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► **B****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

(OJ L 66, 6.3.2014, p. 26)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Council Implementing Decision 2014/216/CFSP of 14 April 2014	L 111	91	15.4.2014
► <u>M2</u>	Council Decision (CFSP) 2015/143 of 29 January 2015	L 24	16	30.1.2015
► <u>M3</u>	Council Decision (CFSP) 2015/364 of 5 March 2015	L 62	25	6.3.2015
► <u>M4</u>	Council Decision (CFSP) 2015/876 of 5 June 2015	L 142	30	6.6.2015
► <u>M5</u>	Council Decision (CFSP) 2015/1781 of 5 October 2015	L 259	23	6.10.2015
► <u>M6</u>	Council Decision (CFSP) 2016/318 of 4 March 2016	L 60	76	5.3.2016
► <u>M7</u>	Council Decision (CFSP) 2017/381 of 3 March 2017	L 58	34	4.3.2017
► <u>M8</u>	Council Decision (CFSP) 2018/333 of 5 March 2018	L 63	48	6.3.2018
► <u>M9</u>	Council Decision (CFSP) 2019/354 of 4 March 2019	L 64	7	5.3.2019
► <u>M10</u>	Council Decision (CFSP) 2020/373 of 5 March 2020	L 71	10	6.3.2020
► <u>M11</u>	Council Decision (CFSP) 2021/394 of 4 March 2021	L 77	29	5.3.2021
► <u>M12</u>	Council Decision (CFSP) 2022/376 of 3 March 2022	L 70	7	4.3.2022

Corrected by:

- **C1** Corrigendum, OJ L 70, 11.3.2014, p. 35 (2014/119/CFSP)
- **C2** Corrigendum, OJ L 86, 28.3.2019, p. 118 (2019/354)

▼B**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***Article 1***▼M2**

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.

For the purpose of this Decision, persons identified as responsible for the misappropriation of Ukrainian State funds include persons subject to investigation by the Ukrainian authorities:

- (a) for the misappropriation of Ukrainian public funds or assets, or being an accomplice thereto; or
- (b) for the abuse of office as a public office-holder in order to procure an unjustified advantage for him- or herself or for a third party, and thereby causing a loss to Ukrainian public funds or assets, or being an accomplice thereto.

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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) 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.

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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:

- (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.

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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.

▼M5*Article 5*

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

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This Decision shall apply until 6 March 2023. With regard to entries 1, 3, 7 and 9 in the Annex, the measures in Article 1 shall apply until 6 September 2022.

▼M5

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.

▼ M3

ANNEX

▼ M9

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

▼ M3

	Name	Identifying information	Statement of reasons	Date of listing
1.	Viktor Fedorovich Yanukovych (Віктор Федорович Янукович), Viktor Fedorovich Yanukovich (Віктор Фёдорович Янукович)	born on 9 July 1950 in Yena-kiieve (Donetsk oblast), former President of Ukraine	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.	6.3.2014
2.	Vitalii Yuriyovich Zakharchenko (Віталій Юрійович Захарченко), Vitaliy Yurievich Zakharchenko (Віталій Юрьевич Захарченко)	born on 20 January 1963 in Kostiantynivka (Donetsk oblast), former Minister of Internal Affairs.	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and in connection with the misuse of office by a public officeholder to procure an unjustified advantage for himself or a third party thereby causing a loss to the Ukrainian public budget or assets.	6.3.2014
3.	Viktor Pavlovych Pshonka (Віктор Павлович Пшонка)	born on 6 February 1954 in Serhiyivka (Donetsk oblast), former Prosecutor General of Ukraine	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets.	6.3.2014
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6.	Viktor Ivanovich Ratushniak (Віктор Іванович Ратушняк)	born on 16 October 1959, former Deputy Minister of Internal Affairs	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for being an accomplice thereto.	6.3.2014

