

<b>From:</b>	"Kent, George P" (b)(6)
<b>To:</b>	(b)(6)
<b>Cc:</b>	(b)(6) (b)(6) (b)(6) (b)(6)
<b>Subject:</b>	Burisma's contribution to upcoming MERP energy efficiency event
<b>Date:</b>	Wed, 31 Aug 2016 14:55:45 -0400

(b)(5)

(b)(6)

(b)(5)

(b)(5)

(b)(6) PA views?

**From:** (b)(6)  
**Sent:** Wednesday, August 31, 2016 4:51 PM  
**To:** Kent, George P  
**Cc:** (b)(6) (EE/AA); (b)(6) Purcell, Alan S; (b)(6)  
(KYiv/OCG)  
**Subject:** Fwd: A few words on Burisma's contribution to upcoming MERP energy efficiency event

Hi George,

Just following up our earlier exchange re: engagement with Burisma. Our energy efficiency activity, known as "MERP", has an upcoming (Sep. 13) award contest for journalists that involves Burisma. Burisma would be providing up to \$7,500 of its own money for these awards.

(b)(5)

Pls see below for further details. Happy to discuss further.

Thanks,

(b)(6)

\*\*\*\*\*  
(b)(6), Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus  
U.S. Embassy Kyiv

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Flickr: <http://redirect.state.sbu/?url=https://www.flickr.com/photos/usaidukraine>

----- Forwarded message -----  
**From:** (b)(6)  
**Date:** Wed, Aug 31, 2016 at 10:49 AM  
**Subject:** A few words on Burisma's contribution to upcoming MERP energy efficiency event  
**To:** (b)(6)

As requested.

**Here is requested information on the upcoming MERP 2016 Contest for Journalists and the extent of Burisma's involvement:**

Earlier this year USAID MERP announced and conducted a contest among Ukrainian journalists for best published media materials covering energy efficiency, alternative and clean energy sources, advantages of condominiums, tariff reform and social protection programs. As it was announced, the contest was conducted in cooperation with the Center for Ukrainian Reform Education. Since dealing with promotion of energy efficiency, Burisma offered to provide about \$7,500 in awards to winners. The main objective of the Contest was to create incentives for journalists to ensure responsible and unbiased coverage of information on energy saving, tariff policy, subsidies, condominiums, and other related clean energy issues.

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- "Best material in printed and on-line media"
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The deadline for applications was May 15, 2016. A special commission reviewed submitted materials and identified eight winners in the different categories. The winners have been notified, and an official award ceremony is currently scheduled for September 13, 2016. Burisma's role is to provide the prizes for the winners (prizes have been already purchased - photo cameras, laptops, tablets). The ceremony will be taking place at the reception hall of Podil Radisson Blu Hotel (arrangements for the venue have been already made by MERP). The USAID EG office director will be the highest level of attendance.

(b)(5)	
<b>Sender:</b>	"Kent, George P" (b)(6)
<b>Recipient:</b>	(b)(6)
	(b)(6)
	(b)(6)
	(b)(6)

<b>From:</b>	(b)(6)
<b>To:</b>	George Kent (b)(6)
<b>CC:</b>	(b)(6)
<b>Subject:</b>	Fwd: A few words on Burisma's contribution to upcoming MERP energy efficiency event
<b>Date:</b>	Wed, 31 Aug 2016 16:50:40 +0300

Hi George,

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(b)(6)

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(b)(6) Deputy Mission Director  
 USAID/Ukraine, Moldova, & Belarus  
 U.S. Embassy Kyiv

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(b)(5)

<b>Sender:</b>	(b)(6)
<b>Recipient:</b>	George Kent (b)(6)
	(b)(6)
	(b)(5)
	(b)(6)

**From:** (b)(6)

**To:** (b)(6)

**CC:** Kent, George P <(b)(6)>  
 (b)(6)  
 (b)(6)

**Subject:** Re: (NO RESPONSE TIL MONDAY) USAID Cooperation with Business  
 (Chornovol allegations) - (b)(5)

**Date:** Mon, 15 Aug 2016 13:30:38 +0300

(b)(6);  
(b)(7)(C)

(b)(5)

\*\*\*\*\*  
 (b)(6) Deputy Mission Director  
 USAID/Ukraine, Moldova, & Belarus  
 U.S. Embassy Kyiv

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 Flickr: <http://redirect.state.sbu/?url=https://www.flickr.com/photos/usaidukraine>

On Mon, Aug 15, 2016 at 1:25 PM (b)(6) wrote:

Sir,

Econ has engaged with Burisma at the working level to get information on private sector gas production.

(b)(6)

Energy and ESTH Unit Chief  
U.S. Embassy Kyiv  
Office: 011-380-44-521-5482

(b)(6)

This email is UNCLASSIFIED.

From: Kent, George P

Sent: Saturday, August 13, 2016 3:26 PM

To: (b)(6)

Cc: (b)(6) (b)(6)

(KYIV/OEG); Sandefur, Joel (KYIV/DIR); Goodwin, Joseph (Nairobi/EA/PDI);  
Woronowycz, Roman (KYIV/PCS); Gonzales, Laura (KYIV/DIR) (b)(6)

(b)(6)

(b)(6)

Subject: (NO RESPONSE TIL MONDAY) USAID Cooperation with Burisma  
(Chornovol allegations) - (b)(6)

(b)(5)

Thanks (b)(6)

(b)(5)

(b)(6);  
(b)(7)(C)

(b)(5)



(b)(5)

(b)(5)

(b)(5)

From: (b)(6)

Sent: Friday, August 12, 2016 4:47 PM

To: Kent, George P

Cc: (b)(6) (b)(6)

(KYIV/OEG); Sandefur, Joel (KYIV/DIR); Goodwin, Joseph (Nairobi/EA/PDI);  
Woronowycz, Roman (KYIV/PCS); Gonzales, Laura (KYIV/DIR); (b)(6)

(b)(6)

Subject: Re: Chornovol - American grants go to "Yanukovychs" and against the Ukr  
army

Hi George,

(b)(5)

I imagine you'd like to discuss further, so pls advise and I'll set up. Thx.

\*\*\*\*\*

(b)(6) Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus  
U.S. Embassy Kyiv

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On Wed, Jul 27, 2016 at 8:11 AM, Kent, George P

(b)(6) <<http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:>>  
> wrote:

Thanks, (b)(6)

(b)(5)

Sent from my BlackBerry 10 smartphone.

Original Message

From: (b)(6)

Sent: Wednesday, July 27, 2016 8:01 AM

To: Kent, George P

Cc: (b)(6) ECON FSOs;

(b)(5) Guy, Patricia H; (b)(6) (EE/AA); Murphy, Oren

(b)(6) (b)(6) (KYIV/OEG); Sandefur, Joel (KYIV/DIR)

Subject: Re: Chornovol - Addressing FBI: American grants go to "Yanukovychs" and against the Ukr army

(b)(5)

-----

Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus

Sent from my iPhone

> On Jul 27, 2016, at 07:50, Kent, George P

(b)(6)

<<http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:>  
> wrote:

>  
(b)(5)

> Sent from my BlackBerry 10 smartphone.

> From:

[lbi@lbicompany.com.ua](mailto:lbi@lbicompany.com.ua)<<http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:lbi@lbicompany.com.ua>>

> Sent: Tuesday, July 26, 2016 9:16 PM

> To: Kyiv, Media Alerts

> Subject: UP: Addressing FBI: American grants go to "Yanukovychs" and against the Ukrainian army

>

>

>

> Ukrainska Pravda:

>

> Addressing FBI: American grants go to "Yanukovychs" and against the Ukrainian army

>

> Tetyana

[Chornovol](http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://blogs.pravda.com.ua/authors/chornovol/)<<http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://blogs.pravda.com.ua/authors/chornovol/>> Member of the parliament of Ukraine of the VIII convocation

>

- >
- >
- > 26 of July 2016,
- >
- >
- >
- > Recently I visited two armored vehicles and artillery repair defense plants in Zhytomyr and Shepetivka. I am proud of the staff of the plants that are making powerful weapons literally from nothing, from old scrap, they got the production of parts up and running, which were previously purchased in Russia, they are modernizing old weapons, developing new ones, wonders on enthusiasm alone.
- > And after that you just want to tear apart those scoundrels in Verkhovna Rada who dare to leave the plants that affect life at the front without money.
- > MPs have been blocking the transfer of "Yanukovich's money" arrested in Ukraine to the state budget, although they know that under the Budget-2016 the defense plants are supposed to be financed from these funds.
- > As a result, they are not being financed and the production, which picked up the pace last year, faltered significantly. Imagine that now, in the conditions of war, the defense plants in Ukraine are loaded only for 10-30%.
- > This is a real BETRAYAL!
- > However, for a year now the parliament cannot adopt a draft law that establishes the legal mechanism for transferring this absolutely real, hard money, of which nearly a billion dollars is in "cash." For example, the information on "Oshchadbank."
- >
- >
- > A list of deputies from the group "Euro-optimists" and "UDAR," who come from the environment "of grant eaters," those organizations and structures in Ukraine that are living by Western grants, including receiving funds coming from US taxpayers, are blocking the adoption of the law.
- >
- > Which is why I appeal to the FBI asking to investigate the impact of corrupt officials of the era of Yanukovich - Mykola Zlochevskyi and Serhiy Kurchenko – on the grant community.
- >
- >
- > I have strong suspicions that it was the corrupt business of Zlochevskyi and corrupt connections of Kurchenko that blocked the passage of the draft law on special confiscation through the Verkhovna Rada. I suspect that the blockade is taking place due to the efforts of well-known Western lobbyists who work in Zlochevskyi's company Burisma Holdings, through their impact not only on "grant eaters," but also donors working in Ukraine.
- >
- > A sufficient part of the evidence the FBI can work with is already in the public domain. For instance, on the web site of the company Burisma Holdings, which officially belongs to Mykola Zlochevskyi. This business empire has been definitely created for corrupt funds.

> Now, remember that no one in Ukraine had such a fierce support from all possible grant eaters and donors like Kasko, who had been stubbornly dragged to the post of the Anti-Corruption Prosecutor.

> The same guard of Kasko, all "grant eaters" which cynically call themselves "Euro-optimists," "corruption fighters," "reformers" have thrown all possible resources, even used lies and slander to block the passage of the draft law on "special confiscation" through the parliament.

>

> And now look at the "accidental" coincidence: the web site of Burisma Holdings is the partner of a list of events of the Ukrainian office of USAID - the American agency that provides grant funds primarily for anti-corruption projects.

>

> What's curious is that after my briefing Burizma removed news about cooperation with USAID from its web site.

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>

>

> With best regards,

> LBI Team

>

>

<http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=www.lbicompany.com.ua>

>

> (044) 501 58 41

> (097) 479-13-50

> <winmail.dat>

<b>Sender:</b>	(b)(6)
<b>Recipient:</b>	(b)(6)
	Kent, George P (b)(6)
	(b)(6)
	(b)(6)

(b)(6)  
(b)(6)  
Kyiv, EXEC <Kyiv\_EXEC@state.gov>;  
(b)(6)  
(b)(6)

(b)(6);  
(b)(7)(C)

**From:** "Kent, George P" (b)(6)  
**To:** (b)(6)  
**Subject:** RE: Burisma  
**Date:** Thu, 1 Sep 2016 00:52:21 -0400

Thanks. For you only - if I don't raise it in the huddle (lots of ambo questions bouncing in my mind), please do.

(b)(5)

---

**From:** (b)(6)  
**Date:** September 1, 2016 at 7:46:07 AM GMT+3  
**To:** Kent, George P (b)(6) (b)(6)  
(b)(6)  
**Cc:** (b)(6) (b)(6)  
(b)(6) (b)(6) (b)(6)  
(b)(6) (b)(6)  
**Subject:** RE: Burisma's contribution to upcoming MERP energy efficiency event (b)(5)  
(b)(5)

(b)(5)

SBU  
This email is UNCLASSIFIED.

---

**From:** (b)(6)  
**Sent:** Thursday, September 01, 2016 7:15 AM  
**To:** Kent, George P (b)(6) EA/DIR  
**Cc:** (b)(6) (EE/AA); (b)(6) (b)(6) (KYIV/OEG);  
(b)(6)  
**Subject:** Re: Burisma's contribution to upcoming MERP energy efficiency event - (b)(5)  
(b)(5)

Sir,

(b)(5)

(b)(6)

Sent from my BlackBerry 10 smartphone.

**From:** Kent, George P

**Sent:** Wednesday, August 31, 2016 21:55

**To:** (b)(6) (EA/DIR)

**Cc:** (b)(6) (EE/AA); (b)(6) (b)(6)

(b)(6) (KYIV/OEG); (b)(6)

**Subject:** Burisma's contribution to upcoming MERP energy efficiency event - (b)(5)

(b)(5)

(b)(6)

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(b)(5)

(b)(5); (b)(6)



(b)(5)

(b)(5)

(b)(6) PA views?

**From:** (b)(6)  
**Sent:** Wednesday, August 31, 2016 4:51 PM  
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**Cc:** (b)(6) (EE/AA); (b)(6) (b)(6)  
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**Subject:** Fwd: A few words on Burisma's contribution to upcoming MERP energy efficiency event

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(b)(6) Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus  
U.S. Embassy Kyiv

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Flickr: <http://redirect.state.sbu?url=https://www.flickr.com/photos/usaidukraine>

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To: (b)(6)

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<b>Recipient:</b>	(b)(6)	

**From:** (b)(6)  
**To:** Kent, George P (b)(6)  
(b)(6)  
(b)(6)  
**Cc:** (b)(6)  
(b)(6)  
(b)(6)  
**Subject:** Re: Burisma's contribution to upcoming MERP energy efficiency event  
**Date:** Wed, 31 Aug 2016 16:18:22 -0400

(b)(5)

(b)(6)  
(b)(6)

Sent from my BlackBerry 10 smartphone.

**From:** Kent, George P  
**Sent:** Wednesday, August 31, 2016 21:55  
**To:** (b)(6) (EA/DIP)  
**Cc:** (b)(6) (EE/AA); (b)(6) (b)(6)  
(KYIV/OEG); (b)(6)  
**Subject:** Burisma's contribution to upcoming MERP energy efficiency event (b)(5)

(b)(6)

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**Sent:** Wednesday, August 31, 2016 4:51 PM

**To:** Kent, George P

**Cc:** (b)(6) (EE/AA); (b)(6) (b)(6)

(KYIV/OEG)

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(b)(6) Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus  
U.S. Embassy Kyiv

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<b>Recipient:</b>	Kent, George P (b)(6)
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	(b)(6)
	(b)(6)

**From:** (b)(6)  
**To:** (b)(6)  
**CC:** Kent, George P <(b)(6)>  
(b)(6)  
(b)(6)  
(b)(6)  
(b)(6)  
**Subject:** Re: Burisma's contribution to upcoming MERP energy efficiency event - (b)(5)  
(b)(5)  
**Date:** Thu, 1 Sep 2016 07:43:25 +0300

Good morning,

(b)(5)

I'll get back to you this morning.

Thanks,

(b)(6)

On Thursday, September 1, 2016, (b)(6) wrote:  
Sir,

(b)(5)

(b)(6)

Sent from my BlackBerry 10 smartphone.  
From: Kent, George P  
Sent: Wednesday, August 31, 2016 21:55

To: (b)(6) (EA/DIR)  
Cc: (b)(6) (EE/AA); (b)(6)  
(b)(6) (KYIV/OEG); (b)(6)

Subject: Burisma's contribution to upcoming MERP energy efficiency event - how large is the potential reputational risk by association?

(b)(6)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(6)

(b)(5)

(b)(5)

(b)(6) PA views?



From: (b)(6)  
Sent: Wednesday, August 31, 2016 4:51 PM  
To: Kent, George P  
Cc: (b)(6) (EE/AA); (b)(6)  
(b)(6) (KYIV/OEG)  
Subject: Fwd: A few words on Burisma's contribution to upcoming MERP energy efficiency event

Hi George,

Just following up our earlier exchange re: engagement with Burisma. Our energy efficiency activity, known as "MERP", has an upcoming (Sep. 13) award contest for journalists that involves Burisma. Burisma would be providing up to \$7,500 of its own money for these awards. (b)(5)

(b)(5)  
(b)(5)

Pls see below for further details. Happy to discuss further.

Thanks,

(b)(6)

\*\*\*\*\*

(b)(6) Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus  
U.S. Embassy Kyiv

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From: (b)(6)  
 (b)(6) <[http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:\(b\)\(6\)](http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6))>  
 Date: Wed, Aug 31, 2016 at 10:49 AM  
 Subject: A few words on Burisma's contribution to upcoming MERP energy efficiency event  
 To: (b)(6)  
 (b)(6) <[http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:\(b\)\(6\)](http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6))>, (b)(6)  
 (b)(6) <[http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:\(b\)\(6\)](http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6))>

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Journalists from thirteen oblasts of Ukraine were invited to participate in the contest in the following categories:

- "Best material in printed and on-line media"
- "Best TV material"
- "Best radio material"

The deadline for applications was May 15, 2016. A special commission reviewed submitted materials and identified eight winners in the different categories. The winners have been notified, and an official award ceremony is currently scheduled for September 13, 2016. Burisma's role is to provide the prizes for the winners (prizes have been already purchased - photo cameras, laptops, tablets). The ceremony will be taking place at the reception hall of Podil Radisson Blu Hotel (arrangements for the venue have been already made by MERP). The USAID EG office director will be the highest level of attendance.

(b)(5)

\*\*\*\*\*  
(b)(6)

Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus  
U.S. Embassy Kyiv

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Flickr: <http://redirect.state.sbu/?url=https://www.flickr.com/photos/usaidukraine>

<b>Sender:</b>	(b)(6)
<b>Recipient:</b>	(b)(6)
	Kent, George P (b)(6)
	(b)(6)
	(b)(6)
	(b)(6)
	(b)(6)
	(b)(6)

**From:** "Kent, George P" (b)(6)

**To:** (b)(6)

**C:** (b)(6)

**Subject:** Re: Burisma's contribution to upcoming MERP energy efficiency event

**Date:** Thu, 1 Sep 2016 00:49:51 -0400

(b)(5)

Thanks. Let's discuss at huddle - with this Econ input in hand, and (b)(6) question from yesterday still in play.

**From:** (b)(6)

**Date:** September 1, 2016 at 7:14:51 AM GMT+3

**To:** Kent, George P (b)(6), (b)(6)

(b)(6) (b)(6) (KYIV/OEG)

(b)(6) (b)(6) (b)(6)

(b)(6) (b)(6)

(b)(6)

**Subject:** Re: Burisma's contribution to upcoming MERP energy efficiency event

Sir,

(b)(5)

(b)(6)

Sent from my BlackBerry 10 smartphone.

**From:** Kent, George P

**Sent:** Wednesday, August 31, 2016 21:55

**To:** (b)(6) (EA/DIR)

Cc: (b)(6) (EE/AA); (b)(6) (b)(6)

(KYIV/OEG); (b)(6)

Subject: Burisma's contribution to upcoming MERP energy efficiency event - (b)(5)

(b)(6)

(b)(5)

(b)(5)

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(b)(5)

(b)(6) (b)(5)

(b)(5)

(b)(6) PA views?

From: (b)(6)

Sent: Wednesday, August 31, 2016 4:51 PM

To: Kent, George P

Cc: (b)(6) EE/AA; (b)(6) (b)(6)

(KYIV/OEG)

**Subject:** Fwd: A few words on Burisma's contribution to upcoming MERP energy efficiency event

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(b)(6)

(b)(5)

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(b)(6) Deputy Mission Director  
USAID/Ukraine, Moldova, & Belarus  
U.S. Embassy Kyiv

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Flickr: <http://redirect.state.sbu/?url=https://www.flickr.com/photos/usaidukraine>

----- Forwarded message -----

From: (b)(6)

Date: Wed, Aug 31, 2016 at 10:49 AM

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To: (b)(6)

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(b)(5)	
<b>Sender:</b>	"Kent, George P" (b)(6)
	(b)(6)
<b>Recipi</b>	(b)(6)
	(b)(6)

<b>From:</b>	John Herbst (b)(6)
<b>To:</b>	Kent, George P (b)(6)
<b>Subject:</b>	RE: Dinner on the 12th
<b>Date:</b>	Mon, 29 Aug 2016 19:44:24 +0000

<http://redirect.state.sbu/?url=http://www.rferl.org/content/who-would-replace-uzbekistan-karimov-president/27952766.html>

You probably already have this in one form or another. I have no clue who will replace Karimov, if his time has come, but it is interesting that the two Rustams are mentioned. They would have been mentioned in similar circumstances when I was in Tashkent. Also, there is no reason to assume that any of these three will be the one. In any case, I do not expect a power struggle.



**John Herbst** | Director, Dinu Patriciu Eurasia Center  
 Ambassador (Ret.)  
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**From:** Kent, George P [[\(b\)\(6\)](http://redirect.state.sbu/?url=mailto:(b)(6))]  
**Sent:** Monday, August 29, 2016 3:09 PM  
**To:** John Herbst (b)(6)  
**Subject:** Dinner on the 12th

Sounds good. Velida may join, depending on what Tia cooks, and what we talk about.

It will be interesting to see if Ortiz sticks around as a hitting instructor, if only in spring training. Listening to him in spring training and earlier this year talking to journalists about his approach to the art of hitting and how it had changed throughout his career reminded me of listening to Pedro in his later years on the art of pitching. Ortiz actually is a much more perceptive hitter than he was 5 or 10 years ago, and gets into the minds of pitchers in ways he did not do before.

**From:** John Herbst [[\(b\)\(6\)](http://redirect.state.sbu/?url=mailto:(b)(6))]  
**Sent:** Monday, August 29, 2016 10:04 PM  
**To:** Kent, George P; Taylor, W  
**Subject:** RE: PGs and Baseball, and Kyiv

George,

I'd be happy to join you for dinner Sep 12. Let's do this solo. I would like to get your take on just about everything.

As for Ortiz, his OPS was well over 1100 in June and now down to about 1050. Your observation may explain it. But he is still leading the bigs in OPS and XB. I just checked his lifetime stats and was



surprised to see his lifetime XB total. As far as I know there is no recorded stat for this -- although it would be relatively easy to put together; but since his BA is only in the 280's, my guess is that he is in the top three of batters with the highest % of XB to hits. For instance, his % is better than Ted's and his 2B total is about 100 more. The Monster made Ortiz, who felt no need to pull everything, a prodigious 2B hitter.

