

P.P. CH-3003 Bern, BA, W II

General Prosecutor of Ukraine  
Riznitskasstr. 13/15  
01011 Kyiv-11  
UKRAINE

Vice-Prosecutor of the Confederation: Urs Köhli  
Recording Clerk: Gabriele Beyeler  
Procedure Number: SV.13.0943-KOU  
Bern, March 31, 2015

## International Rogatory Letter in Criminal Procedure Request for Collection of Evidence

In application of

- The European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 (SR 0.351.1),
- The Second Supplementary Minutes of November 8, 2001 to the European Convention on Mutual Assistance in Criminal Matters (ZPII EUeR, SR 0.351.12),
- The Convention of November 8, 1990 on Money Laundering as well as on the Determination, Seizure and Confiscation of Revenues stemming from Criminal Offences (GwUe, SR 0.311.53),

the Prosecutor's Office of the Swiss Confederation requires legal assistance in criminal proceedings in the criminal investigation SV.13.0943-KOU against

Suspected Person	<b>Mykola MARTYENKO</b> , born on 01/12/1961, Ukrainian citizen, residing in UA- Kiev,
Defence	Lawyer Hans-Peter Schaad, Bahnhofstrasse 71, 8001 Zurich
Criminal Offence	Criminal investigation against Mykola MARTYENKO for suspicion of <b>money laundering</b> (Art. 305bis Criminal Code, [CC]) and of <b>bribery</b> of foreign officials (Art. 322septies CC).

Dear Mr General Prosecutor,

On the basis of the previously mentioned convention, I kindly ask you to grant me legal assistance and to execute the required collection of evidence.

The following facts underlie our requirement of legal assistance:

## 1. Facts

### 1.1 Supplies from SKODA JS to NAEK Energoatom

On the basis of the evidence in our possession, it is apparent that the Czech company SKODA JS has sold regularly, in recent years, construction elements for nuclear power plants via the state-owned ATOMKOMPLEKT to Ukrainian state-owned NAEK Energoatom. We possess signed contracts from 2009 and onwards.

### 1.2 Cooperation Agreement between SKODA JS and BRADCREST INVESTMENT

In addition to supply contracts, SKODA JS has signed a cooperation agreement as well as multiple related appendixes with the company BRADCREST INVESTMENTS SA.

Concretely, the Czech company

SKODA JS a.s. (hereafter: SKODA)  
Orlik 266  
31606 Pízen

has concluded with the Panamanian company

BRADCREST INVESTMENT S.A. (hereafter: BRADCREST)  
East 53rd Street, Marbella  
MMG Building, 2<sup>nd</sup> Floor  
Panama

a cooperation agreement<sup>1</sup> in November 2008 bearing the number JAD-PM/380/08. Through this agreement, BRADCREST made a commitment to SKODA, according to article 1.1, to provide following services:

*"Bradcrest shall assume the support of SKODA JS and shall provide services related to the promotion of sales of the equipment and services of SKODA JS at Ukrainian market listed in List of items agreed time to time by the contractual parties."*

Moreover, this general defined obligation has been specified in the articles 2.1 a) to h), for, among other, BRADCREST had to

- *"...ensure commercial success..." (a)*

<sup>1</sup> Appendix 1: Pagina SV.13.0943 B07.101.001.01. E-0088 up to 0092

- „...submit to SKODA all information about...projects in energy sector in Ukraine...” (b)
- „...assist SKODA in...negotiations...” (d)

According to article 5.1 of the agreements, BRADCREST was to receive a commission from SKODA as compensation for the signed and executed supplies contracts. In case of signed but subsequently revoked activity, BRADCREST would receive no commission, as per art. 5.2.

The agreement was signed for SKODA in November 2008 by

- Miroslav Fiala, Chairman of the Board, and
- Jiri Demis, Member of the Board.

For BRADCREST, the Panamanian chairman of the company, Edgardo E. Diaz, signed the agreement.

## 1.2 Appendix 1-4 to Cooperation Agreement JAD-PM/380/08

The resulting commission payments to BRADCREST stemming from the real supplies from SKODA to the state-owned nuclear power plants in Ukraine were defined in the appendixes 1-4 to the cooperation agreement JAD-PM/380/08.

