

Cаse *Roščins v Lithuania*

26/01/2020, Sèr **Confidential**

To the Fund for Protection of Investors’ Rights in Foreign States

**MEMORANDUM**

Dear Sirs,

I have the honor to present you this memorandum on behalf of Mr. Olegs Roscins & all his companies represented by me in the respective legal disputes.

1. **EXECUTIVE SUMMARY**

Claimant: Olegs Roscins, national of Latvia, resident in Latvia, sole

shareholder of 5 companies (Advanta, Logotreck, Korofalt, Machinery Trade,Mita Group) incorporated in the BVI and Nevis.

Represented by Professor Dr. Stanislovas Tomas, lawyer No. 116 at the Foreign Lawyers Registry of the Russian Federation (CV in Exhibit 6). It might be that other lawyers would join our team soon.

Amount of the claim: $ 14,498,668.75, € 765,101.68, and CHF 25,160.25 under the annual interest of 6 % compounded from 06/09/2006. Over € 32 million in 2020.

Essence of the case: On 06/09/2006, the Lithuanian prosecution freezes $ 14 ,498, 668.75, € 765,101.68, and CHF 25,160.25 from the Lithuanian bank accounts of 5 companies incorporated in the BVI and Nevis. The pre-trial investigation of was discontinued on 02/08/2012, and the criminal case ended even before reaching a court. However, on the same day, the prosecutor declared that the companies were “ownerless”, and therefore the money was nationalized.

The money arrived into those 5 accounts from 2 other companies (Fontana Invest Inc from the BVI, and Ennerdale Investments, Ltd from the UK) acquired by Mr. Roscins. If the owner of those 5 accounts was unknown *quod non*, the Lithuanian authorities had to transfer the money back to their senders, i.e. to those 2 companies, but the authorities decided to nationalize the investment.

* On 30/06/2012, Roscins became the sole shareholder of Advanta.
* On 11/07/2012, he became the sole shareholder of Logotreck.
* On 11/07/2012, he became the sole shareholder of Korofalt.
* On 01/08/2012, he became the sole shareholder of Machinery Trade.
* On 01/08/2012, he became the sole shareholder of Mita Group.

Thus, he became the sole owner of the companies before the decision on their nationalization of 02/08/2012. Before this date, the money was not nationalized, but frozen only.

The final Orders of the Lithuanian Supreme Court on the cassation appeal against the nationalization were entered on 18/01/2013 and 05/12/2014. Until those two dates, the validity of nationalization was doubtful from the internal law perspective.

Part E of the Award in case *Chevron et al v Ecuador*, no. PCA 2009-23, confirms that a person is not denied the status of an investor if he becomes an investor during respective internal proceedings.

There is no claim from any alternative owner.

State of the proceedings: The ICSID proceedings were discontinued on 05/11/2019 due to the failure of Mr. Roscins to pay the arbitration fee of $ 150,000. The arbitration may be restarted at any point when he finds funding to continue.

