

**GEA GROUP AG v UKRAINE (ICSID Case No. ARB/08/16)**

**TRIBUNAL’S DECISIONS REGARDING RESPONDENT’S REQUESTS FOR PRODUCTION OF DOCUMENTS**

No.	Requesting Party	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Response and/or Objections to Document Request	Reply to Objections to Document Request	Tribunal’s Comments
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1.	Respondent	“Spin Off and Acquisition Agreement” dated 29 May 1995 and further agreement dated 31 August 1995	Memorial, para. 22; Exhibit C-38; Counter-Memorial, paras. 27-28, 116-117.	<p>The commercial register indicates that Klöckner Chemiehandel GmbH (“<b>KCH</b>”) acquired the “‘Chemicals’ business segment in its entirety” from Klöckner &amp; Co. AG (“<b>Klöckner</b>”) under these agreements.</p> <p>The rights at issue in the arbitration concern rights relating to the Conversion Contract which Klöckner concluded only later, on 13 December 1995. These agreements</p>	GEA does not have documents responsive to this request in its possession, custody or control.		N/A (no documents).

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				<p>are relevant and material since they go to show that Klöckner and not KCH owned rights under the Conversion Contract. Since the Claimant alleges that it acquired its alleged investment from KCH, this is relevant to the fact that the Tribunal lacks jurisdiction.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since the Claimant relies on rights that were allegedly acquired by KCH under these agreements.</p>			

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2.	Respondent	All addenda, supplements and annexes to the Conversion Contract.	Memorial, paras. 23, 212; Exhibit C-6; Counter-Memorial, paras. 411-414.	<p>The Claimant has filed, at Exhibit C-6, a copy of the Conversion Contract and Addenda No. 25 and 81.</p> <p>The Claimant has not filed the other addenda to the Conversion Contract, despite the fact that its claim concerns rights to product allegedly shipped to Ukraine pursuant to the Conversion Contract, as amended. A full set of addenda and supplements to the Conversion Contract are relevant and material. Clause 10.2 of the Conversion Contract refers to</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana is a party to the addenda, supplements and annexes to the Conversion Contract.</p> <p>Nevertheless, GEA will produce documents in its possession, custody or control that are responsive to this request.</p>	Article 3(c) of the IBA Rules does not require the requesting party to “demonstrate that the documents are without its possession, custody or control”. For the avoidance of doubt and in accordance with Article 3(c) of the IBA Rules, the Respondent reiterates its statement that the documents disclosed by the Claimant in response to the Respondent’s request are not in the Respondent’s possession, custody or control. The Respondent has not received the requested documents from Oriana and has no knowledge whether or not Oriana still	N/A (documents will be produced).

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				<p>Annexes Nos. 1, 2 and 3, but the Claimant has omitted to file these annexes.</p> <p>The Claimant claims USD 3 million and USD 1.5 million allegedly due under, respectively, Addenda 68 and 77 to the Conversion Contract.</p> <p>The Claimant has failed to file these addenda despite the fact that they are relevant and material to its claim.</p> <p>It is assumed that these documents are in the possession, custody or control</p>		has the documents in its possession.	

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				of the Claimant since the Claimant relies on rights and claims amounts allegedly due under the Conversion Contract, as amended and supplemented.			
3.	Respondent	Contract No. 804-142-05743160/45-299 / Addendum No. 45 to the Conversion Contract	Counter-Memorial, para. 403; Exhibit C-28	<p>According to paragraph 7.6 of the ICC Award, the amount claimed by the Claimant includes an amount allegedly payable under this contract, which the Claimant has failed to file.</p> <p>Given that the Claimant claims amounts allegedly due under this contract, the contract itself is relevant and</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana is a party to the contract and addendum sought by Ukraine.</p> <p>In any event, GEA has no Contract numbered 804-142-05743160/45-299 in its possession, custody or control.</p> <p>GEA will produce Addendum No. 45 to the Conversion Contract in response to this request.</p>	To the extent relevant, see response to request number 2 above.	N/A (partly no documents, partly documents will be produced).

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				<p>material to its claim.</p> <p>It is assumed that this document is in the possession, custody or control of the Claimant since the Claimant claims amounts allegedly due under this contract.</p>			
4.	Respondent	Contract No. 804-142-05743160/45-119	Memorial, para. 212; Counter-Memorial, paras. 406-408.	<p>The Claimant claims USD 418,859.48 for debts under this contract which it alleges to be between it and Oriana, but has failed to file the contract itself, which is relevant and material to its claim.</p> <p>It is assumed that this document is in the possession, custody or control</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana is a party to the contract sought by Ukraine.</p> <p>Nonetheless, GEA will produce documents in its possession, custody or control that are responsive to this request.</p>	To the extent relevant, see response to request number 2 above.	N/A (documents will be produced).

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				of the Claimant since the Claimant claims amounts allegedly due under this contract.			
5.	Respondent	Contract No. 804-142-05743160/45-299	Memorial, para. 212; Counter-Memorial, paras. 409-410.	<p>The Claimant claims USD 422,372.11 for debts under this contract which it alleges to be between it and Oriana, but has failed to file the contract itself, which is relevant and material to its claim.</p> <p>It is assumed that this document is in the possession, custody or control of the Claimant since the Claimant claims amounts allegedly due under this contract.</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana is a party to the contract sought by Ukraine.</p> <p>As noted above under Request 3, GEA has no Contract numbered 804-142-05743160/45-299 in its possession, custody or control.</p> <p>However, GEA assumes that Ukraine intended to request the contract referred to at paragraph 212 of the Memorial, i.e., Contract No. 804-142-05743160/45-120. GEA will produce this document in response to this request.</p>	To the extent relevant, see response to request number 2 above.	N/A (documents will be produced).

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6.	Respondent	Drafts and all communications between Klöckner and Oriana leading to the conclusion of the Conversion Contract.	Memorial, para. 23; Counter-Memorial, paras. 13 and 148, Exhibit R-0003.	<p>Klöckner was dissolved and deleted from the commercial registry on 24 November 1995.</p> <p>The Claimant bases its claim on rights under the Conversion Contract. These documents are relevant and material to the question whether the Conversion Contract is a valid contract entered into in good faith by the German contracting party.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since the Claimant relies on rights</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana presumably has any drafts and communications with Klöckner leading to the conclusion of the Conversion Contract.</p> <p>In addition, the request is not sufficiently relevant or material, within the meaning of IBA Rule 9(2)(a), since the terms of the Conversion Contract are not in dispute.</p> <p>In any event, GEA has no such drafts and communications in its possession, custody or control.</p>	<p>To the extent relevant, see response to request number 2 above.</p> <p>The relevance and materiality of these documents are described by the Respondent in its comments in the fifth column of this schedule. In addition, the requested documents will assist the Tribunal and the Parties in the interpretation of the Conversion Contract's terms.</p>	N/A (no documents).



