false construction costs to potential buyers in 2008, produced the offers of these deceived buyers, and invited the Tribunal to rely on these offers, in particular KMG's Indicative Offer, which was intended to be a

This is the "absolute minimum" for assessing the value of the LPG Plant.

551. Had the Arbitral Tribunal been aware of Stati's actions, in particular the fact that their financial statements were unreliable, it would not have considered KMG's Offer as *"the best source of relative valuation for the valuation of the LPG Plant"* since KMG had relied on the historical costs declared by Stati in their financial statements and in the Information Memorandum in formulating its offer (**Exhibits 1.84**, p. 10 and **1.89**, pp. 3-4).

Furthermore, the Arbitral Tribunal should necessarily have examined the impact of the Stati's actions on the financial situation of KPM and TNG, as there was no reason for RoK to compensate the Stati for damage that they themselves had caused.

In his expert opinion, Professor Hanotiau concludes in the light of these elements that *"if the Arbitral Tribunal had had in its possession all the documents and evidence available today, it would have reached different conclusions with regard to the assessment of the damage"* (**Exhibit 12.23**, §147). He also adds that in view of the massive fraud committed by Stati, the Arbitral Tribunal would have considered the impact of Stati's "contributory fault" on the quantum of damages and *"would have deducted from the assessment of damages the amounts they siphoned off from KPM and TNG, these amounts being in the order of hundreds of millions of dollars"* (**Exhibit 12.23**, §145).

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<sup>377</sup> Free translation of : *"the Tribunal considers it to be of particular relevance that an offer was made for the LPG Plant by state-owned KMG at that time for USD 199 million. The Tribunal considers that to be the relatively best source of information for the valuation of the LPG Plant among the various sources of information submitted by the Parties regarding the valuation for the LPG Plant during the relevant period of the valuation date accepted by the Tribunal.*

**(c) Conclusion: Your Court must reject the exequatur of the Award**

552. Throughout the arbitration proceedings, the Stati have consistently misled the Arbitral Tribunal, concealing key documents, producing false documents and making misleading statements about their alleged investment in Kazakhstan.

These frauds clearly had an impact on the Award, which is the relevant causality test as has been demonstrated.

Even using the test proposed by the Stati, it is clear that without these frauds, the Arbitral Tribunal would never have rendered the Award "*as issued on 19 December 2013*" (Stati's Submissions of 26 February 2021, §504).

This conclusion is confirmed by the expert opinion of Professor Hanotiau, for whom the impact of the Stati frauds on the Award is hardly in doubt: "*it seems clear to me that, if the documents and evidence obtained after the notification of the Award had been in the possession of the Arbitral Tribunal, they would have had a material and fundamental impact on the Award*" (**Exhibit 12.23**, §148).

This finding alone should lead your Court to reject the exequatur of the Award on the basis of Articles 1704, §3, a) and 1723, 3°, of the Judicial Code.

## VI. REBUTTAL OF THE OBJECTIONS RAISED BY THE STATI

553. The Stati put forward three grounds for refusing to allow the Court to examine the grounds for refusing to grant exequatur put forward by the RoK, which, according to the Stati, are intended to reopen the debate on the quantum of the damage that took place before the Arbitral Tribunal (A), to have arguments that have already been rejected in Sweden re-examined (B), or to have arguments that the RoK could have put forward before the Arbitral Tribunal judged by the Court of Justice of the European Communities (C).

554. As will be shown below, the grounds of appeal raised by Stati are unfounded and must be dismissed. The cross-appeal lodged by Stati in respect of their second plea in law must also, therefore, be dismissed.

### A. Rebuttal of the first refusal: the RoK does not seek to reopen the debate on the method of assessing the quantum of the Stati

555. The Stati argue that the RoK is attempting to "*reopen the debate on the merits concerning the method of assessing the quantum of the Stati's damages, which the Court of First Instance decided in a contradictory and sovereign manner and with the authority of res judicata*" (Stati's submissions of 26 February, §351 and Heading 5.7.1).

In so doing, the Stati distort and reduce the scope of the pleas put forward by the RoK.

556. Firstly, RoK does not criticise as such the method of valuation of Centrale LPG adopted by the Arbitral Tribunal, consisting in basing itself on an indicative offer made by a potential buyer.

RoK criticises the fact that Stati misled the Tribunal in this respect. As explained, the Stati produced in the arbitration the indicative offers obtained from potential purchasers they had misled (Exhibit 2.41, p. 2), presented them as perfectly reliable evidence for assessing the value of the LPG Plant (Exhibit 2.35, pp. 28-32), and asked the Tribunal to take KMG's Indicative Offer into account as an absolute minimum (Exhibit 2.35, pp. 49:9-15).

In other words, the problem is not the method itself, but the fact that the Stati asked the Arbitral Tribunal to use an offer from a purchaser that the Stati knew perfectly well was based on a false basis because it was based on false data in their financial statements. The English judge had also identified the problem perfectly: "*The Swedish court also found that KMG's Indicative Offer did not (in itself) constitute false evidence. This conclusion is valid at the time the KMG Indicative Offer was made, but I doubt that it is valid when the KMG Indicative Offer is subsequently deployed by a party who knows (but continues to conceal) that it is the product of that party's fraud. ...] If the KMG [indicative offer] is in fact the result of the misrepresentations of the [Stati] then it seems to me, at this stage*



*from the examination of the English application, that there is a sufficient likelihood that the [Arbitral] Tribunal would no longer have considered (to borrow from the language used) that [this indicative offer] had 'particular relevance' and was 'the best relative source of information for the assessment of the LPG Plant'; let alone that it would be the offer that in particular should be taken into account in assessing the damage*"<sup>378</sup> (Exhibit 5.8, §§44 and 66).

557. Secondly, as your Court will have understood from the four pleas put forward by the RoK, the latter considers that the Stati's manoeuvres did not only affect the question of the quantum of damages awarded to the Stati (even if this would be sufficient to refuse the exequatur of the Award). It maintains, on the basis of incontrovertible evidence and various concordant reports and expert opinions, that the Stati's manoeuvres affected the entire arbitral procedure and the Award, from the question of the Arbitral Tribunal's jurisdiction to that of the assessment of the quantum of damages, including the questions of liability and causality.

558. It follows that the first objection raised by Stati is unfounded.

**B. Rebuttal of the Stati's second dismissal: Your Court is not bound by the Swedish Decision which in any case did not settle the arguments submitted to You and is the result of the Stati**

559. The Stati argue, through a tortuous reasoning of more than thirty pages, that "*Kazakhstan cannot go back on an alleged "fraud" argument that has already been definitively swept aside by the Svea Court expressing itself with the authority of res judicata*" (Stati's Conclusions of 26 February, §351 and Title 5.7.2).

This second objection is no stronger than the previous one, for two simple reasons: a decision refusing annulment does not have any kind of res judicata effect against the exequatur judge (1), the Swedish courts have not ruled on the grounds for refusal of exequatur that are put forward, by application of Belgian law and in the light of the new evidence available, before your Court (2).

**1. A decision refusing to set aside an award is not binding on the enforcement judge**

560. By claiming that "[o]n the basis of Article 22 of the [CODIP], [the Swedish decisions] are recognised by operation of law in Belgium, and thus enjoy the authority of res judicata between the Stati and Kazakhstan on the question of fraud [and] are binding on your Court" (Stati's submissions of 26 February 2021, §407), the Stati defend a legally erroneous argument.

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<sup>378</sup> *As mentioned, the Swedish Court also reasoned that the KMG Indicative Bid was not (itself) false evidence. That assessment holds at the time the KMG Indicative Bid was made, but I respectfully question whether it still holds when the KMG Indicative Bid is later deployed by a party who knows (but continues to conceal) that it is the product of that party's fraud."*

561. This is evidenced by the fact that the excerpts from the articles of doctrine cited by the Stati<sup>379</sup> and the only judgment they invoke<sup>380</sup> in support of their thesis, refer to a specific situation: that where the arbitral award **has been annulled** by the courts of the seat of the arbitration. In this case, the award no longer exists and this finding should lead to the refusal of exequatur.

This solution, prescribed by the New York Convention, has been enshrined in Belgian law in Article 1721, §1, a), iv), new of the Judicial Code: "*the court of first instance shall refuse to recognise and declare enforceable an arbitral award [.....] only in the following circumstances: at the request of the party against whom it is invoked, if that party proves ... that the award ... has been set aside or suspended by a court of the country in which or under the law of which it was made.*"

562. The Stati believe that they can find in this provision a form of recognition by the Belgian legislator of "*the extraterritorial effects of a decision rendered in the context of an appeal to set aside an arbitration award*" (Conclusions of the Stati of 26 February 2021, §414). However, the scope of the aforementioned article, which is not applicable in this case, raises some questions.<sup>381</sup>

The Stati then equate, without explaining the reason, a decision to annul with a decision to reject annulment: "*A decision annulling the arbitral award (or, conversely, rejecting such an annulment) produces effects on the exequatur procedure of this award in Belgium, which necessarily implies the recognition, the res judicata and the prohibition of revision on the merits of this decision*" (Stati's conclusions of 26 February 2021, §414) (RoK underlines).

563. The very personal reading of the Stati is clearly *contra legem*.

Indeed, no text provides - and no serious author of doctrine maintains - that decisions **rejecting the annulment of** an award would have any res judicata effect in the requested State.

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<sup>379</sup> Y. Herinckx, "Registration fees and arbitral awards", *b-Arbitra*, 2013/2, p. 298; C. Verbruggen, "Annulment and enforcement of arbitral awards in Belgium", in *Annulment and enforcement of arbitral awards from a comparative law perspective - Contribution from Cepani<sup>40</sup> colloquium held on October 18, 2018*, Kluwer, 2018, p. 19; 297A. Hansebout, "De actualiteit van de arbitrale uitspraak: een conflict tussen het exequaturvonnissen en het vernietigingsvonnissen. Noot onder Besl. Brussel (Fr.) 8 juni 2017", *b-Arbitra*, 2018/1, p. 99.

<sup>380</sup> Civ. Brussels, 8 June 2017 (Seizure Chamber), *b-Arbitra*, 2017/2, p. 301.

<sup>381</sup> As Y. Herinckx, author quoted by the Stati, '*Since the law of 24 June 2013, Article 1721 of the Judicial Code includes among the grounds for refusal of exequatur the fact that the award has been 'annulled [...] by a court of the country in which or under whose law it was made'. The travaux préparatoires do not explain the scope of this provision, and some early commentaries suggest that it should not be interpreted literally and that it leaves the judge with his or her previous freedom of appreciation*', i.e. the possibility of granting enforcement of an award despite annulment in the state of the seat. See Y. Y. Herinckx, "droits d'enregistrement et sentences arbitrales", *b-Arbitra*, 2013/2, p. 296, n°21-22.

On the contrary, in accordance with the system devised by the 1958 New York Convention<sup>382</sup>, the national courts of each State in which recognition and enforcement of a foreign arbitral award is sought must, themselves and independently of the position taken by the national courts of another State, examine the grounds for refusal of exequatur that are raised before them. The Belgian exequatur procedure is therefore an **autonomous procedure**<sup>383</sup>, independent of the annulment procedure of the seat state or any other exequatur procedure.

564. Insofar as it is a question, in the context of an application for enforcement of a foreign arbitral award that has not been set aside, of determining what effect the award will have on Belgian territory, the Belgian court should exercise its own full control over the arbitral award in accordance with the rules applicable in Belgium.<sup>384</sup>

565. In this context, the Belgian judge is hardly bound by decisions taken by foreign courts: it is accepted that foreign judgments that rule on the legality of an international arbitration award in their respective legal order, whether in exequatur or annulment proceedings, necessarily have a territorially limited scope.

As taught by F. Fouchard, E. Gaillard and B. Goldman, who are authorities on arbitration, "the fact that the courts of the State where the award is made have refused to annul the award whose enforcement is sought in France has no bearing on the enforcement of the award. Goldman, who are authorities on arbitration, "*the fact that the courts of the State where the award is made have refused to annul the award whose enforcement is sought in France has **no bearing** on the extent of the control exercised by the French courts*"<sup>385</sup> (RoK emphasises).

This solution is enshrined in unanimous case law in France. In a judgment of 20 September 2005, the Paris Court of Appeal recalled that "*Decisions rendered following annulment proceedings, like decisions of exequatur, **do not produce international effects** because they concern only a specific sovereignty in the territory where it is exercised, and no assessment can be made of these decisions issued by a foreign judge in the course of an indirect trial*"<sup>386</sup> (La RdK emphasises). Commentators of this judgment have seen in it

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<sup>382</sup> See the expert opinion of Professor G. Bermann of 21 January 2021, which notes the following *The New York Convention expressly provides that a court may deny enforcement of an award if enforcement would violate the public policy of "the country where recognition and enforcement is sought."* In other words, a court before which a public policy defense is raised to defeat enforcement is instructed to apply its own public policy, not the public policy of another jurisdiction, including the seat. As is well known, the content of public policy varies from jurisdiction to jurisdiction. The drafters of the Convention thus took pains to ensure that no jurisdiction could impose its public policy on any other jurisdiction" (**Exhibit 12.24**, §34).

<sup>383</sup> Paris Court of Appeal, 10 September 1998, *Rev. arb.* 1998, p. 559.

<sup>384</sup> B. Hanotiau and B. Duquesne, "L'exécution en Belgique des Sentences arbitrales belges et étrangères", *J.T.* 1997, p. 305; Cass. fr. 29 June 2007, *Rev. arb.*, 2007, p. 507.

<sup>385</sup> F. Fouchard, E. Gaillard and B. Goldman, *Traité de l'arbitrage commercial international*, Paris, Litec, 1996, p. 929.

<sup>386</sup> Paris, 20 September 2005, No. 2004/07635, *Directorate General of Civil Aviation of the Emirate of Dubai v. International Bechtel Co. Limited Liability Company*. See also, note by P. Pinsolle under this judgment, *Stockholm International Arbitration Review*, 2005, pp. 168-169.

the confirmation of a "now classic case law"<sup>387</sup> or even a "well-established if not uncontested case law"<sup>388</sup>. It must be said that there is no shortage of decisions along the same lines<sup>389</sup>.

566. It necessarily follows from the above that the Belgian courts are in no way bound by the Swedish decisions, in particular by the Svea Court's judgment of 9 December 2016 - which, as a reminder, **rejected the application to set aside the Award**.

The decision of the English judge is, in this respect, particularly enlightening:

*"Article V(2)(b) of the New York Convention concerns the public policy of the country of enforcement. The relevant public policy can and does differ from country to country. It is correct to say that the Swedish court did not decide whether, under English law, public policy required the rejection of the application for enforcement of the award in that jurisdiction.*

*"In these circumstances, although briefly stated, I do not consider that there is any estoppel [read: res judicata]. But even if the basis for estoppel had been established, the English Court would still have to decide whether enforcement of the award should be allowed because English public policy must ultimately be a matter for the English Court"*<sup>391</sup> (**Exhibit 5.8**, §§84 and 87).

## **2. The Swedish courts have not ruled on the grounds for refusal of exequatur put forward before your Court on the basis of the evidence now available**

567. The Stati also claim that the Swedish courts "*recognised that there had been no fraud and (ii) decided the question of the causal link between the alleged fraud and the Award, deciding that an alleged fraud had in any event no influence - either direct or indirect - on the Award*" (Stati's submission of 26 February 2021, §406).