1. **CIRCUMSTANCES**
2. The Claimant is the only shareholder and the only director of
   1. Korofalt Ventures Ltd. (hereafter – Korofalt), incorporated in the BVI, by using which the Claimant invested $ 3 650 000.00 in Lithuania,
   2. Logotreck Products Inc. (hereafter – Logotreck), incorporated in the BVI, by using which the Claimant invested $ 3 700 245.53 in Lithuania,
   3. Machinery Trade SA (hereafter – Machinery), incorporated in the BVI, by using which the Claimant invested $ 1 988 149.25, € 765 101.68, and CHF 25 160.25 in Lithuania,
   4. Mita Group Ltd. (hereafter – Mita), incorporated in the BVI, by using which the Claimant invested $ 3 860 000.00 in Lithuania,
   5. Advanta Corporation (hereafter – Advanta), incorporated in Nevis, by using which the Claimant invested $ 1 300 273.97 in Lithuania.
3. On 06/09/2006, the Financial Crimes Investigation Service under the Ministry of Interior starts pre-trial investigation no. 06-1-01060-06, and freezes the Investment upon a suspicion of money laundering.
4. On 05/07/2011, the Office of the Kaunas Regional Prosecutor enters Resolution to discontinue the pre-trial investigation no. 06-1-01060-06 in respect of Roscins Companies due to absence of criminal activity, but to transfer the whole investment to State ownership under allegation that the owner of the investment was unknown.
5. The State Tax Inspection lodged a claim with the Kaunas City District Court seeking to obtain recognition that the Investment had no owner, that the owner of the Roscins Companies was unknown, and in order to establish the State ownership over the Investment in this manner. On 08/12/2011 the Kaunas City District Court dismissed the claim.
6. The State Tax Inspection appealed, and on 05/07/2012, the Kaunas Regional Court entered Decision in the civil case no. 2A-715-480/2012 crashing the Decision of the first instance, recognising that the Investment had no owner, and transferring the ownership to the State.
7. On 30/09/2012, Korofalt, Mita, Machinery and Advanta issued cassation appeal, and it was dismissed by the Lithuanian Supreme Court on 18/01/2013.
8. Logoteck issued cassation appeal on 03/12/2014, and the Lithuanian Supreme Court declared it inadmissible on 05/12/2014.
9. On 25/02/2015, the Claimant and his companies lodged a request for arbitration with the ICSID, however it had certain irregularities, and the Claimant decided to make an additional attempt to negotiate with the Respondent.
10. On 17/04/2015, the Claimant served the notice of dispute in the sense of Article 7(1) of the BIT to the Respondent.
11. Behaviour of the Respondent was very arrogant during the negotiations under Article 7(1) of the BIT. First, the Respondent acting via Robert Volterra and Vilija Parvan refused to communicate with the Claimant, since the Claimant had not produced evidence of ownership before 14/09/2015, despite the fact that the Claimant had produced this evidence already in July 2011 while exhausting internal judicial remedies. Then, on November 2, 3, 15 and 16, 2016, Mr. Rolandas Valiūnas, employer of Vilija Parvan, refused to communicate with the Claimant, since there was not authorisation from the Respondent. The Claimant still continued to contact Mr. Valiunas even after his arrogant ignorance. This amounts to a lack of response in the sense of *Antin et al v Spain*, no. ARB/13/31, § 356.
12. On 20/07/2018, Prof. S. Tomas served the final offer of the Claimant to the Respondent setting 31/07/2018 as the final date to accept it. The Respondent rejected the final offer, and in this manner the Article 7(1) BIT procedure was concluded.
13. **MERITS**

**C.1. Identity of the owner of the Investment.**

1. The identity of the Claimant as the sole owner, the sole manager of the Roscins Companies investing the Investment in Lithuania is perfectly proved by certificates from the BVI and Nevis company registries.
2. At no stage, nor during the internal judicial proceedings, neither during the negotiations under Article 7(1) of the BIT, the Contracting State provided a coherent and reasonable explanation of its doubts.
3. Nevertheless, it shall be reminded that in *Antin et al v Spain*, no. ARB/13/31, § 260, the Tribunal explained that, for the purposes of investment treaty protection, the investment should be owned or controlled directly or indirectly by the investor. This is much lower standard than proven by certificates from the BVI and Nevis company registries.

**C.2. Breach of Article 4(1)(A), Article 4(1)(B), Article 4(1)(C) of the BIT, as well as Article 2 of the BIT due to failure to apply Article 1 of the Protocol no. 1 to the European Convention of Human Rights, and Article 2(3)(1) of the International Covenant on Civil and Political Rights.**

1. On 06/09/2006, the Respondent freezes the Investment of the Claimant. This is a measure with an effect equivalent to an expropriation.
2. On 05/07/2011, the Respondent transfers the Investment into the property of the Respondent. This is the expropriation itself. Later, this is confirmed by the Lithuanian Supreme Court.
3. The act of transferring private property to the State is an act of expropriation (nationalisation).