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				under the Conversion Contract, which it allegedly acquired through its acquisition of KCH.			
7.	Respondent	Fourth Pledge Agreement between Oriana and KCH	Memorial, para. 73	<p>The Claimant refers to this agreement and has filed the First, Second and Third Pledge Agreements, but has failed to file the Fourth Pledge Agreement which, according to the Claimant, required the approval of the State Property Fund.</p> <p>This document is relevant insofar as it concerns the Claimant's attempt to obtain a pledge over Oriana's fixed assets.</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana was to have been a party to the Fourth Pledge Agreement.</p> <p>Nonetheless, GEA will produce documents in its possession, custody or control that are responsive to this request.</p>	To the extent relevant, see response to request number 2 above.	N/A (documents will be produced).

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				It is assumed that this document is in the possession, custody or control of the Claimant since KCH was apparently a party to it and the Claimant is in possession of the other pledge agreements.			
8.	Respondent	Appendix No. 1 to the Custody Agreement dated 30 September 1998	Memorial, para. 73, Exhibit C-85	<p>The Claimant refers to this agreement which regulates, <i>inter alia</i>, the custody of raw material shipped by KCH to Oriana, but has failed to file Appendix No. 1, which details "segregated storage facilities".</p> <p>This document is relevant insofar as the Claimant claims in respect</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana is a party to the Custody Agreement of 30 September 1998.</p> <p>In addition, Ukraine has failed to establish how the requested document is relevant or material to the dispute, within the meaning of IBA Rule 9(2)(a), since no raw material under the Custody Agreement of 30 September 30 1998 is at issue in this arbitration.</p>	<p>To the extent relevant, see response to request number 2 above.</p> <p>The relevance and materiality of this document are described by the Respondent in its comments in the fifth column of this schedule.</p> <p>The Respondent notes the Claimant's acknowledgement that "no raw</p>	N/A (no documents).

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				<p>of raw materials held in storage in Ukraine.</p> <p>It is assumed that this document is in the possession, custody or control of the Claimant since KCH was apparently a party to the agreement and the Claimant is in possession of the Custody Agreement itself.</p>	<p>In any event, GEA does not have documents responsive to this request in its possession, custody or control.</p>	<p>material under the Custody Agreement of 30 September 1998 is at issue in this arbitration”.</p>	
9.	Respondent	Agreement whereby mg trade services, a subsidiary of the Claimant, acquired the shares of KCH	Memorial, para. 21; Counter-Memorial, paras. 40-41, 147-148.	<p>The Claimant acquired its alleged investment in Ukraine through its acquisition of the shares of KCH.</p> <p>This document is relevant and material for several reasons. For example, the Claimant has been misleading</p>	<p>The Claimant has located a share purchase and assignment agreement of 4 December 1997 relating to the shares of KCH but this agreement contains a confidentiality clause prohibiting disclosure to third parties. This constitutes a legal impediment within the meaning of Article 9(2)(b) and commercial confidentiality within the meaning of Article 9(2)(e) of the IBA Rules.</p> <p>In addition, the requested</p>	<p>As noted in the Respondent's comments in the fifth column of this schedule, the effective date of the Claimant's acquisition of KCH is highly relevant since the Claimant lacks standing in respect of alleged Treaty violations that took place</p>	<p>Granted at this stage insofar as the confidentiality clause in the KCH share purchase and assignment agreement is concerned.</p>

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				<p>regarding the date of the document, which is relevant since any acts that took place beforehand fall without the jurisdiction of the Tribunal; the terms of the contract are relevant in describing the nature of the Claimant's alleged investment in Ukraine and the risks it assumed at that time; the purchase price paid by the Claimant is relevant regarding the extent of its alleged losses.</p> <p>It is assumed that this document is in the possession, custody or control of the Claimant since a wholly</p>	<p>document is irrelevant and immaterial as a matter of law and within the meaning of Article 9(2)(a) of the IBA Rules. GEA is the successor in interest to KCH. It is undisputed that KCH was a German company whose investments in Ukraine were protected by the Treaty at all relevant times. GEA's claims do not depend upon the timing of its subsidiary's acquisition of the shares of KCH.</p> <p>In addition, GEA does not claim the shares of KCH as an investment in Ukraine. Contrary to Ukraine's suggestion, the share purchase and assignment agreement does not address the nature of any investment at issue in this arbitration.</p> <p>Furthermore, the purchase price paid under this share purchase and assignment agreement is not material or relevant. KCH was a going concern with numerous assets and liabilities. The purchase price paid for the aggregate of those assets and liabilities does not</p>	<p>before the Claimant was an alleged investor in Ukraine. This follows as a matter of law.</p> <p>The Claimant has been consistently misleading regarding the effective date of this acquisition: in its Memorial the Claimant refers to early 1998 and relies on an annual report (Exhibit C-37) in which it has mistranslated the apparent effective date of the acquisition (1 January 1998 instead of 1 February 1998). The Claimant now refers to an agreement allegedly dated 4 December 1997.</p>	

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				owned subsidiary of the Claimant was party to this agreement.	correspond to the value of any one asset of the company.	<p>As regards the purchase price paid under the agreement, the Claimant asserts that this “does not correspond” to the value of any one asset of the company, but no information is provided as to how KCH was valued in the context of this acquisition and the disappearance of products. In addition, as noted in the fifth column of this schedule, the terms of the agreement are relevant to determine the risks assumed by the Claimant.</p> <p>The obvious relevance of this document and the Claimant's previous</p>	

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						<p>misleading descriptions of it represent compelling reasons why the Tribunal should order its disclosure.</p> <p>As regards the alleged confidentiality clause, the Respondent doubts that this represents a serious ground for objection. The agreement was allegedly signed in 1997, i.e., over 12 years ago and it cannot be seriously contended that any prejudice would be suffered by its disclosure to the Respondent In any event, the Respondent proposes that, as a preliminary step, the confidentiality</p>	

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						<p>clause should be disclosed. This would allow the Tribunal and the Respondent to determine the scope of the alleged confidentiality undertaking, the prospects of any waiver that the Claimant may be able to obtain and the possibility of finding any other arrangement to accommodate the disclosure of this document in this arbitration.</p> <p>The Respondent takes note that "GEA does not claim the shares of KCH as an investment in Ukraine".</p>	

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10.	Respondent	Due diligence report and all documents prepared or submitted to the Claimant or its subsidiary as due diligence carried out by the Claimant or its subsidiary prior to its acquisition of KCH.	Counter-Memorial, paras. 279-283.	<p>These documents are relevant and material regarding the risks that the Claimant assumed, and the extent to which it considered these risks, prior to purchasing KCH. These documents are also relevant and material regarding the Claimant's knowledge at the time it made its alleged investment in Ukraine of the shooting of ██████████ and of any irregularities or losses regarding diesel or other products that had been shipped to Ukraine under the Conversion Contract.</p> <p>It is assumed that</p>	<p>GEA objects to the extent that this request calls for documents that are protected by the attorney-client or other privilege, within the meaning of IBA Rules 9(2)(b).</p> <p>In any event, the requested documents are irrelevant and immaterial as a matter of law and within the meaning of Article 9(2)(a) of the IBA Rules. GEA is the successor in interest to KCH. It is undisputed that KCH was a German company whose investments in Ukraine were protected by the Treaty at all relevant times. GEA's claims do not depend upon the timing of its subsidiary's acquisition of the shares of KCH.</p> <p>In addition, this request is framed in overly broad terms and therefore seeks information that is not sufficiently relevant or material within the meaning of IBA Rule 9(2)(a).</p>	<p>The Claimant has failed to point to any rules of legal privilege that might be applicable in this arbitration (as is required under Article 9.2(b) of the IBA Rules). This objection must be dismissed accordingly. The Respondent is not requesting disclosure of legal advice provided in the context of this arbitration, but rather the due diligence report and related documents which were prepared in 1997, before the Claimant even made its alleged investment in Ukraine.</p> <p>As regards Article 9.2(a) of the IBA Rules, the Claimant</p>	Rejected (too broad).



