

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/21/51

BETWEEN:

DISCOVERY GLOBAL LLC

Claimant

-v-

THE SLOVAK REPUBLIC

Respondent

ANNEX A

20 June 2023

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Professor Philippe Sands, Arbitrator

I. DISCOVERY'S OVERVIEW TO ITS DOCUMENT REQUESTS IN REDFERN SCHEDULE

1. These are the document requests submitted by the Claimant (“**Discovery**”) in accordance with paragraph 16 and Annex C of the Tribunal’s Procedural Order No. 1 dated 28 March 2022 (“**PO1**”). Unless otherwise indicated, capitalised terms in this Redfern Schedule have the meaning set forth in the Discovery’s Memorial dated 30 September 2022. The Counter-Memorial filed by the Respondent (“**Slovakia**”) dated 31 March 2023 is referred to herein as the “**Counter-Memorial**”.
2. References to “*Documents*” herein have the wide meaning given in the IBA Rules on the Taking of Evidence in International Arbitration 2010 (the “**IBA Rules**”), i.e., “*a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means*”, and therefore include, without limitation, internal and external communications, instant messages, notes, minutes, slides, spreadsheets and drafts of all the foregoing.
3. Each of Discovery’s document requests are for documents which are known to exist, which are reasonably believed to exist, or whose existence has been clearly indicated by Slovakia. In each case, the requested documents are not in the possession, custody or control of Discovery, and are documents reasonably believed to be in the possession, custody or control of Slovakia being documents that Slovakia prepared, created or used, and/or communications in which Slovakia was involved.
4. For the avoidance of doubt:
 - (1) Unless otherwise indicated, these Requests seek responsive Documents created, modified or distributed during the time period specified in each Request;
 - (2) A request to produce a Document or category of Documents relating to a particular issue is a request for Slovakia to produce internal Documents on the issue (e.g., documents, communications and correspondence within and/or between government departments and other organs of the state), as well as external

Documents (e.g., communications and correspondence between State organs and other individuals or entities);

- (3) The phrase “*relating to*” means relating to, having any connection, association, or concern with, or any relevance, relation, pertinence, or applicability to, or any implication for or bearing upon the subject matter of the document request;
 - (4) Documents “*sent*” to or “*received*” by a person or party shall include documents “*cc'd*” or “*bcc'd*” to a person or entity;
 - (5) Documents “*prepared*” by a person or party shall include all documents for which any part was created or altered by the named person or party. This term shall extend to documents prepared jointly or in cooperation with an outside entity, to documents prepared by an outside entity on the basis of drafts or requests that were prepared by the named person or party, to forms completed fully or partially by the named person or party, or to forms prepared by the named person or party that were completed by an outside entity;
 - (6) A reference to a date includes that date;
 - (7) If any portion of any document is responsive to any Request, the entire Document (including the entirety of any chain of emails of which one message is responsive) should be produced; and
 - (8) Each of Discovery’s document requests constitutes a continuing request. Accordingly, in the event that Documents responsive to Discovery’s document requests are located after the deadline for production of documents, those should be produced to Discovery.
5. Any Request relating to Slovakia’s Counter-Memorial does not constitute an admission by Discovery of the accuracy or relevance of any matter so pleaded in the Counter-Memorial.

6. Discovery requests that any Documents produced to it be organised by Request and labelled to indicate the Request to which the Document is responsive. If a Document is responsive to more than one Request, duplicate production of identical Documents is not necessary.
7. Discovery has made a total of 21 Requests, which are divided into two parts below: Section IV contains Discovery's requests on issues relevant to liability; Section V contains Discovery's requests on issues relevant to quantum.
8. Discovery reserves its right to make additional requests depending on the developments in the arbitration.

II. SLOVAK REPUBLIC'S RESPONSES TO CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS

1. In accordance with Procedural Order No. 1 and the International Bar Association's Rules on the Taking of Evidence in International Arbitration (2010) ("**IBA Rules**"), the Slovak Republic hereby submits its responses and objections to Claimant's Requests for Production of Documents submitted on 5 May 2023 ("**Claimant's Requests**").
2. For each of Claimant's Requests, the Slovak Republic has either agreed to undertake a reasonable and proportionate search for responsive documents, or it has objected in accordance with the IBA Rules. The Slovak Republic understands that its document production obligations are ongoing, and it will abide by those continuing obligations.
3. If documents which the Slovak Republic has agreed to search for, and produce, are legally privileged or otherwise confidential, as envisaged under Articles 9.2(b), 9.2(e), 9.2(f), and 9.3 of the IBA Rules, the Slovak Republic reserves the right not to produce these. In such a case, the Slovak Republic will identify these responsive documents in a privilege log and explain the bases for its withholding of these documents.
4. The Slovak Republic also reserves the right to amend its responses to the Claimant's Requests should it be necessary.

Submitted on behalf of the Slovak Republic.



SQUIRE PATTON BOGGS
Counsel for the Slovak Republic

III. DISCOVERY'S REPLIES TO OBJECTIONS TO DOCUMENT REQUESTS AND APPLICATION FOR AN ORDER FOR THE PRODUCTION OF DOCUMENTS

1. The Claimant (“**Discovery**”) respectfully requests the Tribunal to order the production of the Claimants’ document requests (the “**Requests**”) nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 14 and 21 below in accordance with paragraph 16 and Annex C of the Tribunal’s Procedural Order No. 1 dated 28 March 2022 (“**PO1**”).
2. The Tribunal will have noted the stark disparity between the 31 categories of documents which Discovery has agreed voluntarily to search for and produce (in response to the Respondent (“**Slovakia**”)’s document requests) and the 17 categories of documents to which Slovakia has objected (in response to Discovery’s document requests). In other words, Slovakia has refused to search for and produce circa 80% of Discovery’s document requests.
3. A common theme in Slovakia’s objections is its attempt to be the sole arbiter of the relevance and materiality of the documents Discovery has requested. Slovakia repeatedly refers back to legal submissions and factual assertions in its Counter-Memorial which: (i) Discovery has not yet responded to in its Reply Memorial; (ii) have not yet been tested at an evidentiary hearing; and (iii) in many cases are not even substantiated by any contemporaneous evidence. Slovakia’s legal submissions and factual assertions are, of course, matters to be ultimately determined by the Tribunal. Until those matters have been determined by the Tribunal in its Final Award, Discovery is entitled to test Slovakia’s legal submissions and factual assertions, hence its requests for Slovakia to produce documentary evidence.
4. In respect of each application for the production of relevant responsive documents, Discovery confirms that the documents are not in its possession, custody or control, save to the extent previously exhibited to a legal submission which has already been made in this arbitration. The requested documents have all been created by, or are known to have been received by, Slovakia and are therefore reasonably expected to be within Slovakia’s possession, custody or control.

5. At this juncture, in the light of Slovakia's agreement to conduct reasonable searches for, and produce, any relevant document responsive to Requests no. 1, 11, 12 and 13 (which have been deleted from this document for the Tribunal's convenience), no order is sought with respect to those Requests. Discovery expressly reserves its right to seek an order for production from the Tribunal at a subsequent point in time should Slovakia fail to conduct appropriate searches and to disclose responsive documents.
6. Discovery remains at the Tribunal's disposal to provide any further information that may be required to assist the Tribunal in reaching its decision on each Request.

IV. DISCOVERY'S DOCUMENT REQUESTS REGARDING LIABILITY

Document Request No.	2
Identification of documents or category of documents requested	All records of communications between the State Prosecutor JUDr Vladislava Slosarčíková or her office and Mrs Varjanová between 1-30 June 2016.
Relevance and materiality according to requesting party, including reference to submissions	<p>Discovery's position is that AOG had obtained all the necessary permits to drill the Smilno well by (i) entering into leases with the owners of the land on which the Smilno site was located and (ii) obtaining two permits from the Bardejov District Office to use the site for a non-agricultural purpose, <i>i.e.</i>, geological exploration (Memorial at [81]). Nevertheless, on 18 June 2016 the State Prosecutor JUDr Slosarčíková (wrongly) intervened and restricted AOG's ability to use the Road in order to carry out drilling operations at the Smilno site, despite the fact that such intervention fell outside her responsibilities and authority (Fraser 1 at [56]). As a direct result of the conduct of the State Prosecutor, AOG was unable to commence operations at the Smilno site (Memorial at [106] and Exhibit C-161).</p> <p>Mr Fraser testifies that he was told at the time that JUDr Slosarčíková seemed to know Mrs Varjanová, a local resident of Smilno who objected to AOG's activities (Fraser 1 at [56]). In her witness statement filed on behalf of Slovakia, Mrs Varjanová has denied that she had known or had met JUDr Slosarčíková before 18 June 2016 (Varjanová 1 at [36]). However, Mrs Varjanová has disclosed none of her communications between 1-30 June 2016. Moreover, and importantly, there is no equivalent denial of any prior relationship or contact with Mrs Varjanová in JUDr Slosarčíková's witness statement. Given this omission, Discovery is entitled to see the requested Documents to test the veracity of the statement by Mrs Varjanová and also to challenge the credibility of the testimony of JUDr Slosarčíková. If there are communications between JUDr Slosarčíková or her office and Mrs Varjanová, this will be highly relevant both to (i) the veracity of those individuals' statements and more importantly (ii) Slovakia's contention that it was the Police who asked the State Prosecutor to attend the Smilno site on 18 June 2016. If the communications show that Mrs Varjanová (and not the Police) asked the State Prosecutor to attend the site, the (admitted) subsequent attendance by the State Prosecutor at the Smilno site would demonstrate a clear abuse of authority by a Slovak State official.</p> <p>The Documents requested are relevant to these issues and material to the outcome of the case because they will reveal the circumstances that prompted the State Prosecutor to act in the way she did, and whether such actions were conducted in an arbitrary or prejudicial manner towards AOG, as Discovery contends.</p> <p>The requested Documents are not in Discovery's possession, custody or control. Given that the requested Documents would have been prepared or received by the State Prosecutor or her office, Discovery reasonably believes that they are within Slovakia's possession, custody or control.</p>