John



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**From:** Kent, George P

[[\(b\)\(6\)](http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6))]

**Sent:** Monday, August 29, 2016 2:46 PM

**To:** John Herbst (b)(6); Taylor, W (b)(6)

**Subject:** PGs and Baseball, and Kyiv

We just heard about Lutsenko's interest in a US run (27-28 Sept) this evening from DOJ. He's asking for DOJ leadership. Bruce Schwartz (the DAG for international affairs) may be what's offered. I've been the Lutsenko handler this year – have met him more than a half dozen times, including three before his appointment, and 3-4 since. We now have former NJ Federal prosecutor (and born in Ukraine) Bohdan Vitvitsky as an embedded adviser. Bohdan has started drinking a bit of the Lutsenko kool-aid the past week or so, in the wake of the PGO-NABU showdown, which to the rest of the outside appears like a straight forward old Ukraine-New Ukraine morality tale. Bohdan thinks they all are acting like puerile middle schoolers. That may be true, but it may also be true that Lutsenko ends up on the wrong side of history by choice. I suspect he had terms dictated to him by P2, in terms of untouchables under him (who are an integral part of Team Shokin, and whom he told me initially in the spring time needed to be cleaned out). Those untouchables—Stolyarchuk and Sus—before Lutsenko came on board went after the folk we were working with to reform the PGO in the way P2 asked VP Biden, even to the point of arrogantly saying in public they would summon the US Ambassador (Geoff) for an interrogation (about our assistance, which they felt was being skimmed by the reformers which they forced out). Sus is the one who went after NABU this month. Lutsenko unapologetically defended Sus to the hilt last week to me, in what was the most disappointing engagement we've had with him to date.

My honor to sit with you over coffee, or a meal – dinner Sept 12? I have hired my Thai cook from two Bangkok tours to be the DCR chef; she arrived last week. Happy to just have you over, or invite some Ukrainian interlocutors as well. Alas, it's still the old DCR. OBO's incompetence in managing the overhaul of the old Marine House and soon to be DCR knows no bounds. They turned over the property/project to the embassy last summer. But Embassy discovered over the winter that: the average temperature with the heat on was between 32-40F in jan/Feb; the water and sewage did not meet code; and the electricity load was ¼ what a building that size needed (so they couldn't add space heaters). Same factors affected the new America House/old Consular section, which shut down last





**Subject: former PG Yarema's trip to DC - what is his agenda, and what is his angle (and peanut gallery commentary)**

Ambassadors – thank you for your joint 25<sup>th</sup> anniversary missive. Well targeted and eloquent as always. Masha is officially launched – just finished presenting credentials to P2, and now back in with soon to be ex Chief of Staff Lozhkin, who tendered his resignation today, with one of his proteges, Kharkiv governor Rainen, tapped as his replacement.

Kyiv POL has been fielding inquiries from former PG Yarema's team about an upcoming trip in two weeks, as well as from the Ukraine desk at state (below). Your two organizations (and at least one of you in person) is listed.

I would be interested to hear your impressions about Yarema after you see him, presuming he stays on both the Atlantic Council and USIP's schedule. Following is my gratuitous commentary, for what it may be worth:

I have never met Yarema, I should state (before continuing with my two bits). I do wonder whose interests he is promoting. I have no wonder at all that it is not Ukraine's. The most notable decision by the PGO during his tenure (and he had his whole team come in and leave with him) was not any case pushed to the courts/conviction during his year, despite all the manifest crimes of the Maidan and Yanukovich era, but was a gross miscarriage of justice that undermined months of US assistance. After the FBI and MI-5 spent months and arguably millions working to try to put together the first possible asset recovery case (against former Minister of Ecology Zlochevsky), involving \$23 million frozen in UK accounts, under suspicion of bribes paid for licenses issue for gas/oil permits...Team Yarema closed the case against Zlochevsky in December 2014 just before western Christmas day, by turning it into a case against the ministry rather than ex minister, returning it to the MOI/police for further investigation, and issuing an immediate letter to Zlochevsky's defense lawyer team that there was no active case against their client; defense lawyers flipped that to the British judge, who unfroze the assets that were whisked out of UK jurisdiction before the UK authorities or we could learn/react.

When I met with Yarema's right hand man, the jovially corpulent first Deputy PG Danylenko six weeks later during the first week of Feb 2015, I asked him bluntly how much was the bribe and who took it. Danylenko cheerfully replied: "that's exactly what President Poroshenko asked us last month. I told him \$7 million and it was last May, before our team came into office (in June 2014)." He then said that he'd been a friend of Zlochevsky for 20 years, had his number saved in his phone, could tell me that Zlochevsky was in Dubai at present, and asked if I wished to talk to him to confirm details. I declined, and politely reminded him that the PG letter closing the case was issued in late December, more than 6 months after team Yarema came into office, which means it was Yarema, Danylenko and Co who were responsible for the outrage. He just smiled smugly. They were gone within a month, replaced by Team Shokin, which proved even more venal in overtly preventing USG efforts to reform the justice system...all in response to the direct request of Poroshenko to US leaders. Yarema has had zero public profile in the 18 months since he faded into the woodwork. I presume he's enjoying whatever the inducements were paid to take no action against anyone for a year. The first post-EuroMaidan PG who did nothing for 5 months, Mahnytsky (affiliated loosely with Svoboda at the time), reportedly was gifted control of the Hyatt from Team Donetsk. That might explain why elements of the ancient regime were never put under travel ban or subject to sanctions. I've never heard anyone offer such similar specificity of what the payoff to Yarema and Co to do nothing was, but I have no doubt such arrangements were



10:00 - Meeting with Congresswoman Marcy Kaptur (Dem. Party).

---

4:00pm - Wall Street Journal Interview

- Wednesday Sept. 14, 2016

08:00 - Breakfast at the Hotel

09:00 - Foreign Policy interview

----

4:30pm - laying flowers to the Taras Shevchenko monument.

- Thursday Sept. 15, 2016

08:00 - Breakfast at Hotel

09:30 - Peace Institute Amb. Taylor

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- Friday Sept. 16, 2016

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- Saturday Sept. 17, 2016

09:00 - Breakfast at Hotel

10:00 - City Tour

1:30pm - Move out from Hotel

5:00pm - Flight from Washington DC

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Meetings that are confirmed but waiting on the time:

-Senator Ted Cruz

- Senator John McCain

-Senator Durbin Office - National Security Advisor.

-Voice of America Interview

-IRI - Stephen Nix and Mark Green

-State Dept - Ukrainian Desk

Bohdan Futey - US Federal Judge

Waiting for Confirmation on meetings:

Congressman Eliot Engel

Senator Chris Murphy

National Security Council - Greg Pflieger

INL

Andrii

This email is UNCLASSIFIED.

SBU

This email is UNCLASSIFIED.

<b>Sender:</b>	John Herbst (b)(6)
<b>Recipient:</b>	Kent, George P (b)(6)

<b>From:</b>	John Herbst (b)(6)
<b>To:</b>	Kent, George P (b)(6)
<b>Subject:</b>	RE: Dinner on the 12th
<b>Date:</b>	Mon, 29 Aug 2016 19:15:57 +0000

Happy to sit with Velida too.



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It is painful watching Ortiz run to first base now. If you notice, since June he is turning many doubles into singles, rather than the reverse, and his average may well end south of .300. But he does seem

determined to go out on a locked-in positive performance note, has reached 30-100 already, whether or not the team gets him to the post season one last time (watching the pitching is more painful than watching him run). Some of the young Yankees look like keepers.

Regards - George

---

**From:** John Herbst  
 [http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6)]  
 (b)(6)  
**Sent:** Monday, August 29, 2016 9:05 PM  
**To:** Taylor, W; Kent, George P  
**Subject:** RE: former PG Yarema's trip to DC - what is his agenda, and what is his angle (and peanut gallery commentary)

George,

Thanks for this meaty warning. We already agreed to host Yarema and will not change that. But I will factor into our conversation the Zlochevsky Affair. We are doing a lot of PG work in late September as we also host Lutsenko. Anything that you might share on that would also be appreciated.

Also, I will be in Kyiv Sep 12-18 with Adrian Karatnycky and Anders Aslund. We are formally seeking a meeting with Masha, but it would also be good to sit with you separately. I am on my own the PM of Sep 12 and AM of Sep 13. Can I buy you a drink or coffee in that time slot?

Curiously, Ortiz seems to be having his best season at the tail end of his career.

Best,  
 John



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**From:** Taylor, William  
 [http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6)]  
 (b)(6)  
**Sent:** Monday, August 29, 2016 12:08 PM  
**To:** Kent, George P (b)(6) | John Herbst (b)(6)  
**Subject:** RE: former PG Yarema's trip to DC - what is his agenda, and what is his angle (and peanut gallery commentary)



soon to be ex Chief of Staff Lozhkin, who tendered his resignation today, with one of his proteges, Kharkiv governor Rainen, tapped as his replacement.

Kyiv POL has been fielding inquiries from former PG Yarema's team about an upcoming trip in two weeks, as well as from the Ukraine desk at state (below). Your two organizations (and at least one of you in person) is listed.

I would be interested to hear your impressions about Yarema after you see him, presuming he stays on both the Atlantic Council and USIP's schedule. Following is my gratuitous commentary, for what it may be worth:

I have never met Yarema, I should state (before continuing with my two bits). I do wonder whose interests he is promoting. I have no wonder at all that it is not Ukraine's. The most notable decision by the PGO during his tenure (and he had his whole team come in and leave with him) was not any case pushed to the courts/conviction during his year, despite all the manifest crimes of the Maidan and Yanukovich era, but was a gross miscarriage of justice that undermined months of US assistance. After the FBI and MI-5 spent months and arguably millions working to try to put together the first possible asset recovery case (against former Minister of Ecology Zlochevsky), involving \$23 million frozen in UK accounts, under suspicion of bribes paid for licenses issue for gas/oil permits...Team Yarema closed the case against Zlochevsky in December 2014 just before western Christmas day, by turning it into a case against the ministry rather than ex minister, returning it to the MOI/police for further investigation, and issuing an immediate letter to Zlochevsky's defense lawyer team that there was no active case against their client; defense lawyers flipped that to the British judge, who unfroze the assets that were whisked out of UK jurisdiction before the UK authorities or we could learn/react.

When I met with Yarema's right hand man, the jovially corpulent first Deputy PG Danylenko six weeks later during the first week of Feb 2015, I asked him bluntly how much was the bribe and who took it. Danylenko cheerfully replied: "that's exactly what President Poroshenko asked us last month. I told him \$7 million and it was last May, before our team came into office (in June 2014)." He then said that he'd been a friend of Zlochevsky for 20 years, had his number saved in his phone, could tell me that Zlochevsky was in Dubai at present, and asked if I wished to talk to him to confirm details. I declined, and politely reminded him that the PG letter closing the case was issued in late December, more than 6 months after team Yarema came into office, which means it was Yarema, Danylenko and Co who were responsible for the outrage. He just smiled smugly. They were gone within a month, replaced by Team Shokin, which proved even more venal in overtly preventing USG efforts to reform the justice system...all in response to the direct request of Poroshenko to US leaders. Yarema has had zero public profile in the 18 months since he faded into the woodwork. I presume he's enjoying whatever the inducements were paid to take no action against anyone for a year. The first post-EuroMaidan PG who did nothing for 5 months, Mahnytsky (affiliated loosely with Svoboda at the time), reportedly was gifted control of the Hyatt from Team Donetsk. That might explain why elements of the ancient regime were never put under travel ban or subject to sanctions. I've never heard anyone offer such similar specificity of what the payoff to Yarema and Co to do nothing was, but I have no doubt such arrangements were made, apart from Mr. Zlochevsky (who also put Hunter Biden on the board of his Burisma Energy company).

There's arguably a case to be made that team Yarema should be barred from eligibility to receive a visa to the US under Presidential Proclamation 7750 for taking actions that undermined US interests, specifically US assistance in asset recovering and anti-corruption efforts. We haven't written it up due



09:00 - Foreign Policy interview

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4:30pm - laying flowers to the Taras Shevchenko monument.

- Thursday Sept. 15, 2016

08:00 - Breakfast at Hotel

09:30 - Peace Institute Amb. Taylor

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- Friday Sept. 16, 2016

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- Saturday Sept. 17, 2016

09:00 - Breakfast at Hotel

10:00 - City Tour

1:30pm - Move out from Hotel

5:00pm - Flight from Washington DC

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Meetings that are confirmed but waiting on the time:

-Senator Ted Cruz

- Senator John McCain

-Senator Durbin Office - National Security Advisor.

-Voice of America Interview

-IRI - Stephen Nix and Mark Green

-State Dept - Ukrainian Desk

Bohdan Futey - US Federal Judge

Waiting for Confirmation on meetings:

Congressman Eliot Engel

Senator Chris Murphy

National Security Council - Greg Pfleger

INL

Andrii

This email is UNCLASSIFIED.

SBU

This email is UNCLASSIFIED.

<b>Sender:</b>	John Herbst	(b)(6)
<b>Recipient:</b>	Kent, George P	(b)(6)

<b>From:</b>	"Kent, George P" (b)(6)
	(b)(6)
<b>To:</b>	Yovanovitch, Marie L (b)(6)
	(b)(6)
<b>Subject:</b>	Re: Herbst heads up - Atlantic Council to take Burisma money. (SBU)
<b>Date:</b>	Fri, 13 Jan 2017 09:24:05 -0500

While the Interfax headline on Martynenko proved inaccurate, the Burisma tale of getting a court to shut down a PGO investigation noted below would amount to nearly the same mechanism - rich connected businessman politician seeks to use the court/judge of unknown reputation to close an investigation of a business with a dodgy reputation.

Sent from my BlackBerry 10 smartphone.

**From:** (b)(6)  
**Sent:** Friday, January 13, 2017 4:12 PM  
**To:** Kent, George P; Yovanovitch, Marie L  
**Subject:** RE: Herbst heads up - Atlantic Council to take Burisma money. (SBU)

In case you didn't see Burisma's extensive press release yesterday. Matches arguments Karen made when she visited in December. This and Atlantic Council support are part of a full court press by Zlochevskyi to clear his name.

### **PRESS RELEASE: THE BURISMA GROUP COOPERATED WITH LAW ENFORCEMENT AGENCIES AND PAID IN FULL ALL OUTSTANDING FEES**

International Energy Group Burisma with assets in Ukraine announces that all legal proceedings and pending criminal allegations against its President Nikolay Zlochevskyi and operating companies of Burisma Group are fully closed.

The decision to fully close all pending legal proceedings and criminal allegations was the result of many months of full cooperation between the Office of the General Prosecutor and the legal team representing the Burisma Group. Further, the Burisma Group agreed that should an investigation determine that the Burisma Group owed outstanding taxes and/or fees that it would, without appeal, pay any and all outstanding taxes, fines and fees.

Following the Burisma Group's full cooperation and willingness to submit to a thorough investigation and its findings, the Pechersk District Court of Kiev obliged the Prosecutor General's Office of Ukraine to close the case against Mr. Zlochevskyi and remove him from the wanted list. As a result of the Court's decision the PGO fulfilled the relevant court order. The Ukrainian court decision is fully consistent with the decision taken by the U.K. court on January 21, 2015 and expert's opinion based on the results of forensic and economic expertise, dated February 6, 2015. After considering Nikolay Zlocheskyi's activities in Ukraine from 2002 to 2014, the British court ruled in favor of Nikolay Zlochevskyi and obliged the UK Serious Fraud Office (the SFO) to pay the defendant's costs. Moreover, as a result of the investigation, Burisma agreed to pay UAH180 millions of tax liabilities.

Over the last two years alone, operating companies of Burisma Group, paid more than UAH 5 bln. in tax liabilities to the budgets of all levels. Burisma is one of the top taxpayers of Ukraine



that demonstrates its commitment to social responsibility and compliance with the best international business practices.

Independent Director of Burisma Aleksander Kwasniewski believes that this decision shows how far Ukraine has come in advancing democratic ideals, proving that politics does not affect court decisions.

"It is reassuring that the independent Ukrainian court managed to take the decision that is fully consistent with the decision made by the British court. For Ukraine, the decision on Nikolay Zlochevskyi and Ukraine's largest gas producer Burisma will be also instrumental in making the country energy sufficient, since it will allow Burisma to increase domestic gas production as well as payments to the state budget. Especially today, Ukraine should be united over projects enhancing its defense capabilities and political independence. The country has already paid a high price with the revolution and its aftermath," noted Independent Director of Burisma Aleksander Kwasniewski.

"The actions of the PGO and those of the Ukrainian court are clear evidence of Ukraine's commitment to the rule of law and due process – twin pillars of democracy," stressed former U.S. Deputy Assistant Attorney General Mr. John Burette.

The President of Burisma Group Nikolay Zlochevskyi pointed out extensive cooperation with law enforcement agencies and judicial authorities of different countries.

"Since all legal proceedings against Burisma Group are closed, it will allow us to increase production volumes and the flow of foreign investments in Ukraine, consider attracting international companies in the country, fulfill social and investment responsibilities, as well as duly pay in full all required tax liabilities to the budget. This is a big step forward for Ukraine in general and Burisma Group, in particular," admitted Nikolay Zlochevskyi.

**Official**  
**UNCLASSIFIED**

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**From:** Kent, George P  
**Sent:** Friday, January 13, 2017 4:04 PM  
**To:** Yovanovitch, Marie L; (b)(6)  
**Subject:** Herbst heads up - Atlantic Council to take Burisma money. (SBU)

FYI.

The Blue Star duo, Karen and Sally, are on the Atlantic Council roster, and are the probable pushers of this.

John had come to the old DCR on a trip last fall (before I moved) and talked thru the whole Burisma/Zlochevsky nexus. At the time, he made no mention of this as a possibility.

So: Atlantic council's robust Ukraine program, funded by...akhmetov, pinchuk, and Zlochevsky/Burisma.

Sent from my BlackBerry 10 smartphone.

**From:** John Herbst (b)(6)

**Sent:** Friday, January 13, 2017 3:52 PM  
**To:** Kent, George P; George Kent  
**Subject:** Heads Up

George,

I wanted you to know before it becomes public that the Atlantic Council decided to accept support for its program from Burisma. We looked at the matter closely and weighed it for over a month. Information provided to us by a the Cravath lawyer for Burisma in the London case was an important factor, although some uneasiness remains. Happy to discuss when I am next your way.

Best,  
John



**John Herbst** | Director, Dinu Patriciu Eurasia Center  
Ambassador (Ret.)

1030 15th Street, NW, 12th Floor | Washington, DC 20005

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[www.facebook.com/AtlanticCouncil](http://www.facebook.com/AtlanticCouncil) | [@JohnEdHerbst](https://twitter.com/JohnEdHerbst) | [www.AtlanticCouncil.org](http://www.AtlanticCouncil.org)

<b>Sender:</b>	"Kent, George P" (b)(6)
<b>Recipient:</b>	Yovanovitch, Marie L (b)(6)

<b>From:</b>	John Herbst (b)(6)
<b>To:</b>	Kent, George P (b)(6)
<b>Subject:</b>	RE: KyivPost: Activists cry foul as courts, prosecutors clear Zlochevsky
<b>Date:</b>	Fri, 20 Jan 2017 22:48:46 +0000

George,

Thanks for sending this and your advice. From our standpoint, this settlement is not timely. You will not be surprised to learn that I have heard from an impressive young Ukrainian reformer....

More to discuss when I am next in Ukraine.

Best,  
John



**John Herbst** | Director, Dinu Patriciu Eurasia Center  
 Ambassador (Ret.)  
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[www.facebook.com/AtlanticCouncil](http://www.facebook.com/AtlanticCouncil) | [@JohnEdHerbst](https://twitter.com/JohnEdHerbst) | [www.AtlanticCouncil.org](http://www.AtlanticCouncil.org)

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**From:** Kent, George P [mailto:(b)(6)]  
**Sent:** Friday, January 20, 2017 2:32 AM  
**To:** John Herbst (b)(6)  
**Subject:** KyivPost: Activists cry foul as courts, prosecutors clear Zlochevsky

John – you probably will see this elsewhere, and perhaps hear on future trips to Kyiv from the activist community. Regards - George

**KyivPost: Activists cry foul as courts, prosecutors clear Zlochevsky**

By **Alyona Zhuk**.

Published Jan. 19. 2017

The club of top officials of fugitive ex-President Viktor Yanukovich’s regime who have successfully avoided prosecution has a new member.

Ex-Ecology Minister Mykola Zlochevsky was cleared of corruption charges and can now return to Ukraine after three years of exile. A Ukrainian court closed the case against him in November, but the public only heard of the development when the ex-minister’s oil-and-gas company, Burisma Group, announced it in January.

The Prosecutor General’s Office sat on the case for two years. It finally changed the thrust of the investigation from illicit enrichment to tax evasion, and then settled.

But prosecutors are now under fire from anti-corruption activists for intentionally botching the case and letting Zlochevsky off the hook.

## **SABOTAGE CLAIMS**

Zlochevsky was among several top officials who fled Ukraine after the EuroMaidan Revolution that ousted Yanukovich on Feb. 22, 2014. Months later, some \$35 million was found in his companies' bank accounts in the United Kingdom, prompting money laundering and illicit enrichment investigations in the UK and Ukraine.

He was also investigated for giving gas extraction licenses to affiliated companies – mainly ones in the Burisma Group.

But the charges were then whittled down to a single case of tax evasion, which was settled by a Kyiv court in November, with Burisma agreeing to pay Hr 180 million. The settlement constitutes less than 20 percent of the sum discovered in Zlochevsky's bank account in 2014.

Burisma called the closing of the case the result of "full cooperation between the office of the prosecutor general" and Burisma's lawyers.

However, this "full cooperation" could actually be an illegal backroom deal, claims Daria Kaleniuk, the executive director of the Anti-Corruption Action Center. "The proceedings led by the Prosecutor General's Office weren't just shut – they were intentionally botched," Kaleniuk says.

Answering the claims, prosecutors say the case was investigated properly.

But "we have doubts about that," says Yaroslav Yurchyshyn, an executive director at Transparency International Ukraine.