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				these documents are in the possession, custody or control of the Claimant since a wholly owned subsidiary of the Claimant was party to the agreement.		<p>has failed to address the comments stated in the fifth column of this schedule. The Respondent reaffirms that these documents are relevant and material for the reasons stated in the fifth column of this schedule.</p> <p>The Respondent denies that this request is framed in overly broad terms. The report should be a stand-alone document and it should be easy for the Claimant to identify documents relating to the Claimant's assumption of risks associated with the acquisition of its alleged investment in Ukraine, the shooting of [REDACTED].</p>	

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						██████████ and irregularities or losses of product that had been shipped to Ukraine.	
11.	Respondent	KCH accounting documents "identifying a discrepancy between the amount of raw material that KCH had shipped to Oriana and the amount of finished product it had received back" (see witness statement of ██████████, Exhibit C-32, paragraph 8), including documents evidencing the dates of these accounting documents and of the date when the underlying raw materials were delivered to Oriana and when the products allegedly disappeared.	Memorial, para. 49, Exhibit C-32, para. 8; Counter-Memorial, para. 278.	The Claimant's claim concerns products that it alleges were misappropriated in Ukraine and states that KCH learned of the disappearance of these products through discrepancies in accounting records. The Claimant has not filed the accounting records referred to and has filed no direct evidence of the amount of products that it alleges it lost.  These documents	This request is irrelevant and immaterial as a matter of law and therefore within the meaning of IBA Rule 9(2)(a). The quantity of product that was misappropriated was established by the Settlement Agreement and its value liquidated in the ICC Award. This issue is not open to reassessment in this case.  Nonetheless, and subject to the above objection, GEA will produce those documents concerning the discrepancy provided to the ICC tribunal.	The Respondent was a party neither to the Settlement Agreement nor to the ICC Arbitration.  For the avoidance of doubt, the Respondent maintains this request, i.e., for <u>all</u> accounting documents from which the Claimant / KCH identified a discrepancy between material shipped to Oriana and the amount received back.  To the extent documents exist which KCH did not file in the ICC	N/A (documents will be produced).

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				<p>are relevant and material in evidencing the amount of petrochemical products that the Claimant alleges that the Respondent misappropriated and the date when the underlying raw materials were delivered to Oriana and when these products allegedly disappeared.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since KCH was a wholly owned subsidiary of the Claimant at the time these documents were prepared.</p>		<p>arbitration, the Respondent requests that they be disclosed.</p>	

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12.	Respondent	Communications between KCH's accounting department and KCH's management and legal advisers (including [REDACTED]), including reports prepared by KCH's accounting department regarding the alleged discrepancy between the quantity of raw material KCH / Klöckner shipped to Oriana and the amount of finished products returned to KCH / Klöckner.	Memorial, para. 49; Counter-Memorial, para. 278.	<p>These documents are relevant and material in evidencing the date when KCH learned of the alleged disappearance of the products, the amount of products that KCH considered had disappeared and KCH's contemporaneous understanding of the cause of the alleged disappearance.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since the Claimant's witnesses refer to these documents and KCH was a</p>	<p>GEA objects to the extent that this request calls for documents that are protected by the attorney-client or other privilege, within the meaning of IBA Rules 9(2)(b).</p> <p>In any event, Ukraine has failed to establish that this request is relevant or material, within the meaning of IBA Rules 9(2)(a). GEA is the successor in interest to KCH. It is undisputed that KCH was a German company whose investments in Ukraine were protected by the Treaty at all relevant times. GEA's claims do not depend upon the timing of its subsidiary's acquisition of the shares of KCH.</p> <p>In addition, this request is overbroad. For instance, it does not limit the time period during which the requested documents were created.</p> <p>Subject to the above objections, GEA will produce documents in its possession, custody or control that are responsive to this request.</p>	<p>The Claimant has failed to point to any rules of legal privilege that might be applicable in this arbitration (as is required under Article 9.2(b) of the IBA Rules). In any event such privilege would only apply to communications with external legal advisors and not apply to the documents requested by the Respondent. This objection must be dismissed accordingly.</p> <p>The Respondent is not requesting disclosure of legal advice, but rather any contemporaneous communications between KCH's accounting</p>	Rejected (too broad and privileged).

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				wholly owned subsidiary of the Claimant at the time these documents were prepared.		<p>department and KCH's management and legal advisers regarding the alleged accounting discrepancy and alleged loss of product.</p> <p>These communications dated from 1997 / 1998 are not covered by any rules of legal privilege which could possibly be relevant in this arbitration. The Respondent's request for these documents is maintained.</p> <p>As regards Article 9.2(a) of the IBA Rules, the Claimant has failed to address the comments stated in the fifth column of this schedule. The Respondent</p>	

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						<p>reaffirms that these documents are relevant and material for the reasons stated in the fifth column of this schedule.</p> <p>The Respondent denies that this request is framed in overly broad terms. The Respondent has specified documents between the KCH accounting department and KCH's management and legal advisors and the time period is limited to the period when KCH identified the alleged loss of product (i.e., 1997 / 1998).</p>	
13.	Respondent	Copies of bills of lading and shipping documents evidencing the shipment from KCH / Klöckner to Oriana of raw	Counter-Memorial, paras. 119-120, 154-158.	These documents are relevant in that they show the owner of the	Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article	To the extent relevant, see response to request number 2 above.	N/A (documents will be produced).

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		materials in 1997 and 1998 and the shipment from Oriana to KCH / Klöckner of finished products.		<p>products which were allegedly misappropriated, notably whether the products were owned by Klöckner or KCH and the date when the underlying raw materials were shipped to Oriana.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since KCH was a wholly owned subsidiary of the Claimant at the time or shortly after these documents were prepared.</p>	<p>3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana was a party to the shipments in question and presumably has a record of the bills of lading and shipping documents for shipment from Oriana to KCH / Klöckner in 1997-1998.</p> <p>GEA has at this point only fragmented and incomplete records with respect to shipment of raw materials to Oriana in 1997-1998. KCH's ownership of the raw materials is authoritatively established by several documents already of record, including the Settlement Agreement, the Repayment Agreement and other documents signed by both of the parties involved.</p> <p>Nonetheless, GEA will produce documents in its possession, custody or control that are responsive to this request.</p>	The Respondent was not a party to the Settlement Agreement.	
14.	Respondent	Documents prepared by or for the executive board of KCH and Solvadis in 1997 and 1998,	Counter-Memorial, paras. 154-158.	These documents are relevant in demonstrating the	This request is irrelevant and immaterial as a matter of law and within the meaning of Article	The Claimant's objections to this document request	Granted.