<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>No reasonable basis to believe documents exist:</u> This request violates Art. 3(3)(a)(ii) of the IBA Rules because there is no reasonable basis to believe that the requested documents exist. The only basis for Discovery’s request is Mr. Fraser’s testimony that Ms. Varjanová “<i>seemed to know</i>” State Prosecutor JUDr Slosarčíková when the latter arrived at Smilno in June 2016.¹ But Mr. Fraser was <i>not even at the Smilno Site</i> when the Police requested State Prosecutor JUDr Slosarčíková to come.² He has no direct knowledge of what occurred that day. Rather, his testimony is that he “<i>was told</i>” (by nameless individuals) that the two “<i>seemed to know</i>” one another.³ Remarkably, Discovery has not offered any testimony of those individuals who were actually present that day.</p> <p>In any event, Ms. Varjanová has already denied that she knew Ms. Slosarčíková. Just because Ms. Slosarčíková does not <i>also</i> deny that she knew the other does not create a reasonable basis to believe that these two were communicating with one another in June 2016. This is nothing but an unjustified fishing expedition.</p> <p><u>Documents not relevant or material:</u> The requested documents are also neither relevant nor material to this dispute (Art. 3(b) of the IBA Rules). Any person in the Slovak Republic can approach a prosecutor regarding issues that fall within a prosecutor’s competence. Thus, even if Ms. Varjanová contacted JUDr Slosarčíková—and there is <i>zero</i> evidence to suggest this even occurred—it would not “<i>demonstrate a clear abuse of authority by a Slovak State official</i>” as Discovery alleges.</p> <p>Compounding the lack of relevance and materiality of these documents, when JUDr Slosarčíková arrived at the Smilno Site, the Interim Injunction, which prevented AOG from using the field track to access the Smilno Site, was still in effect. Therefore, even if JUDr Slosarčíková had not come to the Smilno Site, AOG <i>still had no right</i> to access the Smilno Site via the field track.</p>
<p>Reply to objections</p>	<p>The Tribunal will note Slovakia’s defensive stance with respect to this Request. Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request and to dismiss Slovakia’s objections.</p> <p>First, Slovakia has not denied that such communications may exist. As acknowledged by Slovakia itself, “[a]ny person in the Slovak Republic can approach a prosecutor regarding issues that fall within a prosecutor’s competence”. As such, on Slovakia’s own case, the existence of such communications can only be verified through reasonable and proportionate searches being undertaken by Slovakia. Accordingly, Slovakia’s assertion that there is “<i>zero evidence</i>” of communications between the State Prosecutor and Mrs Varjanová is premature.</p> <p>Second, there is a reasonable basis to believe that responsive documents exist. Mr Fraser has stated in a witness statement, verified by a Statement of Truth, that he was told at the time that the State Prosecutor seemed to know Mrs Varjanová. This suggests there were communications between the two individuals. The fact that Mr Fraser was not present at the Smilno site is completely irrelevant to what he was told at the time. The State Prosecutor has not denied in her witness statement that she knew Mrs Varjanová before 18</p>

¹ Fraser WS, ¶ 56.
² Fraser WS, ¶ 50.
³ Fraser WS, ¶ 56.

	<p>June 2016. Only Mrs Varjanová, who had been in formal litigation with Discovery/AOG before (see Memorial at [95]), has issued such a denial in her witness statement. As such, Discovery is entitled to test the credibility and veracity of Mrs Varjanová’s evidence as well as the evidence of the State Prosecutor.</p> <p>Third, the requested documents are plainly relevant and material both (i) to the veracity of the testimony given by Slovakia’s witnesses (Mrs Varjanová and the State Prosecutor) and more importantly (ii) to Slovakia’s pleaded contention that it was the <i>Police</i> who asked the State Prosecutor to attend the Smilno site on 18 June 2016. Slovakia has produced no internal documents with its Counter-Memorial to support this latter factual assertion. Discovery is entitled to test whether Slovakia’s factual assertion is correct and to see what communications prompted the State Prosecutor to attend at the Smilno site.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED AS SPECIFIED</p> <p>The requested documents, to the extent they exist, appear to be <i>prima facie</i> relevant. The Tribunal notes on the one hand that the Respondent has not specifically stated that no responsive documents exist and it has not referred to any evidence supporting its contention above that “the Police requested State Prosecutor JUDr Slosarčíková to come”. On the other hand, JUDr Slosarčíková states in her witness statement that “the police called the prosecutor on duty” and that she “decided to go” to the Smilno site on 18 June 2016 when she “learned about this situation” (Slosarčíková WS, para. 12; cf. Counter-Memorial, para. 107). That said, the Respondent’s comment that “[a]ny person in the Slovak Republic can approach a prosecutor regarding issues that fall within a prosecutor’s competence” suggests that responsive documents may exist. In these circumstances, the Tribunal invites the Respondent to conduct a reasonable search for any responsive documents, and to confirm that no responsive documents exist or, if they exist, to produce those documents.</p>

<p>Document Request No.</p>	<p>3</p>
<p>Identification of documents or category of documents requested</p>	<p>Documents dated between July 2016 and October 2016 evidencing the Bardejov Police’s internal consideration of the proposed new road signage scheme for Smilno, in particular Documents sent to, from or including (but not limited to) the following Police employees:</p> <p>(i) ██████████ (Head of Traffic Police / Director of the District Traffic Inspectorate); and</p> <p>(ii) ██████████ (employed in the same department as Mr ██████████);</p> <p>and including (but not limited to) Documents exchanged with Mr Vladimir Baran (the Mayor of Smilno) and Mr ██████████ (the ██████████ ██████████, who is referred to in exhibit C-151 as possibly also being misled by Mr ██████████: “It seems like ██████████, ██████████’s boss, has also been misleading us and possibly misleading his own ██████████”).</p>
<p>Relevance and materiality according to requesting</p>	<p>Discovery alleges that, in breach of its obligations under the BIT, Slovakia prevented AOG from drilling an exploration well at the Smilno site by reason (<i>inter alia</i>) of the Police’s refusal to erect a crucial sign at the entrance of the Road which would have acknowledged that the Road was a public special purpose road (Memorial at [117]-[126], [128(4)], [227]).</p>

<p>party, including reference to submissions</p>	<p>The proposal to erect such a sign originated with the Police and extensive discussions took place between AOG, the Police and the Mayor of Smilno between July 2016 and October 2016 (Memorial at [117]-[121]).</p> <p>However, by letter dated 11 October 2016 (which was signed by Mr █████ and also made express reference to Mr █████) the District Traffic Inspectorate approved every other sign in AOG’s proposed signage scheme apart from the sign at the entrance of the Road (the only sign AOG was concerned about) ostensibly on the basis that the Road was a “<i>field track</i>” (Memorial at [121]; Exhibit C-153; Counter-Memorial at [115]). Discovery’s position is that a “<i>field track</i>” is still capable of being a public special purpose road—a position which was later confirmed by the competent authority, <i>i.e.</i>, the Ministry of Transport (Memorial at [122]; Exhibit C-21).</p> <p>Given the clear conflict between the position adopted by the Police and the position adopted by the Ministry of Transport as to the legal status of the Road, the requested Documents are relevant to this issue and material to the outcome of the case. In particular, the Documents will reveal (i) why the Police refused to approve the sign, and (ii) why the Police performed a <i>volte face</i> after first suggesting to AOG to erect such a sign and then later deciding to refuse to approve the sign. The Police’s underlying rationale in making its decision stands in stark contrast to the clear position adopted by the Ministry of Transport and the reason for this conflict has never been explained to Discovery.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared by the Police as part of its internal consideration of the proposed signage scheme, Discovery reasonably believes that the Documents are within Slovakia’s possession, custody or control.</p>
<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>Not relevant or material:</u> The requested documents are neither relevant nor material to this dispute (Art. 3(3)(b) of the IBA Rules).</p> <p>As the Sloak Republic explained in its Counter-Memorial, the road signage issue arose when the Smilno municipality was working on a project to correct several road signs in Smilno.⁴ AOG sought to erect several road signs as part of the Smilno municipality’s proposals to the Traffic Inspectorate. From the moment that Discovery’s conversations with the Police and the Mayor of Smilno began in July 2016, and up to the Traffic Inspectorate’s decision not to issue a positive statement to the Smilno municipality’s request, the Interim Injunction was in effect, which precluded AOG from using the field track to access the Smilno Site. In fact, the Interim Injunction ceased to apply in April 2017—a full six months after AOG’s sign request was denied.⁵ The requested documents are therefore neither relevant nor material to this dispute or its outcome.</p> <p>Furthermore, Discovery has blurred the lines of who had the ultimate authority to approve the Smilno municipality’s request and issue the positive statement. Approval of road signs by a positive standpoint is subject to the traffic inspectorate’s authority.⁶ While Discovery may have met with the Mayor of Smilno and some Police, the Director of the District Traffic Inspectorate, Mr. █████, was responsible for reviewing signage proposals, and</p>

⁴ Counter-Memorial, ¶ 114.

⁵ Counter-Memorial, ¶¶ 132-137.

⁶ Counter-Memorial, ¶ 114.