## **LOST MILLIONS**

The prosecutors' work on the Zlochevsky case has long been cause for concern.

In 2015, then-Deputy Prosecutor General Davit Sakvarelidze launched a criminal proceeding into possible abuse of office by the prosecutors who worked on Zlochevsky's case. The National Anti-Corruption Bureau of Ukraine took over the case in early 2016, and is still investigating it.

However, in a press release sent out by the Burisma Group, Zlochevsky said that the closing of the case against him and his companies was "a big step forward for Ukraine in general, and for Burisma Group in particular."

Zlochevsky served as Ukraine's ecology minister in 2010-2012, during the Yanukovich presidency. During that time, the State Service of Geology and Mineral Resources of Ukraine, which works under the Ecology Ministry, granted licenses for gas extraction to Zlochevsky's companies.

In the spring of 2014, after Yanukovich fled and the West started imposing sanctions against his associates, Andriy Kicha, Zlochevsky's lawyer and a top manager at the Burisma Group, tried to transfer some \$23 million from accounts in the UK to Cyprus. The UK

authorities blocked the operation, froze the accounts, and launched an investigation to determine the source of Zlochevsky's money, suspecting money laundering.

At the same time, Ukrainian prosecutors started an illicit enrichment case against Zlochevsky.

However, Ukrainian prosecutors provided no help to the case in the UK. In December 2014, the Prosecutor General's Office sent Zlochevsky's lawyer a letter stating that no active case was underway against his client. A London court then dropped the case, citing a lack of evidence, and unfroze the accounts.

According to the London court, some \$20 million of the \$35 million in Zlochevsky company accounts in British banks had come from fugitive Ukrainian oil trader and Yanukovych crony Serhiy Kurchenko, who is wanted in Ukraine on suspicion of embezzlement.

"That money was the first money arrested abroad, right after the EuroMaidan Revolution," Kaleniuk said. "And we could have got it back."

And although the Ukrainian authorities put Zlochevsky on the wanted list in Ukraine, the case never went further.

After a 30-month investigation by the Prosecutor General's Office, the Podilsky Court in Kyiv closed the case on Nov. 17 after Burisma Group companies paid the state budget Hr 180 million in unpaid taxes. One of the group's companies that paid the settlement was Esko-Pivnich, where the defendant was an accountant.

"Why have the proceedings regarding Zlochevsky's possible illegal enrichment led to the proceedings against an accountant at Esko-Pivnich for tax evasion?" Kaleniuk asks.

Zlochevsky was taken off the wanted list even before the final settlement, in October, after another Kyiv court issued an order to prosecutors because his case hadn't been actively investigated for a year.

Zlochevsky has never revealed where he has been living in the past three years. In December, a Ukrainian journalist published photos of a man she said was Zlochevsky dining in Vienna with Ihor Kononenko, a lawmaker with President Petro Poroshenko's faction and Poroshenko's close associate. Kononenko hasn't commented on the issue. The faction's spokesman told the Kyiv Post that the lawmaker couldn't be reached.

## **GAS SCHEMES**

But prosecutors may not be done with Zlochevsky yet.

In July, Prosecutor General Yuriy Lutsenko announced that his office was investigating Esko-Pivnich, a member of Burisma Group, on suspicion of falsely reducing its profits with the use of fictitious enterprises, and evading about Hr 1 billion (\$36 million) worth of taxes.

At the time, Lutsenko claimed that Zlochevsky was the only shareholder of Burisma Group connected to the scheme. The gas extracting companies were suspected of selling gas to affiliated or fictitious companies cheaply. The companies then resold it at market prices.

However, according to Tetiana Shevchuk, a lawyer with the Anti-Corruption Action Center, the focus in the gas scheme investigation is already shifting away from Zlochevsky's companies. In the latest court rulings, the ex-minister's businesses weren't mentioned at all, according to Shevchuk.

The Kyiv Post asked prosecutors whether the gas scheme investigation still concerned Zlochevsky's companies, but received no response before deadline.

Kaleniuk said Burisma has now embarked on a public relations campaign to improve its reputation.

<https://www.kyivpost.com/ukraine-politics/activists-cry-foul-courts-prosecutors-clear-zlochevsky.html>

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**UNCLASSIFIED**

<b>Sender:</b>	John Herbst	(b)(6)
<b>Recipient:</b>	Kent, George P	(b)(6)

<b>From:</b>	(b)(6)
<b>To:</b>	Yovanovitch, Marie L (b)(6)
<b>CC:</b>	(b)(6) Kent, George P (b)(6) (b)(6)
<b>Subject:</b>	RE: KyivPost: Onyshchenko accuses Poroshenko of pressuring Burisma, energy firm linked to Biden, Kwasniewski
<b>Date:</b>	Thu, 29 Dec 2016 01:49:50 -0500

(b)(6) The dumping part is true. Also, Kononenko was photographed meeting with Zlochevskiy in a Vienna restaurant over the weekend, and Zlochenskiy may have handed over a suitcase. You can't make this stuff up.

Best,

(b)(6)

Deputy Economic Counselor  
 U.S. Embassy Kyiv  
 4, I. Sikorsky Street  
 04112 Kyiv, Ukraine  
 044-521-5039 w

(b)(6)

**Official  
 UNCLASSIFIED**

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**From:** (b)(6)  
**Sent:** Thursday, December 29, 2016 7:29 AM  
**To:** Yovanovitch, Marie L; (b)(6)  
**Cc:** (b)(6) Kent, George P  
**Subject:** Fw: KyivPost: Onyshchenko accuses Poroshenko of pressuring Burisma, energy firm linked to Biden, Kwasniewski

Lots of accusations/innuendo. Mentions Biden's son and kwasniewski are on board of Burisma which allegedly had a subsidiary dump natural gas recently as a way to pay bribes to P2 inner cicle.

Sent from my BlackBerry 10 smartphone.

**From:** lbi@lbicompany.com.ua  
**Sent:** Thursday, December 29, 2016 06:26  
**To:** Kyiv, Media Alerts  
**Subject:** KyivPost: Onyshchenko accuses Poroshenko of pressuring Burisma, energy firm linked to Biden, Kwasniewski

**KyivPost**

**Onyshchenko accuses Poroshenko of pressuring Burisma, energy firm linked to Biden, Kwasniewski**

28.12.2016

By **Oleg Sukhov**

Fugitive lawmaker Oleksandr Onyshchenko and Radical Party leader Oleg Lyashko have accused President Petro Poroshenko of wrongdoing involving the Ecology Ministry, which approves lucrative licenses for gas and oil exploration.

The Presidential Administration denied the allegations and accused Onyshchenko of cooperating with Russian intelligence agencies and getting a Russian passport, which he denies.

"All statements made by lawmaker Onyshchenko, who has been charged with corruption, are lies that are not confirmed by any evidence," the administration told the Kyiv Post. "...This cause has gone beyond a personal campaign against Petro Poroshenko and has become an aspect of Russia's information war against Ukraine."

With respect to the Ecology Ministry, Onyshchenko and Lyashko accused Poroshenko of bribing lawmakers to appoint his loyalists so that the appointees would cancel certain mineral resource licenses.

Among those were licenses granted to two natural gas producers — Naftogazvydobuvannya, controlled by billionaire tycoon Rinat Akhmetov, and Burisma, a firm controlled by ex-Ecology Minister Mykola Zlochevsky. Hunter Biden, son of U.S. Vice President Joe Biden, and former Polish President Aleksander Kwasniewski are on Burisma's board of directors.

When the attempt to revoke the licenses failed, Onyshchenko alleges that the president used his loyal prosecutors to freeze the assets of Burisma and Naftogazvydobuvannya. Onyshchenko claimed that Poroshenko extorted money from Akhmetov and Zlochevsky for unfreezing them. The licenses are active today.

Critics have questioned Onyshchenko's credibility because he has been charged with stealing Hr 1.6 billion (\$64 million) from state-owned gas producer Ukrgezvydobuvannya, which he denies. He fled Ukraine before he was stripped of his parliamentary immunity in July.

He said on Dec. 1 he had given the U.S. Federal Bureau of Investigation information alleging corruption of Poroshenko and his inner circle. The Department of Justice has indirectly confirmed that its representatives had met with Onyshchenko, but issued a statement afterwards saying it would not cooperate with him in the future.

**Shevchenko's appointment**

Onyshchenko told the Kyiv Post that, after his election as president, Poroshenko lobbied for the appointment of loyalists – Igor Shevchenko and Petro Matveyev – as ecology minister and head of the State Service for Geology and Mineral Resources, respectively.



Shevchenko formally represented Yulia Tymoshenko's Batkivshchyna, while Matveyev was formally a candidate from Oleg Lyashko's Radical Party but effectively they would represent the interests of Poroshenko and Onyshchenko, he said.

Onyshchenko supposedly acted as an intermediary.

Poroshenko tried to use these appointees to cancel the mineral resource licenses of Burisma and Naftogazvydobuvannya in order to extort money from them, Onyshchenko claimed.

Shevchenko was eventually appointed in December 2014, while Matveyev's appointment was blocked by Prime Minister Arseniy Yatsenyuk.

Shevchenko was fired in July 2015 amid a corruption scandal over his earlier flights on Onyshchenko's private jet. He denies any wrongdoing.

Tymoshenko on Dec. 5 denied cooperating with Onyshchenko on Shevchenko's appointment, saying his claim had been an effort to discredit her team.

But on the same day, Lyashko published what he said was a letter by Tymoshenko nominating Shevchenko for a minister's job. He accused Tymoshenko of writing the letter in exchange for money, which she denied.

Shevchenko told the Kyiv Post he had not been aware of Poroshenko's alleged lobbying for his candidacy.

"Of course, the president participated in this process," he told the Kyiv Post. "But I don't know who lobbied for what... I was told that my candidacy had been approved by the president."

He also said he had been acquainted with Onyshchenko for a long time, and that Poroshenko had talked with Onyshchenko about him and asked him to talk to Shevchenko.

"We were checking the issuance of licenses to different companies, but we did not have a task to target Naftogazvydobuvannya specifically," Shevchenko said.

But he said Yatsenyuk had likely protected Akhmetov's interests because he had prevented Matveyev's appointment and blocked Shevchenko and Matveyev "from the opportunity to check the issuance of licenses, including those of Akhmetov's company, Burisma or anyone else."

### **Mineral resources agency**

Onyshchenko said he had met with Poroshenko and Yatsenyuk in November 2014, and the president had demanded the appointment of Matveyev and deputy ecology ministers loyal to Poroshenko and Onyshchenko.

Yatsenyuk's spokeswoman Olga Lappo neither confirmed nor denied that the meeting took place.

"Yatsenyuk did not appoint an Onyshchenko loyalist to the State Service for Geology and Mineral Resources despite the efforts to nominate him repeatedly by the ecology minister, who was fired due to suspected corruption," she told the Kyiv Post. "On all other issues, we will comment to investigators."

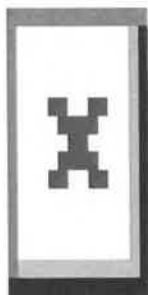
Meanwhile, Lyashko said in September 2015 that Poroshenko had repeatedly offered him bribes for the appointment of his candidate for the State Service for Geology and Mineral Resources.

"When I blocked Matveyev's appointment, Poroshenko met me several times and tried to persuade me not to block it," Lyashko told the Kyiv Post. "But I didn't agree to this because I knew that Matveyev is an Onyshchenko loyalist."

Onyshchenko claimed Poroshenko had offered \$5 million to Lyashko, while Lyashko wanted \$10 million, and they did not reach an agreement. Yatsenyuk blocked the appointment because he protected Akhmetov's interests, Onyshchenko said.

However, Lyashko denied being interested in a bribe.

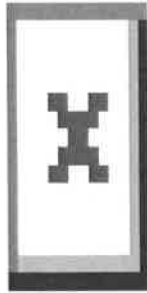
"This is utter nonsense," he said. "On the contrary, I blocked this appointment when I found out that Ecology Minister Shevchenko nominated Matveyev, an Onyshchenko protege, as head of the State Service for Geology and Mineral Resources. I also demanded that Poroshenko fire Ecology Minister Shevchenko, who was nominated by Yulia Tymoshenko and lobbied for Onyshchenko's interests."



*Lawmaker Serhiy Berezenko asking Onyshchenko whether he had approved the appointment of a Yaroslav Klymovych, CEO of Nadra Ukrainy. He also asks him to get votes for the appointment of Ihor Bilous as head of the State Property Fund in May 2015.*

Onyshchenko sent to the Kyiv Post what he says is his smartphone correspondence with Poroshenko's right-hand man and lawmaker Ihor Kononenko and Serhiy Berezenko, a lawmaker from the Poroshenko Bloc, about appointments at state firms and agencies reporting to the Ecology Ministry.

According to the messages, Kononenko discussed the appointment of the chief of a firm based in the Chernobyl Exclusion Zone, while Berezenko asked Onyshchenko whether he had authorized the appointment of Yaroslav Klymovych as CEO of Nadra Ukrainy, a state mineral resource firm.



*Lawmaker Igor Kononenko discussing the appointment of Chernobylsky Spetskombinat's CEO with Oleksandr Onyshchenko.*

### **Prosecutors' pressure**

When the alleged efforts to revoke the licenses of Naftogazvydobuvannya and Burisma failed, prosecutors loyal to Poroshenko froze their assets and then unfroze them when the president received money from them, Onyshchenko claimed.

The Prosecutor General's Office did not respond to a request for comment.

Naftogazvydobuvannya used to be co-owned by Poroshenko and his top ally and lawmaker Igor Kononenko but later it was acquired by lawmakers Nestor Shufrich and Mykola Rudkovsky and then by Akhmetov.

In 2015 Dmytro Sus, a prosecutor accused of links to Poroshenko's allies Kononenko and Oleksandr Hranovsky, ordered the assets of Naftogazvydobuvannya to be frozen as part of a case into the kidnapping of the company's CEO Oleh Seminsky. The company's operations were blocked, and the freeze was deemed controversial because it happened three years after Seminsky's kidnapping.

The assets were unfrozen by a court in December 2015, with prosecutors deciding not to dispute the decision. Meanwhile, in February 2016 a British Virgin Islands firm with unknown beneficiaries became a co-owner of Naftogazvydobuvannya.

Earlier this year Sus also ordered a freeze on the assets of Burisma and other firms controlled by Zlochevsky as part of the embezzlement case into another firm, Ukgazvydobuvannya.

But later courts unfroze them, and Sus did not dispute the rulings. At the same time, Zlochevsky, who has been charged with unlawful enrichment, was taken off the wanted list at the request of Sus' department in October 2016.

Burisma did not respond to a request for comment, while Akhmetov denied the accusations.

"Onyshchenko's claim that money was extorted from me in exchange for unfreezing Naftogazvydobuvannya's assets is absolutely untrue," he told the Kyiv Post in a written comment. "As far as claims by the Prosecutor General's Office against Naftogazvydobuvannya are concerned, they have been resolved in a legal way."

Onyshchenko claimed that Poroshenko had tried to extort \$200 million from Naftogazvydobuvannya, and they settled at \$180 million.

He also claimed that Poroshenko had wanted a \$100 million payment from Zlochevsky, while Zlochevsky offered \$50 million. Eventually they settled at about \$80 million, he added.

Previously Burisma had also been supplying natural gas to a glass factory linked to Kononenko and Poroshenko free of charge, Onyshchenko said.

Ukrainska Pravda reported on Dec. 27, citing a market source, that Esko Pivnich, a Burisma subsidiary, was currently selling natural gas at a dumping price of Hr 7,400 to Hr 7,500 per 1,000 cubic meters. Onyshchenko claimed that, by selling gas at a below-market price, Zlochevsky was effectively paying a bribe to Poroshenko's inner circle.

Meanwhile, Olga Vasilevskaya, a journalist at television channel 1+1, on Dec. 25 published what she claimed to be photos of Kononenko meeting in Vienna with Zlochevsky. Kononenko's face is clearly visible, while the person identified by her as Zlochevsky is seen from behind.

The alleged meeting took place after Onyshchenko testified about Poroshenko's alleged raid on Zlochevsky's business while interrogated by anti-corruption prosecutors by Skype on Dec. 22.

Kononenko did not respond to a request for comment. Previously he has denied Onyshchenko's accusations.

Coincidentally, Radio Liberty journalist Mykhailo Tkach on Dec. 22 photographed the cars of Poroshenko and Kononenko visiting the Security Service of Ukraine, a fact confirmed by SBU Chief Vasyl Hrytsak.

### **Bribery in parliament**

Onyshchenko has also made sweeping claims about alleged corruption in parliament, including the buying of seats in the 2014 election – similar to allegations made by many others, including Poroshenko Bloc lawmaker Sergii Leshchenko and Dragon Capital CEO and European Business Association leader Tomas Fiala. Poroshenko's administration denied the allegations.

Onyshchenko has accused Poroshenko, Kononenko and other allies of the president of using him as an intermediary to bribe lawmakers.



*Lawmaker Serhiy Berezenko asks Oleksandr Onyshchenko to get votes for the resignation of Security Service of Ukraine Chief Valentyn Nalyvaichenko*

As proof of his claims, Onyshchenko showed to the Kyiv Post alleged text messages in which Berezenko asks him to get votes for the resignation of Valentyn Nalyvaichenko as head of the Security Service of Ukraine in June 2015 and the appointment of Ihor Bilous as head of the State Property Fund in May 2015.

Another alleged message shows Kononenko asking Onyshchenko to get votes for a bill on production sharing agreements in June 2016.



*Lawmaker Ihor Kononenko asking Oleksandr Onyshchenko to get votes for a bill on production sharing agreements.*

Additionally, Onyshchenko has said that he had given \$6 million to David Zhvania, a member of Poroshenko's election headquarters in 2014, for the Poroshenko Bloc's campaign in order to get registered as a candidate despite his violation of residency rules.

Zhvania did not respond to a request for comment.

Another one making the allegations is Artem Bidenko, an unsuccessful candidate for parliament from the Poroshenko Bloc in 2014 and now a deputy information policy minister.

Bidenko told the Slidstvo.info investigative show in 2014 that Zhvania was responsible for selling parliamentary seats. He said then between 10 and 20 seats had been sold.

The seats, including that of lawmaker Glib Zagory, were sold for between \$5 million and \$10 million, Bidenko said. Zagory has denied the claim and filed a libel lawsuit against Bidenko.

Bidenko backtracked on Dec. 21, saying that he had had no evidence to back up his earlier claims and that he had made a mistake.

However, others – such as lawmaker Leshchenko — say the bribes paid are fueling today's corruption as lawmakers seek to recoup their payments.

### **U.S. government**

Onyshchenko said on Dec. 1 that he had transferred recordings implicating Poroshenko in corruption to the Federal Bureau of Investigation.

Peter Carr, a spokesman for the Department of State, told the Kyiv Post on Dec. 16 that "the U.S. Department of Justice has no plans to have further meetings or communications with Mr. Onyshchenko."

Despite this, Onyshchenko said on Facebook on Dec. 19 that U.S. intelligence agents had had him pass a polygraph test on that day. Carr said he could not comment on the claim.

Onyshchenko sent to the Kyiv Post what he says is a copy of his agreement with the Department of State signed by Ephraim Wernick, a trial attorney at the Department of Justice's fraud section representing Andrew Weissman, chief of the section.

<https://www.kyivpost.com/ukraine-politics/onyshchenko-accuses-poroshenko-pressuring-burisma-firm-linked-biden-kwasniewski.html>

--

*With best regards,  
LBI Team*

[www.lbicompany.com.ua](http://www.lbicompany.com.ua)

(044) 501 58 41

(097) 479-13-50

<b>Sender:</b>	(b)(6)
<b>Recipient:</b>	Yovanovitch, Marie L (b)(6)
	(b)(6)
	Kent, George P (b)(6)
	(b)(6)

<b>From:</b>	"Yovanovitch, Marie L" (b)(6)
<b>To:</b>	Kent, George P (b)(6)
<b>Subject:</b>	Re: Lutsenko now likely not to go to DC with Blue Star, other Ukr issue comments
<b>Date:</b>	Sun, 4 Sep 2016 05:39:41 -0400

Or frownie face!

Sent from my BlackBerry 10 smartphone.

**From:** Kent, George P  
**Sent:** Sunday, September 4, 2016 11:14 AM  
**To:** Yovanovitch, Marie L  
**Subject:** Re: Lutsenko now likely not to go to DC with Blue Star, other Ukr issue comments

Any time we can find for you to take a breath, I'll be ready :)

Sent from my BlackBerry 10 smartphone.

**From:** Yovanovitch, Marie L  
**Sent:** Sunday, September 4, 2016 8:39 AM  
**To:** Kent, George P  
**Subject:** Re: Lutsenko now likely not to go to DC with Blue Star, other Ukr issue comments

Thanks George. At some point, appreciate discussing in more detail some of the folks referenced.

Sent from my BlackBerry 10 smartphone.

**From:** Kent, George P  
**Sent:** Saturday, September 3, 2016 8:14 PM  
**To:** (b)(6) Yovanovitch, Marie L; (b)(6)  
**Subject:** Lutsenko now likely not to go to DC with Blue Star, other Ukr issue comments

Lutsenko's request to meet one on one after I'd SMSed him regarding stories that he was using a third party lobbyist to pull together a planned trip to DC turned into a chat over thai food at the DCR.

(b)(5)



(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

He said to send his regards to "Madam Ambassador" and that he looked forward to paying respects in person when it would be possible. I mentioned that you had lived in

the same apartment 15 years ago as DCM. He said he had visited the apartment in the late 1990s when the previous owner/occupant was still there - a diminutive but noted political scientist, he said.

Sent from my BlackBerry 10 smartphone.

<b>Sender:</b>	"Yovanovitch, Marie L"	(b)(6)
<b>Recipient:</b>	Kent, George P	(b)(6)

<b>From:</b>	"Kent, George P" (b)(6)
<b>To:</b>	(b)(6) Kent, George P (b)(6); Kyiv, ECON FSOs <KYIVECONFSOs@state.gov>
<b>CC:</b>	(b)(6) Yovanovitch, Marie L (b)(6)
<b>Subject:</b>	Re: Obscure Dutch firm bests 2 rivals for giant gas field
<b>Date:</b>	Fri, 12 Aug 2016 04:38:53 -0400

Thanks, (b)(6)

Sent from my BlackBerry 10 smartphone.

