

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PAO TATNEFT,

Petitioner/Plaintiff,

v.

UKRAINE,

Respondent/Defendant.

Civil Action No. 17-582 (CKK)

MEMORANDUM OPINION AND ORDER

(February 2, 2022)

On December 13, 2021, this Court entered an Order setting out a schedule for Respondent Ukraine's rolling production of responses to Petitioner Pao Tatneft's interrogatories and document requests in aid of execution of its \$172 million judgment against Ukraine. The following schedule for rolling production applies:

By **February 3, 2022**, Ukraine shall produce information and documentation responsive to Interrogatory Nos. 6-8, and 10 and Document Request Nos. 10, 17, 19, and 21-22, on behalf of itself and the 19 Identified State Controlled Entities. By **February 28, 2022**, Ukraine shall produce information and documentation responsive to Interrogatory Nos. 1, 3-5, 9, 11 and Document Request Nos. 1-2, 5-9, 11-14 and 16, on behalf of itself and least ten of the nineteen Identified State Controlled Entities. By **March 18, 2022**, Ukraine shall produce the information and documentation responsive to all remaining discovery requests[.]

December 13, 2021 Order, ECF No. 89, at 3.

On January 21, 2022, Ukraine filed its [90] Motion for Protective Order (docketed as a Motion for Protective Order, to Hold in Abeyance and Motion for Extension of Time to Produce Discovery). On January 31, 2022, Pao Tatneft filed its [92] Opposition to the Motion for Protective Order. Because Ukraine has not yet filed its Reply, the terms of the protective order will be determined when the motion is fully ripe. Ukraine argues that this Court should hold in abeyance

the aforementioned February 3, 2022 production on grounds that the parties are in the process of negotiating a protective order in this case and simultaneously in a case pending in the Southern District of New York, where Pao Tatneft is trying to enforce subpoenas issued to certain third party banking institutions, also in aid of execution of their Judgment.¹

While on its face, Ukraine's argument for entry of a protective order prior to any production seems logical, Pao Tatneft notes correctly that this last-minute motion by Ukraine is yet another delaying tactic in a case that has been rife with delay. In this case:

Ukraine did not even propose the extraordinary protective order it now seeks until *more than three months* after its earlier opposition to Tatneft's motion to compel discovery was denied, and *more than one month* after the Court established the schedule for its document production. Indeed, Ukraine did not bother to seek entry of a protective order until January 21, 2022, knowing this Motion will not be resolved before Ukraine's first tranche of non-public responsive documents is due on February 3, 2022 under the Court's prior order.

Pao Tatneft Opposition, ECF No. 92, at 5.

Moreover, while Ukraine reiterates its concerns that disclosure of seemingly any and all information relevant to enforcement of the Judgment will somehow provide the Russian Federation with insight into Ukraine's defense capabilities and jeopardize Ukraine, it continues to provide this Court with nothing more than generalized assumptions. Pao Tatneft asserts that:

In no fewer than five prior submissions to this Court, the Court of Appeals, and the Southern District of New York, Ukraine sought to resist discovery requests directed at it and third-party financial institutions subpoenaed for documents in New York because of the alleged risk that disclosure of such information to Tatneft, a private company in the Russian Federation, would "leak" and fall into the hands of the Russian Government, which allegedly would use such information against Ukraine.

¹ Pao Tatneft indicates that, in the New York proceeding, Ukraine's motion to quash the subpoenas was denied by a Magistrate Judge, and Ukraine's objections to the denial were denied by the District Court Judge, who referred the matter back to the Magistrate Judge for consideration of an appropriate protective order. On December 10, 2021, a briefing schedule was set with regard to the protective order issue: Ukraine's proposed brief was due on January 21, 2022; Pao Tatneft's response is due on February 4, 2022; and there will be no replies. Pao Tatneft Opposition, ECF No. 92, at 14-16.

Pao Tatneft Opposition, ECF No. 92, at 6 (citing Motion to Stay Execution of Judgment Without Bond, ECF No. 67, at 2-3; Ukraine's Reply in Support of Motion to Quash Third-Party Subpoenas (New York), ECF No. 12, at 7-8; Appellant's Motion for Stay, *PAO Tatneft v. Ukraine*, Case No. 20-7091, Doc. No. 1901412, at 2-3 (D.C. Cir. June 4, 2021); Ukraine's Opposition to Tatneft's Motion to Compel, ECF No. 81, at 17-18; Ukraine's Rule 72 Objections to Order Denying Motion to Quash Third- Party Subpoenas (New York), ECF No. 19, at 16-17.) To date, all of Ukraine's efforts to stay or prevent Pao Tatneft from obtaining information to aid in execution of its Judgment and to proceed without posting a bond have failed. Nor has Ukraine substantiated its general claims that Pao Tatneft's purported relationship with the Russian Federation poses a risk to Ukraine with regard to the information requested by Pao Tatneft to enforce its Judgment, or that such information will be shared by Pao Tatneft or its counsel with Russia. Yet, Ukraine continued to stonewall on the drafting and imposition of a confidentiality or protective order, preferring instead to look for yet another avenue to delay production of any information relevant to enforcing the Judgment.