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	Name	Identifying information	Statement of reasons	Date of listing
▼ <u>M8</u>				
	7. Oleksandr Viktorovych Yanukovych (Олександр Вікторович Янукович)	Born on 10 July 1973 in Yena-kiieve (Donetsk oblast), son of former President, businessman	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for being an accomplice thereto.	6.3.2014
▼ <u>M4</u>				
▼ <u>M3</u>				
	9. Artem Viktorovych Pshonka (Артем Вікторович Пшонка)	born on 19 March 1976 in Kramatorsk (Donetsk oblast), son of former Prosecutor General, Deputy Head of the faction of Party of Regions in the Verkhovna Rada of Ukraine	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for being an accomplice thereto.	6.3.2014
▼ <u>M8</u>				
▼ <u>M10</u>				
▼ <u>M8</u>				
	12. Serhiy Vitalyovych Kurchenko (Сергій Віталійович Курченко)	Born on 21 September 1985 in Kharkiv, businessman	Person subject to criminal proceedings by the Ukrainian authorities for the misappropriation of public funds or assets and for the abuse of office in order to procure an unjustified advantage for himself or for a third party and thereby causing a loss to Ukrainian public funds or assets.	6.3.2014

▼ M3

	Name	Identifying information	Statement of reasons	Date of listing
▼ <u>M11</u> —				
▼ <u>M6</u> —				
▼ <u>M11</u> —				
▼ <u>M7</u> —				
▼ <u>M12</u> —				
▼ <u>M10</u> —				

▼ M12**B. Rights of defence and the right to effective judicial protection****The rights of defence and the right to effective judicial protection under the Code of Criminal Procedure of Ukraine**

Article 42 of the Code of Criminal Procedure of Ukraine ('Code of Criminal Procedure') provides that every person who is suspected or accused in criminal proceedings enjoys rights of defence and the right to effective judicial protection. These include: the right to be informed of the criminal offence of which he has been suspected or accused; the right to be informed, expressly and promptly, of his rights under the Code of Criminal Procedure; the right to have, when first requested, access to a defence lawyer; the right to present petitions for procedural actions; and the right to challenge decisions, actions and omissions by the investigator, the public prosecutor and the investigating judge.

Article 303 of the Code of Criminal Procedure distinguishes between decisions and omissions that can be challenged during the pre-trial proceedings (first paragraph) and decisions, acts and omissions that can be considered in court during preparatory proceedings (second paragraph). Article 306 of the Code of Criminal Procedure provides that complaints against decisions, acts or omissions of the investigator or public prosecutor must be considered by an investigating judge of a local Court in the presence of the complainant or his defence lawyer or legal representative. Article 308

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of the Code of Criminal Procedure provides that complaints regarding failure by the investigator or public prosecutor to respect reasonable time during the pre-trial investigation may be lodged with a superior public prosecutor and must be considered within three days of being lodged. In addition, Article 309 of the Code of Criminal Procedure specifies the decisions of investigating judges that may be challenged on appeal, and that other decisions may be subject to judicial review in the course of preparatory proceedings in Court. Moreover, a number of procedural investigating actions are only possible subject to a ruling by the investigating judge or a Court (e.g. seizure of property under Articles 167-175, and measures of detention under Articles 176-178, of the Code of Criminal Procedure).

Application of the rights of defence and the right to effective judicial protection of each of the listed persons

1. Viktor Fedorovych Yanukovych

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Yanukovych, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decision of the Supreme Anti-Corruption Court of Ukraine of 10 August 2020 in criminal proceeding No 4201600000000785 in which the Court examined the petition of the National Anti-Corruption Bureau of Ukraine and granted permission to apprehend Mr Yanukovych. In the Court's ruling, the investigating judge confirmed that there is a reasonable suspicion for Mr Yanukovych's involvement in a criminal offence relating to misappropriation, and confirmed Mr Yanukovych's status as suspect in the criminal proceedings.

The Supreme Anti-Corruption Court also established that Mr Yanukovych has been staying outside Ukraine since 2014. The Court concluded that there were sufficient grounds to believe that Mr Yanukovych was hiding from the pre-trial investigation bodies.