**C.2.1. Breach of Article 4(1)(A) of the BIT.**

1. The expropriation was not provided by law. No law authorises the Respondent to expropriate property on the basis of a mere declaration that the owner is unknown, and that evidence confirmed by competent foreign authorities could not be accepted.
2. It shall be underlined that the definition of “investor” is much broader under the BIT, since it includes not only the actual owner, but also even an indirect controller of the property in the sense of § 260 of the Award in *Antin et al v Spain*, no. ARB/13/31.
3. There is no public need to expropriate bank deposits like the Investment under consideration. The public is interested in keeping secure private property.
4. If the Responded acted in good faith, it would refund the Investment back to the 2 companies (Fontana and Ennerdale, both belonging to Roščins) that had transferred the Investment to Lithuania.
5. Thus, the expropriation was not for public needs, and not provided by law, contrary to Article 4(1)(A) of the BIT.

**III.2.2. Breach of Article 4(1)(B) of the BIT.**

1. The expropriation was discriminatory, since there is no even a single case where property of a domestic investor would be expropriated on the ground of alleged absence of owner despite a confirmation from the competent authorities stating that the person is the actual owner.
2. Discriminatory expropriation breaches Article 4(1)(B) of the BIT.

**III.2.3. Breach of Article 4(1)(C) of the BIT, as well as Article 2 of the BIT due to failure to apply Article 1 of the Protocol no. 1 to the European Convention of Human Rights, and Article 2(3)(1) of the International Covenant on Civil and Political Rights.**

1. Article 4(1)(C) of the BIT requires paying prompt, adequate and effective compensation for expropriation. The Contracting State still fails to do so.
2. Article 2 of the BIT requires the Contracting State to apply other law encouraging investment, which includes Article 1 of the Protocol no. 1 to the European Convention of Human Rights, and Article 2(3)(1) of the International Covenant on Civil and Political Rights.
3. Article 1 of the Protocol no. 1 to the European Convention of Human Rights requires paying compensation for expropriation.
4. The right to effective remedy under Article 2(3)(1) of the International Covenant on Civil and Political Rights as explained in §§ 12 and 13 of the United Nations Human Rights Committee’s Concluding Observations no. CCPR/C/SWZ/CO/1 dated 23/08/2017 also requires expropriation (nationalisation) to be promptly and adequately compensated in a case where the very property right is recognised by the State, as it is done by Article 23(3) of the Lithuanian Constitution.
5. Article 23(3) of the Lithuanian Constitution provides that property may be expropriated only in situations established by law, and upon payment of a fair compensation. No Lithuanian law provides that property may be expropriated upon a suspicion that it is difficult to establish its owner. In any event, no fair compensation had ever been paid to the Claimant.

**III.3. Breach of FET under Article 3(1)(1) of the BIT.**

**III.3.1. Right to be informed about expropriation in advance.**

1. By § 322 of the Award in *Odin v Libya*, 20355/MCP, the Tribunal has explained that

*a minimum requirement of fairness and equity would entail that* ***investors are informed in advance that a decision to expropriate their investment*** *is contemplated, and are given a reasonable opportunity to engage in a dialogue with the government to find an adapted solution.*

1. The latter conclusion is fully supported by the UNCTAD, *Fair and Equitable Treatment, Series on Issues in International Investment Agreements*, at 51, UNCTAD/ITE/IIT/11 (Vol. III, 1999).
2. The Claimant was not informed in advance neither about the forthcoming decision of the Kaunas Prosecution dated 06/09/2006, nor about the future decision of the Kaunas Prosecution dated 05/07/2011 to expropriate the Investment. Thus, the Respondent breached the FET in the sense of § 322 of the Award in *Odin v Libya*.