In November 2008, the same persons signed the appendix number 1<sup>2</sup> to the cooperation agreement JAD-PM7380/08. According to this appendix, SKODA delivered an unknown number of so-called “High Density Spent fuel Storage Racks” for a global price of EUR 3.3 Mio to be used for block 1 of the Ukrainian state-owned power plant in Rovensk. On that price, BRADCREST should have received a 15% commission. Moreover, SKODA also delivered the same products to block 3 of the Ukrainian state-owned nuclear power plant in Zaporoshe for a global value of EUR 3.4 Mio, which also entitled BRADCREST to benefit from a commission of 15%. Eventually, SKODA managed to deliver globally 70 units of a so-called “Control Rod Drive Mechanism” for a price of EUR 13.6 Mio according to appendix 1 for block 3 of the power plant in Rovensk, for which BRADCREST should have received a commission amounting to 18%.

In the appendix number 2<sup>3</sup> of 12/01/2009 it is stated that SKODA was liable to pay to BRADCREST a 15% commission for the successful delivery of an unknown quantity of “High Density Spent fuel Storage Racks” to block 4 of the power plant in Zaporoshe for a price of EUR 3.5 Mio. Moreover, SKODA had the obligation to pay BRADCREST 20% of the price of EUR 5.5 Mio for the “Modification of SGIU and spare parts SGIU” for block 3 of the nuclear power plant in Zaporoshe.

According to the mutually undersigned appendix number 3<sup>4</sup> of 07/09/2010, SKODA received the delivery order for an unknown amount of “High Density Spent fuel Storage Racks” to blocks 1, 2 and 5 and of “Seals for Steam Generators” for all blocks of the nuclear power

<sup>2</sup> Appendix 2: Pagina SV.13.0943 B07.101.001.01, E-0093

<sup>3</sup> Appendix 3: Pagina SV.13.0943 B08.102.001-0261

<sup>4</sup> Appendix 4: Pagina SV.13.0943 B08.101.017-005

plant in Zaporoshe for a global price of EUR 11.35 Mio. BRADCREST was to receive a **commission of 15%** for these deliveries. A document also bearing the title appendix number 3<sup>5</sup> of 11/15/2010 which however was signed only by BRADCREST is also related to the delivery order of an unknown amount of "High Density Spent fuel Storage Racks" to blocks 1, 2 and 5 of the nuclear power plant in Zaporoshe. But the "Seals for Steam Generators" are not included. The global price of the delivery stated amounts to a total of CZK 303 Mio.

The appendix number 4<sup>6</sup> of 04/11/2011 is linked to the sale of "equipment and services" of SKODA to NEAK Energoatom. BRADCREST should **receive a commission of 15%** each on the sale of 70 "CRDMs" for bloc 6 of the nuclear power plant in Zaporoshe and 65 "CRDMs" for block 1 of the nuclear power plant in Khelnicklij as well as for "Measurement N" to blocks 1-6 of the power plant in Zaporoshe. This was on the condition that the contracts for the related orders would be drafted by the end of June 2011.

### 1.3 Appendix 5 to Cooperation Agreement JAD-PM/380/08

Since "Cooperation Agreement No. JAD-PM7380/08 and Appendix No 5 (paragraph 5) thereto" are indicated in the invoices "Invoice No 01-05/12" and in the "Invoice No 01-08/12" as payment reasons, we have to assume that there is also an appendix 5 to the cooperation agreement.

### 1.4 Payments from SKODA JS to BRADCREST

Our investigations have shown that the company BRADCREST had a bank relation with BNP Paribas (Switzerland) SA (former Fortis Banque (Suisse) S.A.). Following incoming payments were received on this account number 372855 from the company SKODA JS for a total amount of EUR 3,623,317.00:

Date	Curr.	Amount	Paying Bank	Communication Text
03/19/2009	EUR	45,075.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-03/09 cooperation agreement JAD-PM/380/08 and Appendix Nr. 1 thereto
03/19/2009	EUR	125,250.00	CITIBANK EUROPE, Prag (CZ)	Inv. 02-03/09 cooperation agreement JAD-PM/380/08 and Appendix Nr. 1 thereto
04/14/2009	EUR	127,500.00	Credit Agricole CIB, Prag (CZ)	Inv. 01-04 / 09
04/28/2009	EUR	29,100.00	Unicredit Bank, Prag (CZ)	Inv. 21-04 / 09
07/03/2009	EUR	52,889.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-06/09
07/03/2009	EUR	117,814.00	Komerční Banka AS, Prag (CZ)	Inv. 02-06/09
09/18/2009	EUR	355,593.00	CITIBANK EUROPE, Prague (CZ)	Inv. 0108/09