Additionally, on 15 September 2021, the Supreme Anti-Corruption Court of Ukraine followed the motion of the National Anti-Corruption Bureau of Ukraine and granted permission for the detention of Mr Yanukovych. In that decision, the investigating judge confirmed the conclusions of the Supreme Anti-Corruption Court of Ukraine of 10 August 2020.

In criminal proceeding No 42015000000002833, the Supreme Anti-Corruption Court of Ukraine in its ruling of 25 August 2021 granted permission to conduct a special pre-trial investigation in relation to Mr Yanukovych. In that ruling, the investigating judge confirmed the status of suspect of Mr Yanukovych and concluded that the evidence gives reasonable grounds for suspicion that Mr Yanukovych committed the criminal offences of which he is suspected. The judge also concluded that there are reasonable grounds to believe that Mr Yanukovych is deliberately evading the investigation and the court in order to avoid criminal liability. Furthermore, in its ruling of 7 October 2021 the Supreme Anti-Corruption Court of Ukraine imposed detention in custody on Mr Yanukovych. In the ruling, the Court confirmed the status of suspect of Mr Yanukovych as well as the reasonable grounds for suspicion that Mr Yanukovych committed criminal offences. The judge also highlighted that there is a risk of Mr Yanukovych hiding from the investigation and the court to avoid criminal liability.

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The Council has information that on 29 December 2021 the prosecutor considered that the evidence gathered during the pre-trial investigation was sufficient to draw up an indictment and Mr Yanukovych and his lawyers were notified about the completion of the pre-trial investigation. The defence was granted access to the materials of the pre-trial investigation for familiarisation, in line with the provisions of the Code of Criminal Procedure of Ukraine.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Yanukovych has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described in the decision of the Supreme Anti-Corruption Court attributed to Mr Yanukovych have significantly contributed to the length of the investigation.

2. **Vitalii Yuriyovych Zakharchenko**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Zakharchenko, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decisions of the investigating judge of 19 April 2021 ordering detention in custody of Mr Zakharchenko, as well as the ruling of the Pecherskyi District Court of Kyiv dated 10 August 2021 granting permission to carry out a special pre-trial investigation in criminal proceeding No 4201600000002929. Those decisions of the investigating judges confirm the status of suspect of Mr Zakharchenko and highlight that the suspect is hiding from the investigation to avoid criminal liability.

Moreover, the Council has information that the Ukrainian authorities took measures to search for Mr Zakharchenko. On 12 February 2020, the investigating body decided to put Mr Zakharchenko on the international wanted list and forwarded the request to the Department of International Police Cooperation of the National Police of Ukraine for entry into the Interpol database. Additionally, on 11 May 2021, Ukraine sent a request for international legal assistance to the Russian Federation to establish the whereabouts of Mr Zakharchenko, which was rejected by Russia on 31 August 2021.

No violation of the rights of defence and the right to effective judicial protection can be ascertained in the circumstances where the defence is not exercising those rights.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Zakharchenko has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described above attributed to Mr Zakharchenko have significantly contributed to the length of the investigation.

3. **Viktor Pavlovych Pshonka**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

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The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr V. Pshonka, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decision of the Supreme Anti-Corruption Court of Ukraine of 2 October 2020, which dismissed the appeal submitted by Mr V. Pshonka's lawyers to cancel the notice of suspicion dated 22 December 2014. The Court concluded that the notice of suspicion was served in accordance with the Code of Criminal Procedure of Ukraine and confirmed Mr V. Pshonka's status as a suspect in the criminal proceedings. Additionally, on 7 May 2020 and 9 November 2020, the Supreme Anti-Corruption Court of Ukraine rejected a request to open proceedings made on the basis of a complaint by lawyers regarding inaction by the National Anti-Corruption Bureau of Ukraine in the criminal proceedings. The Appellate Chamber of the Supreme Anti-Corruption Court confirmed those decisions on 1 June 2020 and 26 November 2020, respectively.