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		including minutes of meetings, regarding the shooting of ██████████ and the alleged misappropriation of the petrochemical products allegedly processed by Oriana.		<p>date when KCH learned of the shooting of ██████████ and the alleged misappropriation of products and KCH's contemporaneous understanding of the person(s) responsible for these acts.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since KCH was a wholly owned subsidiary of the Claimant at the time or shortly after these documents were prepared.</p>	<p>9(2)(a) of the IBA Rules. GEA is the successor in interest to KCH. It is undisputed that KCH was a German company whose investments in Ukraine were protected by the Treaty at all relevant times. GEA's claims do not depend upon the timing of its subsidiary's acquisition of the shares of KCH.</p> <p>In addition, the principle of equality of arms recognized in Article 9(2)(g) of the IBA Rules militates against requiring one party to produce sensitive documents from its governing bodies without requiring the other party to do the same. GEA would be willing to produce such internal documents of KCH and Solvadis if Ukraine were to produce corresponding documents prepared by or for the governing bodies of the State Property Fund, Oriana, the Ministry of Industrial Policy, the Ministry for Investment Policy, the Ministry of Finance and the Ministry of Economy.</p>	<p>must be dismissed.</p> <p>As regards Article 9.2(a) of the IBA Rules, the Claimant has failed to address the comments stated in the fifth column of this schedule. The Respondent reaffirms that these documents are relevant and material for the reasons stated.</p> <p>The Claimant's reliance on Article 9.2(g) is misplaced. Article 9.2(g) refers to considerations of fairness or equality of the Parties that the Tribunal determines to be compelling.</p> <p>The Claimant has not requested any of the allegedly corresponding</p>	



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						documents cited by the Claimant. In any event, the Respondent is not in possession of any documents which go to evidence the date when the Claimant learned of the shooting / alleged misappropriation or the contemporaneous understanding of these events. To the contrary, the Respondent now is required to defend a claim in relation to events that appear to have taken place over 10 years ago. This considerable time lapse places the Respondent at a serious disadvantage, not least since any official documents will likely have been destroyed. It is	

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						<p>unfair for the Respondent to be required to defend factual allegations regarding events that allegedly took place over 10 years ago without having access to documents in the Claimant's possession regarding these events.</p> <p>For these reasons, the Respondent emphasises that these highly relevant documents should be disclosed. Indeed, their non-disclosure would represent a serious departure from the principle of equality of arms.</p> <p>It is further emphasised that the Claimant does not deny that these</p>	

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						documents are relevant. To the contrary, it describes them as "sensitive" which underscores their relevance and the reasons the Tribunal should order their disclosure.	
15.	Respondent	Minutes and other documents prepared by or for the Claimant's executive board in 1997 and 1998 regarding the alleged misappropriation of the petrochemical products allegedly processed by Oriana.	Counter-Memorial, paras. 154-158.	<p>These documents are relevant in demonstrating the date of the alleged misappropriation of products and the Claimant's contemporaneous understanding of the person(s) responsible for this act.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant</p>	<p>This request is irrelevant and immaterial as a matter of law and within the meaning of Article 9(2)(a) of the IBA Rules. GEA is the successor in interest to KCH. It is undisputed that KCH was a German company whose investments in Ukraine were protected by the Treaty at all relevant times. GEA's claims do not depend upon the timing of its subsidiary's acquisition of the shares of KCH.</p> <p>In addition, the principle of equality of arms recognized in Article 9(2)(g) of the IBA Rules militates against requiring one party to produce sensitive</p>	See response to request number 14 above.	Granted.

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				since they are documents created by the Claimant.	documents from its governing bodies without requiring the other party to do the same. GEA would be willing to produce such internal documents of its executive board only if Ukraine were to produce corresponding documents prepared by or for the governing bodies of the State Property Fund, Oriana, the Ministry of Industrial Policy, the Ministry for Investment Policy, the Ministry of Finance and the Ministry of Economy.		
16.	Respondent	Minutes and other documents prepared by or for the working group established by the Claimant's executive board dated from 1998 to date regarding the alleged misappropriation of the petrochemical products allegedly processed by Oriana, the Oriana bankruptcy proceedings, the ICC arbitration and the Ukrainian legal proceedings regarding the attempted recognition of the ICC Award and the attempts to register KCH's claim in the various bankruptcy proceedings.	Memorial Exhibit C-32, para. 11, C-86.	These documents are relevant in demonstrating the date of the alleged misappropriation of products, the Claimant's contemporaneous understanding of the person(s) responsible for this act, the steps taken by the Claimant to enforce the ICC Award, the strategy adopted by the Claimant in	This request is irrelevant and immaterial as a matter of law and within the meaning of Article 9(2)(a) of the IBA Rules. GEA is the successor in interest to KCH. It is undisputed that KCH was a German company whose investments in Ukraine were protected by the Treaty at all relevant times. GEA's claims do not depend upon the timing of its subsidiary's acquisition of the shares of KCH.  In addition, this request is overbroad and unreasonably burdensome, within the meaning of	The Claimant's objections to this document request must be dismissed.  As regards Article 9.2(a) of the IBA Rules, the Claimant has failed to address the comments stated in the fifth column of this schedule. The Respondent reaffirms that these documents are relevant and material for the	Granted to the extent that it concerns minutes prepared by or for the working group established by the Claimant's executive board dated from 1998 to June 2001 regarding the alleged misappropriation of the petrochemical products allegedly processed by

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				<p>respect of the Ukrainian bankruptcy proceedings and the value attached to the purported claims.</p> <p>The Claimant has only filed the protocol of the meeting of the "KCH/Oriana Working Group" held on 26 October 1998. These documents are highly relevant in understanding the contemporaneous understanding of KCH and the Claimant regarding what entity was responsible for the alleged misappropriation of the products in Ukraine, whether</p>	<p>IBA Rule 9(2)(c). Indeed, the request seeks documents prepared at any time during the past 12 years.</p> <p>Furthermore, the principle of equality of arms recognized in Article 9(2)(g) of the IBA Rules militates against requiring one party to produce sensitive documents from its governing bodies without requiring the other party to do the same. GEA would be willing to produce such internal documents of the working group only if Ukraine were to produce corresponding documents prepared by or for the governing bodies of the State Property Fund, Oriana, the Ministry of Industrial Policy, the Ministry for Investment Policy, the Ministry of Finance and the Ministry of Economy.</p>	<p>reasons stated.</p> <p>As regards the Claimant's statement that this request is "over broad and unreasonably burdensome" (Article 9.2(g)), the Respondent specifies that the key meetings of the working group would have taken place in the period from mid-1998 to June 2001 when KCH commenced the ICC arbitration. [REDACTED] discusses the working group (which underlines its relevance), and the Claimant is well-placed to locate and produce the minutes of the working group</p>	<p>Oriana, and the Oriana bankruptcy proceedings.</p>