	<p>to test Slovakia's assertions by reference to the underlying documents evidencing the Police's internal consideration of the signage scheme.</p> <p>Third, there is a reasonable basis to believe that the requested documents exist, having regard to the factual narrative set out in Memorial at [117]-[126]. Moreover, it is highly implausible to suppose that no documents exist. Given the number of individuals that is reasonable to believe were involved in considering the road signage scheme over a period of four months, it is not plausible to suggest that there were only oral discussions. There should be records of the Police's discussions and internal consideration of the scheme.</p>
Decision of the Tribunal	<p>GRANTED AS SPECIFIED</p> <p>The requested documents, to the extent they exist, appear to be <i>prima facie</i> relevant. The Tribunal notes that the Respondent has not specifically stated that no responsive documents exist. In addition, Exhibit C-153 responds to a traffic signs proposal of the municipality of Smilno. The document is signed by Lieutenant JUDr. [REDACTED], Director of the District Traffic Inspectorate of the District Headquarters of the Police Force in Bardejov, and states that Mr. [REDACTED] processed the municipality's proposal. Accordingly, it is reasonable to believe that internal documents about the proposal exist. In these circumstances, the Tribunal invites the Respondent to conduct a reasonable search for any responsive documents, and to confirm that no responsive documents exist or, if they exist, to produce those documents.</p>

Document Request No.	4
Identification of documents or category of documents requested	<p>Documents dated between 23 November 2016 and 30 December 2016 evidencing internal communications between the Police and the Ministry of Interior, and separately within the Ministry of Interior, with regard to the classification of the Road, in particular Documents sent to, from or including (but not limited to) the following employees:</p> <ul style="list-style-type: none"> (i) [REDACTED] (Director of Ministry of Interior); (ii) [REDACTED] (Case Handler for the Ministry of Interior's letter dated 19 December 2016); and (iii) [REDACTED] (Case Handler for the Ministry of Interior's letter dated 30 December 2016).
Relevance and materiality according to requesting party, including reference to submissions	<p>Discovery alleges that, in breach of its obligations under the BIT, Slovakia prevented AOG from drilling an exploration well at the Smilno site by reason (<i>inter alia</i>) of the conduct of the Ministry of Interior with respect to the legal status of the Road between November 2016 and December 2016 (Memorial at [123]-[124], [129(3)], [227]). On 19 December 2016, the Ministry of Interior issued an instruction to the Police stating that the Road was not a public special purpose road (Memorial at [123]; Exhibit C-23). This instruction contradicted the position adopted by the Ministry of Transport in its letters dated 29 November 2016 and 9 December 2016 (Memorial at [122]; Exhibits C-21 and C-22). Yet on 30 December 2016, the Ministry of Interior subsequently performed a <i>volte face</i> and declared that the competent authority for this issue was not the Ministry of Interior but rather the Ministry of Transport (Memorial at [124]; Exhibit C-24).</p>

	<p>Given the clear conflict between the position adopted by the Ministry of Interior and the position adopted by the Ministry of Transport as to the legal status of the Road, the requested Documents are relevant to this issue and material to the outcome of the case. In particular, the Documents will reveal: (i) why the Police sought directions from the Ministry of Interior; and (ii) the underlying rationale for the Ministry of Interior adopting a position contradictory to that of the Ministry of Transport.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared by, or exchanged between, the Police and the Ministry of Interior, Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>Documents not relevant or material</u>: The requested documents are neither relevant nor material to this dispute (Art. 3(3)(b) of the IBA Rules).</p> <p>The basis for this request is an alleged conflict in communications from the Ministry of Transport and the Ministry of Interior. But as the Slovak Republic explained in its Counter-Memorial, there is no conflict or contradiction between the communications Discovery references. The Ministry of Transport provided a general opinion recognizing that a field track can be—but <i>need not be</i>—a special purpose road. Meanwhile, the Ministry of Interior <i>specifically opined</i> on the track in question at Smilno. And the Ministry of Interior explained that the Smilno field track is private property.⁹ Discovery ignores this explanation, which the Slovak Republic has already explained.</p> <p>Given that the entire basis of this request is made on an alleged conflict that does not exist, the documents sought are neither relevant nor material.</p>
<p>Reply to objections</p>	<p>Slovakia’s objection is misconceived. Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request.</p> <p>The requested documents are relevant and material.</p> <p>First, it is abundantly clear from the Memorial and Counter-Memorial that the parties take diametrically opposing positions as to the legal status of the Road. This is a key legal issue which is foundational to many of Discovery’s claims. Slovakia’s suggestion, therefore, that internal documents by two Slovak Ministries as regards the legal classification of the Road are irrelevant is both disingenuous and wrong.</p> <p>Second, Slovakia has merely asserted there is no conflict between the communications from the Ministry of Transport and the Ministry of Interior, but without referring to any evidence other than its own legal submissions. Discovery disagrees with Slovakia and has pleaded in its Memorial that there <i>was</i> a conflict between the two Slovak Ministries (Memorial at [123]-[124], [129(3)], [227]). Slovakia’s objection is therefore another example of Slovakia attempting to be the sole arbiter of relevance and materiality. Discovery is not obliged (at this stage) to accept Slovakia’s assertion and is entitled to examine Slovakia’s internal contemporaneous consideration of the legal status of the Road in order to work out why two Slovak Ministries issued contradictory positions.</p>

⁹ Counter Memorial, ¶ 113 *et seq.*

Decision of the Tribunal	GRANTED The requested documents appear to be <i>prima facie</i> relevant.
---------------------------------	---

Document Request No.	5
Identification of documents or category of documents requested	Documents recording the Ministry of Agriculture (“ MoA ”)’s approval of the leases and lease extensions concluded between State Forestry and NAFTA between 2006-2016 to enable NAFTA to carry out geological exploration on land managed by State Forestry.
Relevance and materiality according to requesting party, including reference to submissions	<p>NAFTA is, according to its website, an oil and gas company majority owned by the Slovakian State, and which describes itself as “<i>the most important player in Slovakia’s oil and gas exploration and production sector</i>” (Memorial at [12]-[14]). NAFTA holds oil and gas licences throughout Slovakia and successfully drilled numerous wells without incident prior to 2016 (Memorial at [15]-[16]). Yet when Discovery (via AOG) attempted to drill a small number of wells, Slovakia prevented Discovery from doing so (Memorial at [16]). Discovery alleges that, in breach of its obligations under the BIT, Slovakia treated Discovery less favourably than NAFTA in like circumstances.</p> <p>In particular, Discovery alleges that the MoA treated Discovery less favourably than NAFTA by refusing to approve an extension of a Lease which AOG had concluded with State Forestry to enable AOG to drill an exploration well at the Krivá Oľka site (Memorial at [132]-[142], [251]). At a meeting held on 27 April 2015, State Forestry informed AOG that it had previously entered into leases with NAFTA to enable it to drill exploration wells and it was clear that such leases had been approved by the MoA (Memorial at [133], [251(3)]). Moreover, in its Counter-Memorial, Slovakia does not deny that the MoA had previously approved leases between State Forestry and NAFTA.</p> <p>The requested Documents are therefore relevant to this issue and material to the outcome of the case because they will reveal whether the MoA gave preferential treatment to NAFTA in like circumstances (by approving the leases), in violation of Article II(1) of the BIT. In particular, if (as Discovery infers) the MoA approved leases or lease extensions between State Forestry and NAFTA this would demonstrate that Discovery was treated less favourably by Slovakia than NAFTA, in breach of Slovakia’s obligations under the BIT. The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared by and exchanged between NAFTA, State Forestry and/or MoA, Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>The Slovak Republic objects to this request.</p> <p><u>Not relevant or material:</u> The requested documents are neither relevant <i>nor material</i> to this dispute (Art. 3(3)(b) of the IBA Rules). Discovery seeks these documents to buttress its claims that the Slovak Republic violated the national treatment standard in the BIT, and treated AOG differently than it treated NAFTA, an alleged domestic “comparator.” But the mere grant or denial of a lease agreement does not trigger liability under the BIT. As the Slovak Republic explained in its Counter-Memorial with reference to numerous</p>

	<p>investor-state cases, “<i>it is not sufficient merely to assert that one entity obtained a permit, license, agreement, and the other did not, to find discrimination.</i>”¹⁰ Yet this is the argument Discovery now pursues through this request.</p> <p>Furthermore, the Slovak Republic already explained that the MoA denied Discovery’s Lease Agreement because Discovery missed the contractually specified deadline to seek an extension.¹¹ Far from being based on any discrimination, the Slovak Republic’s denial of the Lease Agreement was the result of <i>Discovery’s own actions</i>. Therefore, seeing whether the MoA approved leases or lease extensions for NAFTA has no relevance to <i>this</i> case and the facts underlying <i>this</i> part of Discovery’s claim.</p> <p><u>Not narrow and specific / Unduly broad and burdensome</u>: Even if these documents were relevant and material, this request is not for a narrow and specific category of documents. It seeks <i>all</i> “<i>leases and lease extensions</i>” for a ten-year period from 2006-2016. There is no justification for this wide-ranging temporal scope, and this request would constitute an unreasonable burden to produce the requested evidence (Art. 9(2)(c) of the IBA Rules).</p> <p>Indeed, Discovery did not even “<i>invest</i>” in the Slovak Republic until March 2014, and Discovery did not even <i>exist as a company</i> from 2006-2013.¹² It is unclear how documents from an eight-year period <i>before</i> Discovery even came to the Slovak Republic can be relevant and material to how Discovery was treated during its time in the Slovak Republic.</p>
<p>Reply to objections</p>	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request varied as follows (with the revised wording in red):</p> <p><i>“Documents recording the Ministry of Agriculture (“MoA”)’s approval of the leases and lease extensions concluded between State Forestry and NAFTA between 2014-2016 to enable NAFTA to carry out geological exploration on land managed by State Forestry.”</i></p> <p>First, Discovery does not accept that this Request, as originally drafted, was “[n]ot narrow and specific” and “[u]nduly broad and burdensome”. However, in the spirit of co-operation and efficiency, Discovery has significantly reduced the temporal scope of this Request in order to allay Slovakia’s concerns to cover a time period of just three years (between 2014-2016). As such, Slovakia’s objection to the temporal scope of this request no longer has any merit and should be dismissed.</p> <p>Second, the requested documents are plainly relevant and material. Slovakia’s objection to this Request is another example of its attempt to be the sole arbiter of relevance. Slovakia denies it has given preferential treatment to NAFTA, but Discovery is unable meaningfully to respond to this assertion without seeing the underlying documents evidencing Slovakia’s treatment of NAFTA in like circumstances. Moreover, the way in which Discovery/AOG was treated by the MoA (with respect to the MoA’s refusal to approve an extension of the Lease) is inexplicable, and indicates discrimination and arbitrary treatment against Discovery/AOG, as Discovery has alleged in its Memorial. Discovery is entitled to test these matters by reference to Slovakia’s treatment of NAFTA in like circumstances.</p>

¹⁰ Counter-Memorial, ¶ 380.
¹¹ Counter-Memorial, ¶¶ 138-153.
¹² Request for Security for Costs, ¶ 10.