Furthermore, on 16 February 2021, the Supreme Anti-Corruption Court of Ukraine dismissed the appeal of the lawyers to cancel the resolution of the National Anti-Corruption Bureau of Ukraine on the suspension of the pre-trial investigation dated 14 January 2021. In that decision, the Court confirmed the status of suspect of Mr V. Pshonka. Additionally, on 11 March 2021, the Supreme Anti-Corruption Court of Ukraine dismissed the complaint of Mr V. Pshonka's lawyers concerning the inaction of the prosecutor.

The Council has information that the Ukrainian authorities took measures to search for Mr V. Pshonka. On 24 July 2020, a request for international legal assistance was sent to the competent authorities of the Russian Federation to establish the whereabouts of Mr V. Pshonka and to interrogate him. That request was rejected by Russia. Previously, the Russian authorities rejected requests for international legal assistance sent to them in 2016 and 2018.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr V. Pshonka has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described in the decision of the Supreme Anti-Corruption Court attributed to Mr V Pshonka as well as the earlier non-execution of the requests for international legal assistance have significantly contributed to the length of the investigation.

6. **Viktor Ivanovych Ratushniak**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Ratushniak, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decisions of the investigating judge of 19 April 2021 ordering detention in custody on Mr Ratushniak as well as the ruling of the Pecherskyi District Court of Kyiv dated 10 August 2021 granting permission to carry out a special pre-trial investigation in criminal proceeding No 4201600000002929. Those decisions of the investigating judges confirm the status of suspect of Mr Ratushniak and highlight that the suspect is hiding from the investigation to avoid criminal liability.

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The Council has information that the Ukrainian authorities took measures to search for Mr Ratushniak. On 12 February 2020, the investigating body decided to put Mr Ratushniak on the international wanted list and forwarded the request to the Department of International Police Cooperation of the National Police of Ukraine for entry into the Interpol database. Additionally, on 11 May 2021 Ukraine sent a request for international legal assistance to the Russian Federation to establish the whereabouts of Mr Ratushniak, which was rejected by Russia on 31 August 2021.

No violation of the rights of defence and the right to effective judicial protection can be ascertained in the circumstances where the defence is not exercising those rights.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Ratushniak has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described above attributed to Mr Ratushniak have significantly contributed to the length of the investigation.

7. **Oleksandr Viktorovich Yanukovich**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr O. Yanukovich, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decisions of the Supreme Anti-Corruption Court of Ukraine. In criminal proceeding No 42015000000002833, the Supreme Anti-Corruption Court of Ukraine in its ruling of 25 August 2021 granted permission to conduct a special pre-trial investigation in relation to Mr O. Yanukovich. In that ruling, the investigating judge confirmed the status of suspect of Mr O. Yanukovich and concluded that the evidence gives reasonable grounds for suspicion that Mr O. Yanukovich committed the criminal offences of which he is suspected. The judge also concluded that there is reasonable ground to believe that Mr O. Yanukovich is deliberately evading the investigation and the court in order to avoid criminal liability.

Furthermore, in its ruling of 13 October 2021, the Supreme Anti-Corruption Court of Ukraine imposed detention in custody on Mr O. Yanukovich. In the ruling the Court confirmed the status of suspect of Mr O. Yanukovich as well as the reasonable grounds for suspicion that Mr O. Yanukovich committed criminal offences. The judge also highlighted that there is a risk of hiding from investigation and the court to avoid criminal liability.

The Council has information that on 29 December 2021 the prosecutor considered the evidence gathered during the pre-trial investigation was sufficient to draw up an indictment and Mr O. Yanukovich and his lawyers were notified about the completion of the pre-trial investigation. The defence was granted access to the materials of the pre-trial investigation for familiarisation, in line with the provisions of the Code of Criminal Procedure of Ukraine.