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				<p>this was in fact a criminal act (as now alleged by the Claimant) and the Claimant's contemporaneous understanding of the bankruptcy proceedings and whether it considered that they were being conducted in accordance with due process.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since representatives of the Claimant and / or its subsidiaries attended these meetings. The Claimant has filed only one of protocol of the</p>		<p>meeting. This is evidenced by the fact that it had filed at Exhibit C-86 the minutes of one of these meetings, which it apparently deemed relevant.</p> <p>As regards the Claimant's reliance on Article 9.2(g) of the IBA Rules, see the response to request number 14 above.</p> <p>The Respondent further emphasises that the Claimant does not deny that these documents are relevant. To the contrary, it describes them as "sensitive" which underscores their relevance and the reasons the Tribunal should order their disclosure.</p>	

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				meetings of the working group. It is assumed that it is in possession of these documents which it has not filed.		Indeed, given that this working group was established "to address the problem" of the missing product, the production of this category of documents is essential in order to ensure that both Parties (and the Tribunal) are given the opportunity to investigate the facts behind the Claimant's claim.	
17.	Respondent	Agreement under which the Claimant sold solvadis ag to Chemdis Limited	Memorial, paras. 26-27; Counter-Memorial, paras. 98-99; 159-164.	The Claimant acknowledges that it sold its interest in KCH to Chemdis Limited in 2004, but submits that KCH's rights against Oriana were assigned to the Claimant.	GEA has no agreement for the sale of solvadis ag to Chemdis Limited in its possession, custody or control.  Ukraine's comments suggest that it had in mind to request an agreement for the sale by solvadis ag of solvadis chemag ag to Chemdis Limited.	The Respondent's request is for the agreement whereby "GEA sold its interest in solvadis ag to Chemdis Limited" as stated by the Claimant at para. 26 to the Memorial and depicted on page 2	N/A (no documents).

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				<p>The agreement whereby the Claimant sold its interest in KCH to Chemdis Limited is relevant and material in demonstrating the intention of the parties to that agreement as to whether Chemdis Limited should be entitled to any potential claim under the Treaty. Moreover, the amount of consideration paid for KCH is relevant and material in respect of the amount of the Claimant's alleged losses suffered in respect of its alleged investment in Ukraine and regarding the</p>	<p>Had that been Ukraine's request, GEA would have objected that it is insufficiently relevant or material, within the meaning of IBA Rule 9(2)(a). The Sale and Purchase Agreement of June 28, 2004 (Exhibit C-2) is the definitive statement of the rights transferred by that agreement. Section 5(1) of that agreement specifies that it "constitutes the entire agreement and supersedes all other prior agreements and undertakings both written and oral among the Parties." GEA does not rely on any other agreement to establish its status as a successor in interest to KCH. The agreement for the sale of solvadis chemag ag is not relevant for this purpose.</p> <p>In addition, the amount of consideration paid for solvadis chemag ag in that agreement is irrelevant since claims arising out of business dealings with Oriana were excluded from the purchase.</p>	<p>of the Annex attached to the Memorial.</p> <p>To the extent there is any confusion as to the exact nature of this agreement, this underscores the fact that the document should be disclosed since the Claimant has failed to describe the contract with any adequate precision.</p> <p>The Claimant's objection that this agreement is "insufficiently relevant or material" within the meaning of Article 9.2(a) is baseless. The Claimant sold its interest in KCH (the entity which was allegedly prejudiced by the actions that form the subject of</p>	



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				<p>putative value of any claim under the Treaty.</p> <p>It is assumed that this document is in the possession, custody or control of the Claimant was a party to this agreement.</p>		<p>the Claimant's claim) to Chemdis Limited in 2004. The terms of the agreement which effected this sale are clearly relevant insofar as they indicate the nature of the rights transferred and the value of the Claimant's interest in KCH. The Respondent cannot verify the quantum of the Claimant's purported damages without understanding how KCH's purported loss was reflected in the transaction by which the Claimant divested its interest in KCH.</p> <p>The relevance of the agreement also follows from the Claimant's</p>	

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						objection that "claims arising out of business dealings with Oriana were excluded from the purchase". The Respondent cannot verify whether the claims brought in this arbitration remained with the Claimant, but has a right to see the underlying documents.	
18.	Respondent	Communications and documents exchanged by the Claimant and Chemdis Limited in 2004 (at the time of the sale of solvadis ag and the purported assignment of claims to the Claimant) regarding any claims that KCH, the Claimant or any other company may have had against Oriana or the Respondent.	Memorial, paras. 26-27; Counter-Memorial, paras. 98-99; 159-164.	These documents are relevant in demonstrating whether the parties to these transactions intended that any claim under the Treaty should vest with the Claimant, KCH or with Chemdis Limited.  It is assumed that these documents are in the	This request is insufficiently relevant or material, within the meaning of IBA Rule 9(2)(c), for the reasons set forth in the preceding response and objection.  Subject to this objection, GEA states that it has no such documents regarding the scope of the assignment of KCH's claims to GEA in its possession, custody or control.	The Claimant's reference to Article 9.2(c) presumably should be to Article 9.2(a).  This objection should be dismissed for the same reasons why the objection to production of the document identified at Item 17, above, should be dismissed.	N/A (no documents).

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				possession, custody or control of the Claimant since the Claimant was party to these agreements.			
19.	Respondent	The original marked notes of the meeting between ██████████ held on 21 October 1998, kept in the files of ██████████ in Duisburg.	Memorial, paras. 60, 157; Counter-Memorial, para. 156.	<p>The Claimant relies heavily on a record of these notes, which comprise a sketch, in support of its allegation that the Respondent misappropriated products belonging to KCH (see Exhibit C-149), but has not filed the notes themselves.</p> <p>The notes and sketch are relevant and material regarding this allegation and the time when the products allegedly went missing,</p>	GEA does not have documents responsive to this request in its possession, custody or control.	Given that the document filed at Exhibit C-149 refers to the files in which these notes were located, the Respondent requests that the Claimant produce the files of ██████████ in Duisburg.	N/A (no documents).

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				<p>which is apparently depicted on the sketch.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since Exhibit C-149 states that the original marked notes are kept in the files of ██████ in Duisburg.</p>			
20.	Respondent	All correspondence, minutes of internal meetings, memoranda, claims and other documents between KCH, Klöckner, the Claimant and / or any related companies and their insurance company or consortium, which appears to have included Allianz. The Respondent requests, in particular, the insurance contract, details of any claims submitted and awarded,	Exhibit C-86; Counter-Memorial, paras. 213, 240.	These documents are material and relevant in the light of the comments recorded at paragraph 5 of the protocol of the meeting of the "KCH/Oriana Working Group" held on 26 October	This request is legally irrelevant under Article 11(3) of the Treaty, which provides as follows: "The Contracting State involved in a dispute shall refrain, during arbitration proceedings or the enforcement of an arbitral award, from raising the objection that the national or the company of the other Contracting State has been compensated under an insurance contract in respect of all or part of	The Claimant's objection is misconceived. The Respondent has not made an objection that the Claimant has been compensated under an insurance contract in respect of all or part of the damage.	Granted.