Decision of the Tribunal	GRANTED AS NARROWED DOWN The request for documents recording the MoA’s approval of the leases and lease extensions concluded between State Forestry and NAFTA between 2014 and 2016 is sufficiently specific and the requested documents appear to be <i>prima facie</i> relevant.
---------------------------------	--

Document Request No.	6
Identification of documents or category of documents requested	<p>Internal communications and briefings provided by State Forestry and MoA officials to the Head of Service Office/Chief of Staff of the Office Mr Jaroslav Regec and/or Minister Matečná between 14 January 2016 and 23 June 2016 relating to the MoA’s decision whether or not to approve Addendum No. 1 to the Lease, including but not limited to Documents to, from or including:</p> <ul style="list-style-type: none"> (i) Ing. ██████████ – Mr ██████ was the Managing Director of the Forestry and Wood Processing Section of the MoA at the relevant time, and he responded to AOG’s initial request for consent to their lease extension; (ii) Ing. ██████████ – Discovery understands she prepared Mr ██████’s response to AOG; (iii) ██████████ – she responded to AOG on behalf of Minister Matečná to the effect that Minister Matečná could not meet with them; (iv) JUDr. Robert Slamka – he was copied into correspondence with ██████████ and AOG; (v) Head of the Service Office Jaroslav Regec; and (vi) Minister Gabriela Matečná – she wrote to AOG on 27 May 2016 refusing to provide the MoA’s consent to the lease extension.
Relevance and materiality according to requesting party, including reference to submissions	<p>A key issue in dispute in this arbitration is the MoA’s arbitrary refusal to approve an extension of the Lease, which was necessary to enable AOG to carry out geological exploration at the Krivá Ořka well site (Memorial at [134]), particularly given that the MoA had previously approved leases between NAFTA and State Forestry.</p> <p>Discovery’s position is that State Forestry had previously entered into leases with NAFTA to enable it to drill exploration wells and that such leases had been approved by the MoA. Discovery was also led to understand that the MoA’s approval was considered to be a mere formality in the process (Memorial at [133]). However, the approval process in AOG’s case dragged on for many months. In 2016, the MoA refused to approve an extension of the Lease.</p> <p>On 23 June 2016, Minister Matečná wrote to AOG asserting that the MoA would not consent to the extension of the Lease because “<i>the contractually agreed requirements were not fulfilled</i>” and without elaborating it further. Discovery alleges that Minister Matečná’s decision was arbitrary: she did not explain (i) what the alleged requirements were or (ii) why they were allegedly not fulfilled (or by whom) (Memorial at [140]; see also Memorial at [137]-[142]). It is Discovery’s case that, by refusing to approve Addendum No. 1, the MoA treated Discovery/AOG arbitrarily and less favourably than NAFTA in relation to its dealings with the State Forestry / MoA when compared with the leases which NAFTA had</p>

	<p>concluded with State Forestry (and which had been extended and approved by MoA) to carry out exploration drilling (Memorial at [142]).</p> <p>The Documents requested are therefore relevant to this issue and material to the outcome of the case because they will reveal whether the MoA treated Discovery/AOG in an arbitrary manner, and/or gave preferential treatment in very similar (if not identical) circumstances to NAFTA, the local investor, as opposed to the Discovery/AOG, the foreign investor, in violation of Article II(1) of the BIT.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared by and exchanged between State Forestry and/or the MoA, the Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>Documents not relevant or material:</u> The requested documents are not relevant or material to this dispute (Art. 3(3)(b) of the IBA Rules). As already explained in the Slovak Republic’s Counter-Memorial, there was nothing arbitrary about the MoA denying the Lease Agreement’s extension. Rather, Discovery missed the contractually specified deadline to seek its extension.¹³ Thus, the very foundation of this request is wrong, and the requested documents are thus neither relevant nor material to why the MoA denied the Lease Agreement’s extension.</p> <p><u>Not narrow and specific category of documents / unduly broad and burdensome:</u> This request is not for a narrow and specific category of documents (IBA Rules Art. 3(a)(ii)) as it seeks documents from the <i>State Forestry, the MoA, and six individual custodians</i>. It is not even clear why some of these individuals are named, nor does Discovery sufficiently explain the basis on which it believes documents exist or are held by these custodians:</p> <ul style="list-style-type: none"> • Discovery seeks documents from Ing. ██████████ because Discovery “<i>understands she prepared Mr Határ’s response to AOG.</i>” There is no further explanation, or citation to record evidence that Ing. ██████████ was involved in any discussions about the Lease Agreement. • Discovery seeks documents from ██████████ on the basis that she “<i>responded to AOG on behalf of Minister Matečná to the effect that Minister Matečná could not meet with them.</i>” This comes from a single e-mail (C-134), and there is no indication or support for the proposition that ██████████ was at all involved in any decision-making regarding the Lease Agreement. • Discovery seeks documents from Mr. Regec based on nothing but inflammatory rumours from Discovery’s lobbyist. Specifically, Discovery claims that Mr. Regec refused to sign the extension because it was “<i>a personal decision on the fact that he himself comes from the area.</i>”¹⁴ The only support Discovery cites for this baseless accusation is an e-mail from its lobbyist, Dynamic Relations (C-130).

¹³ Counter-Memorial, ¶¶ 138-153.

¹⁴ Memorial, ¶ 253.

	<p>There is no reasonable basis on which Discovery asserts document production requests from these custodians.</p> <p><u>Documents already in Discovery’s possession, custody, or control:</u> Discovery seeks documents from JUDr. Robert Slamka, who was copied into correspondence with ██████████ and AOG. However, JUDr. Robert Slamka was AOG’s former attorney. As such, any documents sent to, from, or copied to JUDr. Slamka are already in AOG’s/Discovery’s possession, custody, or control.</p> <p><u>Legal privilege:</u> Finally, to the extent Discovery seeks confidential documents, such as legal opinions and other legal documents, these are obviously subject to legal privilege.¹⁵</p>
<p>Reply to objections</p>	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request and to dismiss Slovakia’s objections.</p> <p>First, Slovakia has simply asserted that the requested documents are not relevant or material, without providing any evidence other than its own arguments in the Counter-Memorial. Discovery does not accept that there was “<i>nothing arbitrary about the MoA denying the Lease Agreement’s extension</i>” as Slovakia asserts. Discovery is entitled to test this assertion by reference to internal documents evidencing the MoA’s attitude towards the request for approval of the Addendum to the Lease. At this stage (before Discovery has responded to Slovakia’s Counter-Memorial and before the arguments have been tested at an evidentiary hearing) Slovakia is not entitled to pre-judge the issue in its favour.</p> <p>Second, Slovakia’s Counter-Memorial at [150]-[154] (which addresses this issue) is notably light in detail and does not deal with all of the points raised in Discovery’s Memorial on this issue. In particular, there is a 5-month information gap as to what happened internally within the MoA between 22 January 2016 (when Mr ██████████ explained that the MoA had processed the request and sent it to the “<i>Head of the Service Office</i>”) and 7 June 2016 (when the Minister refused to approve the Addendum). Slovakia has not voluntarily produced any internal documents over this period. Discovery is entitled to see and understand what happened at the MoA over that period.</p> <p>Third, the Request is narrow and specific and not unduly burdensome. Discovery has named the relevant Government Departments as well as custodians in order precisely to narrow down the search and facilitate identification of relevant documents. The listed custodians assisted in preparing or sending certain responses to Discovery/AOG with respect to its request for approval of Addendum No. 1 to the Lease. Accordingly, there is a reasonable basis to believe that those custodians were either (i) involved in the internal discussions and decision-making surrounding the subject matter of the correspondence and/or (ii) at the very least hold relevant internal documents. It would be surprising for those individuals to have been involved in preparing a response about which they had no background knowledge, or without any notion of its contents. By way of further elaboration:¹⁶</p> <ul style="list-style-type: none"> • Ing. ██████████ – she is referred to in Exhibit C-121 as having “[e]xecuted” the letter from Ing. ██████████ to AOG dated 22 January 2016 (see the header

¹⁵ See 2010 IBA Rules on the Taking of Evidence in International Arbitration, 9.2(b), 9.2(e), 9.2(f), and 9.3.

¹⁶ Discovery mistakenly included JUDr. Robert Slamka in its original list of custodians in the Request above. For the avoidance of doubt, Discovery does not ask Slovakia to search for documents held by JUDr. Robert Slamka.