**From:** (b)(6)  
**Sent:** Friday, August 12, 2016 11:33 AM  
**To:** Kent, George P; Kyiv, ECON FSOs  
**Cc:** (b)(6); Yovanovitch, Marie L  
**Subject:** RE: Obscure Dutch firm bests 2 rivals for giant gas field

Sir,

(b)(5)

(b)(6)

Energy and ESTH Unit Chief  
 U.S. Embassy Kyiv  
 Office: 011-380-44-521-5482

(b)(6)

This email is UNCLASSIFIED.

---

**From:** Kent, George P  
**Sent:** Friday, August 12, 2016 6:53 AM  
**To:** Kyiv, ECON FSOs  
**Cc:** (b)(6); Yovanovitch, Marie L  
**Subject:** Obscure Dutch firm bests 2 rivals for giant gas field

(b)(5)

(b)(5)

(b)(5)

Sent from my BlackBerry 10 smartphone.

**From:** lbi@lbicompany.com.ua

**Sent:** Friday, August 12, 2016 6:49 AM

**To:** Kyiv, Media Alerts

**Subject:** Kyivpost: Obscure Dutch firm bests 2 rivals for giant gas field

### ***Kyivpost***

#### **Obscure Dutch firm bests 2 rivals for giant gas field**

August 11

Author: Duncan Hill

A recently founded Dutch company is on the road to winning a tender to explore Ukraine's largest shale gas field, after the firm's proposal was chosen as the best among a group of bidders.

But the move has ignited some controversy: The company, Yuzgaz BV, has not yet disclosed its investors, feeding speculation that people affiliated with the country's history of corrupt gas deals could be somehow involved.

Ukraine's Cabinet of Ministers will need to approve the choice before Yuzgaz becomes a partner with Nadra Ukrainy in the exploration of the nearly 8,000 square kilometer Yuzivska gas field in eastern Ukraine.

Royal Dutch Shell won a contract to develop the field with Nadra in 2012, but withdrew in September 2015, citing the war and the steep drop in global oil prices.

The man behind Yuzgaz is former European Bank of Reconstruction and Development Ukraine country director Jaroslaw Kinakh, who controls Yuzgaz through the Luxembourg-based investment fund Emerstone Capital Partners. Kinakh has declined to name which investors have put up capital for the development project, though he has insisted that the investors are neither Russian nor Ukrainian.

Shell's exit came as a blow to Ukraine's attempt to have foreign companies that are less connected to the country's web of corrupt interests develop its gas deposits. Finding a replacement was never going to be straightforward – especially since so much is at stake.

The agreement grants rights to the gas field for 50 years.

#### **Non-transparency**

Under the terms of the agreement, after Shell walked away, Nadra Yuzivska - and parent company Nadra Ukraine - did not actually need to put the agreement out to tender at all.

"(But) the project was too big and too important to Ukraine... so we chose to go to tender... (as) we didn't want to start off on a bad foot," said Victor Nazarkevych, the CEO of Nadra Yuzivska.

But starting off on a "bad foot" is exactly what has happened.

Critics claim there was a complete lack of transparency in the tender competition.

"There was no official information available regarding the members of the competition committee, the tender conditions, or requirements for participants in the competition," said lawmaker Nataliya Katser-Buchkovska, the chairman of the parliamentary subcommittee that energy investment and sustainable energy.

Last fall, Nadra Yuzivska notified select press, key embassies and the European Business Association about the tender. It also sent a letter to the American Chamber of Commerce, which was then headed by Graham Tiley, the then-head of Shell Ukraine.

Nazarkevych believes that it was in Nadra Yuzivska's interests to get as many bids as possible. The deadline was extended four times to accommodate the needs of more than one potential bidder.

But, according to Alastair McBain, CEO of Arawak Energy, an unsuccessful bidder in the tender, this wasn't enough time.

"It took Shell several years to put their bid together..." McBain said. "We wrote to Nadra Yuzivska twice asking for a (further) extension, but much to our surprise and dismay, this was not granted. We made it clear that we would not have the time to put in a substantive bid as a consequence."

McBain was told that additional extensions were not granted because members of parliament involved in the process wished to have everything wrapped up before the summer holiday.

### **Lack of oversight**

Once the contest was closed, the selection process became less transparent. A committee was established to evaluate the bids, but the process for selecting committee members seems to have lacked checks and balances.

Back in 2012, the Interagency Commission on Organization of Signing and Execution of Production Sharing Agreements was created to manage the state's interests in the PSA. Led by the office of the first vice prime minister, it included senior figures from key government ministries as well as six parliament deputies.

Although the individuals on the committee changed in the aftermath of EuroMaidan, it has continued to oversee the agreement.

It was this committee that had the final say on whether to put the bid out to tender and it was also this committee that decided who would be on the committee to evaluate the bids.

But here, the interagency committee selected from among its own ranks: the evaluation committee was essentially a slimmed-down version of the production sharing agreement committee.

### **Public benefit?**

The evaluation committee received the three bids and, according to sources present at the meeting, quickly and unanimously agreed on the Yuzgas bid.

The Kyiv Post is familiar with the content of the various bids and it is immediately apparent why the Yuzgas bid triumphed: It is significantly greater in size and scope than the other two bids.

In particular, the incentives promised to the state and to Nadra Yuzivska are significantly higher in the Yuzgas bid.

At the time this meeting took place in July, Nadra Yuzivska was 90 percent owned by the state company Nadra Ukrainy and 10 percent owned by SPK Geoservice, an opaque company with alleged ties to the family of ousted former Ukrainian President Viktor Yanukovich.

SPK Geoservice sold its share in Nadra Yuzivska soon after the bid winner was announced. The Kyiv Post understands that SPK Geoservice was removed so as not to give the perception of impropriety. Sources say that it only received the Hr 500,000 it put in as part of its settlement, but we have been unable to verify this.

This means that the benefits offered by Yuzgas - namely an incremental \$40 million in exchange for a 90 percent share, as well as other bonus payouts and social investments - should all come to the state in one way or another.

### **Lack of experience**

Yuzgas offered significantly more than its two rivals under each criteria of the bid. It offered a greater investment over the riskiest first five year phase, it offered the most seismic studies (joint first with another bid), and it also offered higher "first gas" and "first production" bonuses.

The Yuzgas bid comes with guarantees from its parent companies, but they themselves were also only registered this year.

It is hard to find much financial information about any of these companies. But even if Yuzgas and Emerstone Energy do not have the capital for the promised investment on hand at the moment, they may be able to raise it once they are in receipt of a signed production sharing agreement to a vast gas field.

However, unlike the other two bidders, Yuzgas has no experience in hydrocarbon extraction.

Arawak, which submitted its bid under a wholly-owned affiliate company named Balkash, has considerable experience in hydrocarbon extraction. It is producing oil and gas in the United States, Mexico, Kazakhstan, Azerbaijan and in Ukraine -- where it holds a 50 percent stake in GeoAlliance. Arawak is in turn wholly owned by a large private energy and commodities company, Vitol.

The third bidder is Burisma, a scandal-tainted energy firm founded in 2002 by Ukrainian businessman Mykola Zlochevsky, the former ecology minister suspected of corruption -- accusations he has long denied. Furthermore, U.S. Vice President Joseph Biden's son, Hunter, is on Burisma Holding's board of directors.

Yuzgas's bid pointed to a memorandum of understanding with oil-and-gas-services giant Schlumberger, likely for a services contract and technical operations support.

### **Big responsibility**

Alternative bids were quite small for such a large field. "Our bid was extremely modest," admitted Arawak Energy's McBain.

The difficulty is that the production sharing agreement and the huge gas field is better suited to a much larger organization like Shell.

"The PSA structure lends itself to large international companies investing in mega projects in countries with high degrees of risk and regulatory uncertainty," said McBain. "It is a way of carving out much of the risk by having a special arrangement for production sharing in lieu of most taxes."

But Shell is not interested in returning, Shell spokesperson Yuliya Pikhnovska told the Kyiv Post.

"Given the current situation with the oil price slump, there are no plans for new exploration projects in Ukraine in the foreseeable future," Pikhnovska said.

And it's not only Shell -- there is little international interest in Ukrainian hydrocarbons, said Robert Bensch, senior managing partner at Pelicourt LLC, an organization specializing in Ukraine energy investments.

"If you have money it's better to invest elsewhere," Bensch said.

### **Dividing the field**

So the choice could be between waiting for conditions to improve or pressing ahead with an imperfect bid.

The current geopolitical conditions make the idea of waiting less than popular, however. Katser-Buchkovska said that the field could provide up to 20 billion cubic meters of gas, making it "crucial in today's situation."

One option would split the field into smaller parcels, making it simpler for medium-sized bidders.

But Nazarkevych dismisses that suggestion. According to him, the field requires horizontal drilling and fracking, which makes it harder to guarantee property rights.

McBain disagrees, "In principle, I don't see any reason why the land couldn't be split up -- it is a huge exploration project." But he added that the PSA approach would no longer really apply, which is why breaking it up does not make sense for the various stakeholders.

Now the onus is on Yuzgas to prove that it can fulfil its promises and handle hydrocarbon extraction on this scale: that's if it gets final approval from the government, which has 90 days to approve the its selection.

But since most of the evaluation committee will be involved in granting final approval, the final decision should not be a great surprise.

<http://redirect.state.sbu/?url=http://www.kyivpost.com/article/content/business/obs-cure-dutch-firm-bests-2-rivals-for-giant-gas-field-420831.html>

--

*With best regards,  
LBI Team*

[www.lbicompany.com.ua](http://www.lbicompany.com.ua)  
(044) 501 58 41  
(097) 479-13-50

<b>Sender:</b>	"Kent, George P" (b)(6)
<b>Recipient:</b>	(b)(6)
	Kent, George P <(b)(6)>
	Kyiv. ECON FSOs <KYIVCONFESOs@state.gov>;
	(b)(6)
	Yovanovitch, Marie L (b)(6)



<b>From:</b>	"Kent, George P" (b)(6)
<b>To:</b>	(b)(6)
<b>CC:</b>	(b)(6)
<b>Subject:</b>	Re: USAID/MERP cooperation w/energy firms
<b>Date:</b>	Sun, 4 Sep 2016 08:16:11 -0400

The three mentioned don't ring any bells with me, and thus no alarm bells :). Thanks for sharing

Sent from my BlackBerry 10 smartphone.

Original Message

From: (b)(6)  
 Sent: Sunday, September 4, 2016 2:28 PM  
 To: (b)(6)  
 Cc: (b)(6) (b)(6) (EE/AA) (b)(6) (KYIV/OEG); Kent, George P  
 Subject: Re: USAID/MERP cooperation w/energy firms

Ok, thx. And re: DTEK, the autocorrect spelled out wayward instead of eastward...

Sent from my iPhone

> On Sep 4, 2016, at 14:26, (b)(6) wrote:  
 >  
 > Thanks, (b)(6) Also looping in George who was closely following this issue. I am not familiar with the other three companies.  
 >  
 >  
 > This email is UNCLASSIFIED.  
 >  
 >  
 > From: (b)(6)  
 > Sent: Sunday, September 04, 2016 2:21 PM  
 > To: (b)(6)  
 > Cc: (b)(6) (EE/AA); (b)(6) (KYIV/OEG)  
 > Subject: Fwd: USAID/MERP cooperation w/energy firms  
 >  
 > Happy weekend!  
 >  
 > As discussed in huddle, FYI and let us know if you have concerns with our engagement

with these firms through our municipal energy efficiency project (MERP). As we expand  
wayward, we're likely to engage with DTEK as well.

>

> Thanks!

>

> Sent from my iPhone

>

> Begin forwarded message:

> From: Andriy Nesterenko

(b)(6) <http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://  
/redirect.state.sbu/?url=mailto:(b)(6)>

> Date: September 1, 2016 at 12:44:46 GMT+3

> To: (b)(6)

(b)(6) <http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://red  
irect.state.sbu/?url=mailto:(b)(6)>

> Cc: (b)(6)

(b)(6) <http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://red  
irect.state.sbu/?url=mailto:(b)(6)> Joel Sandefur

(b)(6) <http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://re  
direct.state.sbu/?url=mailto:(b)(6)> Laura Gonzales

(b)(6) <http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://re  
direct.state.sbu/?url=mailto:(b)(6)> Roman Woronowycz

(b)(6) <http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=htt  
p://redirect.state.sbu/?url=mailto:(b)(6)>, Rachel Roe

(b)(6) <http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirec  
t.state.sbu/?url=mailto:(b)(6)>

> Subject: Burisma

> (b)(6)

>

> Burisma has been notified that MERP will be conducting the award ceremony without  
their participation. Everything went well.

>

> In addition to Burisma, MERP has MOUs with the following private companies:

>

>

> No

>

> Organization / Date

>

> Contact person

>

> Contacts

>

>

> 1.

>



>  
>  
> Regards,  
>  
> Andriy  
> <winmail.dat>

<b>Sender:</b>	"Kent, George P" (b)(6)	
<b>Recipient:</b>	(b)(6)	

**From:** (b)(6)

**To:** (b)(6); (b)(7)(C)  
 (b)(6)  
 Kent, George P (b)(6)

**CC:** (b)(6)

**Subject:** Re: Zlochevsky, Burisma, Cravath, and image rehab campaigns

**Date:** Fri, 16 Sep 2016 03:33:28 -0400

(b)(6) will also join.

Sent from my BlackBerry 10 smartphone.

**From:** (b)(6); (b)(7)(C)

**Sent:** Friday, September 16, 2016 10:28 AM

**To:** (b)(6) Kent, George P; (b)(6)

**Cc:** (b)(6)

**Subject:** RE: Zlochevsky, Burisma, Cravath, and image rehab campaigns

Will be there.

(b)(6); (b)(7)(C)

Legal Attaché  
 Kyiv, Ukraine  
 Office: +380 (44) 521 5053  
 (b)(6); (b)(7)(C)

SBU  
 This email is UNCLASSIFIED.

**From:** (b)(6)

**Sent:** Friday, September 16, 2016 8:31 AM

**To:** (b)(6) Kent, George P; (b)(6); (b)(7)(C) (b)(6)

**Cc:** (b)(6)

**Subject:** RE: Zlochevsky, Burisma, Cravath, and image rehab campaigns

Thank you I will be there.

**From:** (b)(6)

**Sent:** Friday, September 16, 2016 8:04 AM

**To:** Kent, George P; (b)(6) (b)(6); (b)(7)(C) (b)(6)

(b)(6)

(b)(6)

**Subject:** RE: Zlochevsky, Burisma, Cravath, and image rehab campaigns

Sept 21 at 10 am in AMB office.

Best regards,

(b)(6)

AMB OMS, U.S. Embassy Kyiv  
Office: +380-44-521-5479

(b)(6)

---

**From:** Kent, George P

**Sent:** Friday, September 16, 2016 7:53 AM

**To:** (b)(6); (b)(6); (b)(7)(C); (b)(6)

**Cc:** (b)(6)

**Subject:** RE: Zlochevsky, Burisma, Cravath, and image rehab campaigns

(b)(6) for finding a time for an ambassadorial brief

(topic: Zlochevsky/Burisma – asset recovery and past crimes of the Yanu regime, as they intersect US corporate/individual interests)

SBU

This email is UNCLASSIFIED.

---

**From:** (b)(6)

**Sent:** Friday, September 16, 2016 7:50 AM

**To:** (b)(6); Kent, George P; (b)(6); (b)(7)(C); (b)(6)

**Subject:** Re: Zlochevsky, Burisma, Cravath, and image rehab campaigns

I would like to join for this. Thx

Sent from my BlackBerry 10 smartphone.

**From:** (b)(6)

**Sent:** Friday, September 16, 2016 7:48 AM

**To:** Kent, George P; (b)(6); (b)(7)(C); (b)(6)

**Subject:** Re: Zlochevsky, Burisma, Cravath, and image rehab campaigns

Will be prepared to brief her whenever she has time.

Sent from my BlackBerry 10 smartphone.

**From:** Kent, George P

**Sent:** Thursday, September 15, 2016 23:07

**To:** (b)(6); (b)(7)(C); (b)(6)

**Subject:** Zlochevsky, Burisma, Cravath, and image rehab campaigns

(b)(6) stage. I've suggested to the Ambassador that she should get a briefing from (b)(6); (b)(7)(C) re the background on the Zlochevsky case and LEGATT/DOJ efforts in 2014 on asset recovery.

SBU  
This email is UNCLASSIFIED.

---

**From:** Yovanovitch, Marie L  
**Sent:** Thursday, September 15, 2016 7:01 PM  
**To:** Kent, George P  
**Subject:** Fw: Letter from John Buretta

What is this about?  
Sent from my BlackBerry 10 smartphone.  
**From:** (b)(6)  
**Sent:** Thursday, September 15, 2016 6:10 PM  
**To:** Yovanovitch, Marie L  
**Cc:** John Buretta  
**Subject:** Letter from John Buretta

Ambassador Yovanovitch:

Please see the attached letter from John Buretta.

Regards,  
(b)(6)

(b)(6)  
Cravath, Swaine & Moore LLP  
825 Eighth Avenue, New York, NY 10019  
212-474-1358 (b)(6)

<b>Sender:</b>	(b)(6)
<b>Recipient:</b>	(b)(6); (b)(7)(C)
	(b)(6)
	Kent, George P (b)(6)
	(b)(6)

<b>From:</b>	(b)(6)
<b>To:</b>	(b)(6)
<b>BCC:</b>	<p>EUR-PD-DL &lt;EUR-PD-DL@state.gov&gt;;                  EUR-EE-DL &lt;EUR-EE-DL@state.gov&gt;;                  EUR-Press &lt;EUR-Press-DL@state.gov&gt;;                  EUR-Ukraine Desk-DL &lt;EUR-UkraineDesk-DL@state.gov&gt;;                  Nuland, Victoria J (b)(6)</p> <p>(b)(6)</p> <p>Yovanovitch, Marie L (b)(6)</p> <p>Kent, George P (b)(6)</p> <p>Kyiv, VPOTUS &lt;KyivVPOTUS@state.gov&gt;;                  Kyiv, PAS FSOs &lt;KYIVPASFSOs@state.gov&gt;;                  (b)(6)</p> <p>Tei Aviv Press VIP &lt;TeiAvivPressVIP@state.gov&gt;;                  (b)(6)</p> <p>(b)(6)</p> <p>Pflegger, Gregory W. (b)(6)</p> <p>Genton, Thomas R (b)(6)</p> <p>(b)(6)</p> <p>(b)(6)</p>
<b>Subject:</b>	Special Media Reaction: VP Biden's Visit
<b>Date:</b>	Tue, 17 Jan 2017 12:40:15 -0500

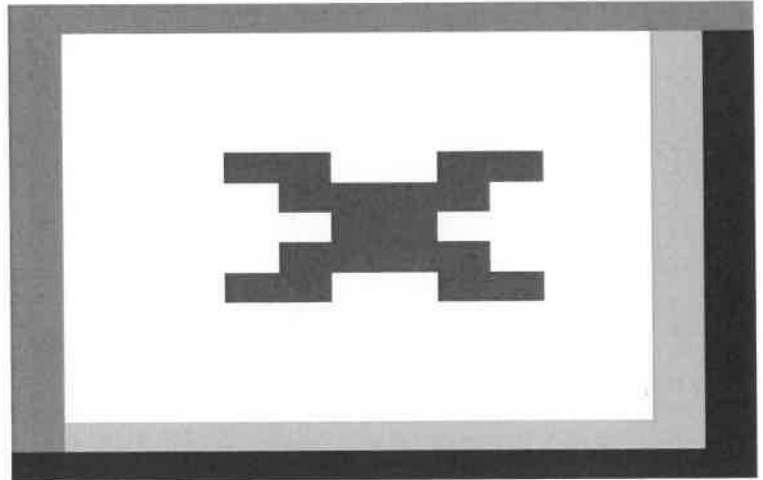
**PUBLIC AFFAIRS OFFICE KYIV**

**SPECIAL MEDIA REACTION: VP BIDEN VISIT**

**Tuesday, January 17, 2017**

**SUMMARY:** Vice President Biden's visit to Ukraine has garnered extensive coverage across all Ukrainian broadcast, print, and electronic media. Most prominent was his joint statement with President Poroshenko, in which Biden called for sanctions to remain in place until Russia fulfilled its Minsk commitments, encouraged Ukraine to continue implementing crucial reforms, and expressed hope that the incoming administration would remain a supporter and partner for Ukraine. Initial commentary positively framed U.S. support for Ukraine, but some expressed uncertainty about the future direction of the bilateral relationship. **END SUMMARY**





Cover of the popular daily *Den* headlines: "Biden: Think about the social good -- Vice President of the U.S. on the urgency of such motivation for Ukrainian politicians."

#### **Reform, Minsk, Call for Continued Partnership**

The tone of reporting on the Vice President Biden's trip has been largely positive, with most media carrying the joint Biden-Poroshenko statement. The prevailing themes were the Vice President's call for sanctions to remain in place until Russia fully implemented its commitments under the Minsk agreement; a call for Ukraine to continue implementing crucial reforms; and the hope that the next administration would continue to support and partner with Ukraine. Ukrainian-language print *Ukraina Moloda* sympathetically referred to Biden as "curator" of Ukraine, and underscored his view that only after the restoration of peace and security in the Donbas should Ukraine be expected to fulfil its political obligations under Minsk. *Silski Visti*, a Ukrainian-language newspaper which caters mostly to rural audiences and rarely reports on foreign relations, ran the Vice President's photo on its front page with the Vice President ostensibly calling on the people of Ukraine to "continue down the path of strengthening the rule of law, fighting corruption, and expanding transparency."

#### **Ukraine's Biggest Supporter in the West**

Most reports emphasized Vice President Biden's personal commitment to Ukraine and his friendly and positive working relationship with President Poroshenko. TV Ukraina called Biden the "biggest supporter of Ukraine in the West." ICTV pointed out that Joe Biden had dedicated a quarter century to the development of U.S.-Ukrainian relations. 1+1 and Ukraina included a quote from former Ukrainian Premier Yatsenyuk which stated that Biden was one of the most loyal friends of Ukraine in U.S. history.

#### COMMENTARY:

##### BIDEN TRIES TO HELP IN ALL AREAS HE HAS INFLUENCE IN

Former member of parliament Taras Chornovil, in an opinion piece for the UNIAN wire website urged readers to reject the notion "that the U.S. Vice President, with only a couple of days in office remaining, has flown to Kyiv at taxpayers' expense simply to see old friend President of Ukraine. Kyiv was a stop on the way to Davos. But some pretty important points were voiced during this visit, which Obama's successor will find difficult to ignore. Biden is truly concerned with the situation in Ukraine and sincerely tries to help in all areas where he has influence."

##### BIDEN'S PERSEVERENCE

Institute of World Policy Director Alyona Getmanchuk wrote in pluralist daily Den that Biden had offered messages that reflected his view of Ukraine's priorities and how the situation with conflict in the Donbas should be settled. Getmanchuk argued that Ukraine had heard those messages multiple times, but lauded the Vice President for his energy and perseverance, categorizing him as the only top Obama Administration official who truly understood Ukraine's importance and had an interest in it as a "success story."

##### THREE REASONS

President of the National Strategies Fund Taras Berezovets wrote in pro-Western Novoe Vremya: "Today there are three reasons for Biden's visit to Kyiv. First: declare publicly support for Ukraine and summarize the work of the informal Poroshenko-Biden commission. Despite the Kuchma-Gore commission, this partnership was never formalized as an institute, but there is plenty of results of joint work between Poroshenko and Biden. Second: Biden most probably will talk about handover of Ukrainian case to his successor...Michael Pence. The third reason is that Joe Biden intends to participate in election race to the White House in 2020."

##### OPPORTUNITY TO STATE KEY POINTS

Kostyantyn Gryshchenko, Ukraine's Minister of Foreign Affairs during the Yanukovych Administration wrote in pluralist daily Den that "Biden's visit is an opportunity to publicly state all those points that are perceived positively in Ukraine, so that in case the Trump Administration departs from these principles, a pointed criticism could be leveled against these actions for lack of adherence to the international law and inviolability of borders in the important part of Europe.

##### LESS MEANINGFUL THAN THE EARLIER VISITS

Institute of Social and Economic Studies, analyst Mykola Kapitonenko, wrote in Den that "this last visit of Joe Biden was less meaningful than the previous ones. It was not only because his is the outgoing Administration, but also because the conflict in Ukraine is becoming a stabilized, structured, and protracted phenomenon... One cannot say that the U.S. had not paid attention

to Ukraine, and Biden's visits are proof enough, although Obama did not personally come to Ukraine even once in eight years. However, the bottom line is that we lost the territorial integrity of Ukraine with the occupation of Crimea and parts of the Donbas"

#### DEFEAT ON UKRAINIAN FRONT

Foreign Affairs editor Mykola Siruk also wrote in *Den*, that Vice President Biden's statement in Kyiv January 16 reiterated what he said in his address to the Ukrainian parliament, Verkhovna Rada December 8, 2015, when he called on the people's representatives not to squander the chance opened up by the Revolution of Dignity. After carefully sifting through the Vice President's key messages, Siruk drew a broader conclusion about the record of Obama Administration vis-a-vis Ukraine: "Despite the support for Kyiv by the United States, the latter have sustained a certain defeat in on the Ukrainian front."

#### OBAMA ADMINISTRATION FAILED TO RESPOND TO KREMLIN

Authoritative columnist Vitalii Portnikov, in his opinion piece about the visit on the *NEWSru* website, came up with a decidedly critical view of the Obama Administration's policy record toward Ukraine and Russia:

"Yes, Biden is a good and engaged friend of Ukraine. But being a friend and broadcasting values is not enough of an adequate reaction that the Obama Administration could have projected as response to Kremlin. The inability of the outgoing U.S. President to correctly appraise the danger coming out of Kremlin in the new circumstances, his persistent conviction that Russia is an economic dwarf unable to challenge the U.S. literally anywhere, has created the world in which we are living now."

#### CAUTION NOT TO ENRAGE INCOMING U.S. ADMINISTRATION

Several publications echoed the concerns voiced by Anatolii Martsynovskyi in an opinion piece for *Ukrainska Pravda/ Yevropeiska Pravda*, posted early on the morning of the visit:

"Perhaps, the organizers hope that this visit will become a small celebration of Ukrainian-American relations. Everybody understands that there is no practical need in the visit of American Vice President, who will stay only a few days at his position. So, this visit is but a gesture..., a sort of classic farewell exchange of courtesies. However, there is a danger that Washington may take this as a different kind of gesture, a rather rude one, - on the part of Kyiv for administration of Donald Trump. Gestures emphasize the position of the country. They can either help to get rid of problems, or create new ones. Gestures are deliberate or merely a mistake, or poorly planned action. There is danger that in case of Biden's visit it is exactly the latter. However, the lack of deliberateness doesn't lessen the potential harm. It is too obvious that in the new, so far unclear for Kyiv, American administration Biden's visit can be interpreted as deliberate unfriendly gesture. And it can be easily interpreted as continuation of Kyiv's unfriendly gesture to democrats. That is why Kyiv has to be at least careful, without, however, lessening Joe Biden's merits and our respect to him."

#### SON'S BUSINESS

*Komsomolskaya Pravda in Ukraine* which is often skeptical of the West and popular Russian-language news website *Strana.ua*. go as far as to propagate rumors surrounding Hunter Biden's business interests in Ukraine's gas development sector (Hunter Biden is a partner in the firm owned by a Yanukovich-era minister) was a factor in the visit: "For Biden, Ukraine is not only a political project but also an business one, where his son Hunter has a role. Now for Biden Sr. it is more important to secure Ukrainian Government's obligation to not change its attitude toward

the shale gas project Hunter is involved with after the Administration transition in the White House."

**Official - Transitory**  
**UNCLASSIFIED**

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	(b)(6)
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<b>From:</b>	"Kent, George P" (b)(6)
<b>To:</b>	John Herbst (b)(6)
<b>Subject:</b>	Uzbekistan
<b>Date:</b>	Mon, 29 Aug 2016 15:53:14 -0400

Thanks. I am not as looped into things Uzbekistan as I am Thai. I recall rumors of Karimov's demise circulating in 1999. 17 years later, it looks like he may finally be in a worse place, with lesser chances to recover.

Sent from my BlackBerry 10 smartphone.

**From:** John Herbst  
**Sent:** Monday, August 29, 2016 10:45 PM  
**To:** Kent, George P  
**Subject:** RE: Dinner on the 12th

<http://redirect.state.sbu/?url=http://www.rferl.org/content/who-would-replace-uzbekistan-karimov-president/27952766.html>

You probably already have this in one form or another. I have no clue who will replace Karimov, if his time has come, but it is interesting that the two Rustams are mentioned. They would have been mentioned in similar circumstances when I was in Tashkent. Also, there is no reason to assume that any of these three will be the one. In any case, I do not expect a power struggle.



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**From:** Kent, George P [[http://redirect.state.sbu/?url=mailto:\(b\)\(6\)](http://redirect.state.sbu/?url=mailto:(b)(6))]  
**Sent:** Monday, August 29, 2016 3:09 PM  
**To:** John Herbst (b)(6)  
**Subject:** Dinner on the 12th

Sounds good. Velida may join, depending on what Tia cooks, and what we talk about.

It will be interesting to see if Ortiz sticks around as a hitting instructor, if only in spring training. Listening to him in spring training and earlier this year talking to journalists about his approach to the art of hitting and how it had changed throughout his career reminded me of listening to Pedro in his later years on the art of pitching. Ortiz actually is a much more perceptive hitter than he was 5 or 10 years ago, and gets into the minds of pitchers in ways he did not do before.

**From:** John Herbst [[http://redirect.state.sbu/?url=mailto:\(b\)\(6\)](http://redirect.state.sbu/?url=mailto:(b)(6))]  
**Sent:** Monday, August 29, 2016 10:04 PM

**To:** Kent, George P; Taylor, W  
**Subject:** RE: PGs and Baseball, and Kyiv

George,

I'd be happy to join you for dinner Sep 12. Let's do this solo. I would like to get your take on just about everything.

As for Ortiz, his OPS was well over 1100 in June and now down to about 1050. Your observation may explain it. But he is still leading the bigs in OPS and XB. I just checked his lifetime stats and was surprised to see his lifetime XB total. As far as I know there is no recorded stat for this -- although it would be relatively easy to put together; but since his BA is only in the 280's, my guess is that he is in the top three of batters with the highest % of XB to hits. For instance, his % is better than Ted's and his 2B total is about 100 more. The Monster made Ortiz, who felt no need to pull everything, a prodigious 2B hitter.

John



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**From:** Kent, George P

[[\(http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:\(b\)\(6\)\)](http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6))]

**Sent:** Monday, August 29, 2016 2:46 PM

**To:** John Herbst (b)(6) Taylor, W (b)(6)

**Subject:** PGs and Baseball, and Kyiv

We just heard about Lutsenko's interest in a US run (27-28 Sept) this evening from DOJ. He's asking for DOJ leadership. Bruce Schwartz (the DAG for international affairs) may be what's offered. I've been the Lutsenko handler this year -- have met him more than a half dozen times, including three before his appointment, and 3-4 since. We now have former NJ Federal prosecutor (and born in Ukraine) Bohdan Vitvitsky as an embedded adviser. Bohdan has started drinking a bit of the Lutsenko kool-aid the past week or so, in the wake of the PGO-NABU showdown, which to the rest of the outside appears like a straight forward old Ukraine-New Ukraine morality tale. Bohdan thinks they all are acting like puerile middle schoolers. That may be true, but it may also be true that Lutsenko ends up on the wrong side of history by choice. I suspect he had terms dictated to him by P2, in terms of untouchables under him (who are an integral part of Team Shokin, and whom he told me initially in the spring time needed to be cleaned out). Those untouchables—Stolyarchuk and Sus—before Lutsenko came on board went after the folk we were working with to reform the PGO in the way P2 asked VP Biden, even to the point of arrogantly saying in public they would summon the US Ambassador (Geoff) for an interrogation (about our assistance, which they felt was being skimmed by the reformers which they forced out). Sus is the one who went after NABU this month. Lutsenko unapologetically

defended Sus to the hilt last week to me, in what was the most disappointing engagement we've had with him to date.

My honor to sit with you over coffee, or a meal – dinner Sept 12? I have hired my Thai cook from two Bangkok tours to be the DCR chef; she arrived last week. Happy to just have you over, or invite some Ukrainian interlocutors as well. Alas, it's still the old DCR. OBO's incompetence in managing the overhaul of the old Marine House and soon to be DCR knows no bounds. They turned over the property/project to the embassy last summer. But Embassy discovered over the winter that: the average temperature with the heat on was between 32-40F in Jan/Feb; the water and sewage did not meet code; and the electricity load was ¼ what a building that size needed (so they couldn't add space heaters). Same factors affected the new America House/old Consular section, which shut down last winter due to the cold. So we won't move into our new digs until October it would appear (with our HHE in a warehouse on the outskirts of town, and we living on suitcases and UAB).

It is painful watching Ortiz run to first base now. If you notice, since June he is turning many doubles into singles, rather than the reverse, and his average may well end south of .300. But he does seem determined to go out on a locked-in positive performance note, has reached 30-100 already, whether or not the team gets him to the post season one last time (watching the pitching is more painful than watching him run). Some of the young Yankees look like keepers.

Regards - George

---

**From:** John Herbst

[[\(b\)\(6\)](http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6))]

**Sent:** Monday, August 29, 2016 9:05 PM

**To:** Taylor, W; Kent, George P

**Subject:** RE: former PG Yarema's trip to DC - what is his agenda, and what is his angle (and peanut gallery commentary)

George,

Thanks for this meaty warning. We already agreed to host Yarema and will not change that. But I will factor into our conversation the Zlochevsky Affair. We are doing a lot of PG work in late September as we also host Lutsenko. Anything that you might share on that would also be appreciated.

Also, I will be in Kyiv Sep 12-18 with Adrian Karatnycky and Anders Aslund. We are formally seeking a meeting with Masha, but it would also be good to sit with you separately. I am on my own the PM of Sep 12 and AM of Sep 13. Can I buy you a drink or coffee in that time slot?

Curiously, Ortiz seems to be having his best season at the tail end of his career.

Best,  
John



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**From:** Taylor, William

[http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6)]

**Sent:** Monday, August 29, 2016 12:08 PM

**To:** Kent, George P <(b)(6)>; John Herbst <(b)(6)>

**Subject:** RE: former PG Yarema's trip to DC - what is his agenda, and what is his angle (and peanut gallery commentary)

I am not eager to help him re-emerge. I think we'll pull the plug. Thanks for the heads up, George.

**From:** Kent, George P

[http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=mailto:(b)(6)]

**Sent:** Monday, August 29, 2016 12:05 PM

**To:** Taylor, William <(b)(6)>; Kent, George P <(b)(6)>; John Herbst <(b)(6)>

**Subject:** Re: former PG Yarema's trip to DC - what is his agenda, and what is his angle (and peanut gallery commentary)

At a minimum, you should grill him about not just the lack of accountability/activity, but specifically the December 2014 decision by him/his team to close the case against Zlochevsky and issue a letter to his lawyers the same day, enabling the assets to be unfrozen.

Your choice whether to engage at all. I presume this trip is part of his re-emergence strategy. To what end, unclear. Were he to return to office under P2, it would not be a sign of progress.

(this spring, we had former PG Piskun trying to meet/spin us with an eye to replacing Shokin. Points for chutzpah if nothing else.)

Sent from my BlackBerry 10 smartphone.

**From:** Taylor, William







(Schedule is being updated, due to the vacation period some meeting are in the process of confirmation)

- Sunday Sept 11, 2016

06:45 - Departure from Kyiv.

1:25pm - Arrive in Washington DC

3:30pm - Arrive at the Hotel (still to be determined)

4:30pm - Lunch

5:30pm - City Tour

- Monday Sept. 12, 2016

08:00 - Breakfast at the Hotel

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1:30-2:30pm - round table at the Atlantic Council, topic "Anti-corruption and Police reforms in Ukraine"

3:00pm - laying flowers to the Holodomor monument.

- Tuesday Sept. 13, 2016

08:30 - Breakfast at the Hotel

10:00 - Meeting with Congresswoman Marcy Kaptur (Dem. Party).

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4:00pm - Wall Street Journal Interview

- Wednesday Sept. 14, 2016

08:00 - Breakfast at the Hotel

09:00 - Foreign Policy interview

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4:30pm - laying flowers to the Taras Shevchenko monument.

- Thursday Sept. 15, 2016

08:00 - Breakfast at Hotel

09:30 - Peace Institute Amb. Taylor

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- Friday Sept. 16, 2016

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- Saturday Sept. 17, 2016

09:00 - Breakfast at Hotel

10:00 - City Tour

1:30pm - Move out from Hotel

5:00pm - Flight from Washington DC

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Meetings that are confirmed but waiting on the time:

- Senator Ted Cruz
- Senator John McCain
- Senator Durbin Office - National Security Advisor.
- Voice of America Interview
- IRI - Stephen Nix and Mark Green
- State Dept - Ukrainian Desk
- Bohdan Futey - US Federal Judge

Waiting for Confirmation on meetings:

Congressman Eliot Engel  
Senator Chris Murphy  
National Security Council - Greg Pflieger  
INL

Andrii

This email is UNCLASSIFIED.

SBU  
This email is UNCLASSIFIED.

<b>Sender:</b>	"Kent, George P"	(b)(6)
<b>Recipient:</b>	John Herbst	(b)(6)

<b>From:</b>	"Kent, George P" (b)(6)
<b>To:</b>	(b)(6); (b)(7)(C) (b)(6)
<b>Subject:</b>	Zlochevsky, Burisma, Cravath, and image rehab campaigns
<b>Date:</b>	Thu, 15 Sep 2016 16:07:57 -0400

The next stage. I've suggested to the Ambassador that she should get a briefing from (b)(6); (b)(7)(C) and (b)(6) re the background on the Zlochevsky case and LEGATT/DOJ efforts in 2014 on asset recovery.

SBU  
This email is UNCLASSIFIED.

---

**From:** Yovanovitch, Marie L  
**Sent:** Thursday, September 15, 2016 7:01 PM  
**To:** Kent, George P  
**Subject:** Fw: Letter from John Buretta

What is this about?  
 Sent from my BlackBerry 10 smartphone.  
**From:** Jun Li <jli@cravath.com>  
**Sent:** Thursday, September 15, 2016 6:10 PM  
**To:** Yovanovitch, Marie L  
**Cc:** John Buretta  
**Subject:** Letter from John Buretta

Ambassador Yovanovitch:  
 Please see the attached letter from John Buretta.  
 Regards,  
 Jun

Jun Li  
 Cravath, Swaine & Moore LLP  
 825 Eighth Avenue, New York, NY 10019  
 212-474-1358 | jli@cravath.com

<b>Sender:</b>	"Kent, George P" (b)(6)
<b>Recipient:</b>	(b)(6); (b)(7)(A) (b)(6)

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GEORGE A STEPHANAKIS  
DARIN P MCATEE  
GARY A BORNSTEIN  
TIMOTHY G CAMERON  
KARIN A DEMASI  
LIZABETHANN R EISEN  
DAVID S FINKELSTEIN  
DAVID GREENWALD  
RACHEL G SKAISTIS  
PAUL H ZUMBRO

September 15, 2016

Dear Ambassador Yovanovitch:

I respectfully write with regard to my clients, Burisma Holdings Limited (“Burisma”) and Mr. Mykola Zlochevskiy, to address the announcement yesterday by the Pechersk District Court of the City of Kyiv of the Decree dated September 13, 2016. The Court reviewed the case file and came to the conclusion that Mr. Zlochevskiy is a witness, not a suspect, in criminal proceeding No. 4201400000000805, and that no further criminal procedural measures should be taken against him. The Court also ordered the Prosecutor General’s Office of Ukraine (the “PGO”) to remove Mr. Zlochevskiy’s name from the wanted list, due to a lack of evidence. The Court’s decision is consistent with the prior findings of a U.K. Court that the same allegations against Mr. Zlochevskiy were unsupported. Both courts’ decisions reflect the application of the rule of law to the facts and should be respected.

Mr. Zlochevskiy owns Burisma, one of Ukraine’s most significant natural gas producers. Burisma is a well-run company committed to Ukraine’s energy independence and to good corporate governance. Burisma’s board of directors is comprised of, among others, prominent and experienced U.S. and European advisers who likewise are committed to sustainable energy production and legal compliance.

In August 2014, the PGO opened an investigation (No. 4201400000000805) pursuant to part 3 of Article 368-2 of the Criminal Code of Ukraine. The investigation was opened shortly after the United Kingdom’s Serious Fraud Office (the “SFO”) commenced a money laundering investigation in March 2014, and obtained a Restraint Order on Mr. Zlochevskiy’s companies’ accounts held at a London branch of BNP Paribas (“BNP”) in April 2014. The centerpiece of the SFO’s claim was that Mr. Zlochevskiy had allegedly abused his position as the Chairman of the State Committee on Natural Resources in order to issue special permits for subsoil rights to companies in which he had an interest, thus purportedly committing the common law offense of misconduct in public office. In connection with the U.K. proceeding, the

Ukrainian government, BNP and Mr. Zlochevskiy produced voluminous materials to the SFO and to the U.K. Central Criminal Court (the "U.K. Court") for consideration. Those materials included, among others, documents explaining the origins of Mr. Zlochevskiy's wealth, the regulatory environment in Ukraine, the history of the corporate structure of Mr. Zlochevskiy's companies, the nature of the business deals that resulted in the payments into the BNP accounts, the reasons why the accounts were opened in the first place and the information required by and provided to BNP to ensure regulatory compliance.

In a lengthy decision, the U.K. Court soundly rejected the SFO's claim that there was reasonable cause to believe Mr. Zlochevskiy's assets were unlawfully acquired as a result of misconduct in public office. The decision is attached hereto as Exhibit A. The U.K. Court stated that "the case remains a matter of conjecture and suspicion with no or insufficient concrete data on which a clearly founded restraint application is made." (Exhibit A at 20.) Furthermore, the U.K. Court found that there were no "reasonable grounds for a belief that [Mr. Zlochevskiy's] assets were unlawfully acquired as a result of misconduct in public office. It is plain from the business history now available that [Mr. Zlochevskiy] was already a businessman of some 12 years standing before he held office. He was declaring income of some US \$2 million throughout his second period of office. Oil and gas industries can yield very large sums of money and according to the prospectus material in the possession of the BNP, the Burisma group of companies is the second largest gas producer in Ukraine at a time when demand for gas was rising, and its total worth is now very great." (*Id.* at 14-15.) Finally, the U.K. Court found that there was a material and "significant failure of disclosure of relevant documents" on the part of the SFO; in other words, the SFO withheld evidence favorable to Mr. Zlochevskiy. (*Id.* at 13 ("10 of the 17 documents in the defendant's supplementary schedule should have been disclosed . . . . The judge was left with the impression that the only reason for the accounts to be opened was money laundering, whereas evidence about the companies' reasons for opening the accounts, the information they provided to the due diligence inquiries, and the bank's initial satisfaction with answers in response to its information gathering before opening the accounts, would all be evidence that a defendant, if present at the hearing, would have wanted to have been before the judge.")) As a result, the Court discharged the restraint order and exercised its discretion to refuse to enter a new order. (*Id.* at 20.)

The U.K. Court's decision was premised on the rule of law. Information was exchanged, evidence was adduced and a court of law made a decision based on written laws. With due process applied, the baseless allegations against Mr. Zlochevskiy were soundly rejected.

In the past, media outlets in Ukraine and others, including the former Ambassador to Ukraine, have conveyed a different, and inaccurate, narrative about the U.K. case. As recently as a few months ago, for example, the Kiev Post claimed that the outcome of the U.K. proceeding was allegedly the result of corruption within the PGO and specifically driven by the PGO's provision of a letter to the U.K. Court claiming that no investigation of Mr. Zlochevskiy was then pending in Ukraine. The claim in the Kiev Post, which echoed prior inaccurate statements along the same lines by others, is clearly



incorrect. The U.K. Court based its decision on the facts and the law, not based on a letter from the PGO about whether an investigation existed in Ukraine. (Id. at 21 (“investigation 805 was one of those mentioned in the 2 December 2014 letter which stated that allegation notification had not been delivered due to absence of grounds for criminal prosecution. It is not known why the authorities subsequently changed their minds 27 days later, or whether fresh evidence has arisen. Equally it is not known what persuaded the judge to make a seizure order without notice, when of course the assets were already subject to an existing UK order of which the defendant had notice.”).) These baseless claims in the media, seeking to tarnish Mr. Zlochevskiy’s reputation, are the opposite of the rule of law.

The recent actions of the Pechersk District Court only further demonstrate that the claims against Mr. Zlochevskiy in Ukraine—claims that the U.K. Court had already adjudicated and rejected—are baseless. The Ukraine Court’s decision was preceded by provision to the Special Investigative Division of voluminous documentation demonstrating the bona fides of Mr. Zlochevskiy’s income. We attach hereto as Exhibit B a list of certain key documents previously provided to the PGO.

We respectfully request that Your Excellency take into consideration these objective facts when considering the narrative promoted by some, and no doubt to be repeated again, in disregard of the facts and the law and the decisions by courts in two different countries.

Respectfully,



John D. Buretta

Ambassador Marie L. Yovanovitch  
U.S. Embassy in Ukraine  
4, I. Sikorsky St. (formerly Tankova)  
04112 Kyiv, Ukraine

VIA EMAIL AND COURIER

# **Exhibit A**



Case No: RSTO/7/2014

IN THE CENTRAL CRIMINAL COURT

Old Bailey  
London  
EC4M 7HS

Date: 20/01/2015

**Before :**

**THE HONOURABLE MR JUSTICE BLAKE**

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**Between:**

**SERIOUS FRAUD OFFICE**  
**- and -**  
**MYKOLA ZLOCHEVSKYI**

**Applicant**

**Defendant**

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**Mr Jonathan Kinnear QC and Mr Jonathan Lennon (instructed by) for the SFO**  
**Mr Hugo Keith QC (instructed by Peters and Peters) for the Defendant**

Hearing dates: 3.12.2014 – 5.12.2014  
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**Approved Judgement as Revised 21 January 2015**

**The Honourable Mr Justice Blake:**Introduction:

1. On 16 April 2014, at a without notice application made to His Honour Judge Kramer QC sitting in private at this court, a restraint order was made against the defendant, who I shall refer to as MZ for short, and three third parties, Brociti Investments Limited, Burisma Holdings Limited and Andrii Kicha preventing them from dealing with assets in a number of bank accounts (the accounts) held at a London branch of the BNP Paribas (BNP).
2. This is the hearing of the defendant's application to discharge the order and, in the event that the order was to be discharged, the applicant's application for a new order in similar terms.
3. MZ is a national of Ukraine, he is a wealthy businessman. He is a former member of the Ukrainian parliament, the Rada, and has held political office. From 16 December 2003 to 22 February 2005 he was appointed Chairman of the State Committee for Natural Resources, a committee overseen by the Ministry of Environmental Protection. During that time two private companies owned by the defendant, Esko-Pivnich and Pari, were awarded licences to explore for oil pursuant to a new procedure for tendering established by a resolution of the Ukrainian Cabinet of Ministers in October 2003. Other exploration licences were subsequently awarded when he was not in office as were further licences to commence production.
4. In February 2005, the defendant was dismissed from his post when there was a change of government in Ukraine. He remained out of office until March 2010 when there was another change of government that remained in power until February 2014. During this second period the defendant held the posts successively of Chairman of the State Committee for Material Reserves (March to July 2010); Minister of Environmental Protection (July to December 2010); Minister of the Environment and Natural Resources (December 2010 to April 2012) and Deputy Secretary of National Security (April 2012 to February 2014). The first three positions were connected with the licensing of exploration and production of the natural resources of Ukraine. The last position was not and did not form part of the executive.
5. In February 2006, during the period when he was out of office and his political opponents were in power, an executive decree cancelled the exploration licences granted to his companies in 2004. The validity of this decree was successfully challenged in the Ukrainian courts in 2007, and the prosecutor's subsequent appeals up the judicial hierarchy as far as the Supreme Court of Ukraine were all dismissed. In February 2006 the Minister of Internal Affairs announced a criminal inquiry into the activities of the committee of which the defendant was chairman but no formal investigation resulted. Allegations of corruption against political opponents appear to have been a feature of Ukrainian political life at this time. The same minister was one of those subsequently jailed for offences following the change of regime in 2010.

6. The only connection that the defendant has with the United Kingdom is that the two companies owned by him, Brociti Investments and Burisma Holdings, have held bank accounts at the BNP since about June 2013. Some US\$35 million was paid into these accounts, of which it is estimated that \$20 million was provided by a company owned by Mr Sergey Kurchenko. Since the change of regime in Ukraine in February 2014 criminal proceedings have been instituted against Mr Kurchenko and his name also appears on a restrictive measure directed against certain persons in view of the situation in Ukraine (Council Regulation (EU) No 208/2014 effective from 5 March 2014 onwards).
7. Mr Andrii Kicha is a Ukrainian commercial lawyer, the chief legal officer of Burisma and other companies owned by the defendant. He was the sole authorised signatory on the BNP accounts that are the subject to the restraint order. On 11 and 25 March 2014 he instructed BNP to transfer the balance of some \$23 million held in the accounts to other accounts of the companies held in Cyprus. In his witness statement of 18 June 2014, made for the purpose of these proceedings, he states that the reason for the transfer was that BNP had wanted, since October 2013, to close the accounts and an end date of 4 April 2014 had been agreed in order to do so.
8. It seems, however, that these requests may have been the trigger for a notification by the bank to the SFO. On 22 March 2014 the Director of the SFO authorised a money laundering investigation into the defendant. On 3, 4 and 8 April production orders were issued to the bank pursuant to s. 345 of the Proceeds of Crime Act 2002 (the Act). The first two orders were complied with by 11 April 2014. The third order resulted in much more documentation being supplied to the SFO between 6 May and 20 May 2014 and a special team was assembled to examine 6170 electronic documents. As a result of this review, on 22 August 2014, 22 documents were produced to the defendant in pursuit of the applicant's duty of disclosure.
9. The SFO investigator Richard Gould made a witness statement on 14 April 2014 in support of the without notice application. The investigation was in its early stages, and the information available to him comprised the product of the two orders that BNP had by then complied with, some information supplied by the NCA liaison officer in Kiev and the product of his own unspecified researches on the internet. A short supplementary (unnumbered) statement by him was filed on 16 April. This was confined to the question whether MZ had made the appropriate disclosure of receipt of a large dividend payment made by one of his companies, as he was required to do as both a public official and a taxpayer. He indicated that as a result of information received from Ukraine he believed that MZ had failed to declare the dividend of some US\$4 million.
10. The hearing before HHJ Kramer QC was short, some 19 minutes in length, and oral evidence was limited to the question of the dividend disclosure relied on as evidence of the defendant's dishonesty. The substance of the case put in the witness statement and supporting skeleton argument was that there were reasonable grounds to believe that the defendant had engaged in criminal conduct in Ukraine and the funds in the BNP account were believed to be the proceeds of such criminal conduct because:-

- i. His wealth increased when he held public office and the only apparent source of his private wealth was from the exploitation of mineral licences awarded to his companies when he held public office.
  - ii. Although no specific offence of bribery or fraud could be identified at this early stage in the investigation, the potential for conflict of interest 'gives rise to a clear inference of a wilful and dishonest exploitation of a direct conflict of interest by a man holding an important public office such as to amount to an abuse of the public's trust in him'. Such conduct would, if committed in this jurisdiction, amount to an offence of misconduct in public office.
  - iii. The complicated pattern of off-shore holding companies established when he was still a serving Minister was effectively to conceal his beneficial ownership of Burisma and the economically active enterprises of which it was the holding company. The court could draw the inference of dishonest motive for the corporate structure.
  - iv. Scrutiny of the statements of the BNP accounts shows very limited activity and this is an indicator that their primary purpose was to facilitate the transfer of criminal property.
  - v. The recent attempt to transfer the assets was troubling evidence of an attempt to avoid sanctions and freezing orders by transferring the funds to the companies' accounts in Cyprus.
11. Since the order was made, evidence has been filed on behalf of the defendant in the form of two witness statements from Mr Kicha with numerous exhibits seeking to explain the origins of the defendant's wealth, the regulatory environment in Ukraine at the time when the defendant held office, the history of the corporate structure of the defendant's companies, the nature of the business deals that resulted in the payments into the BNP accounts, the reasons why the accounts were opened in the first place and the information required by and provided to BNP to ensure regulatory compliance. These include a report from a well known international investigation agency Kress Associates into MZ's business history prepared for BNP and a memorandum on relevant provisions of Ukraine law at the time prepared by reputable lawyers for these proceedings. He states that BNP had asked for closure of the accounts because the reason for applying to the bank in April 2013 to open the accounts in the first place, namely a proposed placement, was no longer going to proceed.
12. Mr Kicha also observed that Mr Gould's second witness statement proceeded on a false basis about disclosure of dividend payments. As a state officer MZ had declared income of approximately US \$2million in 2010 and 2011, \$4.8 million in 2012, and had declared on 24 February 2014 (within the relevant accounting period) the sum of \$3 million received in late November 2013. He suggested that Mr Gould had erroneously looked to the date of the resolution awarding the

payment of a dividend on 28 December 2012 rather the date when instructions were given by Mr Kicha for the payment to be made even though this instruction was in Mr Gould's possession and had been exhibited in his first witness statement (Vol 2/ 240, RG1/73). The date of payment and the February declaration was subsequently accepted by the applicant. There has been no evidence contradicting Mr Kicha's account that earlier declarations had been made.

13. The defendant also relied on the witness statement of Mr Boiko a defence lawyer and current chair of the Bar Council of Kiev and Professor Sakwa. Mr Boiko gives evidence both of the procedural requirements of Ukrainian criminal law and the fact that although the present authorities in Ukraine have been anxious to investigate possible criminal wrongdoing by the defendant, and a number of different investigations connected with him have been opened, he has never been named as a suspect in any criminal investigation. An embezzlement inquiry (investigation 155) into a procurement fraud in his department concerned others and related to events after MZ had left that office.
14. The Ukrainian authorities had written on a number of occasions to the applicant giving information about inquiries that had been opened but had not progressed to the point where evidence of wrongdoing had been discovered such as to require the prosecutor to inform MZ that he was a suspect. Shortly before the hearing of this application a letter dated 2 December 2014 was received from the General Prosecutor of Ukraine stating that in respect of five separately identified investigations opened between 19 December 2012 and 6 August 2014 ( including 155 and another investigation 181) 'allegation notification was not delivered to MZ due to absence of grounds for criminal prosecution.' It may be the case, as Mr Gould points out in his second witness statement, that search warrants were executed at his premises in April and May 2014 but that does not mean that there was evidence to make him a suspect.
15. Professor Sakwa gives some background evidence about the susceptibility of the prosecution authorities in Ukraine to political pressure as regimes change. Given the state of the evidence that no investigations of criminal conduct against the defendant in Ukraine have resulted in his being named as a suspect some ten months after the change of regime, this evidence is only of very limited assistance.
16. The defendant's solicitors have pressed for full disclosure of relevant data that might undermine the applicant's case or support that of the defendant emerging from the product of the first two orders that were available before the hearing on 16 April. Mr Gould disputed that there was anything further to be disclosed in his second witness statement of 29 August 2013 (at [9] to [12]) and specifically addressed this in his third witness statement of 3 October 2014, where he again disputed that there was any relevant disclosure to be made from this material. This remained the position of the applicant in the written submissions lodged and when Mr Kinnear QC addressed me in response to the defendant's application on 4 December the second day of this three day hearing.

17. However, on 5 December, following overnight inquiries and a request for a short adjournment to consider matters, Mr Kinnear concluded that on reviewing the contents of the first production order, there were a small number of documents that should have been disclosed. Disclosure was now being made. In the interest of transparency the whole of the material produced would be supplied to the defendant's team. As a result of these developments the applicant would not now oppose the defendant's application to set aside HHJ Kramer's order but it was nevertheless contended that I should make a fresh order for restraint in the light of all the evidence.
18. As the defendant had not had the opportunity to examine the relevance of the three volumes of material supplied on 5 December (some of which was duplicated material) a time-table was set for further written submissions to be lodged before the end of last term. I have received those submissions and carefully considered them. I conclude that there is no need for this hearing to be reconvened for further oral submissions, nor is there any need for me to be provided with bundles of the newly disclosed material. It is sufficient to note that of the 17 documents identified and described by the defendant in a schedule dated 11 December, the applicant now accepts that 10 should have been disclosed and that at least two mis-statements of fact were made by Mr Gould in his third witness statement, about the documents the applicant had in its possession.

#### The Law

19. The parties are in broad agreement as to the governing law with respect to the following propositions:
- i. The court has the discretion to make a restraining order if the statutory conditions are met (s.41 (1) of the Act).
  - ii. As the Director of SFO had authorised the commencement of a money laundering investigation in March 2014 the relevant statutory conditions are those set out in s.40((2)(b) of the Act namely 'there is reasonable cause to believe that the offender has benefitted from his criminal conduct'.
  - iii. A necessary aspect of this test, in present circumstances, is whether there is reasonable cause to believe that the defendant has committed any criminal conduct in the first place.
  - iv. Reasonable cause to believe that the defendant has committed a crime requires a higher threshold than a reasonable cause to suspect that he may have done, but at an early stage in an investigation there will be many uncertainties, which do not prevent the existence of a reasonable cause to believe (Windsor [2011] 2 Cr App R 7 per Hooper LJ at [53], [78], and [87]).
  - v. The criminal conduct concerned does not have to be an offence punishable in Ukraine (s.76 (1) and 340 (2) of the Act).



- vi. It is not necessary to establish that money that is being handled is criminal property by identifying that it is the product of a specific criminal offence; it suffices if all the circumstances give rise to an irresistible inference that it could only be derived from crime (Anwoir [2008] 2 Cr App R 36 at [21]).
  - vii. An inference that a crime has been committed is only irresistible if it is the only reasonable inference that can be drawn from the evidence as a whole and all inferences consistent with the absence of criminality can be excluded. However, this is the test to be applied by the fact finder at the conclusion of the trial process after all the material evidence has been tested (Jabbar [2006] EWCA Crim 2694 per Moses LJ at [21]).
20. The way that the applicant advanced his case on 16 April 2014 and the primary way in which the case was developed in the written and oral submissions for the December hearing, was that the defendant's assets were the product of criminal wrongdoing when he held public office, and that in the absence of any specific evidence of corruption or fraud, such wrongdoing is reflected in the common law offence of misconduct in public office. The elements of that offence have been described in Attorney General's Reference No 3 of 2003 [2004] 2 Cr App R 23. So far as is material to present circumstances, the prosecution must show that a public officer without reasonable excuse 'wilfully neglects to perform his duty or misconducts himself to such a degree to amount to an abuse of the public's trust in the office holder.'
21. I accept Mr Kinnear's submission that for present purposes it matters not whether Ukraine has an equivalent offence of misconduct in public office. However, in order to show either misconduct or a failure to perform a duty and in order to evaluate whether any failure is sufficiently grave to amount to an abuse of trust, there needs to be some breach by the defendant of a local obligation that is imposed with respect to the office. That means that provisions of Ukrainian law and the conditions of public service relating to conflicts of interests are relevant as a matter of fact. In my judgment, it is not sufficient that MZ was the owner of the shares in a holding company that owned oil and gas production companies and related companies that were commercially active when he held office, unless there was some local requirement to divest himself of all such shareholdings during the period of office.
22. In support of the submission that, whatever their origin, the assets in the account were the proceeds of money-laundering, the applicant points to the complex nature of the commercial transactions described by Mr Kicha, the origin of the venture that is said to be the source of the funds paid into the accounts, the use of offshore companies, the evidential gaps in the documentation produced by him, the absence of any evidence from the defendant himself and the other participants in the joint venture.
23. I accept that as a matter of law appropriate adverse inferences may be drawn from a defendant's failure to explain apparently incriminating evidence consistent with money laundering activity. Whether it is right to draw such an inference depends

on all the surrounding circumstances, the evidential strength of the applicant's secondary submission, and whether there is good reason to doubt what Mr Kicha has said on behalf of the defendant and the interested parties.

24. If there is jurisdiction to make a restraint order, there is a clear legislative steer as to how discretion should be exercised. The application is made in the public interest in order to preserve from dissipation, assets that may be confiscated upon conviction or other order: see s. 69 (2) of the Act and the observations of the court in Jennings v CPS [2005] EWCA Civ 746 [2006] 1 WLR 182 at [56] dealing with the provisions of the predecessor legislation.
25. In this case, the continued existence of an investigation is dependent on the restraint order being continued. If the assets are transferred to the companies' accounts in Cyprus, it is improbable that resources will continue to be devoted to the question of whether they were the proceeds of money laundering. Further, by contrast with most of the cases cited by the parties, by the time of the hearing the British authorities had not brought any charge against anyone concerned with the funds in the BNP banks. It was far from clear that there would be such a charge or that there would be confiscation proceedings related to the accounts.
26. It is clear that a public authority seeking a restraint order without notice has to comply with a duty of candour that goes beyond an obligation not to misrepresent. As Hughes LJ put it in Re Stanford International Bank Ltd [2010] EWCA Civ 137; [2010] 3 WLR 941 at [191]:

'It consists in a duty to consider what any interested person would, if present, wish to adduce by way of fact, or to say in answer to the application, and to place that material before the judge. That duty applies to an applicant for a restraint order under POCA in exactly the same way as to any other applicant for an order without notice. Even in relatively small value cases, the potential of a restraint order to disrupt other commercial or personal dealings is considerable. The prosecutor may believe that the applicant is a criminal and he may turn out to be right, but that has yet to be proved. An application for a restraint order is emphatically not a routine matter of form with the expectation that it will routinely be granted. The fact that the initial application is likely to be forced into a busy list, with very limited time for the judge to deal with it, is yet a further reason for the obligation of disclosure to be taken very seriously. In effect a prosecutor seeking an *ex parte* order must put on his defence hat and ask himself what, if he were representing the defendant or third party with a relevant interest he would be saying to the judge, and having answered that questions, that is what he must tell the judge'.

27. If there has been a material failure of disclosure, when considering whether the order should be discharged, the question is not whether the order was obtained as a result of the misrepresentation or non-disclosure but whether the information was material to be taken into account in the exercise of the discretion to grant the relief sought, Stanford (above) per Sir Andrew Morritt C at [83].
28. A failure of disclosure may result in an award of costs and/or a setting aside of the order made without notice, but it may still be in the public interest to make a

fresh order in the light of all the evidence now available to the court and the relevant issues: see Stanford at [97] to [101]; [198] to [202].

The contentions of the parties

29. I do not propose to lengthen this judgment with a detailed consideration of the evidence relating to MZ's period in office, the grant of exploration and production licences, and the regime then applicable in the Ukraine to prevent conflicts of interest. I have had the benefit of skeleton arguments and in addition there has been a contemporaneous live note record kept of the oral submissions made in these proceedings.

30. In essence Mr Keith submits:

- i. It is peculiar that the Director of the SFO decided to open a domestic money laundering investigation without any clear evidence to suggest that the assets in the accounts were criminal property or criminal property derived from offences committed when MZ held public office. If there had been any basis for such a contention there could have been an external request from Ukraine using the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005. There has never been such a request.
- ii. Instead there has been political contact between Ukraine and the United Kingdom since the change of regime in February 2014. There have been high profile commitments on the English side to assist Ukraine to recover stolen assets and some political expressions of support on the Ukrainian side for the fact that the English authorities have taken the lead with respect to MZ.
- iii. It was wholly misleading of Mr Gould in his first witness statement at [12] to indicate that, although MZ has no known criminal convictions against him, according to a letter from the head of the Main Investigation Department in the Ministry of the Interior of Ukraine dated 13 March 2014 (addressed to the National Crime Agency liaison officer in Kiev) investigation 462 opened in December 2013 and 'there are sufficient grounds to suggest that MZ had been receiving his share of money for participating in law violations'. The subsequent disclaimer that as this was not the basis of the application as it was not a formal request for assistance did not cure its prejudicial effect.
- iv. The true position was that any investigation into embezzlement was against other officials in MZ's former department and he appeared to have been interviewed as a witness. The subsequent witness statement of Mr Boiko and the 2 December letter from the state prosecutor's office written for the purposes of the present hearing, indicate that he was never named as a suspect for embezzlement or indeed any other offence, let alone one related to

the exercise of improper influence in the grant of exploration and production licences.

- v. It was equally misleading for the applicant to rely on Mr Gould's assertion that there were well publicised allegations of abuse when the public allegation was that of a political opponent in 2006, who was himself subsequently convicted of offences when the regime changed. There was no evidence at all to suggest that the oil production licences were improperly obtained. Indeed the decision of the Ukrainian courts given when MZ was out of power indicate that there was no perceived irregularity with the way the licences had been granted before 2010. It also appeared that production licenses were granted from 2005 onwards when he was out of power.
- vi. If Mr Gould had properly investigated the requirements of Ukrainian law before relying on the allegations of corruption, he should have been aware that the change of the tendering system was not a decision taken by MZ himself but a change promoted before he took office. This change was not evidence of corruption but a move to liberalise the market. There was a system of checks and requirements before a licence could be issued and the decision was taken by people other than MZ himself, as the detailed analysis of Ukrainian law prepared by a Ukraine branch of a US law firm, Chadbourne and Parke, dated 17 September 2014 that was attached to Mr Kicha's second witness statement of 23 October 2014 confirmed.
- vii. The suggestion in Mr Gould's first witness statement that the acquisition of MZ's wealth coincided with his holding of political office was untrue, as he could (or should) have known if he had properly researched the topic before making the restraint application. A number of the documents provided to BNP Paribas in their regulatory compliance/Know Your Client investigation between April 2103 and June 2013, before the accounts were opened, showed the pre-2003 business history of the defendant indicating that he had been active in a company called Infox since September 1991. Notable in this respect was a Kroll Associates report, dated 3 August 2013 that had been commissioned by BNP's clients and supplied to the bank as part of the intelligence gathering process. This document was disclosed by Mr Gould in his second witness statement 29 August as something that had been disclosed in the third production order effected in May 2013, but it was surprising that core documents from the Know Your Client process were not sought and obtained in the earlier production orders or specially sought before an inaccurate history was presented to the judge.
- viii. Mr Gould's first witness statement gave the impression that it was suspicious that the accounts showed no commercial activity of the

sort that would be expected with an active oil exploration company. The inference was thereby given that the only reason for the accounts being opened was to launder money from tainted sources. In fact the BNP disclosure material should have revealed that the accounts were opened in the context of a private placement to increase the capital base of the companies and the corporate structure was such that these accounts were related simply to the overall holding companies and not the business operational accounts.