**C.3.2. Protection from arbitrary, inconsistent and unreasonable behaviour, and irrational policy.**

1. Article 3(1)(1) of the BIT provides the principle of fair and equitable treatment (hereafter – FET).
2. Transferring the whole Investment into State ownership is a gross breach of FET.
3. § 518 of *Antin et al v Spain*, no. ARB/13/31, provides that

*The ordinary meaning of the words “fair” and “equitable” is commonly found in the dictionary. According to the Oxford English Dictionary “fair” means “just, unbiased, equitable, impartial, legitimate.”756 In turn, “equitable” is defined as “characterised by equity or fairness”, where “equity” means “fairness; impartiality; even-handed dealing.” In Spanish, another official language of the ECT and the language of the Respondent, the dictionary of the Spanish language of the Real Academia Española defines “fair” as “in accordance with justice and reason”758 and “equitable” as “having equity”, i.e., “equality of disposition”, and, more specifically, “disposition that moves to give each one what he deserves.” These terms, however, cannot be interpreted in separation from the treaty’s context, object and purpose.*

1. § 98 of the Award in *Waste Management v Mexico*, no. ARB(AF)/98/2, provides that “*the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to Claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, discriminatory and exposes Claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety - as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process*”.
2. As it is explained by § 360(11)-(13) of the Award in case *Antabis et al v Czech Republic*, no. 2014-01, FET implies:
   1. Protection from arbitrary or unreasonable behaviour is subsumed under the FET standardfollowing the Awards in *Oxus Gold v Uzbekistan*, § 323; *Tecmed v Mexico*, no. ARB(AF)/00/2, § 154; *CMS Gas Transmission Co v Argentina*, no. ARB/01/8, § 290; *Bayindir v. Pakistan*, no. ARB/03/29, § 178.
   2. It will also fall within the obligation not to impair investments by “unreasonable… measures” or “arbitrary ... measures” following the Award in *AMTO v Ukraine*, no. 080/2005, § 74.
   3. The investor is entitled to expect that the State will not act in a way which is manifestly inconsistent or unreasonable (i.e. unrelated to some rational policy), following the Awards in *Saluka Investments BV v Czech Republic*, § 309, *Philip Morris Brands SÀRL v Uruguay*, no. ARB/10/7, § 322; *Sempra Energy International v Argentina*, no. ARB/02/16, § 318; *Plama Consortium Ltd v Bulgaria*, no. ARB/03/24, § 184; *AES Summit Generation Ltd v Hungary*, no. ARB/07/22, § 10.3.7 (“*the existence of a rational policy; and the reasonableness of the act of the state in relation to the policy*”); *Binder v Czech Republic*, § 447; *Micula v Romania*, no. ARB/05/20, §§ 520 and 525 (“*in the implementation of that policy, the state’s acts have been appropriately tailored to the pursuit of that rational policy with due regard for the consequences imposed on investors*”); *Electrabel SA v Hungary*, no. ARB/07/19, § 155 (“*a legitimate policy objective, necessary for that objective, and not excessive considering the relative weight of each interest involved*”).
3. The expropriation of the Investment was arbitrary, since the Respondent did not try addressing the Roscins Companies with the respective question on their ownership, did not try investigating the issue in order to find the owner of the Roscins Companies, or to refund the Investment to the 2 companies that transferred it to the 5 Lithuanian accounts.
4. The arbitrary nature is manifested *inter alia* by transferring all the Investment into the property of the Respondent instead of keeping it frozen until the clarifications on the ownership title.
5. The expropriation of the Investment was inconsistent, since if you do not believe that the Claimant is the owner, then consistency requires finding the real owner. The expropriation is even more inconsistent having regard to the fact that none of the Roscins Companies bank accounts was frozen after the expropriation, and that all the Roscins Companies continue operating bank accounts in Lithuania, accept money, and transfer money. Their activity is not declared criminal, illegal or irregular in any other manner.
6. The expropriation of the Investment was unreasonable, since the Claimant provided the Respondent with the evidence in Enclosures 2 – 6, and the Respondent (its courts, its Ministry of Justice, and its counsels) failed to explain why wouldn’t they accept this evidence.
7. By § 525 of the Award in case *Antabis* the Tribunal has explained that “*for a state’s conduct to be reasonable, it is not sufficient that it be related to a rational policy; it is also necessary that, in the implementation of that policy, the state’s acts have been appropriately tailored to the pursuit of that rational policy with due regard to the consequences imposed on investors*.”
8. Nevertheless, the policy of the Respondent was irrational. In this manner the Respondent acts contrary to the objective of the BIT to promote investment, and scares investors with the fact that any ownership may be declared ownerless and expropriated.
9. The consequences of the expropriation for the Claimant is losing full ownership, and therefore shall be assessed as very serious and contrary to the objective of the BIT.