	<p>at the top of the page “Executed by/tel. Ing. ██████████, PhD. 02/592 66 528”). It is therefore reasonable to believe that she holds documents relevant to this Request.</p> <ul style="list-style-type: none"> • Mrs ██████████ – she responded to AOG on behalf of Minister Matečná on 7 June 2016 (Exhibit C-134) stating that Minister Matečná was unable to meet with AOG. Her email signature stated she formed part of the “office of the Minister”. It is therefore reasonable to believe that she holds documents relevant to this Request. • Mr Jaroslav Regec – he was the Head of the Service Office of the MoA and he is referred to in Exhibit C-130 as having “refused to sign the addendum despite the instruction of his Superiors” on the basis of a “personal decision based on the fact that he himself comes from the area where you plan your activities”. Given that AOG’s request had been forwarded to the Head of the Service Office in January 2016 (see the first bullet point above) it is reasonable to believe that he holds documents relevant to this Request. <p>Fourth, Slovakia has not denied that the documents exist.</p> <p>Fifth, Slovakia’s assertion of privilege is not a sufficient reason in and of itself to object searching for an entire category of documents. Slovakia has (rightly) not stated that all the documents will be privileged, or that the entire category of documents is privileged. The question of privilege can be addressed (e.g., by way of a privilege log) in due course once searches have been conducted.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED IN PART AND AS SPECIFIED</p> <p>The requested documents appear to be <i>prima facie</i> relevant to the extent that they relate to the decision-making process of Minister Matečná and/or of the Head of the Service Office, Mr. Regec, not to approve Addendum N. 1 to the Lease. That part of the request is sufficiently specific and production would not impose an undue burden. To the extent responsive documents fall within the ambit of legal privilege pursuant to article 9.2(b) or within the ambit of article 9.2(f) of the 2010 IBA Rules, the Respondent shall provide a privilege log setting forth for each non produced responsive document the (i) author(s), (ii) recipient(s), (iii) date, (iv) subject matter of the document or portion thereof claimed to be privileged, without disclosing its content, and (v) the basis for the claim of privilege, including the applicable legal provisions, if any. By contrast, the Respondent has not sufficiently explained why any responsive documents would fall under article 9.2(e) of the 2010 IBA Rules.</p> <p>Regarding documents to or from Mr. ██████████ or Ing. ██████████, the Claimant has not sufficiently explained their <i>prima facie</i> relevance and this part of the request is accordingly denied. Indeed, with reference to Exhibits C-116 and C-121, it appears undisputed that Mr. ██████████, Managing Director of the Forestry and Timber Processing Section of the MoA, delivered to the MoA on 15 January 2016 AOG’s request for prior consent to Amendment No. 1 dated 14 January 2016 (cf. Memorial, paras. 137-138; Counter-Memorial, paras. 149-150) and there is no suggestion that Mr. ██████████ or Ing. ██████████ were further involved in Minister Matečná and/or Mr. Regec’s decision-making process.</p>

	As regards JUDr. Robert Slamka, the Claimant has not rebutted the Respondent's contention that he was AOG's former attorney and that any responsive documents he may have are already in the Claimant's possession, custody or control.
--	---

Document Request No.	7
Identification of documents or category of documents requested	<p>Internal communications, between 18 July 2016 and 6 March 2017, sent between representatives of State Forestry, the Ministry of Environment ("MoE") and MoA (and internal communications within each organisation) evidencing the internal consideration of (i) AOG's request dated 18 July 2016 to conclude a further lease with State Forestry and (ii) AOG's application dated 30 August 2016 for a compulsory access order under §29 of the Geology Act, including but not limited to Documents to, from or including:</p> <ul style="list-style-type: none"> (i) RNDr. ██████████ – she was the Director of the Department of State Geological Administration of the Section of Geology and Natural Resources of the MoE at the time, and she responded to AOG's §29 application on 20 September 2016 asserting that it was not apparent that AOG had attempted to enter into an agreement with the landowner. She was also involved in subsequent correspondence during this period with the State Forestry and MoA in relation to AOG's §29 application; (ii) JUDr. ██████ – Discovery understands Mr ██████ was also involved in the preparation of this response and subsequent correspondence of ██████████; (iii) Ing. ██████████ – he was the Director of the Forestry Administration Department of the Forestry and Wood Processing Section of the MoA and wrote to the MoE on 23 November 2016 refusing to provide input on the §29 application; (iv) Ing. ██████████ – Discovery understands Ing. ██████████ was also involved in the preparation of Mr ██████████ response; (v) Ing. ██████████ – he was the CEO of the State Forestry at the time and wrote to the MoE on 25 October 2016 in relation to AOG's §29 application. He was also involved in subsequent correspondence during this period with the MoE and MoA in relation to AOG's §29 application; (vi) Mgr. ██████████ – Discovery understands Mgr. ██████████ was also involved in the preparation of ██████████'s response and subsequent correspondence of ██████████; and (vii) Mr Regec – MoA's Head of the Service Office / Chief of Staff of the Office.
Relevance and materiality according to requesting party, including reference to submissions	<p>In order to be able to drill the Krivá Oľka well, AOG first applied to the State Forestry on 18 July 2016 for a further lease and subsequently AOG applied to the MoE for a compulsory access order under §29 of the Geology Act on 30 August 2016. State Forestry never responded to AOG's request dated 18 July 2016 (see Memorial at [146]-[147]). Moreover, with respect to the §29 application, the MoE and the MoA took a series of inconsistent decisions, which are described in the Memorial at [144]-[151] and which made no sense. Discovery's understanding at the time was that the relevant department of the MoE was initially minded to grant the §29 application. However, this was reversed after an order had come from "above" that it should be refused (Memorial at [152] and Exhibits C-130 and C-169). Discovery has not seen this order from "above" and Slovakia has produced no internal documents evidencing the internal consideration of the §29 application or the request for the conclusion of the further lease.</p>

	<p>Moreover, in its Counter-Memorial, footnote 253, Slovakia has not in fact denied that an order had been made from “above” to refuse the §29 application. Discovery infers that such an order was in fact made, but Slovakia is unwilling to produce documents evidencing the existence of such order, as no doubt such documents would be unhelpful to its case.</p> <p>The Documents requested are therefore relevant to this issue and material to the outcome of the case because they will reveal (i) what was the rationale behind the MoA suggesting that AOG submit a §29 application to the MoE in connection with a proposed activity that was already licenced by the MoE, (ii) whether the MoA, State Forestry and the MoE treated AOG in an arbitrary manner and/or less favourably than domestic investors, such as NAFTA, in connection with the §29 application, (iii) why the State Forestry never responded to AOG’s letter of 18 July 2016 when it had previously entered into and extended a lease with AOG in relation to the same parcel of land, and (iv) whether the lack of response was influenced by other Government departments, including the MoA.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared by and exchanged between State Forestry, the MoE and/or the MoA, Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>Not relevant or material:</u> The requested documents are not relevant or material to this dispute (Art. 3(3)(b) of the IBA Rules).</p> <p>To recall, on 6 March 2017, the MoE denied AOG’s § 29 request for compulsory access to the Ol’ka Site. AOG appealed that decision, <i>and it prevailed on appeal</i>. Minister Sólymos decided in AOG’s favor, quashed the decision, and “<i>return[ed] the matter to the Ministry of Environment of the Slovak Republic, Department of State Geological Administration for a new discussion and decision.</i>”¹⁷</p> <p>Once the matter was remanded, the MoE asked AOG to provide additional documents—which is the normal procedure, and exactly what the MoE has previously done with entities like NAFTA.¹⁸ AOG, however, did not provide these documents and ceased participating in the § 29 procedure. Mr. Fraser admits this but chalks up Discovery’s abandonment of this procedure to a supposed “<i>overwhelming impression that [the MoE] were not prepared to act [] in good faith.</i>” This is a contrived position to take given that the MoE <i>had just ruled in AOG’s favor</i>.</p> <p>Against this backdrop, the requested documents are neither relevant nor material since AOG voluntarily stopped participating in this procedure.</p> <p><u>No reasonable basis to believe documents exist:</u> There is equally no reasonable basis to believe that documents exist about some alleged “order” from above that was apparently given. The Slovak Republic rejects this inflammatory remark. And stepping back, Discovery’s argument makes no sense. AOG <i>prevailed on appeal</i>, and it was the <i>Minister himself</i> who decided in AOG’s favor. The idea that the Ministry of Environment received an instruction to deny AOG’s application, only to then reverse that denial on appeal and</p>

¹⁷ Decision of Minister of Environment dated 13 June 2017, p. 1, **C-174**.

¹⁸ Counter-Memorial, ¶ 164.

	<p>rule in AOG’s favor is fantastical. There is <i>no</i> support for this claim, apart from a singular allegation that Mr. Lewis included in a letter sent to JXX and Romgaz in March 2017 (C-169).</p> <p>With respect to documents concerning AOG’s 18 July 2016 letter that went unanswered, Discovery seeks documents regarding this to see “<i>whether the lack of response was influenced by other Government departments, including the MoA.</i>” But again, this is pure conjecture. There is no reasonable basis to support this asserted justification.</p> <p><u>Not narrow and specific / Unduly burdensome:</u> This request is not for a narrow and specific category of documents (IBA Rules Art. 3(3)(a)(ii)). Rather, it seeks documents over an <i>eight-month</i> time frame from <i>three different state agencies/entities</i>, and <i>seven individual custodians</i>. That is an unworkably broad scope of documents, and from custodians who do not even appear to be part of any decision-making process:</p> <ul style="list-style-type: none"> • JUDr. █████, Ing. █████, and Mgr. █████ all appear to be individuals who only prepared documents on behalf of others. It is unclear on what basis Discovery believes these three individuals were communicating about any of the topics listed in this request. • Discovery does not even explain why it believes Mr. Regec would have any documents related to this request. <p>Accordingly, this request should also be denied because it is unworkably and unjustifiably broad.</p>
<p>Reply to objections</p>	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request and to dismiss Slovakia’s objections.</p> <p>First, Slovakia has simply asserted that the requested documents are not relevant or material, without providing any evidence other than its own arguments to the contrary in the Counter-Memorial. This is yet another example of Slovakia’s attempt to be the sole arbiter of relevance. Discovery has not yet responded to the Counter-Memorial but will do so in due course. For the avoidance of doubt, however, Discovery denies that “<i>AOG voluntarily stopped participating in this procedure</i>” as asserted by Slovakia. The requested documents are relevant and material because they will enable the Tribunal to consider the full picture of the MoE’s treatment of Discovery/AOG between July 2016 (when the §29 application was submitted) and March 2017 (when the §29 application was refused). That time period necessarily informs what subsequently transpired after March 2017.</p> <p>Second, Slovakia’s Counter-Memorial at [160]-[163] (which addresses this issue) is notably light in detail and does not deal with all of the points raised on this issue in Discovery’s Memorial. In particular, there is an 8-month gap as to what happened internally at the MoE between July 2016 and March 2017. Slovakia asserts that the MoE “<i>reviewed AOG’s request</i>” and then sent a further request on 20 September 2016 (Counter-Memorial at [160]). Yet Slovakia has not explained what happened internally between July 2016 and September 2016 and it has not voluntarily produced any internal documents over this period. The same is true for the period between September 2016 and March 2017. Discovery is entitled to see and understand what happened at the MoE over this period.</p> <p>Third, Discovery does not agree that an 8-month timeframe is unduly burdensome. The timeframe is a function of the lengthy period Slovakia took to consider and respond to the</p>