<sup>5</sup> Appendix 5: Pagina SV.13.0943 B08.102.001-0262

<sup>6</sup> Appendix 6: Pagina SV.13.0943 B08.102.001-0263

08/18/2009	EUR	2,015,030.00	CITIBANK EUROPE, Prague (CZ)	Inv. 0208/09
05/12/2010	EUR	755,066.00	CITIBANK EUROPE, Prague (CZ)	Inv. 0102/10 EUR 391,890.00 inv. 0205/10 EUR 363,176.00

Furthermore, the investigations of the Federal Prosecutor have shown that SKODA did pay the commissions to BRADCREST according to the appendix 1. In this respect, following payments have been made by SKODA to the bank account # 3405250 of BRADCREST at the Banque Hottinger & Cie in Zurich:

Date	Curr.	Amount	Paying Bank	Communication Text
02/21/2011	EUR	361'813.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-01/11
03/16/2011	EUR	91'768.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-03/11
05/03/2011	EUR	93'905.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-04/11
05/19/2011	EUR	166'321.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-05/11
06/16/2011	EUR	946'362.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-06/11
10/25/2011	EUR	278460.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-10/2011
12/27/2011	EUR	450'426.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-12/11
04/24/2012	EUR	283'405.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-04/12
06/18/2012	EUR	102'813.00	CITIBANK EUROPE, Prag (CZ)	Inv. 01-05/12, 02-05/12
09/17/2012	EUR	2'197.50	Komerční Banka AS, Prag (CZ)	Inv. 01-08/2012 (EUR 2,202.00- EUR 4.50 bank fees)

The payments amount to a total of EUR 2,777,460.50, which represents precisely the commissions mentioned in the appendix 1.

Based on the cooperation agreement with SKODA # JAD-PM/380/08 and the appendices, this represents globally a total of EUR 6,400,777.50 that were received on the two bank accounts of BRADCREST known to us:

BNP PARIBAS (Switzerland) SA, Geneva	EUR 3,623,317.00
Banque Hottinger & Cie SA, Zurich	EUR 2,777,460.50

## 1.5 Minutes BRADCREST – SKODA

The Federal Prosecutor has also obtained a document which states that a meeting took place between SKODA and BRADCREST. According to these minutes<sup>7</sup>, this meeting took place in Kiev where, on one side, the manager Edgardo Diaz participated on behalf of BRADCREST and, on the other side, the commercial director Peter Luptacik on behalf of SKODA. The purpose of the meeting was the presentation of an overview for the operations concluded in 2010 as well as to get a perspective on the future possible activities. From the minutes, it can be seen that the **Ukrainian state-owned company NAEK Energoatom had been the principal for the operations dealing with SKODA.**

## 1.6 Exchange of letters between SKODA JS and BRADCREST

In a communication dated 06/05/2012, Mr Peter Luptacik of SKODA wrote to Mr Diaz from BRADCREST stating that:

*„(...) GP NEAK Energoatom will settle the specified supply by export credit from the Czech Export Bank. To obtain the credit GP NAEK Energoatom must get permission from the Ukraine Ministry of Energy and Finance and also from Central Bank of Ukraine. (...) In compliance with the above contract, we are asking you to take all necessary steps to accelerate the obtaining of all necessary permissions and subsequent reimbursement of the payment. (...)”*

In a letter of 06/22/2012, Volodymyr Sviatnenko indicated to Mr Luptacik of SKODA his position as representative of BRADCREST in Ukraine with the following:

*„ (...) The above mentioned problem is caused by protracted procedure of NAEK Energoatom's financial plan approval providing a formal reason to prevent getting the permit. Under such circumstances a special individual permit is to be applied. In the meantime we take all our efforts to promote the matter in getting the individual permit in front of the respective state bodies of Ukrainian Government. (...)”*

## 1.7 BRADCREST Investments S.A.

As already mentioned, BRADCREST is a company incorporated in Panama. As managers of the company in Panama are mentioned

- Edgardo E. Diaz,
- Maria Vallarino A., and
- Fernando A. Gil.<sup>8</sup>

Moreover, an individual power of attorney has been issued for the Ukrainian citizen Pavel (Pavlo) Skalenko, born on 03/08/1963<sup>9</sup>.