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		the request of the insurance company that a criminal complaint be filed, the response to the insurance company's request that a criminal complaint be filed, any affidavits (including drafts) prepared by the employees and management of the Claimant (including Metallgesellschaft AG) or any other companies regarding the loss of the products in connection with a possible claim to the insurance company or consortium.		<p>1998 (Exhibit C-86).</p> <p>The protocol indicates that the insurance company lacked evidence that the inventory missing at the inventory count of 30 June 1998 actually went missing "because of embezzlement"; that the insurance company had "significant questions" concerning the amount of missing inventory; and that the insurance company requested that a criminal complaint be filed.</p> <p>It is assumed that these documents are in the possession,</p>	the damage." Given the clear and unambiguous text of the Treaty, this request is irrelevant and immaterial as a matter of law and within the meaning of Article 9(2)(a) of the IBA Rules.	The Claimant's reference to Article 11(3) of the Treaty does not detract from the relevance of the documents requested. In particular, the Claimant does not address the reasons stated in column 5 of this schedule. Notably, it appears that the insurance company queried whether product had in fact disappeared due to alleged "embezzlement" and the documents requested are relevant regarding the Claimant's allegation of criminal activities which the Respondent failed to prosecute. Furthermore, it is clear that any	

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				custody or control of the Claimant since the protocol of the working group demonstrates that the Claimant and / or its subsidiaries communicated on this issue.		findings of the insurance company are relevant to the quantum of losses allegedly suffered by the Claimant.	
21.	Respondent	Minutes of meeting between, <i>inter alia</i> , representatives of Oriana, mg trade services and KCH held in Munich on 28-30 April 1998.	Memorial, paras. 59, 88; Exhibit C-12	The Claimant relies on the minutes of the meeting held on 10 July 1998 (Exhibit C-12). The 10 July 1998 meeting was held "as part of the joint decisions set down in the minutes of the meeting held in Munich between 28 and 30 April 1998". However, the Claimant has not filed the minutes of the 28-30 April 1998 meeting.	Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana presumably should have copies of the minutes of meetings attended by its representatives.  Nevertheless, GEA will produce documents in its possession, custody or control that are responsive to this request.	To the extent relevant, see response to request number 2 above.	N/A (documents will be produced).

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				<p>This document is relevant and material in that it goes to demonstrate the purpose and context of the 10 July 1998 meeting.</p> <p>It is assumed that this document is in the possession, custody or control of the Claimant since representatives of the Claimant and / or its subsidiaries attended this meeting.</p>			
22.	Respondent	Documents detailing [REDACTED] employment record with KCH. [REDACTED]	Memorial, paras. 13, 167.	<p>This is relevant and material given that the Claimant relies on the alleged shooting of [REDACTED] in support of its allegation of Treaty breach, but</p>	<p>GEA has no documents regarding employment of [REDACTED] by KCH.</p> <p>However, GEA will produce a document evidencing [REDACTED]</p>	<p>The Claimant has provided no documents relating to the termination of the agreement provided or when [REDACTED] ceased to be engaged by KCH.</p>	N/A (partly no documents and partly a document will be produced).

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				<p>has failed to attempt to prove any connection between ██████████ and the Claimant, KCH and / or any related company.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since KCH was a wholly owned subsidiary of the Claimant.</p>	██████████	<p>The Respondent notes that ██████████ was engaged ██████████</p>	
23.	Respondent	Copy letter from mg trade services ag to the Ministry of Industrial Policy of Ukraine No. 18/10-1-123 dated 31 July 1998.	Memorial, para. 63	<p>The Claimant relies on the response to this letter dated 2 August 1998 (Exhibit C-14), but has failed to file this letter, in which mg trade services ag expressed concern due to the</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. The Ministry of Industrial Policy was the recipient of this document. Ukraine does not explain why it cannot secure this document from its own organ.</p>	<p>For the avoidance of doubt, the Respondent confirms that the document disclosed by the Claimant in response to the Respondent's request is not in the Respondent's possession, custody</p>	N/A (a document will be produced).



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				<p>bankruptcy proceedings brought against Oriana.</p> <p>The document is relevant in demonstrating the context to the letter relied on by the Claimant and the nature of mg trade services ag's contemporaneous opinion regarding the conduct of the bankruptcy proceedings.</p> <p>It is assumed that this document is in the possession, custody or control of the Claimant since a subsidiary of the Claimant wrote this letter.</p>	<p>That being said, GEA has located a letter from mg trade services to the State Property Fund and the Ministry of Industrial Policy of Ukraine dated July 31, 1998. GEA will produce this letter in response to the request.</p>	<p>or control.</p> <p>The letter disclosed indicates that "as we already advised you in our first letter of today's date, we have learned of bankruptcy proceedings against the Oriana Group". The Respondent requests this earlier letter dated 30 July 1998 from mg trade services to [REDACTED] which is not in the Respondent's possession, custody or control.</p>	
24.	Respondent	Attachments to the minutes of the meetings held on 23 February 1999	Memorial, paras. 82, 199	The Claimant has filed the minutes (Exhibit C-23), but	GEA will produce documents in its possession, custody or control that are responsive to this request.		N/A (documents will be produced).

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				<p>not the attachments: "1. Overview of the liabilities owed by Oriana to KCH; 2. 'Balance sheet' of the current liabilities between Kloeckner and OAO Oriana; 3. Liabilities owned by Kloeckner from raw materials conversion; 4. Unconsidered transport expenses of the Oriana Group; 5. Itemisation of the quantities of products delivered".</p> <p>These documents are relevant and material regarding the extent of the alleged debt owed by Oriana to KCH, which the Claimant considers</p>			

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				<p>the Respondent to be responsible for.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since the Claimant has filed the minutes without attachments.</p>			
25.	Respondent	Minutes of meeting between Oriana and the Claimant (or a related company) in Duisburg held on 17-19 September 1998	Memorial, para. 70.	<p>The Claimant asserts that during this meeting ██████ was formally introduced ██████ but has failed to file any minutes of this meeting. Given that detailed minutes of other meetings held between representatives of Oriana, the</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana should have copies of the minutes of the meeting held in Duisburg on 17-19 September 1998, which its representatives attended.</p> <p>Nevertheless, GEA will produce documents in its possession, custody or control that are responsive to this request.</p>	To the extent relevant, see response to request number 2 above.	N/A (documents will be produced).