The Stati's position is contrary to the facts, and in clear contradiction to the position they were defending in the English proceedings. As will be shown, the Swedish courts did not rule on the evidence of wrongdoing by the Stati available in 2016 **(a)**, and did not rule on the grounds for refusal of enforceability developed before Your Court, on the basis of new evidence, to challenge the enforceability of the Award **(b)**.

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<sup>387</sup> A. Szekely, note under Cour d'appel de Paris, 29 September 2005, *RCDIP*, 2006, p. 387.

<sup>388</sup> H. Muir Watt, note sous Cour d'appel de Paris, 29 September 2005, *Rev. arb.* 2006, p. 700.

<sup>389</sup> See in particular. Cass. fr., 9 October 1984, *Norsolor*, *Rev. arb.* 1985, p. 431, note B. Goldman; Cass. fr., 23 March 1994, *Hilmarton*, *Rev. arb.* 1995, p. 356 and Cass. fr., 29 June 2007 (2 judgments), *Putrabali*, *Rev. arb.* 2007, p. 507.

<sup>390</sup> "*The New York Convention is addressed, at Article V(2)(b), to the public policy of the country of enforcement. Relevant public policy can and does differ from country to country. It is correct to say that the Swedish Court did not decide whether under English law public policy required the application to enforce the Award in this jurisdiction to be refused.*

<sup>391</sup> Free translation of: "*In these circumstances, albeit briefly expressed, I rule that no issue estoppel has arisen. But even had the basis of an issue estoppel been made out, the English Court would still have to decide whether enforcement of the Award should be permitted because English public order must ultimately be a matter for the English Court.*

**(a) The SVEA Court did not rule on the unlawful and fraudulent actions committed by the Stati in its judgment of 9 December 2016, and this Court was in any case itself deceived**

568. In its judgment of 9 December 2016, the SVEA Court considered that the evidence produced by the Stati in the TCE Arbitration, "*even if it proves to be false*", "*did not directly affect the outcome*" of the Award "[s]ince the tribunal based its decision on [KMG's] Indicative Offer" and that KMG's Indicative Offer should not be

This was "*considered false evidence*" as KMG had made it "*before the arbitration was initiated*" (Stati Exhibit 2.1, pp. 36-37).

569. One can start by pointing out the illogicality of this reasoning, which is difficult to understand in the context of the narrow ('minimalist') approach to exequatur control in Swedish law. Under Belgian law, a party cannot escape punishment for its fraud merely because it has succeeded in having a third party adopt the false evidence and then use the document of that third party. The reasoning of the Swedish judge was moreover logically rejected by the English judge on the grounds that it was linked to a narrow conception of public policy which is not that of English law<sup>392</sup> (**Exhibit 5.8**, §66).

570. Furthermore, and in any event, the SVEA Court did not rule on whether the Stati had committed fraud. Indeed, the Stati expressly conceded this point during the hearing on 6 February 2017 in the exequatur proceedings in England: '*So, Your Honour, if I can turn now to estoppel [equivalent to a common law bar], and perhaps I can start with what is a common ground accepted between the parties. I accept that the Swedish decision [of 9 December 2016] does not decide whether or not the Perkwood management memo, and the transfer prices, et cetera... were a fraud. I accept that it did not decide that*' (**Exhibit 5.6**, p. 99: 4-9) (RoK emphasis added).

It is therefore somewhat puzzling that the Stati should defend, before Your Court, in defiance of all procedural fairness, an interpretation of the Swedish Decision that is diametrically opposed to that which they defended before the English judge.

It should also be noted that the English judge agreed with the Stati's view and added that the Swedish court had not ruled on the indirect impact of the Stati's fraud on the award either:

*"I do not believe that the Swedish court has considered the question of the indirect impact [of fraud*

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<sup>392</sup> As the English judge notes, "*If, as I should, I take the decision of the Swedish Court as showing Swedish public policy in the context of this case then I find, as a matter of law, that English public policy is not the same. Counsel for ROK put it this way, and I agree: 'It is apparent from the outcome in Sweden alone that the content of Swedish public policy must be different from that of its English counterpart'*" (**Exhibit 5.8**, §86).

on the Award]"<sup>393</sup> (**Exhibit 5.8**, §§64 and 84) (RoK emphasis added). Indeed, as pointed out below, the Swedish Court failed to take into account that while the indicative offer was not *itself* fraudulent (in the sense that it was issued in good faith by the prospective purchaser), the Stati knew that this evidence was based on false information in the financial statements and misled the arbitral tribunal into using it to assess their alleged damages.

571. *In any event*, as confirmed in his expert opinion by Dr Patrik Schöldström, who now sits on the Svea Court himself, "*the Stati have, in the Swedish annulment proceedings, violated the duty to tell the truth and the duty not to plead 'with knowledge of the facts'*"<sup>394</sup> and "*misled the Svea Court*"<sup>395</sup> by claiming that KPMG was fully aware of their actions (**Exhibit 12.15**, §§ 84-85).

Indeed, one need only read the summary of Stati's arguments in the Swedish Decision to be convinced: "*During the review of the annual financial accounts by KPMG, TNG's auditors, they had full access to all accounting records. **KPMG was aware of Perkwood's function***" (Stati Exhibit 2.1, pp. 21 and 24) (emphasis added). It is now known that this is a blatant lie: the Stati had concealed Perkwood's status from KPMG, produced false evidence and testimony in the TCE Arbitration and withheld information regarding the valuation of the Centrale LPG.

Worse, the Stati made this assertion by fraudulently concealing from the Svea Court the fact that, by letter of 15 February 2016, KPMG had addressed a series of questions to the Stati about Perkwood and reserved the right to "*withdraw [its] audit reports*"<sup>396</sup> if the Stati did not provide answers to its questions (**Exhibit 9.2**, p. 6). Instead of answering KPMG's legitimate questions, Stati, in a letter dated 26 February 2016, **threatened** KPMG with "*In the case of KPMG Audit LLC Kazakhstan, the Stati 'hold your company accountable in the event that you choose not to cooperate with us and/or withdraw your audit reports*"<sup>397</sup> (**Exhibit 9.3**). By Stati's own admission, Stati "*did not respond to KPMG Audit LLC Kazakhstan's request to reopen the case*" (Stati's Submission 26 February 2021, §318).

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<sup>393</sup> Free translation of : "*I do not, with respect, believe that the Swedish Court has dealt with the issue of indirect impact (i.e. ground (b) under Swedish Law).*"

<sup>394</sup> "*the Stati Parties in the Swedish Annulment Proceedings violated the duty to tell the truth and the duty not to litigate 'against better knowledge'.*"

<sup>395</sup> "*this is also because the Stati Parties misled the Svea Court that 'KPMG had full access to all accounting records' 42 and that the Stati Parties 'did not mislead KPMG [...]' 43 The Stati Parties had clearly known that this was not the case, as in its letter of 15 February 2016 to the Stati Parties KPMG raised its concerns on the facts that it had not been provided with full and truthful account.*"

<sup>396</sup> "*In case we receive no explanations or additional representations, we remain our rights to seek to prevent future reliance on our audit reports and in particular to withdraw our audit reports and to inform about such withdrawal all parties who are still, in our view, relying on these reports, including but not limited, Ministry of Justice of the Republic of Kazakhstan and the Svea Court of Appeals.*"

<sup>397</sup> "*In the meantime, we expressly reserve the right to hold your firm accountable should you choose not to co-operate with us and/or proceed to withdraw your audit reports.*"

**(b) The Swedish courts have not ruled on the grounds for refusal of exequatur under Belgian law which are put forward before the Court**

572. As explained in the previous section, the RoK invokes before the Court four grounds for refusing the exequatur of arbitral awards that are provided for by Belgian law.
573. None of these four grounds for refusal of enforceability has been considered or decided by the Svea Court (or any other Swedish court). This is sufficient to conclude that the decision of the Svea Court cannot prevent your court from considering these grounds.
574. Furthermore, the pleas put forward before Your Court are based on new evidence that has emerged since the Svea Court ruled, including in particular KPMG's confirmation that it was misled in the preparation of the audit reports on Stati's financial statements, and the bank and accounting evidence of the misappropriation of funds by Stati.

**3. Conclusion: the Swedish Decision is not binding on Your Court, which must review the Award in accordance with Belgian law**

575. It follows from the foregoing that the second ground of non-admissibility raised by Stati is manifestly unfounded, both in law and in fact. Your Court must review the Award under the rules of Belgian law. It is not bound by the Swedish Decision, nor by any subsequent decision of the Swedish courts. In any event, the latter have never ruled on the unlawful and fraudulent conduct of the Stati, which the Stati have expressly acknowledged.

**C. Rebuttal of the Stati's third refusal: the RoK discovered the Stati's unlawful conduct after the Award was made and could not reasonably have discovered it earlier**

576. Finally, the Stati argue that the RoK "*can no longer invoke an alleged 'fraud' argument since it should have invoked it in due course, i.e. before the arbitral tribunals*" (Stati's Conclusions of 26 February, §351 and Section 5.7.3).

Specifically, the Stati claim that the RoK "*was aware of all the essential factual elements allegedly underlying its fraud allegations before and during the arbitration and even judicially acknowledged that it could have discovered the fraud during the arbitration*" and that, therefore, the new Article 1679 of the Judicial Code would prevent it "*from invoking an alleged fraud on the pretext of the discovery of new elements*" (Conclusions of 26 February 2021, §473).

577. The Stati's argument does not stand up to analysis for at least three reasons. Firstly, the new Article 1679 of the Judicial Code is not applicable in this case (1). Secondly, the RoK did not refrain, in violation of procedural fairness, from raising during the arbitration

the pleas that it invokes before the Court, simply because it was not aware of them (2). Thirdly, the RoK has never acknowledged that it could have discovered the unlawful and fraudulent conduct of the Stati during the arbitration, and this could not, in any event, be the basis for the Stati's plea of inadmissibility (3).

### 1. Neither the new Article 1679 of the Judicial Code nor Article 1704, §4 of the Judicial Code are applicable in this case

578. Although the Stati recognise that the Court decided, in its judgment of 17 November 2020, that the new Part 6 of the Judicial Code "*is not applicable in this case*", they argue that the new Article 1679 of the Judicial Code should nevertheless be applied because it would merely "*codify a general principle [...] which prevailed under the former Part 6 of the Judicial Code*", which the doctrine would confirm (Conclusions of 26 February 2021, §473).

579. The doctrine does not share the Stati's thesis. It sees in this article 1679 "*a novelty*"<sup>398</sup>.

As O. Caprasse explains, "*the Judicial Code did not contain such a general principle. The idea of procedural fairness was not totally absent, but only enshrined in a limited way. Thus, Article 1704, paragraph 4, of the Judicial Code provided, for example, that certain grounds for setting aside could not be invoked if the party invoking them had become aware of them during the arbitration proceedings and had not then raised them. The novelty therefore lies in the generalisation of the rule*"<sup>399</sup> (RoK underlines).

In the same vein, E. Stein, extensively quoted by the Stati, explains that in the former Part 6 of the Judicial Code, "*there was no general rule on renunciation. On the contrary, there were only two specific cases where renunciation was mentioned, namely (i) in Article 1704, §4, former B.J.C., where a party loses its right to assert a ground for setting aside an award when it learned of this ground during the arbitral proceedings and did not raise it; and (ii) in Article 1717, 4°, former B.J.C., where a party may waive its right to set aside an award*"<sup>400</sup> (RoK underlines).

580. Article 1704, §4 of the Judicial Code, referred to by the above-mentioned authors, is not applicable in this case either.

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<sup>398</sup> O. Caprasse, "Introduction au nouveau droit belge de l'arbitrage", in *Actualités en droit judiciaire*, Brussels, Larcier, 2013, p. 420, n°93.

<sup>399</sup> *Ibid.*

<sup>400</sup> E. Stein, "Article 1679", in *Arbitration in Belgium - A Practitioner's Guide*, Wolters Kluwer, 2016, p. 46, no. 2. Free translation of: "*In the Old B.L.A., there was no general rule dedicated to waiver. Instead, there were only two specific instances where waiver was invoked, namely: (i) in Article 1704, 4° Old B.J.C., where a party loses its right to assert a ground for annulment of an award when it learned of the ground over the course of the arbitral procedure and did not raise it; and (ii) in Article 1717, 4° Old B.J.C., where a party may waive its right to set aside an award.*"



This article provides that "*The cases provided for in paragraph 2 (c), (d) and (f) shall not be considered as grounds for setting aside the award [or for refusing enforcement] if the party invoking them became aware of them during the arbitral proceedings and did not invoke them at that time.*"

Assuming that it can be applied to the grounds for refusing an enforcement order when it explicitly refers to the "grounds for setting aside the award", it should be noted that the situations referred to exhaustively in this article<sup>401</sup> are not invoked by the RoK in support of its claims in the present proceedings.

581. If it were to be considered that the above-mentioned provisions could nevertheless be applicable in this case, *quod non*, it would still be necessary for the Stati to show that RoK "***became aware during the arbitration proceedings***" of a defence and "*did not raise it at that time*"<sup>402</sup> (RoK emphasises).

On this point, Article 1704(4) of the Judicial Code and the new Article 1679 of the Judicial Code are similar in that they require the party to have had "*knowledge*"<sup>403</sup> of the irregularity invoked during the arbitration proceedings.

On the other hand, the new Article 1679 of the Judicial Code introduces a new condition: the party must have refrained, "*without legitimate reason*", from invoking the irregularity of which it was aware.

E. Stein notes that these terms have not been defined by the legislator and that it will be up to the case law to define their contours<sup>404</sup>. However, it is unanimously agreed that this new condition is intended to "*sanction behaviour contrary to procedural fairness*"<sup>405</sup> and to "*prevent a party, acting disloyally, from keeping a means at hand that would enable it to oppose the award, and thus the effectiveness of the arbitration, if it were to be unfavourable*"<sup>406</sup>.

In the present case, however, the RoK had no knowledge of the irregularities that it invoked before the Court, as it was unaware of the existence and extent of the unlawful and fraudulent conduct of the Stati, and it obviously did not deliberately refrain, in breach of procedural fairness, from raising these elements during the arbitration.

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<sup>401</sup> That is, situations where "there is *no valid arbitration agreement*" (letter c), where "*the tribunal has exceeded its jurisdiction or powers*" (letter d) and where "*the award was made by an irregularly constituted arbitral tribunal*" (letter f).

<sup>402</sup> Civ. Mons, 21 March 2000, *R.R.D.*, 2001, p. 55.

<sup>403</sup> Civ. Mons, 21 March 2000, *R.R.D.*, 2001, p. 55. E. Stein, "Article 1679", in *Arbitration in Belgium - A Practitioner's Guide*, Wolters Kluwer, 2016, p. 48, no. 13.

<sup>404</sup> E. Stein, "Article 1679", in *Arbitration in Belgium - A Practitioner's Guide*, Wolters Kluwer, 2016, p. 48, no. 14.

<sup>405</sup> O. Caprasse, "Introduction au nouveau droit belge de l'arbitrage", in *Actualités en droit judiciaire*, Brussels, Larcier, 2013, p. 420, n°92. See also E. Stein, "Article 1679", in *Arbitration in Belgium - A Practitioner's Guide*, Wolters Kluwer, 2016, p. 45, n°1.