**C.3.3. Protection from radical and unexpected change in the essential characteristics of the legal regime.**

1. By §§ 694 and 695 of the Award in the case *Novenergia II v Spain*, no. 2015/063/1, the Tribunal has explained that FET includes protection from radical and unexpected change in the essential characteristics of the legal regime:

*694. […] Nevertheless, in the Tribunal's opinion, the economic effect on a claimant's investment is an important factor in the balancing exercise pursuant to Article 10(1) as well, as it can go towards showing a change in the essential characteristics of the legal regime relied upon by investors in making long-term Investment.*

*694. Taking into account the Kingdom of Spain's statements and assurances prior to and in connection with the implementation of RD 661/2007, the legitimate expectations of the Claimant, and the changes introduced through RDL 9/2013, the Tribunal considers these challenged measures as radical and unexpected.*

1. At no point before the expropriation the Claimant could imagine that the legal regime could be changed in a manner declaring his Investment to have no owner, and that instead of proving the alleged existence of another owner, the Investment would be expropriated in their entirety.
2. The change is unexpected, because the Claimant was conducting normal administration of his bank accounts.
3. The change is radical, because the Investment are expropriated in their entirety.
4. The change falls “*outside the acceptable range of legislative and regulatory behaviour*” in the sense of *AES Summit Generation Limited et al. v. Hungary*, no. ARB/07/22, since the Respondent (its courts, ministries, and counsels) denied clear and obvious evidence about the fact of Claimant’s ownership, and failed to prove any other owner.
5. The change “*entirely transform[ed] and alter[ed] the legal and business environment under which the investment was decided and made*” within the meaning of § 275 of the Award in *CMS Gas Transmission Company v. Argentina*, no. ARB/01/8. The Claimant would not open any bank account in Lithuania had he the knowledge of such possible developments.

**C.3.4. Conclusion on the breaches of FET.**

1. The Respondent breached FET by breaching the right of the Respondent to be informed and consulted about the expropriation in advance, by acting arbitrarily, inconsistently and unreasonably in implementing its irrational policy, and by radically and unexpectedly changing the essential characteristics of the legal regime.
2. **PROCEEDINGS**
3. On 28/08/2018, the Claimant lodged a request for arbitration with the ICSID (Exhibit 1).
4. On 21/03/2019, the Respondent lodged an objection to jurisdiction (Exhibit 2), but the Claimant disagreed with this vision (Exhibit 3).
5. On 05/11/2019, the Respondent wrote a letter to the Arbitral Tribunal requesting to condemn the Claimant to cover all costs, and ensured in this manner that the Award would be executable in the EU (Exhibit 4).
6. However, the Claimant was unable to pay the arbitration fee within the deadline provided, and for this reason, the arbitration was discontinued on 05/11/2019 (Exhibit 5).
7. There is no obstacle to re-start the arbitration proceedings after securing adequate funding.
8. **DEFENSE OF LITHUANIA**
9. Lithuania raised to objections to jurisdiction: (I) a claim that Roscins became owner of the 5 companies too late, i.e. during the internal proceedings that led to the expropriation, and (II) a claim that intra-EU BITs are denounced from the day of accession of Lithuania and Latvia to the EU.
10. During the domestic proceedings, the courts of the Responded failed to provide any coherent reason on merits explaining the refusal to recognize the ownership certificates from the BVI and Nevis, neither the refusal to take the opportunity to refund the Investment to the companies that had transferred it to the 5 Roscins Companies.
11. *Ratione temporis*.
12. Mr. Roscins became a formal sole shareholder of all the respective companies before the preliminary decision of the prosecutor on nationalization of the investment. Please note that that decision was indeed a preliminary one, since it became valid only after the entry into force of the Order of the Lithuanian Supreme Court. Let’s take a look at the chronology:

