



Council of the
European Union

Brussels, 10 July 2014

11547/14
ADD 1

INF 241
API 88

NOTE

From : General Secretariat of the Council
To : Working Party on Information
Subject: Public access to documents
- Confirmatory application No 22/c/02/14

Delegations will find attached:

Attachments to annex 3 of document 11547/14 (confirmatory application No 22/c/02/14).

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2 July 2014

Secretary-General of the Council of the European Union
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By email to
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Ref: 14/0690-ADD-mjb/dm
Our ref: JXH/TB/EE

Strictly Private and Confidential

Dear Sirs

Confirmatory Application Requesting the Council to Reconsider its Decision to Refuse Public Access to document MD 65/14

Further to your letter dated 19 June 2014 ("the Initial Decision Letter"), and Article 7(2) of Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ("the Regulation") we, lawyers on behalf of **Viktor Viktorovich Yanukovich**, hereby submit a confirmatory application, requesting the Council to reconsider its position ("the Initial Decision") (a copy of which is attached/enclosed for convenience) that it is unable to grant access to document MD 65/14 ("the Document").

The Grounds for the Confirmatory Application are summarised below.

1. There was no or no sufficient justification for the Council's delay in responding to the Initial Application dated 11 April 2014 (a copy of which Application is attached/enclosed for convenience), as set out in the Council's letter dated 12 May 2014 (a copy of which is attached/enclosed for convenience) ("the Delay Letter"). This is underlined by the fact that the

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matters referred to in the Delay Letter and the Initial Decision Letter were not such as to constitute this an exceptional case, and/or to justify an extension of the time set in Article 7(1) of the Regulation. The status of the Document should have been taken into account before the Decision to apply Sanctions against the Applicant dated 5 March 2014 (Council Decision 2014/119/CFSP, as amended on 14 April 2014 by Council Decision 2014/216/CFSP and Council Regulation (EU) 208/2014 of 5 March 2014) ("the Sanctions Decision") (a copy of which Decision is attached/enclosed for convenience) was made. Further, any consultation which was required under Article 4(4) of the Regulation regarding the Document ought to have been capable of being completed well within the time specified in Article 7(1). Reference is also made to the matters set out in our letter of 30 April 2014.

2. The law, facts and matters involved did not and do not justify the Initial Decision that disclosure of document MD 65/14 would undermine the protection of the public interest as regards international relations within the meaning of Article 4(1)(a), third indent, of the Regulation. In particular, but without prejudice to the generality of the plea.
 - (a) The Council has failed, in making the Initial Decision, to take into account, or to take properly and sufficiently into account the fact that any restriction on the right of access must be applied strictly and narrowly interpreted. There is a strong public interest in transparency and accountability, which the Council has here failed to take, or failed sufficiently to take, into account. The Regulation is intended to give the widest possible public access to documents from the institutions. There are exceptions, but such exceptions must be interpreted and applied strictly (see e.g. Case T-331/11 *Besselink v Council of the European Union* [2014] 1 CMLR 28, para 28 and cases there cited; Case C-266/05 P *Sison v Council of the European Union* [2007] ECR I-01233 and Joined Cases C-39/05 P & C-52/05 P *Sweden v Council of European Union* [2008] ECR I-4723, and Case T-63/10 *Jurašinović v Council* (EGC, 3 October 2012)).
 - (b) The reasoning provided by the Council in the Initial Decision Letter is inadequate and does not comply with the legal requirements. The Council's explanation is no more than broad brush assertion, and fails to set out facts and evidence to justify the conclusions reached. There is no or insufficient material and/or explanation in the Initial Decision Letter, setting out what precisely the alleged harm would be from disclosure of this particular document, why the alleged harm is more than hypothetical, and why such harm is of a nature to bring the disclosure of the Document within Article 4(1)(a) third indent.
 - (c) The Initial Decision Letter refers to (1) the Document containing a letter from a judicial authority in Ukraine, (2) its having been transmitted by the European External Action Service ("EEAS"), (3) its having a "sensitive nature" and (4) the request of the Ukrainian authorities not to disclose the information contained in the letter.
 - (d) None of these four matters, or anything which is said to flow from them, justify the Initial Decision, which is wrong.
 - (e) Matters (1) and (2) are irrelevant, and cannot justify non-disclosure, either alone or in combination with any other matter.

- (f) Matter (3), the mere assertion that the Document is of a “sensitive nature”, takes the matter no further forward. The treatment of sensitive documents is expressly dealt with in Article 9 of the Regulation, which defines “sensitive documents” by reference to their particular classification and contents (Article 9(1)). In addition, the 9th recital in the preamble to the Regulation emphasises that it is the “highly sensitive content” of such documents which justifies the requirement that they be given special treatment. Article 9(4) further provides that an institution which decides to refuse access to a sensitive document shall give reasons for its decision. The Initial Decision Letter does not refer to or rely on Article 9 at all, let alone provide reasons from which it is possible to understand and ascertain, first, whether the Document requested does in fact fall within the sphere covered by the exception in Article 9 and, second, whether the need for protection relating to that exception is genuine (*Sison v Council of the European Union*, above). No relevant document classification is alleged. The Initial Decision Letter instead refers generally to the “sensitive nature” of the document; this is far too vague to found such a decision. In particular a document may be of a “sensitive nature” without falling within the definition in Article 9(1), or, for that matter, without its disclosure undermining the protection of the public interest as regards international relations, which is what is required for the Article 4(1)(a) third indent exception.
- (g) The Initial Decision therefore appears to be entirely reliant on matter (4), namely the apparent request not to disclose from some unidentified and unnamed “Ukrainian Authorities”. The Applicant does not recognise the so-called “interim regime” in Kiev, but even if some properly constituted authority in Ukraine did so request, reliance on such request to make the Initial Decision is wrong as a matter of law. Ukraine is not a Member State, and its “request” cannot be permitted to act as a veto on disclosure. Even a Member State does not have such a right of veto. Article 4(5) of the Regulation only refers to a right for a Member State to request, and such a right does not constitute a veto. There is no such equivalent right to request for a non-Member State under the Regulation or at all. Even if there was, it would not be a veto.
- (h) Further, even a request by a Member State has to be reasoned to be taken into account. An unreasoned objection by a Member State is ineffective (*C-64/05 P Sweden v Commission of the European Communities* [2007] E.C.R. I-11389). The position of a non-Member State cannot be stronger than that of a Member State. No reasoning from Ukraine is referred to in the Initial Decision Letter, and there is no or no valid reason for any such request. The assertions in the Initial Decision Letter that disclosure would negatively affect the climate of confidence among the relevant actors, and would hence prejudice the EU’s relations with Ukraine, quite apart from being vague in the extreme, can be seen to be no more than acknowledgment that the Initial Decision involves the so-called “interim regime” in Kiev having an impermissible and illegal veto on disclosure.
- (i) The Applicant refers to the matters set out in the Initial Application, which matters are hereby repeated so far as relevant. The supposed “authorities” in Kiev are engaged in an illegitimate attack on the legitimate President of Ukraine and his family. Any request that the Document be not disclosed made by those authorities would be baseless and/or made for an illegitimate purpose, and should not be taken into account in making this important

decision which engages important public and private interests requiring disclosure. Although the exceptions in Article 4(1)(a) of the Regulation are mandatory, the Applicant's interests, and the public interests, in disclosure are not irrelevant, and are extremely strong, as appears from the Initial Application itself, and also from the Applicant's application for the annulment of the Sanctions Decision. In particular, but without prejudice to the generality of the submission, there is no document so far disclosed by the Council which could even conceivably provide a basis for the Sanctions Decision. If there is any such basis, which is denied, it must therefore be contained in the Document. It is thus essential for the Applicant to be provided with access to the Document to enable him properly to defend himself and to challenge the Sanctions Decision, and more generally to protect his reputation, which is obviously being severely damaged by the Sanctions Decision. There is a strong public interest, based on transparency, accountability, fairness, the rights of a defendant, and the provision of a fair trial, in the Applicant having access to the Document, and (contrary to decisions such as *Sison*, above) such considerations are relevant here. The Applicant needs the disclosure sought. Access to it in this context is a fundamental human right, applicable in the European Union under the Lisbon Treaty. The illegitimate and apparently unreasoned objection of the Ukrainian authorities to disclosure of the Document in these circumstances should lead to the supposed objections of Ukraine being discounted entirely. The Council is here dealing with a case that involves a misuse of power.

- (j) In the present case, the objection of Ukraine can and should be overridden without causing damage properly falling with Article 4(1)(a) of the Regulation. If that is not the case, the objectives and practical effect of the Regulation and related Community provisions would be able to be frustrated by the say so of a non-Member State.
 - (k) In any event, even if the Document is properly not disclosed as a whole, the Council is required to consider granting partial access to the Document by redacting any parts that might genuinely and properly require to be concealed (Article 4(6) of the Regulation). The Document could, if it is truly necessary not to disclose the whole document, be redacted in a proportionate manner. The Council has failed to consider this and/or failed to provide access to an appropriately redacted version of the Document, and/or failed to give reasons why a redacted version of the Document cannot or should not be provided.
3. The law, facts and matters involved do not justify the conclusion that disclosure of document MD 65/14 is also justified by the supposed interests of unnamed other individuals outweighing the Applicant's, and the public, interest in disclosure for the purposes of Article 4(1)(b) of the Regulation or for any other reason. In particular, but without prejudice to the generality of the plea.
- (a) The Council has failed to take into account, or to take properly and sufficiently into account, the fact that any restriction on the right of access must be applied strictly and narrowly interpreted. There is a strong public interest in transparency and accountability which the Council has failed to take, or failed sufficiently to take, into account.

- (b) The Applicant's interests, and the public interest, in disclosure are extremely strong, as appears from the Initial Application itself, and also from the Applicant's application for the annulment of the Sanctions Decision (a copy of which Application, without exhibits, is attached/enclosed for convenience). The contents of those applications are repeated so far as material. In particular, but without prejudice to the generality of the submission, as already mentioned above, there is no document so far disclosed by the Council which could even conceivably provide a basis for the Sanctions Decision. If there is any such basis, which is denied, it must therefore be contained in the Document. It is thus essential for the Applicant to be provided with access to the Document to enable him properly to defend himself and to challenge the Sanctions Decision, and more generally to protect his reputation. As already mentioned, there is a strong public interest, based in fairness, the rights of a defendant and the provision of a fair trial, in the Applicant having access to the Document. The Applicant needs the disclosure sought. Access to it in this context is a fundamental human right, applicable in the European Union under the Lisbon Treaty. The illegitimate and apparently unreasoned objection of the Ukrainian authorities to disclosure of the Document in these circumstances should lead to the supposed objections of Ukraine being discounted entirely. The Council is here dealing with a case that involves a misuse of power.
- (c) The supposed interests, if any, of other unnamed persons whose personal data is supposedly mentioned in the Document, cannot outweigh the strong personal and public interest in disclosure being made. If, which is not admitted, there is any such personal data:
- i. The Council is required to consider granting partial access to the Document by redacting any parts that might genuinely and properly require to be concealed by reason of third party interests (as appears from Article 4(6) of the Regulation). The Council has failed to consider this and/or failed to provide access to an appropriately redacted version of the Document. The Document could, if truly necessary, be redacted in a proportionate manner.
 - ii. The Document may itself be the subject of access requests by the people concerned; if that is the case, there can be no proper basis for not disclosing it or disclosing parts of it.
 - iii. There is no specific damage to such persons that is alleged by the Council to flow from disclosure of the Document, and certainly none to outweigh the interests of the public and the Applicant in disclosure of the Document.
 - iv. The Council has failed to identify the people concerned and even the nature of the information in question, and thus the Applicant is unfairly deprived of the possibility of making more detailed submissions as to these matters. In those circumstances, the interests if any must be deemed to be of no or negligible weight.
 - v. The Ukrainian authorities would have provided the information concerned to the Council in the knowledge that such information might or would be acted on, and they must have envisaged that such information would become public at some stage. The Ukrainian authorities were content to use the third parties' information for their own purposes and to disclose it.

- vi. The reasoning provided by the Council is inadequate and does not comply with legal requirements. The Council's explanation is no more than broad brush assertion, and fails to set out facts and/or evidence to justify the conclusions reached.
 - vii. There is no or insufficient material and/or explanation as to why the alleged harm is more than hypothetical, and why it outweighs the public interests in disclosure.
- (d) In any event, it is to be inferred that the Document has been widely distributed within the EU Institutions and amongst the Member States, although that is not acknowledged in the Initial Decision Letter. Such distribution, the extent of which we request be disclosed to us, with proper particulars, is a further reason undermining the Council's assertion that the private interests of other people referred to warrant non disclosure.

Yours sincerely

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**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

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Brussels, 19 June 2014

Mr Joe Hage

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Ref. 14/0690-ADD-mjb/dm

Dear Mr Hage,

Further to our letter of 16 May 2014 in reply to your request for access to documents on behalf of Mr Viktor Viktorovych Yanukovich, for whom you are acting as legal representative, the General Secretariat of the Council has now completed the examination of your request on the basis of Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹ (hereafter Regulation 1049/2001) and specific provisions of the Council's Rules of Procedure² and has come to the following conclusion:

By letter of 16 May 2014, the General Secretariat informed you that documents 6840/14 ADD 1 RESTREINT UE/EU RESTRICTED, 6903/14 ADD 1 RESTREINT UE/EU RESTRICTED, 7324/14, 7325/14 and 7972/14 were already public and granted you full public access to documents 6840/14, 6840/14 COR 1, 6903/14, 6903/14 COR 1, CM 1922/14, CM 1932/14 and SN 1694/14. It also informed you that consultations as regards the last document of relevance to your request, namely document MD 65/14, were still in progress.

Document **MD 65/14** is a document transmitted by the European External Action Service (EEAS) to the General Secretariat of the Council. It contains a letter from a judicial authority in Ukraine.

In accordance with Article 4(4) of Regulation 1049/2001 the General Secretariat has consulted the EEAS on the possible public disclosure of document MD 65/14 originated by the Ukrainian authorities. We are now in a position to inform you that the Ukrainian authorities have requested not to disclose the information contained in the letter.

The General Secretariat has examined the document in compliance with its obligation to

¹ Official Journal L 145, 31.5.2001, p. 43.

² Annex II to the Council's Rules of Procedure – Council Decision No 2009/937/EU; Official Journal L 325, 11.12.2009, p. 35.

carry out its own assessment as to whether any of the exceptions to access to documents contained in Article 4 of Regulation 1049/2001 are applicable. It considers that, in the light of its sensitive nature, unilateral disclosure of document MD 65/14, against the objection of Ukrainian authorities, would negatively affect the climate of confidence among the relevant actors and would hence prejudice the EU's relations with Ukraine. This could also seriously affect trust between the EU and other countries under similar circumstances now or in the future. In the light of the foregoing, the General Secretariat has come to the conclusion that disclosure of document MD 65/14 would undermine the protection of the public interest as regards international relations within the meaning of Article 4(1)(a), third indent, of Regulation 1049/2001.

In addition, the requested document contains information related not only to Mr Viktor Viktorovych Yanukovych but also to other identifiable persons. Such information constitutes personal data within the meaning of Article 2(a) of Regulation 45/2001¹. The General Secretariat considers that the public interest in obtaining access to such personal data does not in the present case prevail over the interest of those individuals in protecting it. Public disclosure of personal data concerning persons other than Mr Viktor Viktorovych Yanukovych contained in document MD 65/14 must therefore also be refused pursuant to Article 4(1)(b) (protection of privacy and integrity of the individual) of Regulation 1049/2001, in conjunction with Articles 8 and 18 of Regulation (EC) No 45/2001.

Accordingly, pursuant to Article 4(1)(a), third indent, (protection of the public interest with regard to international relations) and Article 4(1)(b) (protection of privacy and integrity of the individual) of Regulation 1049/2001 the General Secretariat is unable to grant public access to document MD 65/14.

Statutory remedy notice

Pursuant to Article 7(2) of the Regulation, you may submit a confirmatory application requesting the Council to reconsider this position, within 15 working days of receiving this reply².

Yours sincerely,

For the General Secretariat

Jakob Thomsen

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (Official Journal L 8, 12.01.2001, p. 1).

² Confirmatory applications are published in the Council's Register of documents. If you introduce a confirmatory application, your personal data will be published in the documents related to your confirmatory application only if you have given your explicit consent for this. Your reply relating to the publication of your personal data will in no way prejudice your rights under Regulation (EC) No 1049/2001.

5/11/2014

@Mail.Ru Письмо от yanukovich.v@mail.ru



От: yanukovich.v@mail.ru

Кому: access@consilium.europa.eu, sanctions@consilium.europa.eu

Дата: Пн, 11 Апр 2014 20:03

Тема: Private and confidential: request for information

Dear Sirs

Please see below my request for information dated 11 April 2014. An original Russian version follows the English translation.

It is important for me to receive your reply as soon as possible.

Виктор Янукович
Viktor Viktorovych Yanukovich

—
Виктор Янукович

Dear Sirs,

I was surprised and disappointed to find myself included in the list of individuals made subject to EU sanctions that you published on 5 March 2014 in EU Council Decision 2014/119/CFSP and EU Council Regulation 208/2014. These instruments apparently seek to target persons responsible for the "misappropriation of Ukrainian State funds" and "human rights violations". It is absurd to imagine that such allegations could ever be applied to me and indeed no attempt is made in these instruments to demonstrate how they could. For the avoidance of doubt, I want to affirm that I have never committed any such criminal or unlawful act under Ukrainian or EU law, either personally or in my capacity as an active Member of the Ukrainian Verkhovna Rada.

The measures taken against me by the Council of the European Union are evidently flawed and groundless.

What is more, it is impossible to discern how these measures could have any sensible objective, since I do not now, nor have I in the past possessed any assets in any country of the European Union that could conceivably fall within the scope of these measures. All of my personal assets are in Ukraine and have been lawfully declared. None of these assets inside Ukraine have been blocked or frozen. Even though no legal impediment prevents me, I have not taken any steps whatsoever to transfer any part of these assets outside of Ukraine.

I believe that the decision to impose punitive measures against me through EU Council Decision 2014/119/CFSP and EU Council Regulation 208/2014 has been made purely for partisan political purposes. The sanctions were installed only shortly after my father, President Viktor F. Yanukovich, was unlawfully declared deposed and forced to flee Kiev. In light of the very short passage of time between his departure from Kiev and the publication of the above documents, the charges against me have clearly been drawn up in great haste, and no due consideration could conceivably have been given to their contents. Otherwise, and with due consideration, the Council would surely have concluded that the measures proposed were not in fact appropriate, or even, I believe, legal. In the circumstances, it is plainly the case that these sanctions have been imposed against me solely to support the political campaign now being waged against my family and me.

I can confidently declare that I have not acted in violation of the laws of Ukraine and/or those of the European Union. I am not guilty of any of the allegations that form the basis of the decision to impose sanctions against me. Since, at present, no information has been provided as to the precise nature of these allegations, I respectfully request that the Council provide me with the information and evidence that led it to include me in the sanctions lists of 5 March 2014. I fully expect that these materials will disclose no proper basis for the imposition of sanctions against me, and if I am correct on this point, I intend to invite the Court of Justice of the European Union, which oversees the work of the Council in this field, to overturn these sanctions as contrary to the laws and values of the EU. I have worked throughout my political career to bring Ukraine and the EU closer together, and I have always had great respect for the values of the EU. I have every confidence that the EU's own mechanisms and procedures will allow these illegitimate sanctions to be duly challenged and overturned.

Under EU law, any such challenge to the Court of Justice must be made in an extremely short timeframe. Unless I am provided, as soon as possible, with the information and the evidence relied on by the Council when deciding to include me

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in the list of individuals made subject to sanctions on 5 March 2014, it will be practically impossible for me to take issue with the approach the Council has adopted. Openness and accountability are fundamental principles espoused by the EU, and I am entitled to the information requested under EU law (including under the Transparency Regulation (1049/2001) and the Data Processing Regulation (45/2001)). At the moment the basis for the Council's deliberations in private have never been made available, but it is important that the grave allegations advanced against me are considered and refuted before the eyes of the public. To this end I therefore look forward to receiving the material requested as soon as possible.

Yours faithfully,

Viktor Viktorovych Yanukovich

Уважаемые господа,

Я был удивлен и разочарован, увидев свое имя в списке лиц, на которых были наложены санкции, опубликованные Вами 5 марта 2014 года в Решении Совета ЕС 2014/119/CFSP и Постановлении Совета ЕС 208/2014. Эти документы, очевидно, направлены против лиц, ответственных за «растрату государственных финансовых средств Украины» и «нарушения прав человека». Абсурдно предполагать, что подобные обвинения когда-либо могли бы быть направлены против меня, и, действительно, в указанных документах не делается и попытки показать обратное. Во избежание сомнений я хочу подтвердить, что я никогда не совершал никаких подобных уголовных или иных незаконных деяний, ни лично, ни в качестве активного члена Верховной Рады Украины.

Меры, предпринятые против меня Советом Европейского Союза, очевидно ошибочны и безосновательны.

Более того, невозможно понять, каким образом эти меры могут иметь какую-либо разумную цель, поскольку ни сейчас, ни в прошлом я не владел какими-либо активами в какой-либо стране Европейского Союза, которые бы могли подпадать под действие данных мер. Все мои личные активы находятся в Украине и были законным образом задекларированы. Никакие из этих украинских активов не были заблокированы или заморожены. Несмотря на то, что никакое правовое ограничение не мешает мне это сделать, я не предпринял абсолютно никаких шагов для того, чтобы перевести какую-либо часть этих активов за территорию Украины.

Я полагаю, что решение о наложении на меня карательных мер посредством Решения Совета ЕС 2014/119/CFSP и Постановления Совета ЕС 208/2014 было принято исключительно по предвзятым политическим мотивам. Санкции были введены лишь через очень небольшой промежуток времени после того, как мой отец, Президент Виктор Ф. Янукович, был незаконно объявлен смещенным и был вынужден оставить Киев. В свете очень краткого промежутка времени, прошедшего от момента оставления им Киева и до публикации вышеназванных документов, обвинения против меня были, очевидно, составлены в большой спешке, и не могли быть должным образом обдуманы. В обратном же случае и при должном обдумывании этого вопроса Совет бы безусловно заключил, что предложенные меры не были, на самом деле, ни соответствующими, ни, я полагаю, законными. В настоящих условиях представляется очевидным, что данные санкции были наложены на меня исключительно в поддержку политической кампании, которая в настоящее время ведется против моей семьи и меня.

Я могу с уверенностью заявить, что я не действовал в нарушение закона. Я невиновен ни в каких из деяний, которые приводятся в качестве оснований для решения наложить на меня

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санкции. Поскольку на настоящий момент мне не была предоставлена никакая информация о конкретном характере данных обвинений, я с уважением прошу Совет предоставить мне информацию и доказательства, которые побудили Совет включить в меня в санкционные списки от 5 марта 2014 года. Я всецело ожидаю, что данные материалы не откроют никаких должных оснований для наложения на меня санкций, и, если я прав в этом мнении, я намереваюсь обратиться в Суд Европейского Союза, который надзирает за работой Совета в этой сфере, чтобы добиться отмены этих санкций как противоположных законам и ценностям Европейского Союза. Во все время своей политической карьеры я работал над тем, чтобы сблизить Украину и Европейский Союз, и я всегда с большим уважением относился к ценностям ЕС. Я совершенно уверен, что внутренние механизмы и процедуры Европейского Союза позволят должным образом оспорить и добиться отмены этих незаконных санкций.

По праву ЕС любое подобное оспаривание в Суде Европейского Союза должно быть осуществлено в крайне короткие сроки. Если мне не будет предоставлена, так скоро, как возможно, информация и доказательства, на которых основывался Совет при решении включить меня в список лиц, на которых 5 марта 2014 года были наложены санкции, то мне будет практически невозможно оспорить тот подход, который выбрал Совет. Открытость и подотчетность являются фундаментальными принципами, поддерживаемыми Европейским Союзом, и я вправе получить информацию, запрашиваемую в соответствии с правом ЕС (в том числе в соответствии с Постановлением об открытости информации (1049/2001) и Постановлением об обработке данных (45/2001)). На настоящий момент доводы, рассмотренные Советом в рамках внутренних обсуждений, не были раскрыты, но важно, чтобы те серьезные обвинения, которые были выдвинуты против меня, были рассмотрены и опровергнуты на глазах у общественности. Поэтому я с нетерпением ожидаю получения запрошенного материала в максимально короткий срок.

С уважением,

Виктор Викторович Янукович



**COUNCIL OF
THE EUROPEAN UNION**

GENERAL SECRETARIAT

*Directorate-General F
Communication
Transparency*

*- Access to Documents/
Legislative transparency*

RUE DE LA LOI, 175
B - 1048 BRUSSELS
Tel: (32 2) 281 67 10
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access@consilium.europa.eu

Brussels, 12 May 2014

Mr Joe Hage

**e-mail:
jhage@jha.com**

Ref. 14/0690-PRO-ns

Dear Mr Hage,

The request of Mr V. Yanukovych for access to Council documents sent on 11 April 2014 was registered by the General Secretariat - Access to documents on 14 April 2014.

On 14 April 2014, Mr V. Yanukovych was informed by email that his request will be handled by our service (Access to documents) on the basis of Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹. As for the other parts of this request, the Access to documents service has forwarded it to the competent service of the General Secretariat (sanctions@consilium.europa.eu).

The General Secretariat has received your letter on behalf of Mr V. Yanukovych sent by email on 17 April 2014 requesting to receive an urgent reply by Friday 18 April 2014. We regret, however, to inform you that the necessary consultations concerning your request are not yet completed. Therefore, in view of the particular complexity of the examination incumbent upon the institution, the time-limit for the General Secretariat to reply to your application has to be extended by 15 working days (21.05.2014), in accordance with Article 7(3) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

Yours sincerely,

For the General Secretariat

Jakob Thomsen

¹ Official Journal L 145, 31.5.2001, p. 43.

DECISIONS

COUNCIL DECISION 2014/119/CFSP

of 5 March 2014

concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 20 February 2014, the Council condemned in the strongest terms all use of violence in Ukraine. It called for an immediate end to the violence in Ukraine, and full respect for human rights and fundamental freedoms. It called upon the Ukrainian Government to exercise maximum restraint and opposition leaders to distance themselves from those who resort to radical action, including violence.
- (2) On 3 March 2014, the Council agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine.
- (3) Further action by the Union is needed in order to implement certain measures,

(a) necessary to satisfy the basic needs of the natural persons listed in the Annex and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for the payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources; or

(d) necessary for extraordinary expenses, provided that the competent authority has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph.

4. By way of derogation from paragraph 1, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources, provided that the following conditions are met:

HAS ADOPTED THIS DECISION:

Article 1

1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.
3. The competent authority of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:
- (a) the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in paragraph 1 was listed in the Annex, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the decision is not for the benefit of a natural or legal person, entity or body listed in the Annex; and

(d) recognition of the decision is not contrary to public policy in the Member State concerned.

The Member State concerned shall inform the other Member States and the Commission of any authorisations granted under this paragraph.

5 Paragraph 1 shall not prevent a listed natural or legal person, entity or body from making a payment due under a contract entered into prior to the date on which such person, entity or body was listed in the Annex, provided that the Member State concerned has determined that the payment is not, directly or indirectly, received by a person, entity or body referred to in paragraph 1.

6 Paragraph 2 shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts;
- (b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the measures provided for in paragraphs 1 and 2; or
- (c) payments due under judicial, administrative or arbitral decisions rendered in the Union or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments remain subject to the measures provided for in paragraph 1.

Article 2

1. The Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall decide to establish and amend the list in the Annex.

2. The Council shall communicate the decision referred to in paragraph 1, including the grounds for the listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing such person, entity or body with an opportunity to present observations.

3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review the decision referred to in paragraph 1 and inform the person, entity or body concerned accordingly.

Article 3

1. The Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Article 1(1).

2. The Annex shall also contain, where available, the information necessary to identify the natural and legal persons, entities or bodies concerned. With regard to natural persons, such information may include names, including aliases, date and place of birth, nationality, passport and identity card numbers, gender, address if known, and function or profession. With regard to legal persons, entities and bodies, such information may include names, place and date of registration, registration number and place of business.

Article 4

In order to maximise the impact of the measures referred to in Article 1(1) and (2), the Union shall encourage third States to adopt restrictive measures similar to those provided for in this Decision.

Article 5

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

This Decision shall apply until 6 March 2015.

This Decision shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.

Done at Brussels, 5 March 2014.

For the Council
The President
D. KOURKOULAS

ANNEX

List of persons, entities and bodies referred to in Article 1

	Name	Identifying information	Statement of reasons	Date of listing
1.	Viktor Fedorovych Yanukovich	born on 9 July 1956, former President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
2.	Vitalii Yuriyevych Zakharchenko	born on 20 January 1963, former Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
3.	Viktor Pavlovych Pshonka	born on 6 February 1954, former Prosecutor General of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
4.	Oleksandr Hryhorovych Yasyzenko	born on 22 December 1964, former Head of Security Service of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
5.	Andriy Volodymyrovych Portnov	born on 27 October 1973, former Adviser to the President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
6.	Olena Leonidivna Lukash	born on 12 November 1970, former Minister of Justice	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
7.	Andrii Petrovych Klutsev	born on 12 August 1964, former Head of Administration of President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

	Name	Identifying information	Statement of reasons	Date of listing
8.	Viktor Ivanovych Ratashniak	born on 16 October 1959, former Deputy Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
9.	Oleksandr Viktorovych Yanukovich	born on 1 July 1973, son of former President, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
10.	Viktor Viktorovych Yanukovich	born on 16 July 1981, son of former President, Member of the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
11.	Artem Viktorovych Pshonka	born on 19 March 1976, son of former Prosecutor General, Deputy Head of the faction of Party of Regions in the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
12.	Serhiy Petrovych Klimev	born on 12 August 1969, businessman, brother of Mr. Andrii Klimev	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
13.	Mykola Yanovych Azarov	born on 17 December 1947, Prime Minister of Ukraine until January 2014	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
14.	Oleksii Mykolajovych Azarov	son of former Prime Minister Azarov	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
15.	Serhiy Vitaliyovych Kurchenko	born on 21 September 1985, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

	Name	Identifying information	Statement of reasons	Date of listing
16.	Dmytro Volodymyrovych Tabachnyk	born on 28 November 1963, former Minister of Education and Science	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
17.	Raisa Vasylyvna Boharynava	born on 6 January 1953, former Minister of Health	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
18.	Ihor Oleksandrovych Kalinin	born on 28 December 1959, former Adviser to the President of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

COUNCIL IMPLEMENTING DECISION 2014/216/CFSP

of 14 April 2014

implementing Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(2) thereof,

Having regard to Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine ⁽¹⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) On 5 March 2014, the Council adopted Decision 2014/119/CFSP.
- (2) Additional persons should be included in the list of persons, entities and bodies subject to restrictive measures as set out in the Annex to Decision 2014/119/CFSP.
- (3) In addition, the identifying information for three persons listed in the Annex to Decision 2014/119/CFSP should be amended.
- (4) The Annex to Decision 2014/119/CFSP should therefore be amended accordingly.

HAS ADOPTED THIS DECISION:

Article 1

The persons listed in Annex 1 to this Decision shall be added to the list set out in the Annex to Decision 2014/119/CFSP.

Article 2

The Annex to Decision 2014/119/CFSP is hereby amended as set out in Annex II to this Decision.

*Article 3*This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 14 April 2014.

For the Council
The President
C. ASHTON

(1) OJL 66, 6.3.2014, p. 26.

ANNEX I

Persons referred to in Article 1

	Name	Identifying information	Statement of reasons	Date of listing
19.	Serhiy Arbuzov	Born on 24 March 1976, former Prime Minister of Ukraine.	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	15.4.2014
20.	Yuriy Ivanyushchenko	Born on 21 February 1959, Party of Regions MP.	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	15.4.2014
21.	Oleksandr Klivenko	Born on 16 November 1980, former Minister of Revenues and Charges.	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	15.4.2014
22.	Edward Stavytskyi	Born on 4 October 1972, former Minister of Fuel and Energy of Ukraine.	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	15.4.2014

ANNEX II

The entries for the following persons listed in the Annex to Decision 2014/119/CFSP are replaced by the entries below:

	Name	Identifying information	Statement of reasons	Date of listing
9	Oleksandr Viktorovych Yanukovich	Born on 10 July 1973, son of former President, businessman.	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
12	Serhiy Petrovych Klitiev	Born on 19 August 1969, brother of Mr Andrii Klitiev, businessman.	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
14	Oleksii Mykolayovych Azarov	Born on 13 July 1971, son of former Prime Minister Azarov.	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 208/2014

of 5 March 2014

concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine ⁽¹⁾,

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

- (1) On 20 February 2014, the Council condemned in the strongest terms all use of violence in Ukraine. It called for an immediate end to the violence, and full respect for human rights and fundamental freedoms in Ukraine. It called upon the Ukrainian Government to exercise maximum restraint and opposition leaders to distance themselves from those who resort to radical action, including violence.
- (2) On 3 March 2014, the Council agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine.
- (3) On 5 March 2014, the Council adopted Decision 2014/119/CFSP.

⁽¹⁾ See page 26 of this Official Journal.

(4) Decision 2014/119/CFSP provides for the freezing of funds and economic resources of certain persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine. Those persons, entities and bodies are listed in the Annex to that Decision.

(5) These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.

(6) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights and principles.

(7) The power to amend the list in Annex I to this Regulation should be exercised by the Council, in view of the serious political situation in Ukraine, and to ensure consistency with the process for amending and reviewing the Annex to Decision 2014/119/CFSP.

(8) The procedure for amending the list in Annex I to this Regulation should include providing designated natural or legal persons, entities or bodies with the grounds for listing, so as to give them an opportunity to submit observations. Where observations are submitted, or substantial new evidence is presented, the Council should review its decision in light of those observations and inform the person, entity or body concerned accordingly.

- (9) For the implementation of this Regulation, and in order to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen in accordance with this Regulation, must be made public. Any processing of personal data should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾ and Directive 95/46/EC of the European Parliament and of the Council ⁽²⁾.
- (10) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately.

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions apply:

- (a) 'claim' means any claim, whether asserted by legal proceedings or not, made before or after 6 March 2014, under or in connection with a contract or transaction, and includes in particular:
- (i) a claim for performance of any obligation arising under or in connection with a contract or transaction;
 - (ii) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;
 - (iii) a claim for compensation in respect of a contract or transaction;
 - (iv) a counterclaim;
 - (v) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given;
- (b) 'contract or transaction' means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;
- (c) 'competent authorities' means the competent authorities of the Member States as identified on the websites listed in Annex II;
- (d) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services;
- (e) 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- (f) 'freezing of funds' means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;
- (g) 'funds' means financial assets and benefits of every kind, including, but not limited to:
- (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - (iv) interest, dividends or other income on or value accruing from or generated by assets;
 - (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - (vi) letters of credit, bills of lading, bills of sale; and
 - (vii) documents showing evidence of an interest in funds or financial resources;
- (h) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2

1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body as listed in Annex I shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.

Article 3

1. Annex I shall include persons who, in accordance with Article 1 of Decision 2014/119/CFSP, have been identified by the Council as being responsible for the misappropriation of Ukrainian State funds, and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them.

2. Annex I shall include the grounds for the listing of natural or legal persons, entities and bodies concerned.

3. Annex I shall include, where available, information necessary to identify the natural or legal persons, entities and bodies concerned. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to legal persons, entities and bodies, such information may include names, place and date of registration, registration number and place of business.

Article 4

1. By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

- (a) necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in Annex I, and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; or
- (d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to the competent authorities of the other Member States and to the Commission at least two weeks prior to authorisation.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 5

1. By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the funds or economic resources are subject to an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 2 was included in Annex I, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the decision is not for the benefit of a natural or legal person, entity or body listed in Annex I; and
- (d) recognition of the decision is not contrary to public policy in the Member State concerned.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 6

1. By way of derogation from Article 2 and provided that a payment by a natural or legal person, entity or body listed in Annex I is due under a contract or agreement that was concluded by, or under an obligation that arose for the natural or legal person, entity or body concerned, before the date on which that natural or legal person, entity or body was included in Annex I, the competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, provided that the competent authority concerned has determined that:

- (a) the funds or economic resources shall be used for a payment by a natural or legal person, entity or body listed in Annex I; and
- (b) the payment is not in breach of Article 2(2).

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 7

1. Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties onto the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.

2. Article 2(2) shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts;
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 2 has been included in Annex I; or
- (c) payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments are frozen in accordance with Article 2(1).

Article 8

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

- (a) supply immediately any information which would facilitate compliance with this Regulation, such as information on accounts and amounts frozen in accordance with Article 2, to the competent authority of the Member State where they are resident or located, and shall transmit such information, directly or through the Member State, to the Commission; and
- (b) cooperate with the competent authority in any verification of such information.

2. Any additional information received directly by the Commission shall be made available to the Member States.

3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

4. Paragraph 3 shall not prevent Member States from sharing that information, in accordance with their national law, with the relevant authorities of Ukraine and other Member States where necessary for the purpose of assisting the recovery of misappropriated funds.