<sup>406</sup> M. Dal, "La nouvelle loi sur l'arbitrage", *J.T.*, 2013, p. 787.

## **2. The RoK did not refrain from raising the pleas in law that it invokes before Your Court, simply because it was not aware of them**

582. The Stati, who for many years did everything possible to conceal their misdeeds from their own auditor and from all parties closely or remotely involved in their Kazakh Project, argue that the RoK "*was aware of all the essential factual elements underlying its alleged fraud during, and even before, the arbitration*" (Conclusions of 26 February 2021, §479).

They point to the Arbitral Tribunal's finding in its Award that "*while it inspected and monitored the [Stati] investments and their corporate structures for years, the [RoK] did not allege that anything was illegal or improper until October 2008*"<sup>407</sup> (**Exhibit 2.1**, §812). They also claim that RoK has "*[gotten] hold of all the documents relating to [the] Kazakh companies, KPM and TNG, and "certainly those around which Kazakhstan is building its alleged fraud"*" (Submissions 26 February 2021, §480).

The Stati thesis does not stand up to analysis.

583. Before demonstrating this precisely, by reference to the documents in the file, it should be noted that the Stati's argument defies common sense: why would RoK, if it had had the opportunity to put forward a defence based on the Stati's deceptions, which have now come to light, in the arbitration proceedings, not have invoked this defence in the said proceedings rather than waiting for the exequatur procedures?

On the merits of the Stati's argument, it should be noted that in its Award the Arbitral Tribunal merely found that the RoK was able to monitor the Stati's investment. This was also the case for KPMG, the Stati's auditor, which audited the financial statements of the Kazakh companies for over three years. However, it was only in 2016 that KPMG suspected that Stati had misled it about Perkwood's related company status, and only in 2019 did it become certain, following Artur Lungu's disposition in the US.

The Stati do not demonstrate that RoK had knowledge of the elements they had concealed from their own auditor for years. Nor do the Stati demonstrate that RoK had knowledge of the massive misappropriation of funds they had orchestrated over the years and the frauds they had committed to deceive all stakeholders. In particular, the Stati do not demonstrate that RoK had access to their account statements at Rietumu Banka which revealed the illegal fund transfers, nor to the

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<sup>407</sup> Free translation of : "*Whether that aspect is also relevant for the merits of the case, will have to be examined later in this Award. In addition, the Tribunal notes that, as the timeline above demonstrates, while inspecting and monitoring Claimants' investments and their corporate structures for years, Respondent failed to allege that anything was illegal or improper prior to October 2008.*"

This is not the case with the Stati's triple black bookkeeping, nor with the information on Perkwood's status as a related company, nor with all the other evidence that is available today.

In 2016, the Stati still claimed before the Svea Court that "*KPMG was aware of Perkwood's function*" (Stati Exhibit 2.1, pp. 21 and 24). In 2019, the Stati resumed misleading the first judge in the Belgian exequatur proceedings, claiming that it is "*inaccurate to claim that 'the Stati misled their own auditors KPMG (and others) about the nature of their relationship with Perkwood, by falsely claiming that this company was a third party [...].The seriousness of the allegations ('forgery') that Kazakhstan alleges [...] calls into serious question the role played by KPMG, which Kazakhstan claims was manipulated by the Stati from start to finish without a word*" (Stati's submission of 25 October 2019, §650) (RoK underlines).

584. In fact, as explained in detail in the statement of facts (see *supra*, Title III), RoK **only** discovered the first elements of the fraud **from the second half of 2015 onwards** and has gradually put together the pieces of the Stati puzzle since then. The chronology of the discovery of Stati's unlawful and fraudulent conduct is usefully summarised in Annex 3 attached to Professor Bermann's expert opinion (**Exhibit 12.20**, pp. 11-26).

In summary, RoK discovered in the course of 2014 the existence of two parallel arbitrations between the Stati and their former partner Vitol. In February 2015, the RoK formally requested from Vitol certain documents produced in the Vitol FSU Arbitration. The Stati formally objected. RoK was obliged to seek permission from a New York court, which it obtained in June 2015 (**Exhibit 3.10**). It was therefore only in the second half of 2015 that RoK was able to discover that Perkwood was a related company and that the Stati had artificially inflated the construction costs of the LPG Plant. However, the RoK was unaware at the time that the Stati's misdeeds were in fact much more extensive, which it was only able to discover after the document production proceedings in England in 2018 in which the Stati were forced to produce more than 70,000 documents and with the obtaining of the account statements of the Stati's related companies between 2016 and 2019.

585. It follows from the above that RoK was not aware of Stati's unlawful and fraudulent conduct during the arbitration proceedings and therefore did not refrain from invoking it at the time.

If necessary, the RoK respectfully draws your Court's attention once again to the inconsistency of the Stati's argument: why would the RoK have refrained from invoking in the arbitration the elements relating to the Stati's illegal and fraudulent actions if it had been aware of them, when these elements would have had a fundamental impact on the entire procedure?

**3. The RoK has never acknowledged that it could have discovered the unlawful and fraudulent conduct of the Stati during the Arbitration, and this could not be the basis for the Stati**

586. Finally, the Stati argue that the RoK "*acknowledged that [it] could have discovered the alleged fraud during the arbitration*", from which they conclude that it can no longer be invoked before your Court (Conclusions of 26 February 2021, §481-484).

This claim must be rejected for two reasons, one of law and one of fact.

587. Firstly, assuming that this assertion is true, *quod non*, it has no legal basis: neither Article 1704, §4, of the Judicial Code, nor the new Article 1679 of the Judicial Code are applicable in this case. Assuming that these provisions may nevertheless be effective in the present case, *quod non* yet, it should in any event be noted that they require actual knowledge, at the time of the arbitration, of the means subsequently invoked to oppose the Award<sup>408</sup>. The mere fact that a party "could have discovered these facts" is not sufficient.

588. Secondly, the statement is factually incorrect. The RoK could not have discovered the illegal and fraudulent actions of the Stati, for the simple reason that the Stati had done everything possible to conceal them. The Stati's own auditors, KPMG, were also deceived and did not discover the money, nor did all the stakeholders in the Kazakh Stati Project.

The Stati had previously argued before the English judge that RoK could have discovered their wrongdoing during the arbitration. The allegation was firmly rejected by the English judge in his judgment of 6 June 2017: "[RoK] **did not have access, prior to the Award, to the evidence of the alleged fraud on which it now wishes to rely, and that the evidence of the alleged fraud could not, with reasonable diligence, have been discovered prior to the Award**"<sup>409</sup> (Exhibit 5.8, §79) (RoK emphasis added).

589. The Stati claim that the RoK deceived the English judge, that it later admitted this deception, and that it could have discovered everything at the time of the ECT arbitration. In support of this argument, the Stati rely on the content of certificates filed in the English exequatur proceedings by one of the counsels in the arbitration proceedings (Ms Patricia Nacimiento) and by one of the English counsels (Mr Philip Carrington).

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<sup>408</sup> Civ. Mons, 21 March 2000, *R.R.D.*, 2001, p. 55. E. Stein, "Article 1679", in *Arbitration in Belgium - A Practitioner's Guide*, Wolters Kluwer, 2016, p. 48, no. 13.

<sup>409</sup> Free translation of : "*I am satisfied that the State did not have access before the Award to the evidence of the alleged fraud on which it now seeks to rely, and that the evidence of the alleged fraud could not with reasonable diligence have been discovered before the Award had the State used reasonable diligence.*"

Given the fact that the Stati are trying to dramatise this issue, and although this debate is not relevant in this case (for the reasons given above), RoK considers it useful to set the record straight. It is sufficient to recall the chronology of events in England:

589.1. On 13 January 2017, Ms Nacimiento filed a witness statement in which she explained that "*the discovery of the Stati fraud was based on four critical factors, none of which could be discovered by the [Republic of Kazakhstan] until recently*",<sup>410</sup> namely: (i) the fact that Perkwood was a company related to the Stati; (ii) the Perkwood Contract which was not produced in the ECT Arbitration; (iii) the existence of double (actually triple) accounting for the construction costs of the LPG Plant; and (iv) Artur Lungu's revelation that Perkwood had charged a

This is a "management fee" of USD 44 million to TNG (**Exhibit 5.5**, §38).

Ms Nacimiento added that "*In 2012, Vitol initiated enforcement proceedings against Montvale in Kazakhstan [following the Vitol SA Arbitration]. The [RoK] became aware of these proceedings by chance in 2015*" and "*could only discover these elements following the SDNY production proceedings in June 2015*"<sup>411</sup> ordering the production of documents filed by the Stati in the other arbitration between the Stati and Vitol, the Vitol FSU Arbitration which concerned the construction costs of the LPG Plant (**Exhibit 5.5**, §39).

589.2. On 6 June 2017, the English judge (J. Knowles) found that there was "*sufficient prima facie evidence that the Award was obtained by fraud*"<sup>412</sup> (**Exhibit 5.8**, §92) and that "*[RoK] did not have access, prior to the Award, to the evidence of the alleged fraud on which it now wishes to rely, and that the evidence of the alleged fraud could not, with reasonable diligence, have been discovered prior to the Award*"<sup>413</sup> (**Exhibit 5.8**, §79).

On that occasion, the English judge noted that the Stati did not explain

*The Commission has not been able to explain "the lack of production of the Perkwood Contract in the arbitration, nor why it took until the hearing before the Swedish Court to admit that Perkwood was a related company"*<sup>414</sup> (**Exhibit 5.8**, §76).

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<sup>410</sup> Translation of : "*The Defendant was not able to discover the facts and matters underpinning the Fraud Case during the Arbitration, because the uncovering of the Stati Parties' fraud rested on four critical factors, none of which was discoverable by the Defendant until recently.*"

<sup>411</sup> Free translation of : "*The Defendant was only able to uncover these matters as a result of obtaining the SDNY Disclosure in June 2015, in the following circumstances: (1) In 2012 Vitol initiated enforcement proceedings against Montvale in Kazakhstan. The Defendant became aware of these proceedings by chance in 2015 and, in consequence, on 6 February 2015, presented a request to Vitol to obtain access to information regarding, inter alia, a joint operating agreement, the financing, and the completion of the LPG Plant [...]*".

<sup>412</sup> Free translation of : "*sufficient prima facie case that the Award was obtained by fraud*".

<sup>413</sup> Free translation of : "*I am satisfied that the State did not have access before the Award to the evidence of the alleged fraud on which it now seeks to rely, and that the evidence of the alleged fraud could not with reasonable diligence have been discovered before the Award had the State used reasonable diligence*".

<sup>414</sup> Free translation of : "*Again these facts do not explain the failure to produce the Perkwood Contract in the Arbitration, or why it should take until the hearing before the Swedish Court to concede that Perkwood was a related company.*"

The Stati have still not given this explanation.

589.3. The Parties then had to undergo a document production procedure.

589.4. On 5 January 2018, Ms Nacimiento filed another witness statement. In it, she returned to the chronology of the discovery of the Stati-Vitol arbitrations, explaining that the RoK "*actually became aware of the enforcement proceedings against Montvale in Kazakhstan in 2014 (not 2015)*", that before that, "*there had only been unsubstantiated rumours since around late 2012/early 2013 that the Stati might be involved in arbitration proceedings against Vitol*" but that it was only '*in or around the summer of 2014, [that] Vitol approached the [RoK] requesting assistance with the enforcement in Kazakhstan of the award obtained in the Montvale Arbitration [Vitol SA Arbitration]. Subsequently, [RoK] sought to obtain additional information from Vitol, which led the Respondent to address a written request for information and documents to Vitol on 6 February 2015*'<sup>415</sup> (**Exhibit 5.12**, §§4-5).

RoK voluntarily provided these clarifications and corrections to the English judiciary in order to ensure that the facts presented in the proceedings were correct and in accordance with the chronology in every detail. This is in stark contrast to the approach of the Stati, who have consistently made misleading statements in the post-arbitration proceedings (including in Belgium) (consider the allegation that KPMG was fully aware of Perkwood's status!).

On the merits, RoK's knowledge in the summer of **2014** of the existence of other proceedings involving the Stati is of no consequence whatsoever since, in any event, the Award had been rendered since 19 December **2013**. However, as the Stati vigorously objected to Vitol transmitting to RoK any documents produced in the Vitol arbitrations, RoK was obliged to seek permission from a New York Court, which it obtained in **June 2015** (**Exhibit 5.12**, §6). Ms Nacimiento therefore confirmed that it was not until the second half of 2015 that RoK was able to uncover the first evidence of fraud (**Exhibit 5.12**, §5).

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<sup>415</sup> It is correct that the Defendant only uncovered the matters underpinning the fraud as a result of obtaining the SDNY Disclosure: "*It is correct that the Defendant only uncovered the matters underpinning the fraud as a result of obtaining the SDNY Disclosure. However, the Defendant in fact became aware of the enforcement proceedings against Montvale in Kazakhstan in 2014 (not 2015). Prior to this, there had been only unsubstantiated rumours from around late 2012/early 2013 that the Stati Parties might be involved in arbitral proceedings against Vitol. Whilst efforts were made by the Defendant at that time to establish whether these rumours were true, no information of any nature could be obtained. This remained the position throughout 2013 (including in December 2013, when the Tribunal rendered its final award in the ECT Arbitration and in January 2014, when it corrected the final award). Subsequently, in or around the summer of 2014, Vitol approached the Defendant seeking assistance with the enforcement in Kazakhstan of the award obtained in the Montvale Arbitration. Thereafter, the Defendant sought further information from Vitol and this resulted in the Defendant making a written request to Vitol for information and documentation on 6 February 2015.*"

589.5. On 26 February 2018, in the middle of the document production proceedings, the Stati suddenly introduced a "notice of discontinuance" of the English exequatur proceedings to avoid a trial on the merits (**Exhibit 5.13**).

589.6. On 6 March 2018, Mr Carrington, counsel for the RoK in the English exequatur proceedings, filed a witness statement detailing the steps taken by the RoK to produce the documents requested by the Stati. In it, Mr Carrington explained that RoK's counsel reviewed several tens of thousands of documents, both in hard copy and electronic format, and that the documents requested by the Stati were produced on time, which was not the case for the Stati who had just decided to abandon the English proceedings (**Exhibit 5.14**, §26).

589.7. On 16 March 2018, Mr Carrington filed a second witness statement. In it, he explained that RoK's English counsel had noted that a copy of the Perkwood Contract was among thousands of documents from TNG's archives provided by Bolashak, RoK's Kazakh counsel (**Exhibit 5.15**, §47). As explained in

Mr Carrington, RoK's English counsel interviewed Bolashak and a former Ministry of Justice employee involved in the conduct of the ECT Arbitration. This former employee "*was not aware of the electronic copy of the Perkwood Agreement during the Arbitration, and would not have been aware of its relevance in any event*" and that "*counsel for [RoK] was not provided with a copy of the Perkwood Agreement during the Arbitration*" (**Exhibit 5.15**, §48).

Again, RoK has provided these details to the English judiciary voluntarily and transparently, in accordance with the highest ethical standards in handling the case.

589.8. On 11 May 2018, the English judge (J. Knowles) rejected the Stati's "notice of discontinuance", considering, inter alia, that "*the real reason for the notice of discontinuance is that the Stati do not want to take the risk that the trial will result in findings against them and in favour of the State*"<sup>417</sup> (**Exhibit 5.16**, §25).

On this occasion, the English judge also examined the various witness testimonies filed since his judgment of 6 June 2017, including the testimonies of Ms Nacimiento and Mr Carrington, which the Stati instrumentalise to argue that the RoK would have "*acknowledged that [it] could have discovered the alleged fraud during the arbitration*"

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<sup>416</sup> Free translation of : "*To the best of his recollection, he was not aware of that electronic copy of the Perkwood Contract during the Arbitration, and would not have been aware of its significance in any event. Furthermore, I am informed that the Defendant's legal counsel in the Arbitration were not provided with a copy of the Perkwood Contract during the Arbitration.*"

<sup>417</sup> Free translation of : "*I am however prepared to hold that the real reason for the notice of discontinuance is that the Statists do not wish to take the risk that the trial may lead to findings against them and in favour of the State*".

(Conclusions of 26 February 2021, §481-484). What the Stati deliberately fail to tell Your Court is that **the English judge has already rejected this argument of the Stati**.

Indeed, in his judgment of 11 May 2018, the English judge first recalled that under the principles applicable in English law, it is necessary that "*evidence to establish fraud was not available to the party alleging fraud*" at the time of the arbitration and that there is "*a prima facie case of fraud sufficient to overcome the Court's extreme caution when asked to set aside [or refuse enforcement of] an award on grounds of public policy*".<sup>418</sup> He then stated:

*"I concluded on 6 June 2017 that these conditions were met. [...] This remains the case, notwithstanding the fact that the issues have since been considered at a higher level in Sweden"*<sup>419</sup> (**Exhibit 5.16**, §§15-16).

In other words, the English judge himself confirmed that the witness testimonies that the Stati make much of in the present proceedings had **absolutely no impact** on his judgment of 6 June 2017.

590. As can be seen from the content of these witness statements and the chronology of events, RoK learned of the arbitration proceedings between Stati and Vitol in 2014 and found during the document production proceedings in England in 2018 that an electronic copy of the Perkwood Contract was among the thousands of documents in TNG's archive.

These two elements do not, by themselves, reveal the existence of large-scale fraud committed by Stati. Firstly, the existence of an arbitration procedure between Stati and Vitol reveals nothing more than the existence of a commercial dispute. Secondly, at the time of the arbitration proceedings, RoK believed, as did KPMG and all those involved in the Stati's Kazakh Project, that Perkwood was an independent company, which is what **all the** documents produced by the Stati in the arbitration indicated. One only has to read the Award to be convinced of this: Perkwood appears only once, as an independent company ("*third party*") (**Exhibit 2.1**, §1450).

591. From the above, it can be seen that Stati's argument that RoK "*acknowledged that [it] could have discovered the alleged fraud during the arbitration*" (Conclusions of 26 February 2021, §481-484) is irrelevant to the present case and is, in any event, factually incorrect.

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<sup>418</sup> The first condition is "*that the evidence to establish the fraud was not available to the party alleging the fraud at the time of the hearing before the arbitrators. The second condition is that "there is a prima facie case of fraud which is sufficient to overcome the extreme caution of the Court when invited to set aside an award on the grounds of public policy.*"

<sup>419</sup> Translation of: '*I concluded on 6 June 2017 that these conditions were met. [...] That remains the case notwithstanding that matters have since been considered at a higher level in Sweden*'.



#### **4Conclusion: the Stati's refusal to accept is clearly unfounded**

592. It follows from the foregoing that the third ground for dismissal invoked by Stati is, like the first two, manifestly unfounded, both in law and in fact. Neither the new Article 1679 of the Judicial Code nor Article 1704(4) of the Judicial Code are applicable in this case and it has been shown, in any event, that the condition of actual knowledge required by these provisions, if they are to be applied at all, is not met.

The question of whether RoK could have discovered the unlawful and fraudulent conduct of the Stati is not relevant in this case. It is in any case contradicted by the facts.

## **VII. EXPENSES**

593. The Republic of Kazakhstan seeks an order that the Stati pay all the costs and expenses of both sets of proceedings, including the procedural allowance.

594. On the basis of Article 1022(3) of the Judicial Code<sup>420</sup>, the maximum amount of procedural damages should be fixed.

The complexity of the case seems difficult to criticise and is not disputed by the Stati.

The manifestly unreasonable nature of the situation must also be taken into account, in particular because of the abusive and unreasonable behaviour of Stati.

595. Moreover, since the case falls into the category of non-monetary disputes, the maximum procedural compensation is by no means excessive.

596. Therefore, the Republic of Kazakhstan requests that Stati be ordered to pay procedural damages of EUR 36,000 per instance, which is the maximum amount for disputes that cannot be evaluated in money.

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<sup>420</sup> This provision specifies that "At the request of one of the parties, which may be made at the request of the judge, the judge may, by a specially reasoned decision, either reduce the compensation or increase it, without however exceeding the maximum and minimum amounts provided for by the King. In his assessment, the judge shall take into account - the financial capacity of the unsuccessful party, in order to reduce the amount of compensation; - the complexity of the case; - the contractual compensation agreed for the successful party; - the manifestly unreasonable nature of the situation.

## VIII. DEVICE

### BY THESE REASONS,

Subject to any other legal or factual arguments to be made in the course of the proceedings,

### PLEASE THE COURT OF APPEAL IN BRUSSELS,

To declare the appeal of the Republic of Kazakhstan well founded.

To reform the judgment under appeal, except insofar as it declared the third party opposition against the enforcement order of 11 December 2017 admissible and, ruling by way of new provisions,

- Granting the original third party opposition against the exequatur order of 11 December 2017 ;
- Find that the Award could not, and cannot, be recognised or enforced in Belgium on the basis of Article 1723, 2° of the Judicial Code and/or Articles 1723, 3° and 1704, 3°, c) of the Judicial Code and/or Articles 1723, 3° and 1704, 3°, a) of the Judicial Code and/or Articles 1723, 3° and 1704, 3°, b) of the Judicial Code - these provisions being referred to as they were in force prior to their amendment by the Law of 24 June 2013;
- Order the annulment and withdrawal of the exequatur order of 11 December 2017.

Declare the cross-appeal of the Stati unfounded.

Order the Stati to pay all the costs and expenses of the two sets of proceedings, including the procedural indemnity calculated, for each of the two sets of proceedings, at its maximum amount for disputes not assessable in money, namely EUR 36 000.

Brussels, 30 April 2021,

For the Republic of Kazakhstan,

One of its Councils,

Arnaud Nuyts

#### Appeal costs :

- Submission fee: EUR 591.91
- Compensation for the proceedings at first instance: 36,000 EU
- Compensation for proceedings on appeal: EUR 36,000

**Total:** EUR 72,591.91

**TABLE 1: SUMMARY OF TRANSFERS RE. OIL SALES**

**Table 1** compiles the account statements of Terra Raf and Montvale relating to the use of funds paid by Vitol SA under the KPM and TNG COMSA Contracts between 15 November 2005 and 3 November 2010.

**Part 1: Extracts from Terra Raf's accounts**

Exclusion: Amounts in **yellow** are excluded from the calculations because they are from Vitol FSU.

Table 1.1 - Extracts from Terra Raf's accounts					
Date	KPM COMSA (11.11.2005)		TNG COMSA (20.01.2006)		Reimbursement
	From Vitol S.A.	In Stadoil	From Vitol S.A.	To General Affinity	To Vitol S.A.
17.11.2005	15.000.000				
6.12.2005	5.000.000				
14.12.2005					- 52.125
20.12.2005	9.000.000	- 4.710.000			
22.12.2005		- 2.500.000			
23.12.2005		- 500.000			
27.12.2005		- 500.000			
<b>2005</b>	<b>29.000.000</b>	<b>- 8.210.000</b>	<b>0</b>	<b>0</b>	<b>- 52.125</b>
11.01.2006		- 1.812.300			
12.01.2006					- 157.823
18.01.2006		- 3.000.000			
20.01.2006	5.000.000	- 2.500.000			
23.01.2006		- 400.000			
30.01.2006		- 3.500.000			
31.01.2006	4.800.000				
3.02.2006	9.000.000				
7.02.2006					- 189.051
9.02.2006		- 2.400.100			
15.02.2006					- 56.900
16.02.2006			10.000.000		
21.02.2006		- 1.000.000			
28.02.2006		- 1.000.100	5.000.000		
7.03.2006	9.000.000		4.000.000		
7.03.2006		- 2.252.400			- 273.514
16.03.2006			7.000.000	- 6.916.800	
21.03.2006		- 1.000.000	3.000.000		
27.03.2006		- 1.000.000			
4.04.2006		- 3.460.300	9.000.000		
6.04.2006	11.000.000				
7.04.2006		- 7.018.500		- 3.218.400	- 397.460
13.04.2006				- 3.000.000	
21.04.2006	3.000.000	- 500.000			

28.04.2006			7.000.000		
5.05.2006					- 261.365
8.05.2006	12.000.000	- 3.400.100	3.000.000	- 2.016.800	
9.05.2006					- 194.022
15.05.2006				- 6.000.000	
22.05.2006		- 2.400.000			
6.06.2006	11.500.000		9.500.000		
7.06.2006		- 1.500.100			
8.06.2006					- 320.933
12.06.2006					- 223.075
14.06.2006		- 1.863.000		- 8.089.200	
21.06.2006			3.000.000		
28.06.2006		- 500.100		- 542.900	
5.07.2006					- 279.093
6.07.2006	10.000.000		4.500.000		
6.07.2006	10.000.000 (FSU)				
7.07.2006		- 4.700.000		- 2.700.000	
12.07.2006					- 217.914
18.07.2006		- 4.000.000			
26.07.2006		- 1.000.100			
2.08.2006				- 1.120.400	
8.08.2006	12.000.000	- 4.200.000	10.000.000		
11.08.2006				- 1.825.900	- 287.290
16.08.2006		- 4.000.200		- 5.348.700	
24.08.2006					- 258.557
25.08.2006		- 2.792.000			
5.09.2006					- 492.483
6.09.2006	11.000.000	- 2.800.000			
8.09.2006			10.000.000		
12.09.2006		- 2.500.100		- 2.804.600	
15.09.2006				- 6.648.150	
18.09.2006			3.000.000		
22.09.2006		- 2.700.000		- 3.406.400	
6.10.2006	9.500.000		4.000.000		
9.10.2006		- 2.370.600			- 271.502
11.10.2006				- 4.000.100	
16.10.2006		- 2.130.000		- 5.847.100	
23.10.2006		- 1.000.100			
24.10.2006					- 221.532
3.11.2006	6.000.000			- 984.100	
3.11.2006		- 1.000.000			- 541.410
8.11.2006		- 4.000.100	6.500.000	- 1.973.700	
13.11.2006				- 2.250.000	

16.11.2006				- 2.150.100	
17.11.2006				- 1.600.000	
20.11.2006			10.000.000		
22.11.2006		- 1.649.700		- 1.000.000	
6.12.2006	7.800.000		3.600.000		
6.12.2006					- 200.000
7.12.2006		- 2.700.000			
8.12.2006					-256.799
12.12.2006		- 2.500.100		- 2.224.100	
14.12.2006				- 4.000.000	
15.12.2006		- 1.500.000	3.000.000	- 1.000.000	
20.12.2006		- 512.500		- 529.900	
28.12.2006					- 246.830
<b>2006</b>	<b>121.600.000</b>	<b>- 88.562.500</b>	<b>115.100.000</b>	<b>- 81.197.250</b>	<b>- 5.347.553</b>
10.01.2007	7.500.000		3.000.000		
11.01.2007					- 550.769
15.01.2007		- 6.000.000		- 2.300.700	
16.01.2007				- 5.200.000	
18.01.2007		- 5.000.000			
6.02.2007	6.900.000				
8.02.2007			8.800.000		
12.02.2007				- 1.879.300	
13.02.2007		- 9.372.800			
14.02.2007					- 562.280
15.02.2007		- 15.634.400			
20.02.2007				- 6.318.500	
8.03.2007			7.300.000	- 1.807.100	
12.03.2007	10.500.000	- 3.200.000			
19.03.2007				- 6.428.800	
20.03.2007		- 3.000.000			- 249.974
30.03.2007		- 11.880.500		- 8.119.300	
2.04.2007	10,000,000 (FSU)				- 275.788
10.04.2007					- 573.897
11.04.2007	7.750.000		8.500.000		
17.04.2007		- 393.800		- 4.571.900	
11.05.2007					- 549.407
14.05.2007		- 695.300		- 4.793.200	
7.06.2007	19.000.000				
13.06.2007					- 442.978
18.06.2007		- 2.247.500		- 4.761.350	
<b>6M 2007</b>	<b>51.650.000</b>	<b>- 57.424.300</b>	<b>27.600.000</b>	<b>- 46.180.150</b>	<b>- 3.205.093</b>
<b>Total Terra Raf</b>	<b>202.250.000</b>	<b>- 154.196.800</b>	<b>142.700.000</b>	<b>- 127.377.400</b>	<b>- 8.604.771</b>

## Part 2: Extracts from Montvale's accounts

**Inclusion:** In addition to the transfers between Montvale and Vitol SA, Stadoil and General Affinity, Part Two also compiles the transfers between Montvale and Hayden.

**Exclusion:** The amounts in yellow are excluded from the calculations because they originate from the Lenders of the Laren Transaction, not from Vitol SA. The same applies to the amounts in grey, which come from Sibex Oil Ltd.