This Court has found previously that Ukraine failed to sustain its burden of demonstrating that its confidentiality concerns could not be adequately addressed by a normal protective order. *See* June 1, 2021 Memorandum Opinion on Ukraine's motion to stay execution of judgment without bond, ECF No. 75, at 11 ("The Court notes that Ukraine's claim that the information sought by Tatneft is sensitive and could be shared with the Russian Federation has not been substantiated in any way by Ukraine [n]or does Ukraine explain why a confidentiality agreement or protective order could not resolve any confidentiality concerns."); *see also* October 18, 2021 Memorandum Opinion and Order, ECF No. 83, at 17 ("In the instant case, this Court finds that Ukraine's vague claims of invasion of privacy concerns and violation of secrecy laws are speculative and furthermore, Ukraine has summarily rejected the possibility of negotiating a confidentiality agreement or protective order.").

On December 13, 2021, this Court ordered Ukraine to begin producing documents on February 3, 2022.² Accordingly, Ukraine has had more than sufficient time in which to seek to negotiate a stipulated protective order or make a timely motion for entry of one, yet, it elected to wait until January 21, 2022, knowing full well that the motion for protective order would not be fully briefed until after the February 3, 2022 production deadline. The Court finds this to be yet another strategic stalling tactic by Ukraine in a case where there have been far too many.

This Court has reviewed the information that is scheduled to be produced on February 3, 2022, with an eye toward Ukraine's alleged security concerns. The Court finds that while this subset of information entails production of information relevant to enforcement of the Judgment – *i.e.*, the interrelationships between Ukraine and its state controlled entities relevant to control of Ukrainian assets – it does not seem to bear on Ukraine's generalized assertions of security concerns.³ Furthermore, pending resolution of the terms of a protective order, Pao Tatneft has proposed to treat *all* documents and information Ukraine produces on February 3 as outside counsel “attorney’s eyes only,” which is based on the terminology employed by Ukraine in its proposed protective order. *See*

² The October 18, 2021 Memorandum Opinion and Order indicated that production of documents would span from November 8, 2021 (documents Ukraine had already agreed to produce) through March 18, 2022). The parties were to provide a plan for rolling production by November 8, 2021.

³ The February 3 production includes Interrogatory No. 6 (addressing the relationship among and between Ukraine and its state controlled entities); Interrogatory No. 7 (identifying officers and directors of the state controlled entities); Interrogatory No. 8 (instances where Ukraine is responsible for the financial obligations of the state controlled entities and vice versa); Interrogatory No. 10 (information relating to determination of policies by the state controlled entities); Document Request No. 10 (banking and financial institutions addresses and contact information); Document Request No. 17 (communications concerning payment or nonpayment of the Judgment); Document Request No. 19 (documents concerning the authority of Ukraine to determine policies of the state controlled entities); Document Request No. 21 (meetings or communications about Tatneft); Document Request No. 22 (judicial or administrative determinations regarding interrelationships between state controlled entities). *See* Pao Tatneft's Motion to Compel Production of Documents, ECF No. 76, Ex. 1 [First Set of Interrogatories to Ukraine], ECF No. 76-2, Ex. 2 [First Set of Requests for Production of Documents to Ukraine], ECF No. 76-3.

Ukraine’s Proposed Protective Order, ECF No. 90-1, at 2 (defining “Attorney Eyes Only Information (or AEO Information)” as “all Discovery Material that contains non-public business, commercial, financial, trade-secret, personal, governmental, regulatory, diplomatic, consular, or national-security related information that is entitled to a higher level of protection due to its heightened sensitivity.”); at 8-9 (designating the following as a category of persons entitled to view Attorney Eyes Only information: “Counsel for Tatneft who appeared in the above-captioned case prior to January 21, 2022”). Accordingly, in light of the subset of information that is scheduled to be produced on February 3, 2022, and Pao Tatneft’s agreement to treat production of all such information as outside counsel’s “attorney’s eyes only” until the resolution of the terms of the protective order, this Court finds no good reason to defer the February 3, 2022 production. It is hereby this 2nd day of February 2022,

ORDERED that Ukraine’s specific request for an abeyance or extension of the February 3, 2022 scheduled production, which was included in Ukraine’s [90] Motion for Protective Order, is DENIED, while this Court’s ruling on Ukraine’s request for a protective order in its [90] Motion for Protective Order is DEFERRED until briefing is complete. All information produced on February 3, 2022 shall be treated by Pao Tatneft as outside counsel “attorney’s eyes only,” as that term is defined in Ukraine’s proposed protective order, and the information shall be held in a secure manner and in a secure location.

_____/s/_____
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE