

DECISIONS

COUNCIL DECISION (CFSP) 2022/376

of 3 March 2022

amending 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 29 thereof,

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

Whereas:

- (1) On 5 March 2014, the Council adopted Decision 2014/119/CFSP ⁽¹⁾.
- (2) On the basis of a review of Decision 2014/119/CFSP, the application of restrictive measures directed against certain persons, entities and bodies should be extended until 6 March 2023 in respect of three persons, and until 6 September 2022 in respect of four persons. Furthermore, the information in the Annex to Decision 2014/119/CFSP regarding the rights of defence and the right to effective judicial protection, including the fundamental right to have a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law, should be updated. Moreover, the entry for one person – against whom the application of restrictive measures expired on 6 September 2021 – as well as the information regarding his rights of defence and his right to effective judicial protection should be deleted.
- (3) Decision 2014/119/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/119/CFSP is amended as follows:

- (1) in Article 5, the second paragraph is replaced by the following:
‘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.’;
- (2) the Annex is amended as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 3 March 2022.

For the Council
The President
G. DARMANIN

⁽¹⁾ 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).

ANNEX

The Annex to Decision 2014/119/CFSP is amended as follows:

(1) in Section A ('List of persons, entities and bodies referred to in Article 1'), the entry for the following person is deleted:

17. Oleksandr Viktorovych Klymenko (Олександр Вікторович Клименко);

(2) Section B ('Rights of defence and right to effective judicial protection') is replaced by the following:

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 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 4201500000002833, 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.

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.

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.

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 Viktorovych 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 O. 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 decisions of the Supreme Anti-Corruption Court of Ukraine. In criminal proceeding No 4201500000002833, 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. Yanukovych. In that ruling, the investigating judge confirmed the status of suspect of Mr O. Yanukovych and concluded that the evidence gives reasonable grounds for suspicion that Mr O. Yanukovych committed the criminal offences of which he is suspected. The judge also concluded that there is reasonable ground to believe that Mr O. Yanukovych 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. Yanukovych. In the ruling the Court confirmed the status of suspect of Mr O. Yanukovych as well as the reasonable grounds for suspicion that Mr O. Yanukovych 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. 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.

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

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 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 Kyivskiy District Court of Odesa City granted permission to carry out a special pre-trial investigation in absentia. Furthermore, on 20 October 2021 the Kyivskiy 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.'