Article 9

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2.

Article 10

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

2. Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions set out in this Regulation.

Article 11

1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated natural or legal persons, entities or bodies listed in Annex I;
- (b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).

2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the natural or legal person, entity or body seeking the enforcement of that claim.

3. This Article is without prejudice to the right of the natural or legal persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.

Article 12

1. The Commission and Member States shall inform each other of the measures taken under this Regulation and share any other relevant information at their disposal in connection with this Regulation in particular information:

- (a) in respect of funds frozen under Article 2 and authorisations granted under Articles 4, 5 and 6;
- (b) in respect of violation and enforcement problems and judgments handed down by national courts.

2. The Member States shall immediately inform each other and the Commission of any other relevant information at their disposal which might affect the effective implementation of this Regulation.

Article 13

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

Article 14

1. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 2, it shall amend Annex I accordingly.

2. The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraph 1, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.

3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.

4. The list in Annex I shall be reviewed at regular intervals and at least every 12 months.

Article 15

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify the rules referred to in paragraph 1 to the Commission without delay after 6 March 2014 and shall notify it of any subsequent amendment.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 March 2014.

For the Council
The President
D. KOURKOULAS

Article 16

1. Member States shall designate the competent authorities referred to in this Regulation and identify them on the websites listed in Annex II. Member States shall notify the Commission of any changes in the addresses of their websites listed in Annex II.

2. Member States shall notify the Commission of their competent authorities, including the contact details of those competent authorities, without delay after the entry into force of this Regulation, and shall notify it of any subsequent amendment.

3. Where this Regulation sets out a requirement to notify, inform or otherwise communicate with the Commission, the address and other contact details to be used for such communication shall be those indicated in Annex II.

Article 17

This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 18

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Union*.

ANNEX 1

List of natural and legal persons, entities and bodies referred to in Article 2

	Name	Identifying information	Statement of reasons	Date of listing
1.	Viktor Fedorovych Yanukovych	born on 9 July 1950, former President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
2.	Vitalii Yuriyovych Zakharchenko	born on 20 January 1963, former Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
3.	Viktor Pavlovych Pshonka	born on 6 February 1954, former Prosecutor General of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
4.	Oleksandr Hryhorovych Yakymenko	born on 22 December 1964, former Head of Security Service of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
5.	Andriy Volodymyrovych Portnov	born on 27 October 1973, former Adviser to the President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
6.	Olena Leonidivna Lukash	born on 12 November 1976, former Minister of Justice	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
7.	Andrii Petrovych Kliuiev	born on 12 August 1964, former Head of Administration of President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

	Name	Identifying information	Statement of reasons	Date of listing
8.	Viktor Ivanovych Ratushniak	born on 16 October 1959, former Deputy Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
9.	Oleksandr Viktorovych Yanukovych	born on 1 July 1973, son of former President, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
10.	Viktor Viktorovych Yanukovych	born on 16 July 1981, son of former President, Member of the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
11.	Artem Viktorovych Pshonka	born on 19 March 1976, son of former Prosecutor General, Deputy Head of the faction of Party of Regions in the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
12.	Serhii Petrovych Klushiev	born on 12 August 1969, businessman, brother of Mr. Andrii Klushiev	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
13.	Mykola Yanovych Azarov	born on 17 December 1947, Prime Minister of Ukraine until January 2014	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
14.	Oleksii Mykolayovych Azarov	son of former Prime Minister Azarov	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
15.	Serhiy Vitaliyovych Kurchenko	born on 21 September 1985, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

	Name	Identifying information	Statement of reasons	Date of listing
16.	Dmytro Volodymyrovych Tabachnyk	born on 28 November 1963, former Minister of Education and Science	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
17.	Raisa Vasylivna Bohatyrsova	born on 6 January 1953, former Minister of Health	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
18.	Ihor Oleksandrovych Kalinin	born on 28 December 1959, former Adviser to the President of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

ANNEX II

Websites for information on the competent authorities and address for notification to the European Commission

BELGIUM

<http://www.diplomatie.be/easansctions>

BULGARIA

<http://www.mfa.bg/en/pages/135/index.html>

CZECH REPUBLIC

<http://www.mlc.cz/mexinarodni/sankce>

DENMARK

<http://um.dk/da/politik-og-diplomati/retsorden/sanktioner/>

GERMANY

<http://www.bmwi.de/DE/Themen/Aussenwirtschaft/aussenwirtschaftsrecht,did=404888.html>

ESTONIA

http://www.vm.ee/est/kat_622/

IRELAND

<http://www.dfa.ie/home/index.aspx?id=28519>

GREECE

<http://www.mfa.gr/en/foreign-policy/global-issues/international-sanctions.html>

SPAIN

<http://www.exteriores.gob.es/Ponad/es/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiegos/Documents/ORGANISMOS%20COMPETENTES%20SANCIONES%20INTERNACIONALES.pdf>

FRANCE

<http://www.diplomatie.gouv.fr/autorites-sanctions/>

CROATIA

<http://www.mvep.hr/sankcije>

ITALY

http://www.esteri.it/MAE/IT/Politica_Europea/Deroghe.htm

CYPRUS

<http://www.mfa.gov.cy/sanctions>

LATVIA

<http://www.mfa.gov.lv/en/security/4539>

LITHUANIA

<http://www.urm.lt/sanctions>

LUXEMBOURG

<http://www.mae.lu/sanctions>

HUNGARY

http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitikank/nemzetkozi_szankciok/