	<p>§29 application. Discovery notes that some of Slovakia’s own document requests cover a much longer timeframe (sometimes encompassing <i>multiple years</i>). Discovery has named the relevant Government Departments and certain custodians in order precisely to narrow down the search. The listed custodians assisted in preparing or sending certain responses to Discovery/AOG with respect to its §29 application. Accordingly, there is a reasonable basis to believe that those custodians were either (i) involved in the internal discussions and decision-making surrounding the subject matter of the correspondence and/or (ii) at the very least hold relevant internal documents. It would be surprising for those individuals to have been involved in preparing responses about which they had no background knowledge, or without any notion of its contents. By way of further elaboration:</p> <ul style="list-style-type: none"> • JUDr. █████ – see Exhibits C-144, C-156, C-165, and Memorial at [152]: Discovery understands Mr █████ was also involved in the preparation of this response and subsequent correspondence of █████. • Ing. █████ – see Exhibit C-156: Discovery understands Ing. █████ was also involved in the preparation of Mr █████’s response. • Mgr. █████ – see Exhibit C-72: Discovery understands Mgr. █████ was also involved in the preparation of █████’s response and subsequent correspondence of █████. • Mr Regec – he was the newly appointed (at the time) Head of the Service Office of the MoA and he is referred to in Exhibit C-130 as having “<i>refused to sign the addendum despite the instruction of his Superiors</i>” on the basis of a “<i>personal decision based on the fact that he himself comes from the area where you plan your activities</i>”. He is also mentioned in C-135 as having pledged to his voters not to permit exploration drilling. Given the possible personal motivations of Mr Regec and his preparedness not to follow instructions from his superiors, it is reasonable to believe that he holds documents relevant to this Request. <p>Fourth, Slovakia has not denied that the documents exist.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED AS SPECIFIED</p> <p>With respect to the 18 July 2016 application (Exhibit C-142), the Respondent does not appear to dispute that State Forestry never responded to this application (see above, “AOG’s 18 July 2016 letter that went unanswered”). The requested documents about internal consideration of this application appear to be <i>prima facie</i> relevant. The Tribunal notes, however, that State Forestry responded on 25 October 2016 to a letter sent by AOG on 10 October 2016 (Exhibit C-156, p. 3). Therefore, the Tribunal limits production to the period between 18 July and 25 October 2016. Compliance with this request, as specified, is not overly burdensome.</p> <p>With respect to the Section 29 application of 30 August 2016 (Exhibit C-143), the Tribunal notes that Mr. Lewis informed JKX and Romgaz on 10 March 2017 that the legal department of the MoE “indicated to us that they had been preparing to issue an order in our favour when they received an instruction from ‘above’ to refuse the order, instead” (Exh. C-169, p. 2). Mr. Frazer states in his witness statement that “[w]e understood from Mr Hrvol that the Ministry of Environment had been in the process of drafting a decision in favour of AOG, when they received instructions from more senior members of the</p>

	Ministry to decide against us” (Fraser WS, para. 87). The requested documents, for the period 30 August 2016 to 6 March 2017 appear to be <i>prima facie</i> relevant, the request is sufficiently specific and production is not overly burdensome.
--	--

Document Request No.	8
Identification of documents or category of documents requested	All prior drafts of the MoE’s decision dated 6 March 2017 and any instructions or memoranda given by any official of the MoE or the MoA (including but not limited to Mr Regec) to the legal department of the MoE suggesting or recommending refusal of AOG’s application for a compulsory access order under §29 of the Geology Act.
Relevance and materiality according to requesting party, including reference to submissions	<p>The background to and justification for this request is set out in Request No. 7 above and is not repeated here.</p> <p>The Documents requested are therefore relevant to this issue and material to the outcome of the case because they will reveal whether the MoA, State Forestry and the MoE treated AOG in an arbitrary manner and/or less favourably than domestic investors, such as NAFTA, in connection with the §29 application.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared by and exchanged between the MoE and the MoA, the Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>The Slovak Republic objects to this request.</p> <p><u>Not relevant or material:</u> The requested documents are neither relevant nor material to this dispute (Art. 3(3)(b) of the IBA Rules). As explained in the previous request, AOG appealed the § 29 decision and <i>prevailed on appeal</i>. Previous drafts of the decision that was ultimately quashed <i>in AOG’s favor</i> will shed no light on whether the MoA, State Forestry and the MoE treated AOG in an arbitrary manner and/or less favourably than domestic investors, such as NAFTA, in connection with the §29 application.</p> <p><u>No reasonable basis to believe that documents exist:</u> With respect to the alleged “<i>instruction</i>” that AOG claims the Ministry of Environment received and any memoranda explaining that AOG’s application should be denied, there is no reasonable basis to believe documents concerning these exist. The lone piece of evidence that Discovery cites for this completely baseless accusation is a note from Mr. Lewis to JKX and Romgaz alleging that “<i>the legal department indicated that they. . . received an instruction from ‘above’ to refuse the order.</i>” (C-169). But as already explained, this does not make sense. This means that the “higher ups” at the MoE allegedly ordered for AOG’s § 29 application to be denied, only for AOG to <i>prevail on appeal</i>. This nonsensical position only reaffirms that there is no reasonable basis to believe that documents concerning this supposed “order” from above exist.</p> <p><u>Legal privilege:</u> Finally, any communications between the legal department and the MoE or MoA concerning legal advice about these § 29 proceedings would be privileged.¹⁹</p>

¹⁹ See 2010 IBA Rules on the Taking of Evidence in International Arbitration, 9.2(b), 9.2(e), 9.2(f), and 9.3.

<p>Reply to objections</p>	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request and to dismiss Slovakia’s objections.</p> <p>First, the requested documents are relevant and material. The points made by Discovery in its “Reply to objections” in connection with Request 7 above apply <i>mutatis mutandis</i> here and are not repeated.</p> <p>Second, there is a reasonable basis to believe that the requested documents exist. Discovery has pointed to a specific contemporaneous exhibit in which Mr Lewis states: “The legal department indicated to us that they had been preparing to issue an order in our favor when they received an instruction from ‘above’ to refuse the order, instead” (Exhibit C-169). Slovakia has not produced any internal documents evidencing its internal consideration of the §29 application. Further, Slovakia has not denied that (i) prior drafts of the decision were created or (ii) an instruction was issued from “above”. Any prior drafts indicating an intention to approve the §29 application would support Discovery’s case that there was a subsequent instruction from “above” to refuse the application.</p> <p>Third, Slovakia’s assertion of privilege is not a sufficient reason in and of itself to object searching for an entire category of documents. Slovakia has (rightly) not stated that all the documents will be privileged, or that the entire category of documents is privileged. The question of privilege can be addressed (<i>e.g.</i>, by way of a privilege log) in due course once searches have been conducted. For the avoidance of doubt, it is extremely unlikely that all documents would be privileged. Moreover, any instruction issued by an official of the MoE or the MoA to refuse AOG’s §29 application would not be privileged because it would not be a “communication[] [...] concerning legal advice”.</p>
<p>Decision of the Tribunal</p>	<p>GRANTED IN PART</p> <p>To the extent not already covered by Request No. 7 above, the drafts of the decision the MoE was allegedly preparing in favour of AOG mentioned by Mr. █████ according to Mr. Fraser (Fraser WS, para. 87) appear to be <i>prima facie</i> relevant. By contrast, the Claimant has not sufficiently explained the <i>prima facie</i> relevance of drafts of the decision that was ultimately quashed, and this part of the request is accordingly denied. If responsive documents fall within the ambit of legal privilege pursuant to article 9.2(b) or within the ambit of article 9.2(f) of the 2010 IBA Rules, the Respondent shall provide a privilege log as specified in Request No. 6 above. The Respondent has not sufficiently explained why any responsive documents would fall under article 9.2(e) of the 2010 IBA Rules.</p>

<p>Document Request No.</p>	<p>9</p>
<p>Identification of documents or category of documents requested</p>	<p>The legal analysis conducted by the MoE and referred to in the MoE’s press release dated 29 November 2016 confirming that AOG was under no legal obligation to carry out a preliminary EIA in respect of its exploration activities.</p>

<p>Relevance and materiality according to requesting party, including reference to submissions</p>	<p>A key issue in dispute in this arbitration is Slovakia’s violation of its obligations under the BIT by preventing AOG from drilling any exploration well unless AOG first conducted a preliminary EIA, and the losses incurred by Discovery as a result.</p> <p>In a press release dated 29 November 2016 (Memorial at [164] and Exhibit C-157), which made specific reference to AOG, the MoE stated: “A <i>legal analysis has shown that the current legislative and procedural [framework] does not give rise to a legal obligation on the license holder to carry out an EIA.</i>” In its Counter-Memorial, Slovakia has not disclosed the “<i>legal analysis</i>” referred to in this public press release. The position set out in this press release was also consistent with other public statements made by Minister of Environment László Sólymos and the MoE on numerous occasions (Memorial at [163]-[165]). Despite these statements, AOG was later ordered to perform a full EIA on each of its proposed wells by the relevant District Offices (Memorial at [184]-[187]), which would have added significant delays and costs to the project (Memorial at [158] and [181]-[187]). Discovery’s position is that the position as set out in the press release dated 29 November 2016 was correct.</p> <p>The Documents requested are therefore relevant to this issue and material to the outcome of the case because they will confirm (i) the basis for the conclusion set out in the press release, (ii) why the legal analysis was requested to be prepared in the first place, (iii) who the initial request to prepare the legal analysis came from and why, and (iv) that AOG was not required to conduct a preliminary or a full EIA and so should not have been pressured into doing so by the MoE / Minister Sólymos. This is relevant to Discovery’s position that the relevant District Offices discriminated against AOG and treated it unfairly, in circumstances where it was not required by law to carry out a preliminary or full EIA prior to exploration.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared or received by the MoE, Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>Legal privilege</u>: The requested document is <i>prima facie</i> privileged.²⁰ Discovery provides no justification for why it should be entitled to see a document protected by legal privilege.</p> <p><u>Not relevant or material</u>: In any event, the requested document is not relevant nor material to this dispute (Art. 3(3)(b) of the IBA Rules). AOG agreed to undergo Preliminary EIAs “[f]or each exploration well, including those where operations have already started”.²¹ In light of AOG’s <i>undisputed</i> agreement with <i>activists</i> to undergo the Preliminary EIA, any documents revealing “(i) <i>the basis for the conclusion set out in the press release, (ii) why the legal analysis was requested to be prepared in the first place, (iii) who the initial request to prepare the legal analysis came from and why, and (iv) that AOG was not required to conduct a preliminary or a full EIA and so should not have been pressured into doing so by the MoE / Minister Sólymos</i>” are simply irrelevant and immaterial to this dispute.</p>

²⁰ See 2010 IBA Rules on the Taking of Evidence in International Arbitration, 9.2(b), 9.2(e), 9.2(f), and 9.3.

²¹ Press Release in relation to AOG’s commitment to local communities in North-East Slovakia, 5 April 2017, C-171.

<p>Reply to objections</p>	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request and to dismiss Slovakia’s objections.</p> <p>First, Slovakia has failed to provide a valid and reasoned objection to this Request on the grounds of privilege. In particular, Slovakia has: (i) failed to set out the applicable law on which it basis its assertion of privilege; (ii) failed to explain why the requested documents are privileged; and (iii) failed to explain why any alleged privilege in the document was not waived. Instead, Slovakia has merely asserted that the document is <i>prima facie</i> privileged. In the absence of a full reasoned explanation by Slovakia, this Request is maintained.</p> <p>Second, Discovery does not accept that the requested documents are privileged. Article 9.3(a) of the IBA Rules relates to documents created “<i>in connection with and for the purpose of providing or obtaining legal advice</i>” and Article 9.3(d) requires the Tribunal to have regard to “<i>any possible waiver</i>” of privilege by reason of “<i>earlier disclosure</i>” and/or “<i>affirmative use of the Document</i>”. The Request does not seek legal advice obtained by the MoE for the purposes of a legal claim brought by a third party. Instead, the Request seeks a copy of the “<i>legal analysis</i>” to which Slovakia referred (Exhibit C-157) in a public press release published on the MoE’s website. This press release (i) refers specifically to AOG; (ii) refers to a “<i>legal analysis</i>” and (iii) refers to the conclusion of that “<i>legal analysis</i>” viz. that the “<i>license holder</i>” (i.e., AOG) was not required to carry out an EIA. Therefore, Slovakia is not entitled to assert any alleged privilege in that “<i>legal analysis</i>” vis-à-vis Discovery.</p> <p>Third, the requested documents are relevant and material. Slovakia’s arguments are yet another example of its attempt to be the sole arbiter of relevance by simply recycling (contested) submissions made in its Counter-Memorial. For the avoidance of doubt, Discovery does not accept the points made by Slovakia by reference to events which post-date the creation of the “<i>legal analysis</i>” in November 2016. Discovery will respond in due course in its Reply Memorial.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>Considering that the press release clearly states that “the current legislative and procedural [framework] does not give rise to a legal obligation on the license holder to carry out an EIA” (Exhibit C-157), which question it may be for the Tribunal itself to decide, the Claimant has not sufficiently explained the <i>prima facie</i> relevance of the requested document.</p>

<p>Document Request No.</p>	<p>10</p>
<p>Identification of documents or category of documents requested</p>	<p>Internal briefings and reports prepared by MoE officials in relation to the Ministerial inspection of AOG’s activities at Smilno in February 2017.</p>

<p>Relevance and materiality according to requesting party, including reference to submissions</p>	<p>A key issue in dispute in these proceedings is Slovakia’s violation of its obligations under the BIT by preventing AOG from drilling any exploration well, unless AOG first conducted a preliminary EIA, and the losses incurred by Discovery as a result.</p> <p>The fact that AOG was under no legal obligation under the amended EIA Act to conduct a preliminary EIA was confirmed on numerous occasions, including by the Minister of Environment László Sólymos (Memorial at [163]-[165]) and by the MoE following an in-depth Ministerial inspection of AOG’s activities at Smilno (Memorial at [180]). The 15 February 2017 statement summarising the results of an in-depth Ministerial inspection dismissed as unfounded the environmental concerns which had been raised by the activists in late 2015 and early 2016 regarding AOG’s activities at Smilno and stated that the results of the inspection “<i>did not show violations that would have a significant impact on the environment</i>” (Exhibit C-168). However, after AOG agreed voluntarily to conduct a preliminary EIA (which AOG was not legally obliged to), AOG was later ordered to perform a full EIA on each of its proposed wells by the relevant District Offices (Memorial at [184]-[187]), which would have added significant delays and costs to the project (Memorial at [158] and [181]-[187]).</p> <p>The Documents requested are therefore relevant to this issue and material to the outcome of the case because they will confirm that, in addition to the fact that AOG was not legally required to conduct a preliminary or a full EIA, there was no factual basis or any environmental concern that would have justified the imposition of a full EIA. This means that the relevant District Offices discriminated against AOG and treated it unfairly by requiring a full EIA in circumstances where this was clearly not justified, and which was otherwise not required under Slovak law in AOG’s case.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared by the MoE, Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>Not relevant or material:</u> The requested document is not relevant or material to this dispute (Art. 3(3)(b) of the IBA Rules). AOG agreed to undergo Preliminary EIAs “[f]or each exploration well, including those where operations have already started”.²² Thus, documents confirming that AOG was not legally required to conduct a Preliminary EIA are irrelevant.</p> <p>At the same time, Discovery has conflated the different purposes of the inspection that took place and the Preliminary EIA. Discovery’s reliance on the 15 February 2017 statement summarising the results of an in-depth Ministerial inspection, which stated that the results of the inspection “<i>did not show violations that would have a significant impact on the environment</i>” (C-168) misses the point. As C-168 makes clear, the Ministerial inspection focused on inspecting whether AOG complied with its statutory obligations. For that reason, the Ministry concluded that it “<i>did not prove fundamental misconduct by the company</i>”, that the “<i>inspection revealed only some administrative deficiencies, for example late fulfilment of the obligation to notify about the start of work</i>” and that “<i>did not show violations that would have a significant impact on the environment.</i>”</p>

²²

Press Release in relation to AOG’s commitment to local communities in North-East Slovakia, 5 April 2017, **C-171**.

	<p>However, the scope of the Preliminary EIA is much broader when compared to the scope of the Ministerial inspection. For instance, the EIA Directive provides that the environmental impact assessment shall identify, describe, and assess in an appropriate manner, the direct and indirect effects of selected projects on human beings, fauna and flora; soil, water, air, climate and the landscape; material assets and the cultural heritage; or the interaction between these factors.²³</p> <p>Thus, any finding of the Ministerial inspection that it “<i>did not show violations that would have a significant impact on the environment</i>” is irrelevant to assess whether there was any factual basis or any environmental concern that would have justified the imposition of a Full EIA. This is an apples-to-oranges comparison and conflates two very different processes.</p>
Reply to objections	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request and to dismiss Slovakia’s objections.</p> <p>First, the requested documents are plainly relevant and material. The premise of Discovery’s request is that there was no factual basis or any environmental concern that would have justified the imposition of a <i>full EIA</i>. The fact that AOG previously agreed to undergo a <i>Preliminary EIA</i> is thus beside the point. Slovakia has put forward no evidence to support its assertion that Discovery is conflating the purposes of the Ministerial inspection with the Preliminary EIA, other than Slovakia’s own assertions. This is yet another example of Slovakia attempting to be the sole arbiter of relevance and materiality and recycling (contested) legal submissions from its Counter-Memorial.</p> <p>Second, Discovery does not accept that the results of the Ministerial inspection (and any documents relating to the Ministerial inspection) are irrelevant to the question of whether a full EIA should have been carried out. The Ministerial inspection took place in February 2017 and its results “<i>did not show violations that would have a significant impact on the environment</i>” (Exhibit C-168). Yet the order for a full EIA for the Smilno site was issued in August 2017 (Memorial at [185(3)]). Accordingly, there is a very close temporal overlap and material overlap between the Ministerial inspection and the EIA process. Discovery should be entitled to scrutinise Slovakia’s internal documents for itself and should not simply be required to take Slovakia’s word for it.</p>
Decision of the Tribunal	<p>DENIED</p> <p>The Claimant has not sufficiently explained why the production of internal briefings and reports prepared by the MoE in relation to the Ministerial inspection of February 2017 is <i>prima facie</i> relevant to the issue of whether the subsequent “imposition of a full EIA” was justified or not.</p>

Document Request No.	14
Identification of documents or category of	Documents evidencing the amount of money allocated by Slovakia in each year from 2006 to 2021 to local communities in the areas covered by the 2006 Licenses (as extended) under §26(4) of the Geology Act.