* Lawyer Ramune Snarskyte is ready to witness that during the entire internal proceedings from 2009 she was receiving instructions from Roscins only.
* On 30/06/2012, Roscins became the sole shareholder of Advanta.
* On 11/07/2012, he became the sole shareholder of Logotreck.
* On 11/07/2012, he became the sole shareholder of Korofalt.
* On 01/08/2012, he became the sole shareholder of Machinery Trade.
* On 01/08/2012, he became the sole shareholder of Mita Group.
* **On 02/08/2012, the prosecutor enters the order to nationalize the investment.**
* The final Orders of the Lithuanian Supreme Court ratifying the nationalization were entered on **18/01/2013 and 05/12/2014**. Until those two dates, the validity of nationalization was doubtful from the internal law perspective.

1. The Respondent basically claims that there are two stages in ownership of the investment by the Claimant:
   1. Being a beneficiary of the investment before the period from 30/06/2012 to 01/08/2012. Contrary to the Respondent’s statements, the directors of the Roscins Companies Tatjana Durova, Irina Gank, Borys Balenko, Evgeniy Demianov and Mikhail Rodionov are not drifters, alcoholics or disabled persons. They were interrogated by Russian prosecutors who were under control of persons from the Magnitsky list renouncing any role in the Roscins Companies. However, they renounced their statements given in Russia upon their arrival to the European Union.

The Respondent tries to compare our case to that of *Phoenix Actiono* in order to prove that only a formal shareholder may be considered as a beneficiary of a company. However, this is a huge simplification, since in *Phoenix Arizona* the respective companies were incorporated in the Czech Republic where the internal law does not authorize any category of beneficiaries other than formal shareholders. This is not the case in the BVI and Nevis.

* 1. Becoming a formal sole shareholder after the period from 30/06/2012 to 01/08/2012, acquiring 100 % of shares of those five companies.