The Council has information that the Ukrainian authorities took measures to search for Mr O. Yanukovich, who is staying in the Russian Federation and avoiding investigation.

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In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr O. Yanukovych has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described above attributed to Mr O. Yanukovych have significantly contributed to the length of the investigation.

9. Artem Viktorovych Pshonka

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr A. Pshonka, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decision of the Supreme Anti-Corruption Court of Ukraine of 8 July 2020, which dismissed the appeal submitted by Mr A. Pshonka's lawyers to cancel the resolution of the prosecutor dated 30 April 2015 on the suspension of the pre-trial investigation. The Court also concluded that the notice of suspicion was served in accordance with the Code of Criminal Procedure of Ukraine and confirmed Mr A. Pshonka's status as suspect in the criminal proceedings.

Furthermore, on 10 February 2021, the Supreme Anti-Corruption Court of Ukraine dismissed the appeal of the lawyers to cancel the resolution of the National Anti-Corruption Bureau of Ukraine on the suspension of the pre-trial investigation dated 14 January 2021. In that decision the Court confirmed the status of suspect of Mr A. Pshonka. Additionally, on 11 March 2021, the Supreme Anti-Corruption Court of Ukraine dismissed the complaint of Mr A. Pshonka's lawyers concerning the inaction of the prosecutor.

The Council has information that the Ukrainian authorities took measures to search for Mr A Pshonka. On 24 July 2020, a request for international legal assistance was sent to the competent authorities of the Russian Federation to establish the whereabouts of the suspect and to interrogate him. That request was rejected by Russia. Previously, the Russian authorities rejected the request for international legal assistance sent to them in 2018.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr A. Pshonka has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described in the decision of the Supreme Anti-Corruption Court attributed to Mr A. Pshonka as well as to an earlier non-execution of the request for international legal assistance have significantly contributed to the length of the investigation.

12. Serhiy Vitalyovych Kurchenko

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Kurchenko, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the fact that the defence was notified about the completion of the pre-trial investigation in criminal proceeding No 4201600000003393 on 28 March 2019 and was provided access to the materials for familiarisation. The Council has information that the familiarisation by the defence is ongoing. On 11 October 2021, the National Anti-Corruption Bureau of Ukraine additionally

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informed the defence lawyers of Mr Kurchenko about the completion of the pre-trial investigation and the provision of access to the materials of the pre-trial investigation for familiarisation. The Council received information that the National Anti-Corruption Bureau of Ukraine filed a motion to establish a term for the review by the defence party in order to address the delay of the defence party in reviewing the materials of the pre-trial investigation.

In relation to criminal proceeding No 12014160020000076, in its decision of 18 September 2020, the Odessa Court of Appeal granted the appeal by the prosecutor and imposed a preventive measure of detention in custody on Mr Kurchenko. The Court also stated that Mr Kurchenko departed Ukraine in 2014 and that his location cannot be established. The Court concluded that Mr Kurchenko is hiding from the pre-trial investigation bodies in order to avoid criminal liability. On 20 December 2021, the Kyivskyi District Court of Odesa City granted permission to carry out a special pre-trial investigation in absentia. Furthermore, on 20 October 2021 the Kyivskyi District Court of Odesa City dismissed the appeal of the lawyers to cancel the resolution of the prosecutor on the suspension of the pre-trial investigation dated 27 July 2021.

The Council has information that the Ukrainian authorities took measures to search for Mr Kurchenko. On 13 May 2021, the Main Department of the National Police in Odessa Region forwarded the request to the Ukrainian Bureau of Interpol and Europol to publish a Red Notice concerning Mr Kurchenko, which is under consideration. The Council was informed that on 29 April 2020 the Ukrainian authorities sent a request for international legal assistance to the Russian Federation, which was returned on 28 July 2020 without execution.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Kurchenko has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described in the decision of the Odessa Court of Appeal attributed to Mr Kurchenko as well as the non-execution of the request for international legal assistance have significantly contributed to the length of the investigation.