- ix. This last point has been supported by the schedule of documents on which the defendant relies arising from 5 December 2014 disclosure. Most of the seven documents, where concessions of disclosure have not been made by the applicant, related to the original reasons for the account being opened and the initial satisfaction of the bank with the results of its due diligence inquiries.
- x. Equally it was wrong for Mr Gould (and also counsel relying on him in the without notice application), to give weight to the request to withdraw the funds from the companies' accounts in London and transfer them to their accounts in Cyprus as evidence of risk of dissipation. The closure of the London accounts had been requested by the bank from October 2013 as would have been known by the time of the without notice application.
- xi. There was clear and damaging misinformation provided to the judge with respect to a failure to declare a dividend when received. In addition it is now accepted that there was a failure to disclose documents that were in the possession of the applicant at the time of the without notice application and which should have been disclosed.
- xii. Taking these matters cumulatively, the misrepresentations and failure to disclose was sufficiently serious to set aside the judge's order and not make a fresh one. The applicant should not be able to rely on its significant failures to now seek an order on a fundamentally changed case when it is recognised that their primary case has collapsed.
- xiii. If the court nevertheless evaluates today whether there is a good case for restraint, on any basis the evidence of Mr Kicha as to the good faith of the business transactions resulting in the payment in and payment out of the funds in the account, is un-contradicted and not undermined by anything the applicant has put forward.
- xiv. In so far as the applicant relies on documentary gaps in Mr Kicha's evidence, this relates largely to documents from third parties and in any event does not establish a reasonable belief that the proceeds of

the account were criminal property the subject of money laundering.

31. By contrast Mr Kinnear contends that:

- i. The failures of disclosure were innocent errors of judgment at an early stage of a complex investigation. Mr Gould had drawn attention to factors favourable to the defence in his first witness statement. There was no reason to doubt the good faith of the applicant in seeking the restraint order in the first place and its replacement with a fresh order today.
- ii. The fact remains that MZ held political office in a former regime now notorious for corruption and abuse of power, as the defendant's own expert Professor Sakwa explains.
- iii. MZ has not made a witness statement detailing how he came by his significant wealth or the nature of his dealings with those who are connected to the funds in the BNP accounts, or explaining the source of the funds paid into the accounts. It is not sufficient for him to rely on the evidence of Mr Kicha and that evidence leaves unanswered questions. It is a reasonable inference that it involved criminality of one sort or another.
- iv. The BNP material dealing with the proposed public to private placement was overtaken by subsequent events when the possibility of a venture was brought to an end. In any event, it is clear that by February 2014 a senior official in the bank was concluding that the relationship should terminate because of concerns about money laundering.
- v. The conclusion that disclosure of the fact that the bank wanted to close the accounts may be prejudicial to the defendant was an exercise of judgment made in good faith.
- vi. It is not sufficient to establish reasonable grounds for belief of money laundering that off-shore companies are used in complex transactions. However, the level of complexity here and the involvement of Mr Kurchenko in a joint venture giving rise to the funds in the accounts, suffice, when combined with the other factors, to substantiate reasonable grounds for a belief that the funds represent criminal property.
- vii. In these circumstances the statutory steer suggests that discretion should still be exercised to restrain the proceeds pending the completion of investigations and the outcome of any possible trial.

## Conclusions:

### *(1) Non-disclosure*

32. In giving directions for the present hearing Phillips J rejected the applicant's application for cross-examination of Mr Kicha. His reasons for doing so were brief but were in essence that such an application is not a detailed examination of the facts but the exercise of a discretion on the principles set out in the legal authorities above. Either the applicant has established a sufficient basis for the grant of relief on the documents or it has not.
33. At an earlier stage of the proceedings, when setting the timetable on 27 June as to when the applicant should file evidence by way of response, he also said this:
- ‘It is not acceptable that this sort of order is obtained unless the SFO has already sufficient evidence to satisfy the court that there is the relevant reasonable cause present and it is not right there should be, effectively, an initial order followed by a period of investigation’.
34. There is common ground between the parties that there has been a significant failure of disclosure of relevant documents resulting from the BNP response to the first two production orders. On any view, 10 of the 17 documents in the defendant's supplementary schedule should have been disclosed. Summarily reviewing the descriptions of the seven documents where the applicant SFO has not conceded that disclosure should have been made, it would appear to me that each was relevant to the exercise of the judge's discretion within the Stanford criteria identified above. The judge was left with the impression that the only reason for the accounts to be opened was money laundering, whereas evidence about the companies' reasons for opening the accounts, the information they provided to the due diligence inquiries, and the bank's initial satisfaction with answers in response to its information gathering before opening the accounts, would all be evidence that a defendant, if present at the hearing, would have wanted to have been before the judge.
35. Taking all seventeen documents together, I am satisfied that a serious error of judgment was made by the applicant's team about what should have been put before Judge Kramer and in response to the defendant's solicitors repeated requests for the product of the initial production orders.
36. I am puzzled by the submission that Mr Gould thought it would be prejudicial to the defendant to inform the judge that BNP wanted the accounts closed. It seems to me infinitely more prejudicial to identify as the 'most troubling aspect' (as counsel's skeleton argument did at [15]) the fact of Mr Kicha's request for BNP to transfer the assets of \$23 million from the BNP account to the companies' accounts in Cyprus when that was what BNP had wanted the companies to do and had set a time table for so doing. Further, on 29 August 2014 Mr Gould exhibited an BNP email dated 11 February 2014 where there is a reference to the deal that is the source of the funds and where it said "it looks" obvious that the deal itself is probably a mixture of money laundering and corruption' which might be the kind of

prejudice he had in mind, but this did not result in more disclosure of the product of the first two orders.

37. Precisely what led the bank to seek to terminate the relationship established in June 2013 is unclear. In October 2013 it may have been simply that the commercial venture that had been proposed was not going to take place, or it may have been other concerns not communicated to the clients. The bank's concerns may have been the starting point of an inquiry into the nature of the assets in the accounts, but this does not amount to a reasonable belief that the assets are criminal proceeds either from some corrupt activity of the defendant or an attempt to money launder the dubious assets of others.

38. In addition to the failure to disclose material documents forming part of the banking relationship with BNP, there was a positive inaccurate (false without any connotation of knowingly and dishonestly false) information about the failure to disclose a dividend in an accounting year before it had been paid. Whilst this was only a small point, it went directly to the credibility and honesty of the defendant and was in fact the only issue ventilated when Mr Gould gave short evidence in a very short hearing. It must have played a role in the judge's decision.

*(2) Criminal property from corruption in office*

39. In the light of the acceptance by Mr Kinnear that the judge's order made without notice should be set aside for material non-disclosure, it seems to me that I do not have to engage in an assessment of whether the order would have been made if no misrepresentation had occurred and the fuller picture set out in the disclosure documents had been provided. The evidential picture before me is fundamentally different to that before him.

40. I accept Mr Keith's submission that despite ample opportunity to do so, nothing has been produced by Mr Gould to undermine the reliability of Mr Kicha's account of the business history and transactions or Chadbourn and Parke's account of the applicable Ukrainian law. However this material along with Mr Boiko's account of the state of the investigations being conducted in the Ukraine undermines most of the six points that I have summarised as the evidential basis for the earlier application at [10] above.

41. I accept that very large sums of money came into the BNP accounts, US \$35 million, of which \$23 million remains. I accept that the defendant held public office in a regime that is presently considered corrupt. I accept that Ukrainian domestic arrangements to prevent conflict of influence by public officials who were already wealthy businessmen and had substantial shareholdings in companies involved in the extractive industries might either be considered inadequate or inadequately enforced. I accept that there is always the possibility that, despite the existence of safeguards as to who makes decision, undue influence can be brought to bear.

42. However, none of these general points establishes reasonable grounds for a belief that his assets were unlawfully acquired as a result of misconduct in public office. It is plain from the business history now available that MZ was already a



businessman of some 12 years standing before he held office. He was declaring income of some US \$2 million throughout his second period of office. Oil and gas industries can yield very large sums of money and according to the prospectus material in the possession of the BNP, the Burisma group of companies is the second largest gas producer in Ukraine at a time when demand for gas was rising, and its total worth is now very great.

43. Mr Kinnear points out that the Kroll Associates report suggests that a career in politics was chosen by MZ around 2002 precisely to develop further his business. I do not read that as an admission of corruption, nor is it likely that BNP did so when agreeing to open the accounts after reading this report. The passage is consistent with a view that unless the regulatory regime was opened up and political changes made to encourage market economy, the role of the private sector and opportunities for economic development were limited.
44. I accordingly conclude that the primary way in which the applicant puts and has put its case, does not support the making of a further restraint order.

*(3) Criminal property by money laundering the assets of others*

45. I now turn to Mr Kinnear's second submission, namely that analysis of the details of the transactions provided by Mr Kicha in his June witness statement itself leads to the conclusion that the funds that went into the accounts were the product of money laundering. If so, whatever the source of MZ's wealth may have been, in 2013 he was engaging in transactions that had no genuine commercial purpose but were designed to transfer money that was in some way tainted out of Ukraine, possibly in anticipation of pending political turmoil in that country.
46. For this point to be explored, it is necessary to summarise some of the transactions on which the applicant founds this submission. I am conscious that Mr Keith's primary response to this second limb is that the court should not consider making a fresh restraint at all giving the misrepresentations, the failure of disclose and the changes in the way the applicants puts its case.
47. Mr Kicha's account of the source of the US \$35m that was placed in the accounts is as follows:
- i. MZ owned property assets of parcels of land outside Kiev. These were unrelated to oil and gas industry. They were held through a company called Chartlux Resources Inc and its subsidiary TOV Kam that was founded on 1 August 2003. In September 2013 these assets were valued at US \$46.34 million.
  - ii. A Latvian businessman called Andrej Kiselovs who had extensive experience in real estate in Ukraine was interested in developing the land in a joint venture with MZ and believed that they could be sold for more than their current valuation.

- iii. There was an agreement to set up a joint venture entity to acquire and hold the assets. This was Cipriato Alliance Limited, a company registered in Belize. MZ and Mr Kiselovs both held a 50 per cent stake in Cipriato. Kiselovs was to invest US\$ 17 million in the venture and MZ \$18 million.
  - iv. TOV Kam did not sell the assets direct to Cipriato, but a complex series of transactions ensued, whereby TOV Kam was sold to a special purpose vehicle called Seanon Limited, Seanon sold it to Brociti and Brociti sold it to Cipriato for \$35 million. MZ was the ultimate beneficial owner of Seanon as well as Tov Kam and Brociti. Seanon was sold to Brociti at a nominal value because this was a transfer between companies all owned by MZ.
  - v. The ultimate sale agreement between Brociti and Cipriato dated 11 December 2013 was provided (see AK8 vol 2/442). The position described above is rendered more complex by the existence of various loans.
  - vi. In due course, the sums representing the \$35m were paid into the accounts in six instalments between 19 December and 21 January 2014.
48. Thus, it is said, the payments were the product of a good faith sale of assets to a joint venture for value. What is not known, possibly because Mr Kicha cannot say and MZ has not made a statement, is:-
- i. Why an asset valued at \$46.3 million was sold to the joint venture for \$35 million?
  - ii. Why MZ thought it appropriate that Mr Kiselovs should acquire 50% of the value of this asset for US \$17 million?
  - iii. What the commercial reasons were to sell the assets through the chain described above?
  - iv. Why the purchase price was paid into the BNP account at a time when the placement proposal was at an end and BNP was suggesting that the account should be closed?

49. Mr Kicha then turns to how MZ raised his share of the funds needed by Cipriato to purchase Seanon. He explains that this was achieved by the sale of an oil terminal and tank farm in Kherson that was owned by him through a British Virgin Islands registered company under his control called Kisaliano Holdings Limited. It is stated that US \$20.03 million was transferred by Kisaliano into Cipriato's bank account in Latvia. A further point is made that that payment did not arouse any regulatory concerns by the bank, although the footnote in the statement refers to regulatory compliance in Estonia not Latvia. The sum paid in was more than the \$18 million that was due to be MZ's share of the investment as

the balance was a loan to Mr Kiselovs to help him raise his share of the joint venture.

50. Mr Kicha then explains more about Kisaliano and the sale of the oil terminal. He states that the property in question was owned by MZ's operating company Infox from 2002 having had an earlier association with it when an opportunity arose to acquire it when its original owner became bankrupt. The asset then went through various holding companies until in about September 2013 it was transferred to Vestorgia Holdings Limited, a company registered in Cyprus on 22 March 2012.
51. Mr Kicha further explains that in mid 2013, MZ had decided to sell the asset to Rosseu Business Group Ltd. Rosseu was understood to be a subsidiary company of the Vetek Group, which is owned by Sergey Kurchenko.
52. Kisaliano Holdings was therefore created as a special purpose vehicle in July 2013 in the BVI in contemplation of the sale of the assets to Rosseu through Vestorgia. The sale agreement was signed on 9 October 2013 whereby Kisaliano sold 1000 shares in Vestorgia to Rosseu for the sum of US\$32 million. Payment was made between October and 8 November 2013, of \$30.950, and a further \$1million was held in an escrow account.
53. The \$20.3 million paid into Cipriato came from this \$30.95 million. The Cipriato monies (to which Mr Kiselovs added some \$15m of his own) were the source of the payments into the accounts that are the subject of the restraint order.
54. In his second witness statement, Mr Gould comments that, far from providing evidence tending to show that the funds were legitimately derived from the sale of assets, the explanation supports the applicant's case that they are the product of money laundering. He points out that one high risk money laundering indicator known to law enforcement and the financial sector is corporate entities that are based in one jurisdiction and operate in another. He suggests that the sequence of transfers of assets through different companies is suspicious in itself and indicative of attempts to disguise the nature of the transactions.
55. He then makes the point that Mr Kicha's June statement made no comment on the current status of Mr Kurchenko. He explains that on 20 March 2014 it was reported in the global media sources that Mr Kurchenko was the subject of an arrest warrant in relation to misappropriation, embezzlement or obtaining state funds through abuse. Inquiries were still pending with the Ukrainian authorities as to the nature of these charges. He fled Ukraine after the fall of the previous government. His present whereabouts are unknown. He is the subject of a Treasury Sanctions notice dated 6 March 2014 freezing his assets pursuant to the EU Regulation.
56. By way of preamble, Mr Gould also commented on the sale of a subsidiary of Brociti called Egeli Services to Audrinura Trade LLP Limited on 27 December 2012. The sale price was US \$6 million but the funds were not paid until 8 July 2013. Egeli was the Cypriot corporate vehicle for the acquisition earlier in 2012 of two Ukrainian companies supplying specialist gas drilling products. Audrinura is registered in the UK but the annual returns for the accounting period ending 30

September 2013 made no reference to the acquisition of Egeli and its net profit was recorded as merely £243. All this is said to be consistent with money laundering, the creation of a complex series of transactions where there is little evidence of genuine trading or proper accounting of high value transactions.

57. Mr Kicha's response to the points about Egeli is, first, this was not raised in the first witness statement when it could have been; second the assets owned by Egeli are genuine assets and the sale was properly recorded in Brociti's financial statements. Third, he volunteers the fact that Audrinura is a company owned by Mr Kiselovs (who of course is the partner of MZ in the Cipriato joint venture). Fourth, he says if the irregularity is that Audrinura did not record the purchase in its trading account then that is a matter for Mr Kiselovs to comment on, not the defendant. It does nothing to suggest that the Cipriato monies are criminal property.
58. In his submissions by way of reply to the points developed by Mr Kinnear orally on this part of [46] above:-
- i. Each of the transactions under consideration resulted in real assets being exchanged for real cash, with ownership going one way and cash the other.
  - ii. Each was properly recorded in the relevant accounts that, in turn, were audited and accepted as a true statement by various professionals in a number of jurisdictions.
  - iii. The underlying transactions were completed in the autumn of 2013 before the dramatic events of February 2014 that led to change of regime and any need to transfer ill gotten gains out of the country.
  - iv. The fact that Mr Kurchenko is now the subject of a freezing order does not invalidate or taint business transactions conducted with him some six months previously.
  - v. It was Mr Kicha who disclosed the names of Kiselovs and Kurchenko as the real individuals behind the corporate entities. He was the person running the Brociti bank accounts and was able to provide credible evidence of the transactions under scrutiny.
  - vi. Nothing is known to the discredit of Mr Kiselovs save possibly a failure to lodge accurate accounts but could this not make the sums he paid into Cipriato tainted.
  - vii. The information that Mr Kurchenko is now under investigation for criminal activity is too vague and evidentially unsupported to give rise to any proper basis for concluding that the purchase price for the oil terminal was criminal property that has now come into the BNP accounts.

(4) Decision

59. I am required to perform an overall exercise of discretion as to whether relief should now be granted afresh having regard to the fact that the without notice order is to be set aside, there was material non disclosure, and the principal basis on which it was obtained does not justify the conclusion that there are reasonable grounds to believe that MZ was engaged in criminal conduct relating to his companies when he held office. The burden is on the applicant to persuade me that that such an order should be granted, evaluating all the material as it now stands
60. The non disclosure of the 10 or 17 documents identified in the schedule was not a momentary or accidental slip. It was an exercise of judgment that is now accepted to be flawed having regard to the issues or criteria. It may be that the misrepresentation as to the dividend disclosure (noted at [38] above) was a slip, as it required detailed reading of the accounts for the point to be noted and there was undoubtedly pressure of time in preparing the first statement.
61. Despite the number of documents in question, the concerns of Mr Keith at the nature of the communications between Ukraine and the SFO and the inappropriate reliance by Mr Gould in his first witness statement on information and belief from sources whose identity is not revealed, I do not conclude that the errors of judgment were such to suggest that he was not acting in good faith.
62. As a result of these matters, the hearing before HHJ Kramer was unfair and the order made is set aside. That does not prevent the making of a fresh order as was in fact done in the case of Stanford. I do not consider that the non-disclosure and false representations are of such serious misconduct as to prevent a fresh order being made, having regard to the guidance in Jennings. An adverse costs order, relating to the proceedings will often suffice to address a failure of disclosure that falls below this threshold.
63. However, eight months have passed since the original order. I have concluded that the basis for any fresh order rests on the suspicious inferences arising from the details of the transactions disclosed with particularity by Mr Kicha.
64. This is a different case to that advanced in April although, I accept, not totally disconnected from it. Where, on a without notice application, it is submitted that the known circumstances give rise to the reasonable inference of money laundering, and the defendant then provides a detailed account by way of response, the applicant's critical comments on the evidence produced by the defendant are part of the continuum of the inquiry. This is not a case of delaying the hearing to permit some wholly extraneous fresh investigation to yield forensically probative fruit.
65. Nevertheless, the case now rests largely on the analysis of what has not been provided by Mr Kicha, whose credibility and reliability has not been undermined. The applicant's principal point is that we have not heard from MZ personally to explain more. The question for me is whether the SFO has presented such an

evidentially cogent case of reason to believe that the money in the accounts were the product of money laundering that the absence of a response from the defendant personally can assume evidential significance in the balance of factors.

66. I have given very anxious consideration to the written and oral submissions (the transcript of which I have reminded myself of) of the applicant on this aspect of the case. I recognise that the unexplained complexity of the transaction gives reasonable cause to suspect that something other than a simple commercial transaction may have been conducted here, but the case remains a matter of conjecture and suspicion with no or insufficient concrete data on which a clearly founded restraint application is made.
67. Whilst it is understandable why much should remain unclear and unsubstantiated at the first application, when only 25 days had passed since the institution of the investigation and a much shorter period since the receipt from the BNP in response to the disclosure orders, it is reasonable in the light of the passage of time to have expected a much clearer and evidentially supported account of why there had been a benefit for criminal conduct. There is nothing to suggest that Mr Kiselovs's businesses are unlawful; there may well be real suspicion about Mr Kurchenko's activities given his current status and investigation but no specific evidence of illegality has been identified to suggest that any commercial transaction with him was tainted. The transactions appear to involve more corporate vehicles than might seem necessary, but Mr Kicha explains that special purpose vehicles are often the means of conducting large scale transactions in Ukraine and explains why foreign companies and bank accounts are preferred to domestic ones. There is nothing to suggest that any other inference than criminality is implausible.
68. A restraint order is a draconian measure. It should not be made on the basis of suspicion and conjecture alone. The court must critically examine the evidential foundation for such an application, whilst recognising that there will be omissions in the evidence presented by both parties. In substance I prefer Mr Keith's submissions on this issue summarised at [58] above. Taking all the above into account I have concluded that I should set aside the restraint order previously made without making a new one. The applicant's application for such an order accordingly fails.
69. On 8 January 2015, shortly before this draft judgment was finalised, I received a note from Mr Kinnear updating the court with respect to developments since the conclusion of the hearing. So far as material, they amounted to this:
- i. On 29 December 2014, in respect of investigation 42014000000805 (805), the Ukrainian prosecutor made a decision to give MZ notice that he was suspected of having committed a criminal offence of unlawful enrichment. He could not be served with this notice as his whereabouts were unknown.
  - ii. On 30 December 2014, at a without notice hearing in the same investigation, a judge of the Percherskyi District Court in Kyiv gave a decision on the prosecution's application to seize the funds

in the BNP accounts, inviting the initiation of a mutual assistance request to the English authorities so as to obtain their recovery.