1. There is no ground to think that a final beneficially could be discriminated in any manner as compared to an intermediary formal shareholder. Nevertheless, it shall be reminded that the investment was transferred to the State ownership on 02/08/2012, i.e. when the Claimant was already a sole formal shareholder of all 5 Roscins Companies.
2. The investment had been frozen, but kept by the Respondent as ownership of the Roscins Companies before 02/08/2012.
3. Moreover, the transfer to the State ownership of 02/08/2012 became valid only upon entry of the final Orders of the Lithuanian Supreme Court dated 18/01/2013 and 05/12/2014. These two latter dates are the dates when the challenged measure became valid and final, since before those dates it was unclear how the final internal proceedings might end. The measure of the investment expropriation was not final before these Supreme Court Orders.
4. The measurement of *ratione temporis* by a final entry into force of the challenged decision is confirmed in § 531 of *Philip Morris Asia* citing *Gremcitel et al v Peru*, No. ARB/11/17,§ 150: “*there was still a possibility that the* [institution taking the final decision] *would decide not to adopt the* [final decision]. The Claimants would then have no act to complain about“.
5. The Respondent’s counsel was misled in his objection by the fact that certain arbitration requests are lodged without exhausting internal remedies, and others like the current case are lodged with the ICSID after exhausting internal remedies. In *Mesa Power Group* (§ 335 – 337), *Gallo* (§ 336), *Philip Morris Asia* (§ 533), the claimants were challenging general legislative/administrative measures enacted before making their investments while our case concerns individual civil case passing via 3 instances.
6. The same issue of becoming owner (or change of ownership) during internal proceedings has already been discussed in part E of the case *Chevron et al v Ecuador*, no. PCA 2009-23, and the respective Tribunal has totally dismissed this kind of objection. The situation of the Claimant is much stronger, since the Respondent has failed to prove that the Claimant was not the final beneficiary before 11/07/2012.
7. I do not see why he should not be accepted as a Latvian investor. If nevertheless we have a problem here, then the investment was made by the nominee shareholders who were all Russians, and the BIT between Lithuania and Russia is applicable.
8. Even if the Respondent does not recognize the Claimant or previous formal directors and shareholders who had been Russian nationals as the owner of the Investment, it is strange why the Respondent failed to transfer the investment back to the 2 sender companies of the money. Both are owned by Roscins. One of the senders is incorporated in the UK, which makes the BIT between Lithuania and the UK applicable.
9. Thus, this objection is meritless.
10. Relationship between the BIT and the EU law.
11. The Respondent has failed to produce even a single argument on termination of all intra-EU BITs from the moment of accession of respective countries to the EU that has not already been dismissed by §§ 178 – 203, 225 – 235, 322, 339 of the Decision on Annulment in the case *Micula et al v Romania*, no. ARB/05/20, by §§ 213, 214, 224 – 228 of the Award in *Antil et al v Spain*, no. ARB/13/31, by §§ 311 – 313, 321, 328 – 330, 336 – 339, 678, 679 of the Award in *Masdar v Spain*, no. ARB/14/1, by § 183 of the Award in *PV Investor v Spain*, no. 2012-14, by §§ 633, 634, 636, 640, 654 of the Award in *Isolux v Spain*, no. V2013/153, § 77 of the Decision on Jurisdiction in *Oostergetel et al v Slovakia*, by the Decision on Jurisdiction in *RREEF at al v Spain*, no. ARB/13/30, §§ 430, 444, 445 of the Award in *Charanne v Spain*, no. V 062/2012, § 4.147 of the Decision on Jurisdiction in *Electrabel v Hungary*, no. ARB/07/19, by §§ 453, 459 – 465 of the Award in *Novenergia II v Spain*, no. 2015/063/1, by Procedural Order no. 17 in *Novenergia II v Spain*, no. 2015/063, by the Award in *Cube Infrastructures Fund et al v Spain*, no. ARB/15/20, by §§ 531 – 560 of the Award in *United Utilities (Tallinn) v Estonia*, no. ARB/14/24, by §§ 438 – 460 of the Award in *WA Investments – Europa Nova Ltd v Czech Republic*, PCA no. 2014-19, by §§ 348 – 370 of the Award in *Voltaic Networks v Czech Republic*, PCA no. 2014-20, by §§ 337 – 359 of the Award in *Photovoltaik v Czech Republic*, PCA no. 2014-21, in case *Nextera v Spain*, no. ARB/14/11, by §§ 396 – 418 of the Award in *LCW Europe Investments v Czech