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				Claimant and KCH were taken, it is assumed that minutes of this meeting were taken and are in the possession, custody or control of the Claimant. This document is relevant and material given that the Claimant relies on these minutes in support of its argument that [REDACTED] was formally introduced [REDACTED]				
26.	Respondent	Copies of claims filed by KCH in the various bankruptcy proceedings, including the claim allegedly filed by KCH in around August 1998 in the bankruptcy proceedings initiated by Shelton and the claim that "MG/ Klöckner" attempted to file in the bankruptcy	Memorial, para. 173, Exhibits C-89 and C-90.	[REDACTED] of mg solvadis ag states in his fax to the Federal Ministry of Economics dated 2 August 2001 (Exhibit C-90) that "[o]n August 6, 1998,	Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana was a party to the bankruptcy proceedings.	For the avoidance of doubt, the Respondent confirms that the document disclosed by the Claimant in response to the Respondent's request has not been	N/A (documents will be produced).	

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		proceedings initiated by Galev.		<p>KCH submitted its claims for the bankruptcy table at the bankruptcy court".</p> <p>The Claimant has not filed any evidence that KCH did file a claim in these bankruptcy proceedings.</p> <p>In the travel report prepared by [REDACTED] dated 6 August 1999 (Exhibit C-89), [REDACTED] states "It was not possible for me to determine whether Baker &amp; McKenzie filed the claims of MG/ Klöckner; according to unconfirmed information, Baker &amp; McKenzie is to have alleged that</p>	Nevertheless, GEA will produce documents in its possession, custody or control that are responsive to this request.	<p>in the Respondent's possession, custody or control.</p> <p>The Claimant has provided a copy of a claim dated 20 August 1998. It has not filed a copy of any alleged claim dated 6 August 1998. The Respondent accordingly maintains its request.</p>	

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				<p>the relevant employee of MG had suffered a car accident and that it would be very difficult to submit the necessary documents on time”.</p> <p>The Claimant has likewise not filed this claim or any evidence in respect of it.</p> <p>The claim documents are relevant and material given that the Claimant alleges that the conduct of the bankruptcy proceedings constitutes a violation of the Treaty.</p> <p>It is assumed that these documents</p>			

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				are in the possession, custody or control of the Claimant since KCH was a wholly owned subsidiary of the Claimant.			
27.	Respondent	All communications between KCH, the Claimant, and / or an associated or subsidiary company and their legal advisers, including Baker & McKenzie, regarding the various Oriana bankruptcy proceedings.	Memorial, paras. 173-174, Exhibit C-89	<p>The travel report prepared by ██████ dated 6 August 1999 (Exhibit C-89) indicates that Baker &amp; McKenzie had been retained by the Claimant and / or KCH in the context of the bankruptcy proceedings.</p> <p>Given that the Claimant alleges that it was treated unfairly in the bankruptcy proceedings, that the conduct of the</p>	This request calls for documents that are protected by the attorney-client or other privilege, within the meaning of Article 9(2)(b) of the IBA Rules.	<p>The Claimant has failed to identify any rules of legal privilege that might be applicable in this arbitration (as is required under Article 9.2(b) of the IBA Rules). This objection must be dismissed accordingly.</p> <p>The Respondent is not requesting disclosure of legal advice provided in the context of this arbitration, but rather the documents relating to its claim in the</p>	Rejected (privileged).

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				<p>bankruptcy proceedings constitutes a violation of the Treaty and that it appears that the failure of KCH to register successfully its claim in the Oriana bankruptcy proceedings was caused, at least partly, by the litigation strategy adopted by the Claimant, it is appropriate that the Claimant disclose all contemporaneous legal advice that the Claimant / KCH and / or related companies received during the Oriana bankruptcy proceedings and subsequent litigation.</p>		<p>bankruptcy proceedings. Those legal proceedings are entirely distinct from the present arbitration and any legal advice given in those proceedings is not privileged for the purpose of this arbitration.</p> <p>As noted in the fifth column of this schedule, the Claimant alleges that it was treated unfairly in the bankruptcy proceedings but evidence indicates that the Claimant's disappointment in respect of these proceedings followed from its own litigation strategy. Moreover, Exhibit C-89 indicates that KCH may have failed to</p>	



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				<p>This is relevant to show whether the Claimant was denied justice in violation of the Treaty and regarding the scope of its legitimate expectations regarding the bankruptcy proceedings.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since the Claimant or its subsidiary company (e.g., KCH) was party to these communications.</p>		register a claim in certain bankruptcy proceedings since an employee of Baker & McKenzie suffered a car accident with the result that documents were not filed on time.	
28.	Respondent	Letter of engagement between KCH and Control Risks, copies of all information communicated by KCH, the Claimant and / or	Memorial, paras. 13, 167, Exhibit C-34, para. 12.	██████████ states in his witness statement (Exhibit C-34, paragraph	This request is insufficiently relevant and material within the meaning of Article 9(2)(a) of the IBA Rules. Ukraine does not	The Claimant's denial of the relevance of the documents	Rejected (lack of relevance).

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		an associated or subsidiary company to Control Risks, all communications from Control Risks to KCH, the Claimant and / or an associated or subsidiary company and all reports prepared by Control Risks for the Claimant, KCH and / or any related companies, including the report commissioned by KCH regarding the circumstances of the alleged shooting of [REDACTED]		<p>12) that KCH engaged Control Risks to investigate the shooting of [REDACTED], but that Control Risks was unable to identify the responsible party or parties.</p> <p>Given that the Claimant alleges that the Respondent is responsible for the shooting of [REDACTED] this report is relevant and material.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since the Claimant or its subsidiary company (e.g., KCH) was party to</p>	dispute that GEA engaged Control Risks. Contrary to Ukraine's suggestion, GEA has not alleged that Ukraine shot [REDACTED]. None of Ukraine's justifications for this request addresses a material issue in dispute.	<p>requested is clearly unsustainable.</p> <p>As acknowledged by [REDACTED], the Claimant engaged Control Risks to investigate the shooting of [REDACTED] and Control Risks was unable to identify the persons responsible.</p> <p>The Respondent notes the Claimant's statement that "GEA has not alleged that Ukraine shot [REDACTED]". However, given that the Claimant alleges that the Respondent is nevertheless responsible for this incident (for example, by alleging that the failure to prosecute anyone constitutes a</p>	

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				these communications.		violation of the obligation to provide full protection and security), these documents are clearly relevant and should be disclosed.	
29.	Respondent	Pleadings, witness statements, evidence and documents filed in the ICC arbitration Case No. 11645/DK, including but not limited to all documents listed on page 5 of the ICC Award (Exhibit C-28), i.e. the Request for Arbitration, Oriana's "Answer to the Claim", Oriana's letter to ██████ in respect of the Request for Arbitration, transcripts of all hearings, Terms of Reference, KCH's "Submission (on Jurisdiction and Validity of the 'Agreement for Repayment of Debts')", Oriana's "Response to Claimant's Submission", KCH's Reply, KCH's Expert Report, Oriana's letter to ██████ and KCH's Closing Statement.	Memorial, para. 212, Counter-Memorial, paras. 401-415.	<p>The Claimant's claim is based on the amounts that were awarded to KCH in the ICC arbitration, and the Claimant has filed an incomplete set of the arbitration documents.</p> <p>A full set of documents filed in the ICC arbitration is accordingly relevant and material to the nature of the Claimant's claim.</p> <p>It is assumed that these documents are in the</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. Ukraine undisputedly controls Oriana. Oriana was a party to the ICC arbitration Case No. 11645/DK, and documents in the case were meticulously transmitted to Oriana.</p> <p>In addition, this request is overbroad and unreasonably burdensome, within the meaning of IBA Rule 9(2)(c). Ukraine has requested substantial volumes of documents which Oriana has. It would be unduly burdensome for GEA to produce the requested documents.</p>	<p>To the extent relevant, see response to request number 2 above. The Respondent has requested Oriana to provide all relevant documents from the ICC arbitration but Oriana has failed to comply with this request.</p> <p>The Respondent denies that it would be unreasonably burdensome for the Claimant to produce these documents. The Respondent has identified with specificity the documents</p>	Rejected (too broad).