70. These developments do not cause me to reopen this hearing or to revisit the provisional conclusions already reached.
71. Investigation 805 was referred to in a letter from the Prosecutor General's office (undated but in response to an inquiry of 14 November 2014). It was there stated that an investigation had been registered on 5 August 2014 into an allegation of unlawful enrichment as a result of receiving a large bribe and money laundering based on the information provided from the competent authorities in the United Kingdom in the course of their money laundering investigation started on 22 March 2014. It was further stated in this letter that:
- 'the British investigation established the fact that (MZ being a Minister of Ecology and Natural Resources and being the beneficial owner of a non resident company that owned the subsidiary companies) illegally ensured the issuance of mineral resource use permits to the companies'.
- The evidence I have seen established nothing of the sort. Disregarding the possibility that the applicant has supplied to the Ukrainians probative data not supplied to this court, there is a real risk that the effect of the without notice order of 16 April has been misunderstood.
72. Further, investigation 805 was one of those mentioned in the 2 December 2014 letter which stated that allegation notification had not been delivered due to absence of grounds for criminal prosecution. It is not known why the authorities subsequently changed their minds 27 days later, or whether fresh evidence has arisen. Equally it is not known what persuaded the judge to make a seizure order without notice, when of course the assets were already subject to an existing UK order of which the defendant had notice.
73. In the event that this information suggests that a Ukrainian request for mutual assistance is about to be made on fresh evidence not considered in this application, that is a matter that can be addressed by a timetable for setting aside the existing order and to which the parties can give consideration following the handing down of this judgment.

# Exhibit B



**LIST OF DOCUMENTS IN THE FILE**

1. History
2. Copy of the extract from the resolution of the Central Criminal Court of the Royal Courts of Equity dated 20.01.2015
3. Copy of the extract from the resolution of the Central Criminal Court of the Royal Courts of Equity dated 20.01.2015 (as amended dated 21.01.2015)
4. Individual license of the National Bank of Ukraine No. 109 dated 25.06.2012
5. Copy of a notification of making an investment abroad dated 26.07.2012
6. Individual license of the National Bank of Ukraine No. 199 dated 01.11.2012
7. Copy of a notification of making an investment abroad dated 12.11.2012
8. Copy of an expert's consulting opinion dated 25.12.2014
9. Copy of biography of M.V. Zlochevskyi
10. Copy of the certificate of the administration of the National Security and Defence Council of Ukraine No. 076 on awarding M.V. Zlochevskyi
11. Copy of the certificate of Association of Kyiv Radio Engineering Academy of Air Defence Forces Youth NGO on awarding M.V. Zlochevskyi
12. Copy of the certificate of the Ministry of Defence of Ukraine on awarding M.V. Zlochevskyi
13. Copy of the certificate of the State Customs Service of Ukraine on awarding M.V. Zlochevskyi
14. Copies of certificates of the Ministry of Internal Affairs of Ukraine on awarding M.V. Zlochevskyi
15. Copy of the certificate of the State Service of Geology and Mineral Resources of Ukraine on awarding M.V. Zlochevskyi
16. Copy of the certificate of the Minor Academy of Sciences – Ecology and Health and Safety on awarding M.V. Zlochevskyi
17. Copy of tax return of M.V. Zlochevskyi dated 25.04.2013
18. Copy of the bank order No. 1, dated 15.05.2013, on payment of personal income tax by M.V. Zlochevskyi
19. Copy of the bank order No. 1, dated 28.04.2014, on payment of personal income tax by M.V. Zlochevskyi
20. Copy of transparency return of M.V. Zlochevskyi for 2011, 2012 and 2013
21. Copies of university diplomas of M.V. Zlochevskyi
22. Copy of the certificate of incorporation of Burisma Holdings Limited dated 05.12.2014

23. Copy of the certificate of location of Brociti Investments Limited dated 28.04.2014
24. Copy of the certificate of location of Burisma Holdings Limited dated 05.12.2014
25. Copy of the certificate of shareholders of Brociti Investments Limited dated 28.04.2014
26. Copy of the certificate of shareholders of Burisma Holdings Limited dated 05.12.2014
27. Copy of the certificate of directors of Brociti Investments Limited dated 28.04.2014
28. Copy of the certificate of directors of Burisma Holdings Limited dated 05.12.2014
29. Certificate of shareholders of Brociti Investments Limited dated 20.08.2012 (1,000 shares)
30. Certificate of shareholders of Brociti Investments Limited dated 15.10.2012 (1,000,000 shares)
31. Email from BNP Paribas dated 25.06.2013 on accounts opening confirmation
32. Translation of email from BNP Paribas dated 25.06.2013 on accounts opening confirmation.
33. Letter from BNP Paribas on accounts opening confirmation
34. Translation of letter from BNP Paribas on accounts opening confirmation
35. Resolution of directors of Burisma Holdings Limited on opening the company account dated 13.05.2013
36. Translation of resolution of directors of Burisma Holdings Limited on opening the company account dated 13.05.2013
37. Resolution of the Director of Brociti Investments Limited on opening the company account dated 13.05.2013
38. Translation of resolution of the Director of Brociti Investments Limited on opening the company account dated 13.05.2013
39. Resolution of the directors of Burisma Holdings Limited on opening the company account with a signature sample of a person assigned to be the facility agent of the company dated 25.06.2013
40. Translation of resolution of the directors of Burisma Holdings Limited on opening the company account with a signature sample of a person assigned to be the facility agent of the company dated 25.06.2013
41. Resolution of the Director Brociti Investments Limited on opening the company account with a signature sample of a person assigned to be the facility agent of the company dated 25.06.2013
42. Translation of resolution of the Director Brociti Investments Limited on opening the company account with a signature sample of a person assigned to be the facility agent of the company dated 25.06.2013

43. Copy of a foreign passport of A.V. Kicha
44. Resolution on conclusion of share sales agreement between Brociti Investments Limited and Cipriato dated 11.12.2013
45. Translation of resolution on conclusion of share sales agreement between Brociti Investments Limited and Cipriato dated 11.12.2013
46. Share sales agreement between Brociti Investments Limited and Cipriato dated 11.12.2013
47. Translation of share sales agreement between Brociti Investments Limited and Cipriato dated 11.12.2013
48. Annex G. Financial reports of Seanon for the period from 04.07 until 31.10. 2013
49. Annex H. KAM LLC equity rights assessment report dated 28.10.2013
50. Annex I. Financial reports of KAM LLC dated 30.09.2013
51. Annex J. Turnover balance list of KAM LLC dated 30.09.2013
52. Annex K. Financial reports of Scientific Research Institute VECTOR PJSC dated 30.09.2013
53. Annex L. Turnover balance list of Scientific Research Institute VECTOR PJSC dated 30.09.2013
54. Annex M. Financial reports of KYIVSHCHYNA LLC dated 30.09.2013
55. Annex N. Turnover balance list of KYIVSHCHYNA LLC dated 30.09.2013
56. Certificate of share transfer of Seanon between Brociti Investments Limited and Cipriato
57. Translation of certificate of share transfer of Seanon between Brociti Investments Limited and Cipriato.
58. Assignment agreement dated 11.12.2013
59. Translation of assignment agreement dated 11.12.2013
60. Transaction scheme between Brociti Investments Limited and Cipriato
61. Copy of the power of attorney of Burisma Holdings Limited to A. Kicha
62. Copy of the power of attorney of Brociti Investments Limited to A. Kicha
63. Copy of the certificate of Brociti Investments Limited dated 09.01.2015
64. Copy of the certificate of Burisma Holdings Limited dated 09.01.2015
65. Copy of the certificate of Burisma Holdings Limited dated 09.01.2015
66. Copy of the bank account statement of Brociti Investments Limited for the period from 28.06.2013 until 03.02.2014
67. Copy of the bank account statement of Burisma Holdings Limited for the period from 28.06.2013 until 03.02.2014

68. Copy of the certificate No. 232/17-01/24227104810 of the State Tax Inspectorate in Shevchenko District of the Main Department of the State Fiscal Service of Ukraine in the City of Kyiv dated 30.06.2015
69. Copy of the certificate No. 305/17-01/2427104810 of the State Tax Inspectorate in Shevchenkivskyi District of the Main Department of the State Fiscal Service of Ukraine in the City of Kyiv dated 17.09.2015

**Correspondence with BNP Paribas on the share sales agreement between Brociti Investments Limited and Cipriato dated 11.12.2013, on dividend payment, account balance repayment to other company's account and notifications on accounts closing**

70. Email from A. Kicha to BNP Paribas (P. Koval) dated 17.12.2013 in the attachment with the Sales agreement dated 11.12.2013
71. Email from A. Kicha to BNP Paribas (Victoria Wright) on the request for dividend payment amounting to USD 10 million dated 24.02.2014 and SWIFT provision in the letter from BNP Paribas
72. Translation of the email from A. Kicha to BNP Paribas (Victoria Wright) on the request for dividend payment amounting to USD 10 million dated 24.02.2014 and SWIFT provision in the letter from BNP Paribas
73. Email from A. Kicha to BNP Paribas (Victoria Wright) on the request for dividend payment amounting to USD 9,899,900 dated 11.03.2014
74. Translation of email from A. Kicha to BNP Paribas (Victoria Wright) on the request for dividend payment amounting to USD 9,899,900 dated 11.03.2014
75. Email from A. Kicha to BNP Paribas (Victoria Wright) on the request for transferring the accounts balances dated 24.03.2014
76. Translation of the email from A. Kicha to BNP Paribas (Victoria Wright) on the request for transferring the accounts balances dated 24.03.2014
77. Email from A. Kicha to BNP Paribas (Victoria Wright) dated 25.03.2014
78. Translation of the email from A. Kicha to BNP Paribas (Victoria Wright) dated 25.03.2014
79. Email from A. Kicha to BNP Paribas dated 31.03.2014 on closing the accounts
80. Translation of the email from A. Kicha to BNP Paribas dated 31.03.2014 on closing the accounts
81. Email on behalf of Chadbourne & Parke to BNP Paribas dated 02.04.2014 on behalf of Chadbourne & Parke

- 82. Translation of the email on behalf of Chadbourne & Parke to BNP Paribas dated 02.04.2014
- 83. Email from BNP Paribas to Chadbourne & Parke dated 03.04.2014 with the attached official letter explaining why the bank cannot conduct the transactions
- 84. Translation of the email from BNP Paribas to Chadbourne & Parke dated 03.04.2014 with the attached official letter explaining why the bank cannot conduct the transactions

**Tax returns on the assets and income and certifying documents. Dividends**

- 85. Tax return on the assets and income for 2011
- 86. Tax return on the assets and income for 2012

**Payment under Loan Agreement amounting to USD 2.1 million**

- 87. BNP Paribas account statement
- 88. Loan Agreement dated 23.12.2013
- 89. Letter with payment instruction
- 90. Tax return on the assets and income for 2013

**Dividend payment for 2013**

- 91. Resolution on dividend payment amounting to USD 21 million dated 31.12.2013
- 92. Resolution dated 18.03.2014 on cancelling the resolution on dividend payment amounting to USD 21 million dated 31.12.2013
- 93. Letter with payment instruction for USD 10 million
- 94. Statement of LGT Bank on receipt of USD 10 million to the account dated 25.02.2014

**Closing LGT Bank account**

- 95. Statement of LGT Bank for the period from 01.01.2014 until 31.03.2014
- 96. Statement of LGT Bank for the period from 25.11.2013 until 24.04.2014
- 97. Statement of LGT Bank for the period from 01.04.2014 until 24.04.2014 and confirmation of closing the account in LGT Bank
- 98. Tax return on the assets and income for 2014 dated 25.04.2013
- 99. Certificate of authorities of M.V. Zlochevskyi as Deputy Secretary of the National Security and Defence Council of Ukraine
- 100. Copy of the expert's opinion of Kyiv Independent Court Expert Authority based on the results of forensic and economic examination No. 1090 dated 06.02.2015
- 101. Scientific opinion of Prof. P.P. Andrushko dated 12.02.2016

<b>From:</b>	"Kent, George P" (b)(6)
<b>To:</b>	Yovanovitch, Marie L (b)(6)
<b>Subject:</b>	Zlochevsky, Cravath, Burisma (and Blue Star)
<b>Date:</b>	Thu, 15 Sep 2016 16:06:24 -0400

This is further to the Blue Star effort to rehabilitate the reputation of their non-client in the US, former Ministry of Ecology Zlochevsky, who clearly has retained the services of a blue chip law firm (Cravath), and his energy company Burisma, which in turn has Hunter Biden on its board.

I think a briefing by (b)(6); (b)(7)(C) and (b)(6) on the background of the Zlochevsky case and the US effort therein would be in order, so you can separate what the US position on this set of circumstance is, as opposed to paid legal counsel.

SBU

This email is UNCLASSIFIED.

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**From:** Yovanovitch, Marie L  
**Sent:** Thursday, September 15, 2016 7:01 PM  
**To:** Kent, George P  
**Subject:** Fw: Letter from John Buretta

What is this about?

Sent from my BlackBerry 10 smartphone.

**From:** Jun Li <jli@cravath.com>  
**Sent:** Thursday, September 15, 2016 6:10 PM  
**To:** Yovanovitch, Marie L  
**Cc:** John Buretta  
**Subject:** Letter from John Buretta

Ambassador Yovanovitch:

Please see the attached letter from John Buretta.

Regards,  
 Jun

Jun Li  
 Cravath, Swaine & Moore LLP  
 825 Eighth Avenue, New York, NY 10019  
 212-474-1358 | jli@cravath.com

**Sender:** "Kent, George P" (b)(6)

**Recipient:** Yovanovitch, Marie L <(b)(6)>

<b>From:</b>	"Kent, George P" (b)(6)
<b>To:</b>	Kyiv, ECON FSOs <KYIVECONFOS@state.gov>
<b>CC:</b>	(b)(6) Yovanovitch, Marie L (b)(6)
<b>Subject:</b>	Obscure Dutch firm bests 2 rivals for giant gas field
<b>Date:</b>	Thu, 11 Aug 2016 23:53:12 -0400

(b)(5)

Sent from my BlackBerry 10 smartphone.

**From:** lbi@lbicompany.com.ua

**Sent:** Friday, August 12, 2016 6:49 AM

**To:** Kyiv, Media Alerts

**Subject:** Kyivpost: Obscure Dutch firm bests 2 rivals for giant gas field

### ***Kyivpost***

#### **Obscure Dutch firm bests 2 rivals for giant gas field**

August 11

Author: Duncan Hill

A recently founded Dutch company is on the road to winning a tender to explore Ukraine's largest shale gas field, after the firm's proposal was chosen as the best among a group of bidders.

But the move has ignited some controversy: The company, Yuzgaz BV, has not yet disclosed its investors, feeding speculation that people affiliated with the country's history of corrupt gas deals could be somehow involved.

Ukraine's Cabinet of Ministers will need to approve the choice before Yuzgaz becomes a partner with Nadra Ukrainy in the exploration of the nearly 8,000 square kilometer Yuzivska gas field in eastern Ukraine.

Royal Dutch Shell won a contract to develop the field with Nadra in 2012, but withdrew in September 2015, citing the war and the steep drop in global oil prices.

The man behind Yuzgaz is former European Bank of Reconstruction and Development Ukraine country director Jaroslaw Kinakh, who controls Yuzgaz through the Luxembourg-based investment fund Emerstone Capital Partners. Kinakh has declined to name which investors have put up capital for the development project, though he has insisted that the investors are neither Russian nor Ukrainian.



Shell's exit came as a blow to Ukraine's attempt to have foreign companies that are less connected to the country's web of corrupt interests develop its gas deposits. Finding a replacement was never going to be straightforward – especially since so much is at stake.

The agreement grants rights to the gas field for 50 years.

### **Non-transparency**

Under the terms of the agreement, after Shell walked away, Nadra Yuzivska - and parent company Nadra Ukraine - did not actually need to put the agreement out to tender at all.

“(But) the project was too big and too important to Ukraine... so we chose to go to tender... (as) we didn't want to start off on a bad foot,” said Victor Nazarkevych, the CEO of Nadra Yuzivska.

But starting off on a “bad foot” is exactly what has happened.

Critics claim there was a complete lack of transparency in the tender competition.

“There was no official information available regarding the members of the competition committee, the tender conditions, or requirements for participants in the competition,” said lawmaker Nataliya Katser-Buchkovska, the chairman of the parliamentary subcommittee that energy investment and sustainable energy.

Last fall, Nadra Yuzivska notified select press, key embassies and the European Business Association about the tender. It also sent a letter to the American Chamber of Commerce, which was then headed by Graham Tiley, the then-head of Shell Ukraine.

Nazarkevych believes that it was in Nadra Yuzivska's interests to get as many bids as possible. The deadline was extended four times to accommodate the needs of more than one potential bidder.

But, according to Alastair McBain, CEO of Arawak Energy, an unsuccessful bidder in the tender, this wasn't enough time.

“It took Shell several years to put their bid together...” McBain said. “We wrote to Nadra Yuzivksa twice asking for a (further) extension, but much to our surprise and dismay, this was not granted. We made it clear that we would not have the time to put in a substantive bid as a consequence.”

McBain was told that additional extensions were not granted because members of parliament involved in the process wished to have everything wrapped up before the summer holiday.

### **Lack of oversight**

Once the contest was closed, the selection process became less transparent. A committee was established to evaluate the bids, but the process for selecting committee members seems to have lacked checks and balances.

Back in 2012, the Interagency Commission on Organization of Signing and Execution of Production Sharing Agreements was created to manage the state's interests in the

PSA. Led by the office of the first vice prime minister, it included senior figures from key government ministries as well as six parliament deputies.

Although the individuals on the committee changed in the aftermath of EuroMaidan, it has continued to oversee the agreement.

It was this committee that had the final say on whether to put the bid out to tender and it was also this committee that decided who would be on the committee to evaluate the bids.

But here, the interagency committee selected from among its own ranks: the evaluation committee was essentially a slimmed-down version of the production sharing agreement committee.

### **Public benefit?**

The evaluation committee received the three bids and, according to sources present at the meeting, quickly and unanimously agreed on the Yuzgas bid.

The Kyiv Post is familiar with the content of the various bids and it is immediately apparent why the Yuzgas bid triumphed: It is significantly greater in size and scope than the other two bids.

In particular, the incentives promised to the state and to Nadra Yuzivska are significantly higher in the Yuzgas bid.

At the time this meeting took place in July, Nadra Yuzivska was 90 percent owned by the state company Nadra Ukrainy and 10 percent owned by SPK Geoservice, an opaque company with alleged ties to the family of ousted former Ukrainian President Viktor Yanukovich.

SPK Geoservice sold its share in Nadra Yuzivska soon after the bid winner was announced. The Kyiv Post understands that SPK Geoservice was removed so as not to give the perception of impropriety. Sources say that it only received the Hr 500,000 it put in as part of its settlement, but we have been unable to verify this.

This means that the benefits offered by Yuzgas - namely an incremental \$40 million in exchange for a 90 percent share, as well as other bonus payouts and social investments - should all come to the state in one way or another.

### **Lack of experience**

Yuzgas offered significantly more than its two rivals under each criteria of the bid. It offered a greater investment over the riskiest first five year phase, it offered the most seismic studies (joint first with another bid), and it also offered higher "first gas" and "first production" bonuses.

The Yuzgas bid comes with guarantees from its parent companies, but they themselves were also only registered this year.

It is hard to find much financial information about any of these companies. But even if Yuzgas and Emerstone Energy do not have the capital for the promised investment on hand at the moment, they may be able to raise it once they are in receipt of a signed production sharing agreement to a vast gas field.

However, unlike the other two bidders, Yuzgas has no experience in hydrocarbon extraction.

Arawak, which submitted its bid under a wholly-owned affiliate company named Balkash, has considerable experience in hydrocarbon extraction. It is producing oil and gas in the United States, Mexico, Kazakhstan, Azerbaijan and in Ukraine -- where it holds a 50 percent stake in GeoAlliance. Arawak is in turn wholly owned by a large private energy and commodities company, Vitol.

The third bidder is Burisma, a scandal-tainted energy firm founded in 2002 by Ukrainian businessman Mykola Zlochevsky, the former ecology minister suspected of corruption -- accusations he has long denied. Furthermore, U.S. Vice President Joseph Biden's son, Hunter, is on Burisma Holding's board of directors.

Yuzgas's bid pointed to a memorandum of understanding with oil-and-gas-services giant Schlumberger, likely for a services contract and technical operations support.

### **Big responsibility**

Alternative bids were quite small for such a large field. "Our bid was extremely modest," admitted Arawak Energy's McBain.

The difficulty is that the production sharing agreement and the huge gas field is better suited to a much larger organization like Shell.

"The PSA structure lends itself to large international companies investing in mega projects in countries with high degrees of risk and regulatory uncertainty," said McBain. "It is a way of carving out much of the risk by having a special arrangement for production sharing in lieu of most taxes."

But Shell is not interested in returning, Shell spokesperson Yuliya Pikhnovska told the Kyiv Post.

"Given the current situation with the oil price slump, there are no plans for new exploration projects in Ukraine in the foreseeable future," Pikhnovska said.

And it's not only Shell -- there is little international interest in Ukrainian hydrocarbons, said Robert Bensch, senior managing partner at Pelicourt LLC, an organization specializing in Ukraine energy investments.

"If you have money it's better to invest elsewhere," Bensch said.

### **Dividing the field**

So the choice could be between waiting for conditions to improve or pressing ahead with an imperfect bid.

The current geopolitical conditions make the idea of waiting less than popular, however. Katser-Buchkovska said that the field could provide up to 20 billion cubic meters of gas, making it "crucial in today's situation."

One option would split the field into smaller parcels, making it simpler for medium-sized bidders.

But Nazarkevych dismisses that suggestion. According to him, the field requires horizontal drilling and fracking, which makes it harder to guarantee property rights.

McBain disagrees, "In principle, I don't see any reason why the land couldn't be split up – it is a huge exploration project." But he added that the PSA approach would no longer really apply, which is why breaking it up does not make sense for the various stakeholders.

Now the onus is on Yuzgas to prove that it can fulfil its promises and handle hydrocarbon extraction on this scale: that's if it gets final approval from the government, which has 90 days to approve the its selection.

But since most of the evaluation committee will be involved in granting final approval, the final decision should not be a great surprise.

<http://redirect.state.sbu/?url=http://www.kyivpost.com/article/content/business/obs-cure-dutch-firm-bests-2-rivals-for-giant-gas-field-420831.html>

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*With best regards,  
LBI Team*

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(097) 479-13-50*

<b>Sender:</b>	"Kent, George P" (b)(6)
<b>Recipient:</b>	Kyiv, ECON FSOs <KYIVECONFOSOs@state.gov>; (b)(6) Yovanovitch, Marie L (b)(6)