Table 1.2 - Montvale account extracts						
Date	KPM COMSA (11.11.2005)		TNG COMSA (20.01.2006)		Reimbursement	Diversion
	From Vitol S.A.	In Stadoil	From Vitol S.A.	To General Affinity	To Vitol S.A.	From/to Hayden
11.07.2007	9.500.000					
12.07.2007					- 396.022	
16.07.2007		- 1.500.000		- 5.880.800		
17.07.2007						- 1.722.000
10.08.2007	12.500.000		7.000.000			- 4.745.000
13.08.2007						- 13.000.000
14.08.2007		- 7.500.000		- 7.270.800	- 400.633	13.400.000
7.09.2007	10.000.000		10.000.000		- 395.914	- 13.000.000
17.09.2007		- 7.118.200		- 7.951.200		8.435.900
10.10.2007	11.500.000		6.500.000			
12.10.2007				- 3.283.400	- 418.743	
16.10.2007		- 9.088.200		- 4.512.900		- 742.500
9.11.2007	5.000.000	- 9.518.500				4.499.000
14.11.2007				- 3.125.700		3.125.700
20.11.2007				- 2.937.600		2.937.600
21.11.2007			10.000.000			
22.11.2007					- 301.820	- 9.698.000
26.11.2007					- 153.879	153.500
7.12.2007	9.000.000	- 8.914.200	16.000.000	- 4.200.600	- 176.073	- 11.700.000
17.12.2007					- 130.989	121.500
26.12.2007			4.500.000			
27.12.2007						- 4.559.000
<b>6M 2007</b>	<b>57.500.000</b>	<b>- 43.693.100</b>	<b>54.000.000</b>	<b>- 39.163.000</b>	<b>- 2.374.073</b>	<b>- 26.492.542</b>
15.01.2008	4.000.000	- 2.902.300	16.000.000			
23.01.2008		- 9.056.400		- 5.302.000	- 186.746	
25.01.2008	34.460					- 2.580.000
28.01.2008					- 196.023	161.200
4.02.2008					- 34.460	
7.02.2008	9.000.000		24.000.000			
11.02.2008					- 315.288	- 3.000.000
12.02.2008						- 2.000.000

15.02.2008		- 10.528.900		- 9.934.300		
19.02.2008						- 2.000.000
22.02.2008				- 7.987.100		2.723.500
5.03.2008	40.000.000		45.000.000			
6.03.2008		- 11.300	45.000.000			
14.03.2008		- 20.379.000			- 42.245	
27.03.2008			4.900.000			
1.04.2008						- 4.900.000
3.04.2008		- 579.800		- 13.077.800		
4.04.2008						- 4.000.000
11.04.2008					- 210.759	- 2.000.000
14.04.2008				- 6.585.200		
17.04.2008				- 6.000.000		
22.04.2008				- 6.453.700	- 514.155	
7.05.2008		- 12.058.700		- 6.333.000		- 3.000.000
8.05.2008	30.000.000					
13.05.2008				- 1.032.000	- 148.096	
15.05.2008						- 500.000
22.05.2008				- 19.066.500		
30.05.2008						- 5.000.000
4.06.2008				- 4.435.500		
6.06.2008	19.000.000	- 12.351.100	48.000.000	- 14.733.000	- 190.702	
9.06.2008					- 396.696	- 12.000.000
10.06.2008						35.000
13.06.2008						- 2.000.000
16.06.2008				- 20.590.000		
17.06.2008				- 1.500.000		
18.06.2008						- 2.000.000
25.06.2008						- 3.000.000
26.06.2008						- 15.000.000
1.07.2008						- 15.000.000
2.07.2008						- 8.000.000
3.07.2008						- 4.000.000
7.07.2008		- 2.182.100				
8.07.2008	33.000.000		47.000.000			
9.07.2008						- 5.000.000
10.07.2008		- 17.000.000		- 4.000.000		
14.07.2008						- 3.000.000
18.07.2008				- 6.474.700		- 3.000.000
21.07.2008						- 4.000.000
23.07.2008					- 363.337	- 5.000.000
30.07.2008						- 2.000.000

4.08.2008						- 25.000.000
5.08.2008					- 242.829	- 1.000.000
6.08.2008	20.000.000		10.000.000			- 22.000.000
7.08.2008						- 1.000.000
8.08.2008				- 2.311.000		
11.08.2008						- 5.000.000
12.08.2008						- 6.700.000
13.08.2008			35.000.000		- 598.517	
14.08.2008		- 10.217.600		- 7.769.700		- 4.000.000
18.08.2008						- 2.000.000
20.08.2008						- 2.000.000
27.08.2008			15.000.000			
28.08.2008						- 2.000.000
29.08.2008						- 5.000.000
3.09.2008						- 4.000.000
5.09.2008		- 2.500.000		- 3.707.000		
10.09.2008					- 259.681	- 5.843.000
12.09.2008		- 1.151.470		1.500.000		- 348.000
16.09.2008	15.900.000	- 8.000.000		- 4.000.000	- 351.462	- 3.545.000
19.09.2008				- 2.000.000		2.000.000
25.09.2008				1.400.000		- 1.400.000
1.10.2008		- 3.000.000				3.000.000
8.10.2008		- 1.700.000				1.700.000
10.10.2008	12.400.000			- 12.565.000		162.000
22.10.2008		- 16.309.500	31.000.000	- 7.285.000	- 682.822	- 6.726.000
27.10.2008		- 6.654.800		- 3.036.000		9.690.800
7.11.2008	9.500.000		5.000.000			
10.11.2008		- 8.100.000		- 8.460.000		2.060.000
13.11.2008				- 14.000.000		14.005.300
19.11.2008					- 775.284	775.300
20.11.2008			6.600.000	- 6.550.000		
25.11.2008						- 50.000
26.11.2008				- 6.000.000		6.000.000
8.12.2008		- 21.997.800				21.997.800
16.12.2008				- 3.600.000		3.600.000
19.12.2008			8.000.000	- 7.750.000		- 250.000
19.12.2008				- 1.600.000		1.600.000
23.12.2008			5.000.000	- 6.415.000		1.414.600
<b>2008</b>	<b>192.834.460</b>	<b>- 166.680.770</b>	<b>345.500.000</b>	<b>- 227.653.500</b>	<b>- 5.509.102</b>	<b>- 138.916.500</b>
5.01.2009					- 649.827	650.000
9.01.2009			1.800.000			
12.01.2009				- 455.000	- 629.922	- 715.000



16.01.2009		- 1.000.000		- 1.970.000		2.970.000
28.01.2009		- 500.000	3.200.000	- 1.445.000		- 1.255.000
11.02.2009		- 200.000		- 200.000		400.000
12.02.2009			1.200.000			- 1.200.000
13.02.2009		- 400.000				400.000
2.03.2009		- 3.400.000	4.000.000	- 20.000		- 580.000
5.03.2009						106.500
9.03.2009	2.200.000	- 1.895.200				- 304.500
13.03.2009			1.300.000	- 660.000	- 236.579	- 400.000
31.03.2009	4.800.000	- 2.403.800		- 15.000		- 2.385.000
23.04.2009		- 1.500.000	4.100.000	- 25.000		- 2.575.000
28.04.2009		- 1.000.000			- 447.043	1.447.200
4.05.2009			2.277.164			
5.05.2009	5.800.000					
6.05.2009				- 15.000		- 600.000
7.05.2009						- 650.000
8.05.2009						- 500.000
11.05.2009			2.503.532			- 1.300.000
12.05.2009		- 300.000		- 320.000		- 1.200.000
14.05.2009					- 87.303	- 1.000.000
18.05.2009		- 150.000		- 150.000		- 500.000
19.05.2009						- 500.000
20.05.2009				- 150.000		
21.05.2009		- 150.000				- 200.000
26.05.2009						- 400.000
2.06.2009						- 1.400.000
4.06.2009						- 500.000
8.06.2009		- 650.500	2.000.000	- 670.000		
9.06.2009		- 350.000		- 350.000		- 487.000
10.06.2009			108.420			
12.06.2009						- 109.000
17.06.2009		- 16.550.500		- 17.630.000		14.331.000
19.06.2009		- 7.378.000				7.378.000
19.06.2009		3.000.000		- 3.000.000		
22.06.2009				- 735.200		735.000
1.07.2009	7.100.000					
3.07.2009				- 5.995.200		- 1.105.000
13.07.2009	2.000.000			- 1.800.000		- 200.000
21.07.2009	1.000.000			- 950.000		- 50.000
28.07.2009				- 11.800.000		6.000.000
17.08.2009	6.700.000			- 480.000		- 6.000.000
24.08.2009			1.000.000	- 995.000		

9.09.2009	2.500.000	6.000		- 1.506.000		- 985.000
25.09.2009						3.770.000
30.09.2009	2.700.000					
1.10.2009						- 100.000
2.10.2009						- 150.000
6.10.2009						- 246.000
15.10.2009		- 1.000		- 1.000.000		- 99.000
28.10.2009						1.750.000
28.10.2009						4.000
29.10.2009		- 4.000				
30.10.2009						5.000.000
17.11.2009						5.000.000
23.12.2009						- 899.500
<b>2009</b>	<b>34.800.000</b>	<b>- 13.898.500</b>	<b>23.489.116</b>	<b>- 19.171.200</b>	<b>- 2.050.674</b>	<b>- 21.717.800</b>
5.01.2010						- 289.000
13.01.2010						- 1.137.000
19.01.2010			422.243			
20.01.2010				- 500		- 422.000
26.01.2010						- 1.000
2.02.2010			54.773			
4.02.2010				- 1.000		- 53.000
19.02.2010			1.112.520			- 1.112.500
23.03.2010		- 600	1.211.998	- 500		- 1.210.000
19.04.2010			1.261.049			- 1.261.000
5.05.2010	3.170.501					- 3.168.000
7.05.2010		- 500		- 500		
3.06.2010	1.797.147					- 1.797.000
21.06.2010			1.486.965			- 1.486.000
1.07.2010	4.776.330					
7.07.2010				- 451.000		
8.07.2010						- 2.000.000
9.07.2010				- 1.000.000		
13.07.2010				- 1.326.000		
2.11.2010						8.500
3.11.2010		- 4.000		- 1.500		
<b>2010</b>	<b>9.743.978</b>	<b>- 5.100</b>	<b>5.549.548</b>	<b>- 2.781.000</b>		<b>- 12.502.000</b>
<b>Total Montvale</b>	<b>294.878.438</b>	<b>- 224.277.470</b>	<b>428.538.664</b>	<b>- 288.768.700</b>	<b>- 9.933.849</b>	<b>- 199.529.402</b>

### Summary tables re. Oil sales

Movement of funds year by year					
Year	KPM COMSA (11.11.2005)		TNG COMSA (20.01.2006)		Reimbursement
	From Vitol S.A.	In Stadoil	From Vitol S.A.	To General Affinity	To Vitol S.A.
2005	29.000.000	- 8.210.000	0	0	- 52.125
2006	121.600.000	- 88.562.500	115.100.000	- 81.197.250	- 5.347.553
2007	109.150.000	- 101.117.400	81.600.000	- 85.343.150	- 5.579.166
2008	192.834.460	- 166.680.770	345.500.000	- 227.653.500	- 5.509.102
2009	34.800.000	- 13.898.500	23.489.116	- 19.171.200	- 2.050.674
2010	9.743.978	- 5.100	5.549.548	- 2.781.000	0
<b>Total</b>	<b>497.128.438</b>	<b>- 378.474.270</b>	<b>571.238.664</b>	<b>- 416.146.100</b>	<b>- 18.538.620</b>

Cumulative					
Year	KPM COMSA (11.11.2005)		TNG COMSA (20.01.2006)		Reimbursement
	From Vitol S.A.	In Stadoil	From Vitol S.A.	To General Affinity	To Vitol S.A.
2005	29.000.000	- 8.210.000	0	0	- 52.125
2006	150.600.000	- 96.772.500	115.100.000	- 81.197.250	- 5.399.678
2007	259.750.000	- 197.889.900	196.700.000	- 166.540.400	- 10.978.844
2008	452.434.460	- 364.570.670	542.200.000	- 394.193.900	- 16.487.946
2009	487.384.460	- 378.469.170	565.689.116	- 413.365.100	- 18.538.620
2010	497.128.438	- 378.474.270	571.238.664	- 416.146.100	- 18.538.620

Embezzlement of funds from Vitol AG					
Year	From Vitol S.A.	To Vitol S.A.	In Stadoil / KPM	TO G.A. / TNG	Balance
2005	29.000.000	- 52.125	- 8.210.000	0	20.737.875
2006	236.700.000	- 5.347.553	- 88.562.500	- 81.197.250	57.020.697
6M 2007	79.250.000	- 3.205.093	- 57.424.300	- 46.180.150	- 27.559.543
<b>Total Terra Raf</b>	<b>344.950.000</b>	<b>- 8.604.771</b>	<b>- 154.196.800</b>	<b>- 127.377.400</b>	<b>54.771.029</b>
Substitution of Montvale for Terra Raf on 30 June 2007					
6M 2007	111.500.000	- 2.374.073	- 43.693.100	- 39.163.000	26.269.827
2008	538.334.460	- 5.509.102	- 166.680.770	- 227.653.500	138.491.088
2009	58.289.116	- 2.050.674	- 13.898.500	- 19.171.200	23.168.742
2010	15.293.526	0	- 5.100	- 2.781.000	12.507.426
<b>Total Montvale</b>	<b>723.417.102</b>	<b>- 9.933.849</b>	<b>- 224.277.470</b>	<b>- 288.768.700</b>	<b>200.437.083</b>

**TABLE 2: SUMMARY OF PERKWOOD AND AZALIA TRANSFERS**

**Table 2** compiles all of Perkwood's and Azalia's account statements between November 2005 and September 2009.

The amounts in EUR are shown in **yellow**. The amounts in **blue** correspond to payments that, according to Stati, were not made in connection with the construction of the LPG Plant (Azalia-Altrex and Azalia-Kasco payments) (**Exhibit 9.31**). As these amounts are relatively small (net amount < USD 1.5 million, i.e. approximately 1.5% of the payments made by Azalia, after excluding the amounts transferred to Terra Raf and Hayden), they have been included in the calculations for simplification purposes. The amounts in **grey** concern transfers between related companies (Azalia SRL, Ascom, Garantie, Getter Investment...) and are included in the calculations. Interest generated is shown in **green**.

**Part 1: Transfers between November 2005 and July 2007 and diversions to Terra Raf**

Date	Extracts from Perkwood's accounts			Extracts from Azalia's account	
	From/to TNG	From/to Azalia	From/to others	From/to Terra Raf	From/to others
25.11.2005				523.000	- 522.585
					- 242.181€
				440.000€	- 102.390€
29.11.2005					- 62.755€
5.12.2005				40.500€	- 72.603€
7.12.2005				23.500€	- 23.581€
9.12.2005					39.690
15.12.2005					58.961€
<b>2005</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>523.000</b>	<b>- 482.895</b>
(EURx1.24)	<b>0</b>	<b>0</b>	<b>0</b>	<b>504.000€</b>	<b>- 444.819€</b>
13.01.2006					- 8.786€
26.01.2006				- 40.000	
1.02.2006					- 36.843€
10.02.2006				5.664.000€	- 5.676.000€
16.02.2006				200.500	- 200.412
				42.900€	- 42.966€
23.03.2006	5.864.487€				
31.03.2006	7.999.965€	- 13.864.000€		- 13.864.000€	
6.04.2006	8.304.575€				
18.04.2006		- 1.500.000€		- 1.500.000€	
19.04.2006	8.185.925€				
21.04.2006				276.500	- 276.502
26.04.2006		- 1.000.000€		- 1.000.000€	
28.04.2006		- 13.150.500€			- 24.304€

3.05.2006					- 13.119.650€
12.05.2006	8.510.275€				
22.05.2006		- 3.000.000€		- 3.006.500€	
24.05.2006		- 1.000.000€		- 1.000.000€	
29.05.2006		- 300.000€		- 300.000€	
30.05.2006		- 500.000€		- 500.000€	
1.06.2006		- 400.000€		- 400.000€	
5.06.2006	2.471.660€				
7.06.2006	2.528.230€	- 700.000€		- 700.000€	
9.06.2006		- 3.930.000€			
12.06.2006		- 300.000€		- 300.000€	- 3.928.000€
13.06.2006	4.999.925€				69.362
					7.546
14.06.2006		- 6.000.000€		- 6.000.000€	
20.06.2006		- 666.000€		- 600.000€	171.138€
					- 905
					- 245.554€
22.06.2006					401.516€
4.07.2006				21.600€	- 21.624€
5.07.2006		- 500.000€		- 500.000€	
6.07.2006				21.900€	- 21.755€
7.07.2006				33.200€	- 33.222€
26.07.2006		- 2.053.000€			- 46.038€
27.07.2006				- 2.006.900€	
				44.400	- 16.961
					- 3.602
					- 494.452
				29.500€	- 29.420€
28.07.2006			5.100€	- 5.100€	
8.08.2006	5.999.925€				
9.08.2006		- 1.000.000€		- 598.000€	- 350.900€
					- 50.592€
18.08.2006		- 5.000.000€		- 2.000.000€	- 3.000.000€
21.08.2006				32.400€	- 32.681€
29.08.2006					21.880€
30.08.2006				349.300€	- 273.951€
					- 97.076€
				312.400	- 312.375
31.08.2006					24.184