Republic*, PCA no. 2014-22, 9REN Holding v Spain, no. ARB/15/15, in case *Cube Infrastructures Fund et al v Spain*, no. ARB/15/20, by §§ 531 – 560 of the Award in *United Utilities (Tallinn) v Estonia*, no. ARB/14/24, by §§ 438 – 460 of the Award in *WA Investments – Europa Nova Ltd v Czech Republic*, PCA no. 2014-19, by §§ 348 – 370 of the Award in *Voltaic Networks v Czech Republic*, PCA no. 2014-20, by §§ 337 – 359 of the Award in *Photovoltaik v Czech Republic*, PCA no. 2014-21, in case *Nextera v Spain*, no. ARB/14/11, by §§ 396 – 418 of the Award in *LCW Europe Investments v Czech Republic*, PCA no. 2014-22, 9REN Holding v Spain, no. ARB/15/15, as well as even by §§ 158 – 181 of the Partial Award in the case *Eastern Sugar v the Czech Republic*, SCC no. 088/2004 where the Respondent’s lawyer Mr. Volterra served as an arbitrator.
12. It is strange why the Respondent’s lawyer Mr. Volterra has changed his point of view (§§ 105 and 107 of the objection) and writes things that are contrary to his position as an arbitrator in *Eastern Sugar*.
13. It shall be noted that Article 12(2) and (3) of the BIT provides the procedure for denouncing the BIT between Lithuanian and Latvia, and everything what the Respondent writes is contrary to Article 12(2) and (3) of the BIT.
14. The internal law of the Respondent could not be used to invalidate the BIT. A contrary conclusion would be contrary to longstanding case law of arbitration tribunals.
15. Moreover, on 14/10/2019, the Respondent requested the Arbitral Tribunal to enter an Award providing that the Claimant should pay the costs of the Respondent (Exhibit 4). In this manner, the Respondent provided guarantees that an Award would be executable in the EU.
16. Thus, the part of the objection on the applicability of the EU law is meaningless for the purposes of proving that the request is without legal merits.
17. **POTENTIAL FOR A SETTLEMENT**
18. The Lithuanian bureaucratic system is very inflexible, and the behavior of the Respondent’s counsel is quite arrogant.
19. There are no examples of settlement with the Government of Lithuania before any international instance, such as arbitration, the European Court of Human Rights or the United Nations judicial bodies.
20. It is likely that the Respondent would not settle even when its defeat becomes self-evident.
21. **ENFORCEMENT**
22. By the letter dated 14/10/2019, the Respondent confirmed that an Award on costs of the ICSID Tribunal would be enforceable in the European Union despite the claims that the intra-EU BITs had been terminated. It might be the case that the Respondent believes that an Award against an investor is enforceable, but an Award against the very Respondent is not enforceable.
23. At this stage, there is not enough case law from the courts of the EU Member States on enforcement of intra-EU Awards.
24. In any event, the Award would be perfectly enforceable in the USA, in Switzerland, and in the UK leaving the EU. The Respondent keeps a substantial part of its funds in the USA, Switzerland, and in the UK.
25. The case has a potential for becoming an extra-EU one, since former formal owners of the Roscins Companies are Russian nationals, and the Respondent claims that they should act instead of Roscins. Moreover, one of the two companies who transferred the money to the 5 Roscins Companies is a UK company. Both Russia and the UK have BITs with Lithuania. In this way, the Award would be executable even in Lithuania.
26. **ARBITRATION BUDGET**
27. The case is not difficult on merits, and there are good chances to obtain the final Award in 2 years.
28. The case has a potential to have a huge number of senseless motions from the Respondent and third parties it would invite, since the Respondent has unlimited budget.
29. Our estimation is that the arbitration fees would be € 1 million, and the same amount for the lawyers team.
30. Therefore, our estimation of the budget requested is € 2 million.
31. **CONCLUSION**
32. We look forward to discussing the case with you once you have had the opportunity to consider the contents of this memorandum and its exhibits.
33. **EXHIBITS**

Exhibit 1 Request for Arbitration dated 28/08/2018.

Exhibit 2 Objection of the Respondent dated 21/03/2019.

Exhibit 3 Response dated 08/04/2019 of the Claimant to the Objection.

Exhibit 4 Letter of the Respondent on enforceability of the Award dated 14/10/2019.

Exhibit 5 Order of the ICSID Tribunal on Discontinuance.

Exhibit 6 CV of the Claimant’s counsel

Warm regards

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