²³

<p>documents requested</p>	
<p>Relevance and materiality according to requesting party, including reference to submissions</p>	<p>Slovakia alleges that Discovery failed to obtain a social license to operate and that that this alleged failure ultimately led to the failure of the project (Counter-Memorial at [1(iii)], [11]-[20], [444]-[455]). Slovakia alleges that by reason of this alleged failure there is no causal link between Slovakia’s breaches of the BIT and Discovery’s damages (Counter-Memorial at [426]-[427], [444]-[455]). For example, Slovakia advances the inflammatory allegation that Discovery’s subsidiary (AOG) “<i>ran roughshod over the local community</i>” and that Discovery allegedly showed a “<i>brazen disregard for the local community</i>” (Counter-Memorial at [14]). These allegations are strongly disputed by Discovery.</p> <p>Discovery understands that a proportion of the exploration License fees—which were paid on an annual basis to Slovakia between 2006-2021—were allocated to the local communities in Slovakia where the exploration was due to take place, pursuant to §26(4)-(5) of the Geology Act (Memorial at [35]; Exhibit C-218, pp. 17-18). In particular, §26(5) of the Geology Act provides: “<i>The Ministry [of Environment] shall remit to the municipality the part of the fee under paragraph 4 within 30 days of collection of such fee</i>” (Exhibit C-218, pp. 17-18). Substantial annual license fees—running into millions of Euros—were paid to Slovakia between 2006-2021 pursuant to the terms of the Licenses (Memorial at [38(iv)], [45(iii)], [65], [139]).</p> <p>Of the total License fees paid to Slovakia between 2006-2021, Discovery does not know precisely how much money was allocated by Slovakia to the local communities on an annual basis pursuant to §26(5) of the Geology Act. Discovery anticipates that the funds allocated to the local communities were substantial. The payment of an annual license fee, a proportion of which is then allocated to the local communities, is a clear indication that Discovery did in fact obtain a social license (contrary to Slovakia’s pleaded defence).</p> <p>The Documents requested are therefore relevant to this issue and material to the outcome of the case because they will enable Discovery to rebut Slovakia’s pleaded defence that Discovery allegedly failed to obtain a social license to operate.</p> <p>The requested Documents are not within Discovery’s possession, custody or control. Discovery reasonably believes that the documents will be within the possession, custody or control of Slovakia given that §26(5) of the Geology Act expressly requires the MoE to remit funds to the local communities. Slovakia must therefore have records of the funds remitted.</p>
<p>Responses and/or Objections by disputing party to production of requested documents</p>	<p>The Slovak Republic objects to this request.</p> <p><u>Not relevant or material to the outcome of this case:</u> The requested documents are not relevant nor material to this case (Article 3(3)(b) of the IBA Rules).</p> <p>Discovery appears to have misunderstood what the social license to operate represents, despite its importance in the extractive sector. The social license to operate concerns an entity’s good faith efforts to engage with the community in which its project will take place—the community most impacted by a project. Discovery’s payment of the statutorily required license fees to the Slovak Republic was one of its minimum obligations to operate in the country. How the Slovak Republic apportioned those mandatory fees says nothing</p>

	<p>about the actions that <i>Discovery</i> took to engage with the community and understand its concerns. The requested documents are therefore irrelevant and immaterial to this dispute.</p> <p><u>Not narrow and specific / Unduly broad</u>: In addition, this request’s temporal scope is 16 years—dating all the way back to 2006. There is no justification for such a broad request. Discovery did not even begin its operations in the Slovak Republic until 2014. The license fees—and however the Slovak Republic apportioned them—from a time when Discovery was not even in the country (and not even paying these) cannot possibly evidence how Discovery “<i>did in fact obtain a social license.</i>”</p>
<p>Reply to objections</p>	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request varied as follows (with the revised wording in red):</p> <p><i>“Documents evidencing the amount of money allocated by Slovakia in each year from 2014 to 2021 to local communities in the areas covered by the 2006 Licenses (as extended) under §26(4) of the Geology Act.”</i></p> <p>First, Discovery does not accept that this Request, as originally drafted, was “[n]ot narrow and specific” and “[u]nduly broad and burdensome”. However, in the spirit of co-operation and efficiency, Discovery has significantly reduced the temporal scope of this Request to allay Slovakia’s concerns. As such, Slovakia’s objection to the temporal scope of this request is no longer valid.</p> <p>Second, the requested documents are relevant and material. Slovakia has not denied or disputed Discovery’s understanding that a proportion of the exploration License fees (which were paid on an annual basis to Slovakia until 2021) were allocated to the local communities in Slovakia where the exploration was due to take place, pursuant to §26(4)-(5) of the Geology Act (Memorial at [35]; Exhibit C-218, pp. 17-18). Slovakia asserts that, reduced to its core, a social license “<i>represents community engagement</i>” (Counter-Memorial at [450]). Discovery will contend in its Reply Memorial that this “<i>community engagement</i>” included funds from annual license fees which were allocated by Slovakia to the local communities to pay for projects/social infrastructure. The precise amount of funds allocated by Slovakia to the local communities on an annual basis over an extended period of time is therefore relevant and material to enable Discovery to rebut Slovakia’s pleaded defence, namely that Discovery failed to obtain a social license to operate.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>The Claimant has not sufficiently shown the <i>prima facie</i> relevance of the requested documents to rebut the Respondent’s allegation that “Discovery failed to obtain a social license to operate” (Counter-Memorial, paras. 444-455).</p>

V. DISCOVERY’S DOCUMENT REQUESTS REGARDING QUANTUM

Document Request No.	21
Identification of documents or category of documents requested	<p>A. Documents prepared by and/or utilised by the MoE for the promotion of oil and gas exploration and mining licences in Discovery’s Licence Areas (i) from July 2004 to July 2006 and (ii) from 25 May 2018 to date.</p> <p>B. Documents recording engagement with third parties who approached the MoE with a view of exploring Discovery’s Licence Areas from 25 May 2018 to date.</p>
Relevance and materiality according to requesting party, including reference to submissions	<p>On the one hand, Discovery’s expert, Mr Atkinson, says that <i>“the oil and gas production history in the neighbouring area of Poland, and drilling results in Slovakia show that Discovery’s licence areas are prospective for oil and gas”</i> (Atkinson 1 at [48]). On the other hand, Slovakia’s expert, Dr Longman, contends that <i>“it is extremely unlikely that any commercial accumulations of oil and/or gas would be made in Discovery’s exploration areas, even if Discovery continued to explore for oil and gas”</i> (Longman 1 at [22]).</p> <p>Dr Longman’s view is unlikely to be shared by the Slovakian authorities (including the Slovak national government, the government of the Prešov Region, and the governments of the districts of Bardejov, Humenné and Medzilaborce District), considering that the licences were granted for the benefit of the Slovakian state. It is expected that the views of the Slovakian authorities as to the prospectivity in Discovery’s licence areas are enshrined in the requested Documents and contradict the assertions of Dr Longman.</p> <p>The Documents requested are therefore relevant to this issue and material to the outcome of the case because they will help to confirm the expert opinion of Discovery’s expert, Mr Atkinson, and, as a consequence, the amount of compensation requested by Discovery.</p> <p>The requested Documents are not in Discovery’s possession, custody or control. Given that the requested Documents would have been prepared and/or utilised by the MoE, Discovery reasonably believes that they are within Slovakia’s possession, custody or control.</p>
Responses and/or Objections by disputing party to production of requested documents	<p>The Slovak Republic objects to this request.</p> <p><u>No reasonable basis to believe documents exist:</u> This request violates Art. 3(3)(a)(ii) of the IBA Rules because there is no reasonable basis to believe that the requested documents exist. In fact, Discovery does not even try to explain on what basis it believes that such documents exist. This appears to be another fishing expedition.</p> <p><u>Not relevant or material:</u> This request also violates Article 3(3)(b) of the IBA Rules because the documents are not relevant to this dispute nor material to its outcome. The Slovak state’s “views” on prospectivity of a certain area is not a substitute for the amount of hydrocarbons in the ground, and the recoverable volumes of those hydrocarbons. In other words, the amount and recoverability of the hydrocarbons across the various Exploration Area Licenses will drive quantum calculations in this case—not any promotional materials and conversations with third parties, to the extent those even exist.</p>

<p>Reply to objections</p>	<p>Discovery respectfully requests the Tribunal to order the production of relevant documents responsive to this Request and to dismiss Slovakia’s objections.</p> <p>First, there is a reasonable basis to believe that the requested documents exist. The Licenses issued by the MoE explicitly confirmed that (i) survey work had “<i>confirmed deep structures [...] that might indicate [the] potential accumulation of hydrocarbons</i>” and (ii) the “<i>overall potential of the area has been evaluated as very good and promising</i>” (see e.g., Memorial at [74]; Exhibits C-12, C-13 and C-14). Moreover, from 2006 onwards, Slovakia issued successive energy policies with the stated aim of (i) reducing its dependence on imports of oil and gas and (ii) incentivising local oil and gas exploration by companies (Memorial at [6]-[8]). Slovakia has not denied that the requested documents exist. In the premises, Discovery has a reasonable basis to believe that the requested documents exist.</p> <p>Second, the requested documents are plainly relevant and material. There is a clear conflict between the opinions of Discovery’s expert (Mr Atkinson) and Slovakia’s expert (Dr Longman) as regards the prospectivity of Discovery’s License Areas. That conflict will need to be explored in subsequent legal submissions and in cross-examination at the evidentiary hearing. The requested documents are therefore relevant and material to assist the Tribunal in resolving the conflict between the experts’ opinions and hence to evaluate Discovery’s losses and damages in this arbitration. Documents evidencing Slovakia promoting oil and gas exploration in Discovery’s License Areas and/or evidencing engagement with other third parties would: (i) demonstrate that Slovakia considers that the License Areas are prospective; (ii) support Discovery’s case and expert evidence in this arbitration; and (iii) undermine Slovakia’s case and expert evidence in this arbitration.</p>
<p>Decision of the Tribunal</p>	<p>DENIED</p> <p>The <i>prima facie</i> relevance of documents reflecting the views of the Slovakian authorities as to the prospectivity in Discovery’s licence areas is not sufficiently demonstrated.</p>