6.09.2006					14.673
					22.402€
15.09.2006				2.653.600€	- 2.676.000€
5.10.2006	8.675.135€				
9.10.2006		- 675.400€		- 675.400€	
12.10.2006					8.613
16.10.2006		- 4.000.000€		- 3.855.800€	- 144.108€
27.10.2006		- 1.000.000€		- 1.000.000€	
9.11.2006				13.400€	- 13.300€
10.11.2006		- 3.000.000€		- 3.000.000€	
13.11.2006				- 47.350	
23.11.2006				239.600€	- 239.414€
29.12.2006				313.500€	- 313.262€
<b>2006</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>746.450</b>	<b>- 1.180.831</b>
(EURx1.26)	63.540.102€	- 63.538.900€	0	- 33.386.600€	- 29.813.610€
16.01.2007				34.300€	- 34.436€
19.01.2007				11.600€	- 11.498€
25.01.2007					7.520
22.02.2007		1.425.100€	- 1.425.068€	1.721.800€	
23.02.2007				8.200€	- 304.561
5.03.2007				6.900€	- 4.941€
6.03.2007				1.600€	- 3.600€
8.03.2007				162.100€	- 162.055€
15.03.2007				3.600€	- 3.420€
22.03.2007				788.200€	- 788.015€
18.04.2007				193.700€	- 193.352€
				364.200	- 371.400
25.04.2007		1.425.100€	- 1.425.068€	2.419.100€	- 993.800€
3.05.2007				345.800€	- 345.670€
11.05.2007				197.900€	- 8.425€
14.05.2007				10.000€	- 199.245€
16.05.2007					167.970
18.05.2007				1.757.100€	- 1.756.942€
24.05.2007					- 97.055
				14.000€	- 14.056€
1.06.2007					701€
4.06.2007				24.000€	- 24.400€
7.06.2007				43.600€	- 43.464€
				366.400	- 387.392

					- 49.320
8.06.2007				251.000€	- 250.927€
13.06.2007				453.200€	- 453.113€
14.06.2007					125.137
20.06.2007					7.000€
25.06.2007				16.100€	- 23.050€
					- 49.884
27.06.2007				271.500€	- 271.408€
3.07.2007				18.000€	- 17.000€
5.07.2007				382.000€	- 380.721€
9.07.2007					800€
12.07.2007					800€
13.07.2007					- 25.000
16.07.2007		5.100€	- 5.000€	114.000€	- 110.431€
17.07.2007					- 2.750
<b>6M 2007</b> (EURx1.37)	<b>0</b>	<b>0</b>	<b>0</b>	<b>730.600</b>	<b>- 682.174</b>
	<b>0</b>	<b>2.855.300€</b>	<b>- 2.855.136€</b>	<b>9.249.300€</b>	<b>- 6.389.229€</b>

<b>Total USD</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2.000.050</b>	<b>- 2.345.900</b>
<b>Total EUR</b>	<b>85.524.977421</b> <b>63.540.102€</b>	<b>81.680.126</b> <b>- 60.683.600€</b>	<b>- 3.843.013</b> <b>- 2.855.136€</b>	<b>- 31.810.422</b> <b>- 23.633.300€</b>	<b>- 49.327.748</b> <b>- 36.647.658€</b>
<b>Total (1)</b>	<b>85.524.977</b>	<b>81.680.126</b>	<b>- 3.843.013</b>	<b>- 29.810.372</b>	<b>- 51.673.648</b>

<sup>421</sup> The conversion is based on the conversion rate of 1.346, which is the average rate between 2005 and 2009 (1.24 + 1.26 + 1.37 + 1.47 + 1.39 = 6.73 : 5 = 1.346 ): <https://fr.statista.com/statistiques/577988/taux-de-change-moyen-annuel-du-dollar-etats-uni-against-the-euro/>.

**Part 2: Transfers between July 2007 and September 2009 and diversions to Hayden**

Date	Extracts from Perkwood's accounts			Extracts from Azalia's account	
	From/to TNG	From/to Azalia	From/to others	From/to Hayden	From/to others
25.07.2007		74.400€	- 74.400€	306.000€	- 232.323€
				8.600	- 56.322
31.07.2007		60.200€	- 60.000€	171.100€	- 99.820€
					- 11.251€
10.08.2007		322.700	- 322.527	975.700	- 58.534
					- 594.240
		101.000€	- 100.820€	256.000€	- 154.712€
21.08.2007		24.800	- 24.813	24.900	
		45.200€	- 44.922€	115.300€	- 69.730€
23.08.2007		51.100€	- 51.100€	65.300€	
5.09.2007				8.150	- 8.133
7.09.2007					199.970
10.09.2007	6.000.000	- 5.645.000	- 354.981	- 5.606.000	- 238.451
					- 4.100€
12.09.2007		100.500€	- 99.810€	2.060.000€	- 1.968.566€
17.09.2007				470.350€	- 446.430€
					149.970
18.09.2007		284.300		284.300	- 5.000€
19.09.2007	3.751.779	- 2.000.000	- 172.170	- 2.000.000	
			- 112.035		
			- 18.835€		
20.09.2007					96.750
21.09.2007		- 1.000.000	- 27.753€	- 800.000	- 164.323€
24.09.2007			- 20.000		
27.09.2007		- 660.000		- 660.000	
8.10.2007	2.999.975				
9.10.2007		- 2.976.500	- 21.193€	- 3.059.000	- 124.472
				473.000€	- 496.650€
17.10.2007	3.999.975				
18.10.2007		- 4.000.000		- 4.000.000	
		47.800€	- 47.780€	762.000€	- 714.383€
24.10.2007	3.999.975				
1.11.2007		- 3.982.200	- 17.805	- 3.669.000	- 313.706
1.11.2007		59.000€	- 59.400€	830.000€	- 770.780€
5.11.2007	1.999.975		- 62.159		
7.11.2007	3.999.975		- 154.210		
9.11.2007		- 5.786.000		- 5.786.000	
14.11.2007	3.999.975	- 4.000.000		- 4.000.000	



19.11.2007	2.999.984	- 2.965.300		- 2.965.300	
20.11.2007			- 631		
			- 33.990		
22.11.2007		372.900	- 372.864	617.000	- 243.471
23.11.2007		1.909.000€	- 1.908.586€	2.761.000€	- 851.380€
6.12.2007				1.340.400€	- 1.340.351€
13.12.2007		94.000	- 94.586	190.600	- 96.563
		102.000€	- 102.125€	680.500€	- 578.209€
19.12.2007				1.039.500€	- 1.039.286€
28.12.2007		43.600	- 43.167	43.500	
Interests	4.286				
<b>6M 2007</b>	<b>33.755.899</b>	<b>- 31.872.700</b>	<b>- 1.785.938</b>	<b>- 30.392.550</b>	<b>- 1.287.202</b>
(EURx1.37)	0	2.550.200€	- 2.616.724€	11.330.450€	- 8.947.294€
7.01.2008		36.000	- 36.936	36.000	
10.01.2008		40.000	- 39.767	207.300	- 167.610
		21.700€	- 21.600€	688.000€	- 665.907€
25.01.2008		153.000	- 152.983	153.000	
		131.600€	- 131.462€	925.500€	- 793.896€
28.01.2008				303.500	- 303.677
29.01.2008		4.500€	- 4.686€	82.500€	- 78.306€
4.02.2008				205.000€	- 204.027€
12.02.2008		2.800	- 2.880	9.500	- 6.629
		101.700€	- 101.593€	1.501.000€	- 1.398.838€
14.02.2008		64.600	- 64.538	64.600	
20.02.2008		21.700€	- 21.600€	97.000€	- 75.216€
26.02.2008				239.500€	- 239.817€
27.02.2008	6.699.975	57.500€	- 57.300€	62.500€	- 5.000€
3.03.2008			- 33.684		
		19.100€	- 19.205€	19.100€	
13.03.2008		- 6.500.000		- 6.184.600	- 315.167
		41.000€	- 40.820€	1.115.000€	- 1.073.259€
20.03.2008				43.500€	- 43.838€
26.03.2008		21.500€	- 21.600€	365.500€	- 344.286€
2.04.2008				256.100€	- 256.110€
11.04.2008				281.300	- 281.325
				401.100€	- 401.017€
22.04.2008		- 54.000	- 21.246		- 53.919
23.04.2008		103.000€	- 102.908€	743.700€	- 640.651€
25.04.2008	5.273.233				
7.05.2008			- 78.252		
13.05.2008		- 262.500			- 262.526
13.05.2008		35.000€	- 34.450€	382.000€	- 346.715€

14.05.2008				249.900€	- 249.900€
28.05.2008		5.000€	- 5.000€	563.500€	- 557.944€
29.05.2008		- 170.500	- 15.780		- 170.246
		59.000€	- 58.776 €	404.000€	- 345.132€
11.06.2008		- 248.900			- 248.820
		41.600€	- 41.604€	651.000€	- 608.948€
12.06.2008					12.000€
13.06.2008				5.000€	- 16.291€
20.06.2008		- 52.000			- 52.025
		18.800€	- 18.760€	18.500€	
25.06.2008				197.000€	- 196.794€
9.07.2008		- 304.200			- 304.046
		20.500€	- 20.803€	182.500€	- 161.945€
21.07.2008			- 385		
		22.500€	- 22.417€	210.000€	- 187.348€
23.07.2008		- 207.800			- 207.702
				160.500€	- 160.386€
30.07.2008			- 88.620		
6.08.2008		- 360.000			- 359.628
				538.000€	- 537.831€
12.08.2008		- 3.590.000		- 3.590.000	
21.08.2008	1.246.965				
22.08.2008		- 47.000	- 11.810		- 47.482
22.08.2008		40.800€	- 40.817€	162.300€	- 121.529€
1.09.2008				357.500€	- 357.298€
10.09.2008		- 1.195.000			- 435.683
				272.800€	- 272.881€
12.09.2008				- 759.000	
25.09.2008				44.500	- 44.844
				210.000€	- 209.997€
1.10.2008	3.499.975	- 3.500.000		- 3.500.000	
17.10.2008	999.975	- 1.000.000		- 1.000.000	
27.10.2008	4.553.084	- 4.550.000		- 4.550.000	
13.11.2008	6.299.975	- 6.228.000	- 75.268	- 6.228.000	
19.11.2008		5.000€	- 5.000€	10.000€	- 5.000€
26.11.2008	3.499.975	- 3.500.000		- 3.500.000	
5.12.2008	21.999.975				
8.12.2008		- 22.000.000		- 22.000.000	
16.12.2008	3.614.909	- 3.600.000		- 3.600.000	
18.12.2008		- 15.000			- 15.000
23.12.2008				- 2.368.500	2.368.583
				- 35.509€	35.509€

Interests	22.492				
<b>2008</b>	<b>57.710.533</b>	<b>- 57.088.500</b>	<b>- 622.149</b>	<b>- 56.180.900</b>	<b>- 907.746</b>
(EURx1.47)	0	771.500€	- 770.401€	11.284.000€	- 10.508.598€
2.01.2009	649.984				
5.01.2009		- 650.000		- 650.000	
16.01.2009	2.999.975	- 3.000.000		- 3.000.000	
27.01.2009				51.000	- 50.528
28.01.2009				995.000	- 994.922
12.03.2009				100.000	- 100.000
13.03.2009		15.000€	- 15.000€	15.000€	
31.03.2009				300.000	- 300.000
14.04.2009	649.975				
15.04.2009		- 650.000		- 650.000	
7.05.2009				650.000	- 650.000
11.05.2009				650.000	- 650.000
12.05.2009				850.000	- 850.000
21.05.2009		40.000	- 40.000	40.000	
21.05.2009		7.800€	- 7.780€	27.500€	- 19.440€
26.05.2009				218.000	- 218.000
17.08.2009				728.000	- 727.965
3.09.2009		11.400	- 11.906	11.100	
Interests	183				
<b>2009</b>	<b>4.300.117</b>	<b>- 4.248.600</b>	<b>- 51.906</b>	<b>293.100</b>	<b>- 4.541.415</b>
(EURx1.39)	0	22.800€	- 22.780€	42.500€	- 19.440€

<b>Total USD</b>	<b>95.766.549</b>	<b>- 93.209.800</b>	<b>- 2.459.993</b>	<b>- 86.280.350</b>	<b>- 6.736.363</b>
<b>Total EUR</b>	<b>0</b>	<b>4.501.697</b> 3.344.500€	<b>- 4.589.732</b> - 3.409.905€	<b>30.496.255</b> 22.656.950€	<b>- 26.213.797</b> - 19.475.332€
<b>Total (2)</b>	<b>95.766.549</b>	<b>- 88.708.103</b>	<b>- 7.049.725</b>	<b>- 55.784.095</b>	<b>- 32.950.160</b>

<b>Total USD</b>	<b>95.766.549</b>	<b>- 93.209.800</b>	<b>- 2.459.993</b>	<b>- 84.280.300</b>	<b>- 9.082.263</b>
<b>Total EUR</b>	<b>85.524.977</b> 63.540.102€	<b>- 77.178.429</b> - 57.339.100€	<b>- 8.432.745</b> - 6.265.041€	<b>- 1.314.167</b> - 976.350€	<b>- 75.541.545</b> - 56.122.990€
<b>Total LPG plant</b>	<b>181.291.526</b>	<b>- 170.388.229</b>	<b>- 10.892.738</b>	<b>- 85.594.467</b>	<b>- 84.623.808</b>

