

International Centre for  
Settlement of Investment Disputes

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**GEA GROUP AKTIENGESELLSCHAFT**

*Claimant*

**v.**

**UKRAINE**

*Respondent*

ICSID Case No. ARB/08/16

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**Procedural Order No. 3**

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Rendered by an Arbitral Tribunal composed of:

Professor Albert Jan van den Berg, President

Toby Landau QC, Arbitrator

Professor Brigitte Stern, Arbitrator

Ms. Aïssatou Diop, Secretary of the Arbitral Tribunal

**CONSIDERING:**

- (A) Procedural Order No. 1 and Annex A thereto dated 19 February 2010 regarding production of documents;
- (B) Claimant's letter of 11 March 2010, attaching: (a) Letter of Ivano-Frankivsk Statistics Office dated 15 February 2010; (b) Table of Documents Produced by Respondent dated 5 March 2010; (c) letter from Claimant to Respondent dated 8 March 2010; and (d) letter from Respondent to Claimant dated 10 March 2010;
- (C) Claimant's request in its letter of 11 March 2010, regarding its Document Request No. 1, as reproduced in Annex A to Procedural Order No. 1, that the Tribunal "order Ukraine urgently (a) to conduct a good faith search for the requested financial reports that it has failed to produce, including a search of Oriana's files and those of the State Statistics Committee; and (b) to report to the Tribunal on the dates of its destruction of the requested evidence, and produce any document production procedures that it relies upon to justify such conduct";
- (D) Counsel for Respondent's e-mail of 11 March 2010, stating that he was awaiting his client's instructions regarding the Claimant's letter of 11 March 2010;
- (E) Claimant's letter of 17 March 2010 requesting that "the Tribunal without further delay take up GEA's March 11, 2010 request for an order that Ukraine produce the annual and monthly financial reports of Oriana for the critical period of 1996 – 1999";
- (F) Respondent's letter of 18 March 2010 stating that, without prejudice to its belief that it was not required to do so, Respondent had on 1 February 2010 requested from Oriana copies of the financial reports sought by Claimant and had received a response on 17 February 2010 stating that "due to a short storage period" Oriana did not hold any of the requested financial reports;
- (G) The statement in Respondent's letter of 18 March 2010 that Respondent "has since [17 February 2010] been informed, that Oriana is continuing to search for the requested reports and it remains possible that Oriana may locate some of the reports.

If Oriana does locate and produce to the Respondent any of these reports, the Respondent will forward them promptly to the Claimant”;

- (H) The statement of the Respondent in its Objections to Claimant’s Document Request No. 1, as reproduced in Annex A to Procedural Order No. 1, “[t]he Respondent will provide any financial statements for the period which the Claimant submits is relevant which are in its possession. These documents have been requested from the State Statistics Committee and are presently being gathered. They will be provided to the Claimant as soon as possible”;
- (I) The explanation in Respondent’s letter of 18 March 2010 as to why it made its request to the State Statistics Committee through the Ivano-Frankivsk Oblast Statistics Office;
- (J) The statement in the Table of Documents Produced by Respondent dated 5 March 2010 regarding Claimant’s Document Request No. 1, that “Respondent is unable to produce any of the requested documents for the years 1996 through 1999 since no such documents are in its possession, custody or control. The Ministry of Justice of the Respondent has requested these documents from the Ivano-Frankivsk Statistics Office which has advised that the storage period for documents from this time has expired. Consequently, any such documents that may have previously been held by the Ivano-Frankivsk Statistics Office have been destroyed”;
- (K) The explanation in Respondent’s letter of 18 March 2010 of the document destruction policies pursuant to which the documents in question were destroyed;
- (L) The Tribunal’s view that the Claimant has not established any failure by Respondent to produce documents responsive to Claimant’s Document Request No. 1;

**THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:**

1. The Tribunal rejects the order sought by the Claimant in its letters of 11 and 17 March 2010.
2. The Tribunal notes Respondent’s statement referred to in recital (G), above, that if Oriana provides Respondent with documents falling within the terms of Claimant’s Document Request No. 1, Respondent will forward such documents promptly to the Claimant.

Date: 19 March 2010

On behalf of the Arbitral Tribunal

[signed]

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Albert Jan van den Berg,  
President