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				possession, custody or control of the Claimant since KCH was a wholly owned subsidiary of the Claimant.		requested, in particular five documents listed on pages 5 of the ICC Award (Exhibit X-28), and it should be straightforward for the Claimant to locate them and provide them to the Respondent. The Claimant has already exhibited a number of documents from the ICC arbitration, e.g. Exhibit C-0028, C-0073, C-0075, C-0113 and C-0114, and disclosed certain documents in response to Item 11 which were filed as exhibits in the ICC arbitration, the meaning of which is not clear on their face. The Claimant should therefore be able to produce the	

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						<p>remaining documents and provide a complete record. Disclosure of the full set of pleadings and evidence filed in the ICC arbitration is necessary to understand fully the significance and meaning of the ICC documents filed and disclosed by the Claimant so far in this arbitration.</p> <p>It would be prejudicial to the Respondent if the Claimant was allowed to produce only those selected documents from the ICC arbitration that it deems to be favourable to its case.</p> <p>The Respondent</p>	

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						notes that the Claimant does not deny the relevance or materiality of these documents.	
30.	Respondent	Annual reports (Jahresabschluss) for Metallgesellschaft AG / mg technologies ag / GEA for the years 1997 – 2004.	Memorial, paras. 19-21, Counter-Memorial, para. 11	<p>These are relevant and material since they represent a contemporaneous record of the nature and extent of the Claimant's alleged losses relating to its</p> <p>alleged investment in Ukraine.</p> <p>It is fairly assumed that these documents are in the possession, custody or control of the Claimant.</p>	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. GEA understands that all of the requested documents are available to the public under German law.</p> <p>As stated by the tribunal in the case of <i>ADF Group, Inc. v. United States of America</i> (ICSID Case No. ARB(AF)/00/1), Procedural Order No. 3 Concerning the Production of Documents, October 4, 2001, para. 4 (<a href="http://www.state.gov/s/l/c3754.htm">http://www.state.gov/s/l/c3754.htm</a>):</p> <p>“Where only one party has access to requested documents relevant to the proceeding at hand, we consider that the party with access should be required to make the documents available to the other party. Where, however, the</p>	<p>These documents are available to the public only in theory. The Respondent's efforts to procure detailed corporate documents from commercial registers has been unsuccessful to date. To the extent the Respondent has requested more detailed information that is not readily available online, requests have been denied, or the commercial registers have conceded that files are missing, or they have imposed considerable burdens on the</p>	Granted.

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					<p>documents requested are in the public domain and equally and effectively available to both parties, we believe that there would be no necessity for requiring the other party physically to produce and deliver the documents to the former for inspection and copying.”</p> <p>No such necessity, within the meaning of the ICSID Arbitration Rules, has been demonstrated here.</p>	<p>Respondent by levying charges or requiring the Respondent's counsel to inspect the physical files in the registry in person.</p> <p>The requested documents are therefore not “equally and effectively” available to both Parties and the Claimant should be required to produce them.</p>	
31.	Respondent	Annual reports (Jahresabschluss) for mg trade services ag / solvadis ag for the years 1997 – 2004	Memorial, para. 25, Counter-Memorial, para. 12	These are relevant and material since they represent a contemporaneous record of the nature and extent of the Claimant's alleged losses relating to its alleged investment in Ukraine.	<p>Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as those terms are used in Article 3(3)(c) of the IBA Rules. GEA understands that all of the requested documents are available to the public under German law.</p> <p>As stated by the tribunal in the case of <i>ADF Group, Inc. v. United</i></p>	For the reasons stated in respect of document request number 30 these documents are not “equally and effectively available” to both Parties and the Claimant should be required to produce	Granted.

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				It is assumed that these documents are in the possession, custody or control of the Claimant since mg trade services ag / solvadis ag was wholly owned by the Claimant.	<p><i>States of America</i> (ICSID Case No. ARB(AF)/00/1), Procedural Order No. 3 Concerning the Production of Documents, October 4, 2001, para. 4 (<a href="http://www.state.gov/s/l/-c3754.htm">http://www.state.gov/s/l/-c3754.htm</a>):</p> <p>“Where only one party has access to requested documents relevant to the proceeding at hand, we consider that the party with access should be required to make the documents available to the other party. Where, however, the documents requested are in the public domain and equally and effectively available to both parties, we believe that there would be no necessity for requiring the other party physically to produce and deliver the documents to the former for inspection and copying.”</p> <p>No such necessity, within the meaning of the ICSID Arbitration Rules, has been demonstrated here.</p>	them,	
32.	Respondent	Annual reports (Jahresabschluss) for KCH / solvadis international gmbh /	Memorial, paras. 22-25, Counter-Memorial, para. 14	These are relevant and material since they represent a	Ukraine has failed to demonstrate that the documents are without its possession, custody or control, as	For the reasons stated in respect of document request	Granted.



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		solvadis chemag ag for the years 1997 – 2004.		<p>contemporaneous record of the nature and extent of the Claimant's alleged losses relating to its alleged investment in Ukraine.</p> <p>It is assumed that these documents are in the possession, custody or control of the Claimant since KCH / solvadis international gmbh / solvadis chemag ag was wholly owned by the Claimant.</p>	<p>those terms are used in Article 3(3)(c) of the IBA Rules. GEA understands that all of the requested documents are available to the public under German law.</p> <p>As stated by the tribunal in the case of <i>ADF Group, Inc. v. United States of America</i> (ICSID Case No. ARB(AF)/00/1), Procedural Order No. 3 Concerning the Production of Documents, October 4, 2001, para. 4 (<a href="http://www.state.gov/s/l/c3754.htm">http://www.state.gov/s/l/c3754.htm</a>):</p> <p>“Where only one party has access to requested documents relevant to the proceeding at hand, we consider that the party with access should be required to make the documents available to the other party. Where, however, the documents requested are in the public domain and equally and effectively available to both parties, we believe that there would be no necessity for requiring the other party physically to produce and deliver the documents to the former for inspection and copying.”</p>	No. 30 these documents are not “equally and effectively available” to both Parties and the Claimant should be required to produce them,	

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					No such necessity, within the meaning of the ICSID Arbitration Rules, has been demonstrated here.		