**INVENTORY OF COINS OF THE REPUBLIC OF KAZAKHSTAN**

<b>N°</b>	<b>Description</b>	<b>Date</b>
<b>1. Documents related to the Kazakh Stati</b>		
<b>1.1</b>	Audited financial statements of Tristan Oil, KPM and TNG for 2007, 2008 and 2009	2007-2009
<b>1.2</b>	Memorandum of Association of Ascom Group Ltd	14.06.2002
<b>1.3</b>	Deed of Incorporation Jepson Corporation Ltd	07.08.2002
<b>1.4</b>	Mandate conferring management of Jepson Corporation Ltd to the Stati	20.09.2002
<b>1.5</b>	Beneficiary certificate of Jepson Corporation Ltd	23.04.2004
<b>1.6</b>	Memorandum of Association General Affinity	26.01.2005
<b>1.7</b>	Memorandum of Association Stadoil	27.04.2005
<b>1.8</b>	Hidden mandate conferring management of General Affinity to the Stati	18.05.2005
<b>1.9</b>	Shadow mandate conferring management of Stadoil to Stati	24.05.2005
<b>1.10</b>	Framework agreement of 31 March 2005 between TNG and Kasco	31.05.2005
<b>1.11</b>	Framework agreement of 8 August 2005 between TNG and General Affinity (General Affinity Agreement)	08.08.2005
<b>1.12</b>	Framework agreement of 15 August 2005 between KPM and Stadoil (Stadoil Agreement)	15.08.2005
<b>1.13</b>	Perkwood's Memorandum of Association of 14 September 2005	14.09.2005
<b>1.14</b>	Hayden Incorporation Act	15.09.2005
<b>1.15</b>	Hidden mandate conferring management of Azalia to the Stati	18.09.2005
<b>1.16</b>	Act of incorporation of Montvale	22.09.2005
<b>1.17</b>	Hidden mandate conferring the management of Montvale to the Stati	5.10.2005
<b>1.18</b>	Shadow mandate conferring management of Hayden to the Stati	5.10.2005
<b>1.19</b>	Contract of <sup>1</sup> November 2005 between Azalia and TNG	1.11.2005
<b>1.20</b>	Shadow mandate conferring management of Perkwood to the Stati	02.11.2005
<b>1.21</b>	Hayden beneficiary certificate	4.11.2005
<b>1.22</b>	Framework agreement of 11 November 2005 between Terra Raf and Vitol SA (KPM COMSA agreement)	11.11.2005
<b>1.23</b>	Application for Perkwood to open bank accounts with Rietumu Banka	28.11.2005
<b>1.24</b>	Contract of 15 December 2005 between Azalia and Bourgas Free Zone	15.12.2005
<b>1.25</b>	Contract of 11 January 2006 between Azalia and Perkwood (Azalia Contract)	11.01.2006
<b>1.26</b>	Annex 2 of the Azalia Contract of 11 January 2006	11.01.2006
<b>1.27</b>	Framework agreement of 20 January 2006 between Terra Raf and Vitol SA (TNG COMSA Agreement)	20.01.2006
<b>1.28</b>	Contract of 31 January 2006 concluded between Tractebel and Azalia/Ascom (Tractebel Contract)	31.01.2006
<b>1.29</b>	Application for a TNG licence at the BNK	20.02.2006
<b>1.30</b>	License granted by BNK to TNG	16.03.2006
<b>1.31</b>	Perkwood Contract Passport	17.03.2006
<b>1.32</b>	Contract of 27 March 2006 between Perkwood and TNG (Perkwood Contract)	27.03.2006
<b>1.33</b>	Annex 2 to the Perkwood Contract of 27 March 2006	27.03.2006
<b>1.34</b>	Memorandum of Association of Ascom Sudd	12.04.2006
<b>1.35</b>	Business Plan of the LPG Plant prepared by the Stati	04.2006
<b>1.36</b>	Beneficiary certificate of Ascom Group Ltd	05.06.2006
<b>1.37</b>	Azalia's customs declaration of 26 June 2006	26.06.2006
<b>1.38</b>	<i>Joint Operating Agreement</i> of 27 June 2006 between Stati and Vitol FSU (JOA)	27.06.2006
<b>1.39</b>	Financial statements (unaudited) of KPM and TNG for the first nine months of 2005 and 2006	30.09.2006
<b>1.40</b>	E-mails of 5 and 6 October 2006 from Deloitte to Artur Lungu and from Artur Lungu to Jefferies	5-6.10.2006

1.41	Minutes of the "Joint Meeting Committee" between TNG and Vitol of 29 November 2006	29.11.2006
1.42	Beneficiary certificate for Ascom Sudd	6.12.2006
1.43	E-mail of 7 December 2006 from Jefferies (1)	07.12.2006
1.44	E-mail of 7 December 2006 from Jefferies (2)	07.12.2006
1.45	Circular from Tristan	13.12.2006
1.46	Tristan's trust agreement	20.12. 2006
1.47	Contract no. 330/06 of 17 January 2007 between Perkwood and Transeco	17.01.2007
1.48	List of Congolese senators elected on 19 January 2007	19.01.2007
1.49	Invoice from Transeco to Perkwood	7.02.2007
1.50	Email of 5 March 2007 from Artur Lungu to Jefferies	05.03.2007
1.51	Financial statements (audited and unaudited) of Tristan Oil Ltd, KPM and TNG from 2004 to the first quarter of 2007 inclusive	31.03.2007
1.52	Letter from Artur Lungu to Tristan Oil Ltd on 2 April 2007	02.04.2007
1.53	Memorandum of Association of Komet Group NV	25.04.2007
1.54	Contract of 31 May 2007 between Azalia and John Zink	31.05.2007
1.55	Novation agreements of 30 June 2007 between Terra Raf, Montvale and Vitol SA to substitute Montvale for Terra Raf in the KPM COMSA Contract	30.06.2007
1.56	Novation agreements of 30 June 2007 between Terra Raf, Montvale and Vitol SA to substitute Montvale for Terra Raf in the TNG COMSA Contract	30.06.2007
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1.58	Beneficiary certificate for Komet Group NV	16.07.2007
1.59	Invoice from Transeco to Perkwood	24.07.2007
1.60	Double billing system implemented between Garantie and Perkwood	31.08.2007
1.61	Perkwood Customs Declaration of 10 September 2007	10.09.2007
1.62	Perkwood Customs Declaration of 15 October 2007	15.10.2007
1.63	Perkwood Customs Declaration of 23 October 2007	23.10.2007
1.64	Perkwood Customs Declaration of 5 November 2007	05.11.2007
1.65	Perkwood Customs Declaration of 29 December 2007	29.12.2007
1.66	Contract of 15 January 2008 between Azalia and Leoni Kerpen	15.01.2008
1.67	Internal Stati email of 30 January 2008 (15:13)	30.01.2008
1.68	Excel tables attached to the internal Stati email of 30 January 2008 (15:13)	30.01.2008
1.69	Email from Stati of 30 January 2008 to Vitol (15:16)	30.01.2008
1.70	Excel tables attached to the Stati email of 30 January 2008 sent to Vitol (15:16)	30.01.2008
1.71	Minutes of the "Joint Meeting Committee" meeting of 5 February 2008	05.02.2008
1.72	Mandate conferring the management of Berdaron Estate Ltd to the Stati	19.02.2008
1.73	Mandate conferring management of Lenwell Solutions Inc. to the Stati	19.02.2008
1.74	Mandate conferring management of Pellat International to the Stati	21.02.2008
1.75	Certificate of Beneficiary of Berdaron Estate Ltd	14.03.2008
1.76	Beneficiary certificate of Lenwell Solutions Inc.	14.03.2008
1.77	Pellat International beneficiary certificate	14.03.2008
1.78	Letter of 8 May 2008 from Rietumu Banka to Anatolia Stati detailing the latter's fund transfers in 2007	08.05.2008
1.79	Contract of 20 June 2008 between Stati and the Kurdish government to exploit the Barda Rash oil field	20.06.2008
1.80	Stati's hidden triple accounting in July 2008 (Crudu Tables)	07.2008
1.81	Minutes of the "Joint Meeting Committee" between TNG and Vitol of 23 July 2008	23.07.2008

<b>1.82</b>	Stati's triple secret accounting in August 2008 (Crudu Tables)	08.2008
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<b>1.84</b>	Information Memorandum	08.2008
<b>1.85</b>	First Draft of the KPMG Due Diligence Report (full version)	31.08.2008
<b>1.86</b>	Stati's letter of affirmation of 3 September 2008 to Deloitte	03.09.2008
<b>1.87</b>	E-mails of 3 to 11 September 2008 re. Stati comments on the First Draft Due Diligence Report	03.09.2008 as of 11.09.2008
<b>1.88</b>	Second Draft of the KPMG Due Diligence Report	15.09.2008- 16.09.2008
<b>1.89</b>	KasMunaiGas' indicative offer of 25 September 2008	25.09.2008
<b>1.90</b>	Confidential summary of indicative bids received for the Zenith project	27.09.2008
<b>1.91</b>	Tristan Oil's third quarter 2008 interim financial statements	30.09.2008
<b>1.92</b>	Minutes of the Ascom Board meetings of 14 and 22 October 2008	14 and 22.10.2008
<b>1.93</b>	Minutes of the "Joint Meeting Committee" between TNG and Vitol of 28 October 2008	28.10.2008
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<b>1.97</b>	Contract between the Stati and KPMG re. audit of KPM's 2008 financial statements	9.12.2008
<b>1.98</b>	Ascom's internal note on the financial situation of Kazakh companies in the Stati	11.12.2008
<b>1.99</b>	Stati internal memo of 11 December 2008 on the Credit Suisse credit proposal	11.12.2008
<b>1.100</b>	E-mails of 18 December 2008 between Credit Suisse and Artur Lungu	18.12.2008
<b>1.101</b>	Financial statements of Transeco for the years 2006, 2007 and 2008 (in Dutch)	2006-2008
<b>1.102</b>	Letter from TNG to the Kazakh Minister of Energy and Mineral Resources on 9 March 2009	09.03.2009
<b>1.103</b>	E-mail of 13 March 2009 from Stati to Vitol	13.03.2009
<b>1.104</b>	Letter from TNG to the Kazakh Minister of Energy and Mineral Resources on 18 March 2009	18.03.2009
<b>1.105</b>	Internal Stati email of 24 March 2009 re. creditors of Perkwood and Azalia	24.03.2009
<b>1.106</b>	Stati's letter of affirmation of 31 March 2009 to KPMG	31.03.2009
<b>1.107</b>	Contract proposal of <sup>1</sup> April 2009 from Renaissance Capital to the Stati in connection with the Laren Transaction	01.04.2009
<b>1.108</b>	E-mails of 24 and 27 April 2009 between Linklaters and Walkers	24- 27.04.2009
<b>1.109</b>	Contract of 2 May 2009 re. extension of payment terms granted under the Stadoil Contract	02.05.2009
<b>1.110</b>	Contract of 2 May 2009 re. extension of payment terms granted under the General Affinity Contract	05.05.2009
<b>1.111</b>	Letter from Ascom to Kazakh President on 7 May 2009	07.05.2009
<b>1.112</b>	E-mails of 11 and 12 May 2009 between Linklaters and Brodies	11- 12.05.2009
<b>1.113</b>	E-mails of 12 and 13 May 2009 between Linklaters and Salans	12- 13.05.2009
<b>1.114</b>	E-mails of 16 and 17 May 2009 between Linklaters and Salans	16- 17.05.2009
<b>1.115</b>	E-mails of 29, 30 and 31 May 2009 between Linklaters and Salans	29- 31.05.2009

<b>1.116</b>	E-mails of 2 June 2009 between Stati and Renaissance Capital	02.06.2009
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<b>1.118</b>	Emails of 7 June 2009 between Linklaters and Salans	07.06.2009
<b>1.119</b>	Emails of 8 June 2009 between Linklaters and Renaissance Capital	08.06.2009
<b>1.120</b>	Email of 8 June 2009 between Stati and Renaissance Capital	08.06.2009
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<b>1.122</b>	Stati's letter of affirmation of 10 June 2009 to KPMG	10.06.2009
<b>1.123</b>	Laren's incorporation deed	10.06.2009
<b>1.124</b>	Emails of 10 and 11 June 2009 between Linklaters, Salans and GLG Partners	10.06.2009 and 11.06.2009
<b>1.125</b>	Laren Loan Agreement dated 11 June 2009	11.06.2009
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<b>1.131</b>	Official communication from the Stati regarding the Laren Transaction to the financial markets	19.06.2009
<b>1.132</b>	Harneys expense account	24.06.2009
<b>1.133</b>	E-mails re. disclosure of documents concerning the Laren Transaction	29.06.2009
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<b>1.135</b>	E-mails between Stati and Fitch from 8 to 11 July 2009	08-11.07.2009
<b>1.136</b>	E-mails between Stati and Fitch from 15 to 20 July 2009	15-20.07.2009
<b>1.137</b>	E-mails of 12 and 13 August 2009 between Stati and KMPG relating to the Laren Transaction	12-13.08.2009
<b>1.138</b>	E-mails of 13 to 25 August 2009 between Stati and KMPG relating to the Laren Transaction	13-25.08.2009
<b>1.139</b>	Internal note of 24 August 2009 to Anatolia Stati	24.08.2009
<b>1.140</b>	Stati's letter of affirmation of 25 August 2009 to KPMG	25.08.2009
<b>1.141</b>	Invoice dated 23 September 2009 issued by Renaissance Securities (Cyprus) to Laren and the Stati	23.09.2009
<b>1.142</b>	Stati's letter of affirmation of 14 December 2009 to KPMG	14.12.2009
<b>1.143</b>	Stati's hidden triple accounting: " <i>LPG budget till Dec'09 closed.xls</i> " (Crudu tables)	12.2009
<b>1.144</b>	Triple occult accounting of the Stati (Crudu analysis)	
<b>1.145</b>	Extract from the Kurdistan Government homepage, showing the members of the fifth administration, from May 2006 to October 2009.	2006-2009
<b>1.146</b>	Photo from the Getty images website about Sarbaz N. Hawrami	
<b>1.147</b>	Compilation of Azalia payment orders signed by the Stati	2006-2009
<b>1.148</b>	Compilation of Perkwood payment orders signed by the Stati	2007-2009
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<b>1.150</b>	E-mails re. Limozen	27.01.2010
<b>1.151</b>	Loan agreement between Montvale and Limozen Investments Ltd	01.2010
<b>1.152</b>	Report of the Kazakh Ministry of Energy and Mineral Resources, February 2010	02.2010
<b>1.153</b>	Financial statements (unaudited) of Tristan Oil, KPM and TNG for the first quarter of 2010	31.03.2010

<b>1.154</b>	Minutes of the conference call between KPMG and the European Commission on 13 May 2010	13.05.2010
<b>1.155</b>	Stati's letter of affirmation of 25 May 2010 to KPMG	25.05.2010
<b>1.156</b>	E-mails of 6 and 10 October 2010 between the Stati and Jefferies	06.10.2010-10.10.2010
<b>1.157</b>	List of Ascom employees attached to an internal Ascom email of 13 October 2010	13.10.2010
<b>1.158</b>	Email from Alex Naval to Stati of 7 December 2010 re. dissolution of Perkwood and General Affinity	07.12.2010
<b>1.159</b>	Contract of 27 July 2007 between Stati, Afren PLC and the Kurdish government	27.07.2011
<b>1.160</b>	Press article re. Afren	28.07.2011
<b>1.161</b>	Caribbean court order to freeze Stati assets on 27 September 2011	27.09.2011
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<b>1.164</b>	Decisions of the Russian Commercial Court of Kurgan of 17 December 2012	17.12.2012
<b>1.165</b>	Internal Stati email of 29 August 2013 re. Crudu analysis	29.08.2013
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<b>1.170</b>	Extract from the Russian database "Spark" (Azalia)	17.01.2019
<b>1.171</b>	Minutes of the hearing of Mr Shorin and Ms Medvedeva of 4 February 2019	04.02.2019
<b>1.172</b>	Press article from 12 April 2019 on Tristan's bonds	12.04.2019
<b>1.173</b>	Photos of the LPG Plant (July 2019)	07.2019
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<b>2.2</b>	Stati's request for arbitration of 26 July 2010 (in English)	26.07.2010
<b>2.3</b>	SCC letter of 5 August 2010 notifying the Republic of Kazakhstan of the Stati Request for Arbitration	5.08.2010
<b>2.4</b>	Notification of the Stati Request for Arbitration to the relevant department within the Ministry of Justice	11.08.2010
<b>2.5</b>	Letter from the CCS to the Republic of Kazakhstan dated 27 August 2010 and proof of receipt (in English)	27.08.2010
<b>2.6</b>	Letter of 13 September 2010 from the SCC to the Republic of Kazakhstan regarding the Stati's request for the default appointment of Professor Lebedev	13.09.2010
<b>2.7</b>	Minutes of the CSC Committee meeting of 15 September 2010	15.09.2010
<b>2.8</b>	Proof of receipt by the Republic of Kazakhstan of the SCC's letter of 13 September 2010	23.09.2010
<b>2.9</b>	Letter of 23 September 2010 from the SCC to the Republic of Kazakhstan nominating Professor Lebedev	23.09.2010
<b>2.10</b>	Letter from the Republic of Kazakhstan to the SCC dated 8 November 2010	08.11.2010
<b>2.11</b>	Letter from Counsel of the Republic of Kazakhstan to the SCC dated 2 December 2010	02.12.2010
<b>2.12</b>	Letter from the Stati to the SCC on 7 December 2010	07.12.2010
<b>2.13</b>	Minutes of the CSC Committee meeting of 15 December 2010	15.12.2010
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2.15	Letter from the Republic of Kazakhstan to the SCC dated 27 December 2010	27.12.2010
2.16	SCC Rules of Arbitration (2010)	2010
2.17	Letter of 18 January 2011 from the Republic of Kazakhstan to the SCC	18.01.2011
2.18	Letter from the Stati Councils to the Councils of the Republic of Kazakhstan on 24 January 2011	24.01.2011
2.19	Email from the Councils of the Republic of Kazakhstan to the Councils of the Stati on 28 January 2011	28.01.2011
2.20	Letter from the Stati Councils to the Councils of the Republic of Kazakhstan on 2 February 2011	02.02.2011
2.21	Letter of 6 February 2011 from the Councils of the Republic of Kazakhstan to the Councils of the Stati	06.02.2011
2.22	First testimony of Anatolia Stati	17.05.11
2.23	Artur Lungu's first testimony	17.05.2011
2.24	First FTI expert report	17.05.2011
2.25	Stati's Statement of Claim of 18 May 2011	18.05.11
2.26	Procedural Order No. 2 of the Arbitral Tribunal re. proceedings for production of documents	03.02.2012
2.27	Testimony of Catalin Broscaru of 11 April 2012	11.04.2012
2.28	Second testimony of Artur Lungu	05.05.2012
2.29	Second testimony of Anatolia Stati of 7 May 2012	07.05.2012
2.30	Stati's Reply Brief on Jurisdiction and Liability	07.05.2012
2.31	Stati's Reply to the quantum of 28 May 2012	28.05.2012
2.32	Second expert report by FTI Consulting of 28 May 2012	28.05.2012
2.33	Minutes of the Liability Hearing of <sup>1</sup> October 2012 (Day 1)	01.10.2012
2.34	Reply of the Republic of Kazakhstan of 13 August 2012 on jurisdiction and liability	13.08.2012
2.35	Minutes of the quantum hearing of 28 January 2013 (day 1)	28.01.2013
2.36	Report on the quantum hearing of 29 January 2013 (day 2)	29.01.2013
2.37	Minutes of the Quantum Hearing of 30 January 2013 (Day 3)	30.01.2013
2.38	Report on the quantum hearing of 31 January 2013 (day 4)	31.01.2013
2.39	First Stati Post-hearing Brief of 8 April 2013	08.04.2013
2.40	Third Expert Report by FTI Consulting	08.04.2013
2.41	Consolidated list of documents produced by the TVE Arbitration	2013
2.42	Minutes of the final hearing on 2 May 2013 (day 1)	02.05.2013
2.43	Minutes of the final hearing on 3 May 2013 (day 2)	03.05.2013
2.44	Second Post-Hearing Brief of the Stati of 3 June 2013 in the ECT Arbitration	03.06.2013
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3.2	Witness statement by Anatolia Stati of 11 October 2013	11.10.2013
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3.5	Testimony of Raymond Martin of 21 January 2014	21.01.2014
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3.9	London High Court order to maintain the freeze on Stati assets made on 29 August 2014	29.08.2014

3.10	Order of 22 June 2015 of the Court for the Southern District of New York ordering the production of documents produced by the Stati in the Vitol FSU Arbitration	22.06.2015
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4.3	Stati evidence statement of 30 August 2016 before the SVEA Court.	30.08.2016
4.4	Conclusions of the Stati of 30 August 2016 before the Court of Appeal in Sweden	30.08.2016
4.5	Minutes of the hearing before the Swedish Court of Appeal on 8 September 2016 (day 1)	08.09.2016
4.6	Report on the hearing before the Swedish Court of Appeal on 13 September 2016 (day 3)	13.09.2016
4.7	Table produced by the Stati in the proceedings for annulment of the Award in Sweden summarising all the transactions carried out by Perkwood and Azalia in connection with the construction of the LPG Plant	13.09.2016
4.8	Minutes of the hearing before the Svea Court of Appeal on 6 October 2016 (day 13)	06.10.2016
4.9	Powerpoint presentation produced by the Stati	08.10.2016
4.10	SVEA (Stockholm) Court decision of 9 December 2016	09.12.2016
4.11	Decision of the Supreme Court of Sweden of 24 October 2017 (in Swedish)	24.10.2017
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5.3	First testimony of Franjo Zaja of 27 August 2015	27.08.2015
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5.5	Fifth testimony of Patricia Nacimiento of 13 January 2017	13.01.2017
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5.10	<i>Points of Claim</i> of the Republic of Kazakhstan	01.08.2017
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5.12	Sixth testimony of Patricia Nacimiento of 5 January 2018	5.01.2018
5.13	Notice of withdrawal of the Stati from the exequatur proceedings in the United Kingdom of 26 February 2018	26.02.2018
5.14	First testimony of Philip Maitland Carrington of 6 March 2018	06.03.2018
5.15	Second testimony of Philip Maitland Carrington of 16 March 2018	16.03.2018
5.16	London High Court decision of 11 May 2018	11.05.2018
5.17	Testimony of James Hunter Crawford of 9 July 2018	09.07.2018
5.18	High Court of London Production of Documents Order of 20 July 2018	20.07.2018
5.19	Testimony of Anatolia Stati of 3 August 2018 at the High Court in London	03.08.2018
5.20	Stati's conclusions of 9 August 2018 regarding the spread of documents	09.08.2018
5.21	London Court of Appeal decision of 10 August 2018	10.08.2018
5.22	London High Court decision of 2 July 2019	02.07.2019
<b>6. Documents relating to the Dutch, Luxembourg and Italian exequatur procedures</b>		
6.1	Decision of the District Court of Amsterdam of 23 January 2018 (in Dutch)	23.01.2018
6.2	Conclusions of the Stati of 4 May 2018 in the Luxembourg exequatur procedure	04.05.2018
6.3	Correspondence between the Republic of Kazakhstan, the Stati and the Court of Amsterdam after the hearing of 22 June 2018 in the exequatur procedure in the Netherlands (in Dutch)	22.06.2018

6.4	Conclusions of the Stati of 25 October 2018 in the Luxembourg exequatur procedure	25.10.2018
6.5	Interlocutory judgment of the Amsterdam Court of Appeal of 6 November 2018 (in Dutch)	06.11.2018
6.6	Affidavit of the Italian counsel of the Republic of Kazakhstan, D. Geronzi and C. Carrara, dated 29 March 2019, detailing the scope of the decision of the Court of Appeal of Rome of 27 February 2019	29.03.2019
6.7	Summary conclusions of the Stati of 6 June 2019 in the Luxembourg exequatur procedure	06.06.2019
6.8	Judgment of the Luxembourg Court of Appeal of 28 January 2020	28.01.2020
6.9	Judgment of the Luxembourg Court of Cassation of 11 February 2021	11.02.2021
<b>7. Documents relating to the Belgian exequatur procedure</b>		
7.1	Letter of 15 November 2017 from counsel for the Republic of Kazakhstan to the French-speaking Court of First Instance of Brussels	15.11.2017
7.2	Exequatur order issued by the French-speaking court of first instance in Brussels on 11 December 2017	11.12.2017
7.3	Explanatory note attached to the Stati's submissions of 15 April 2019 in the proceedings at first instance	15.04.2019
7.4	Official letter from the counsel of the RoK to the exequatur judge of 11 October 2019	11.10.2019
7.5	Official letter from the RoK councils to the Stati councils of 17 October 2019	17.10.2019
7.6	Official letter from Stati's counsel to the exequatur judge of 25 October 2019	25.10.2019
7.7	Official letter from Kazakhstan's counsel to the exequatur judge of 6 November 2019	6.11.2019
7.8	Official letter from Stati's counsel to the exequatur judge of 10 November 2019	10.11.2019
7.9	Judgment of the French-speaking court of first instance of 20 December 2019	20.12.2019
<b>8. Documents related to Artur Lungu's statement</b>		
8.1	Unilateral Motion of February 7, 2019 filed by the Republic of Kazakhstan in the United States District Court for the Southern District of Texas	07.02.2019
8.2	Order of the United States District Court for the Southern District of Texas of February 20, 2019	20.02.2019
8.3	Subpoena of 21 February 2019 to Artur Lungu	21.02.2019
8.4	Letter dated 12 March 2019 from King & Spalding to Norton Rose Fulbright	12.03.2019
8.5	Artur Lungu's deposition on 3 April 2019 in Houston (Texas, USA)	03.04.2019
8.6	French translation of Artur Lungu's statement of 3 April 2019	03.04.2019
<b>9. Documents related to the KPMG Correspondence</b>		
9.1	Correspondence KPMG	2016-2019
9.2	Email and letter from KPMG to the Member States on 15 February 2016	15.02.2016
9.3	Letter from Stati to KPMG on 26 February 2016	26.02.2016
9.4	Letter from KPMG to Member States on 10 March 2016	10.03.2016
9.5	Letter of 5 July 2019 from Counsel for the Republic of Kazakhstan to KPMG	5.07.2019
9.6	Letter of 17 July 2019 from KPMG to the Councils of the Republic of Kazakhstan	17.07.2019
9.7	August 2, 2019 Order of the United States District Court for the Southern District of Texas	02.08.2019
9.8	KPMG letter to Stati dated 5 August 2019 with French translation	05.08.2019
9.9	Letter of 15 August 2019 from Counsel for the Republic of Kazakhstan to KPMG	15.08.2019
9.10	Letter from KPMG to Member States dated 21 August 2019	21.08.2019
9.11	Letter of 21 August 2019 from KPMG to the Republic of Kazakhstan	21.08.2019
9.12	Letter of 30 August 2019 from the Councils of the Republic of Kazakhstan to the Councils of the Stati	30.08.2019
9.13	Correspondence between KPMG and the Councils of the Republic of Kazakhstan from 30 August to 11 October 2019	30.08-1.10.2019
9.14	Letter of September 6, 2019 from Statistical Counsel to KPMG	06.09.2019
9.15	Letter from KPMG to Member States on 20 September 2019	20.09.2019

9.16	KPMG letter to Stati dated 3 October 2019 with French translation	3.10.2019
9.17	Kazakh court order of 17 October 2019 and subsequent decision of 25 October 2019 with English translation	17-25.10.2019
<b>10. Account statements of companies related to the Stati</b>		
10.1	Extracts from the account of Tristan Oil Ltd.	
10.2	Terra Raf Trans Trading Ltd account statements	
10.3	Montvale Invest Ltd account statements	
10.4	Hayden Intervest Ltd account statements	
10.5	Stadoil Ltd account statements	
10.6	General Affinity Ltd account statements	
10.7	Extracts from Azalia's account OOO	
10.8	Perkwood Investment Ltd account statements	
10.9	Melvin Production Inc. account excerpts	
10.10	Getter Investment Ltd account statements	
10.11	Lenwell Solutions Inc. account statements	
10.12	Account statement of Komet Group	
10.13	Pellat International Ltd account statements	
10.14	Berdaron Estate Ltd account statements	
10.15	Bert Management Consulting Group account extracts	
10.16	Ascom Group account statements	
10.17	Ascom Sudd Operating Ltd account statements	
10.18	Casco Petroleum Overseas account statements	
10.19	Pulmer Management account extracts	
10.20	Jepson Corporation Ltd account statements	
10.21	Account statements of Daventron Plus SA	
<b>11. Financial Standards</b>		
11.1	ISA 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing	
11.2	ISA 240, The Auditor's Responsibilities Regarding Fraud in an Audit of Financial Statements	
11.3	ISA 320, Materiality in Planning and Performing an Audit	
11.4	ISA 450, Evaluating Misstatements Identified During the Audit	
11.5	ISA 560, Subsequent Events (as at 29 June 2006)	
11.6	ISA 700 (Revised), Basis for Opinion and Reporting on Financial Statements	
11.7	ISA 705 (Revised), Modifications to the Opinion in the Independent Auditor's Report	
11.8	IAS 24, Related Party Disclosures	
11.9	FSMA explanatory note of 15 February 2016 for Belgian listed companies, related party transactions	15.02.2016
<b>12. Reports and Expert Opinions</b>		
12.1	Tractebel expert report of 2 June 2016	02.06.2016
12.2	Tractebel expert report of 12 January 2017	12.01.2017
12.3	Annexes to the Tractebel Expert Report of 12 January 2017	12.01.2017
12.4	Deloitte expert report of 12 January 2017	12.01.2017
12.5	Annexes to the Deloitte Report of 12 January 2017	12.01.2017

<b>12.6</b>	Deloitte expert report of 19 June 2018	19.06.2018
<b>12.7</b>	Expert report by Steef Huibregtse of 6 February 2019 on the alleged transfer pricing by Stati	06.02.2019
<b>12.8</b>	PwC expert report on KPMG's decision	21.01. 2020
<b>12.9</b>	Expert opinion of Prof. C. Schreuer of 21 January 2020	21.01. 2020
<b>12.10</b>	Expert opinion of A. Layton of 29 July 2020	24.07.2020
<b>12.11</b>	PwC expert report on the use of funds to finance the Kazakh Project	29.07.2020
<b>12.12</b>	PwC expert report on the characterisation of Stati transactions with regard to corruption and money laundering criteria	29.07.2020
<b>12.13</b>	Expert opinion by Mr Yeleuov 30 July 2020	30.07.2020
<b>12.14</b>	Expert opinion by S. Cassella of 30 July 2020	30.07.2020
<b>12.15</b>	Expert opinion of Dr. P. Schöldström 23 August 2020	23.08. 2020
<b>12.16</b>	Expert opinion of Prof. C. Rogers of 17 January 2021	17.01.2021
<b>12.17</b>	Expert opinion of Prof. G. Bermann of 17 January 2021	17.01.2021
<b>12.18</b>	Annex 1 (Expert opinion of Prof. G. Bermann)	17.01.2021
<b>12.19</b>	Annex 2 (Expert opinion of Prof. G. Bermann)	17.01.2021
<b>12.20</b>	Annex 3 (Expert opinion of Prof. G. Bermann)	17.01.2021
<b>12.21</b>	Annex 4 (Expert opinion of Prof. G. Bermann)	17.01.2021
<b>12.22</b>	Annex 5 (Expert opinion of Prof. G. Bermann)	17.01.2021
<b>12.23</b>	Expert opinion of Prof. B. Hanotiau	29.04.2021
<b>12.24</b>	Expert opinion of Prof. G. Bermann of 21 January 2020	21.01.2020