<sup>7</sup> Appendix 7: Pagina SV.13.0943 B08.101.017-0050 and 0051

<sup>8</sup> Appendix 8: Pagina SV.13.0943 B07.101.001.01.E-0026

<sup>9</sup> Appendix 9: Pagina SV.13.0943 B07.101.001.01.E-0032

Pavlo Salenko appeared as "financial director" of BRADCREST INVESTMENT S.A. and had been granted an individual power of attorney on the above-mentioned known bank relation of BRADCREST INVESTMENT S.A.<sup>10</sup>

Furthermore, a certain Volodymyr Sviatnenko has been mentioned in a letter<sup>11</sup> of BRADCREST to SKODA as representative of BRADCREST for the actual affairs related to the Ukrainian projects. Peter Luptacik was mentioned as being the addressee of the letter at SKODA.

According to the indications received from the banking institution Banque Hottinger & Cie SA<sup>12</sup>, Mykola Martynenko is the beneficial owner of the assets of the company BRADCREST.

Mykola Martynenko is also named as the beneficial owner<sup>13</sup> of the banking relation of BRADCREST with Fortis Banque (Suisse) S.A. and BNP Paribas (Switzerland) SA.

## 1.8 Mykola Martynenko

The suspected Mykola Martynenko in the investigations of the Swiss Federal Prosecutor is the beneficial owner of the commissions of SKODA resp. the beneficial owner of the assets of the bank relations of BRADCREST in Switzerland.<sup>14</sup> Martynenko is a member of the Ukrainian parliament, the "Verchovna Rada". As Member of Parliament, he has also been president of the parliamentary commission "Fuel and Energy Complex, Nuclear Policy and Nuclear Safety" since 2008, a fact which has a special interest in relation to the deliveries of SKODA to the Ukrainian state-owned nuclear power plants.

Mykola Martynenko was interrogated on 10/28/2013 under guarantee of safe conduct in Switzerland about the accusation of bribery. The cooperation agreement JAD-PM/380/08 and its specified payments of SKODA to BRADCREST were presented to him. Martynenko denies however having received bribes. He said he had knowledge of neither the agreement nor the payments.

## 1.9 Pavlo Skalenko

As "right hand" of the accused Martynenko, he would be responsible for the management of his assets.<sup>15</sup> Besides his position as "financial director" of BRADCREST INVESTMENT S.A., he also holds managing positions in various other companies which are also connected to the accused, and possesses powers of attorney on their banking relations.

Furthermore, he has been nominated as manager of Trading House Ukraine (THU), which also belonged to the accused and he has been, in this position, the superior of Natalja Fischer who, after her activities for THU SA (1998-2001), worked among other things for BNP Paribas (Switzerland) SA (former Fortis Banque (Suisse) S.A.) (2006-2010) and for Con-

<sup>10</sup> Appendix 10: Pagina SV.13.0943 B08.101.016-0014

<sup>11</sup> Appendix 11, Pagina SV.13.0943 B08.101.017-0046

<sup>12</sup> Appendix 12, Pagina SV.13.0943 B07.101.001.01.E-0012

<sup>13</sup> Appendix 13: Pagina SV.13.0943 B07.102.001.01 E-0009

<sup>14</sup> Appendix 14: Pagina SV.13.0943 B07.101.001.01 E-0012; SV.13.0943 B07.102.001.01 E-0009

<sup>15</sup> Appendix 15: Pagina SV.13.0943 B07.101.001.01 E-0065 and E-0077

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sus.<sup>16</sup> Consus appeared as asset manager in the bank relation between BRADCREST and Hottinger & Cie.

## **1.10 Suspicion of bribery of foreign officers**

The evidence collected up to now has been secured thanks to different coercive measures in Switzerland as well as to a house search organised through legal assistance in December 2014 at the premises of the company SKODA JS in the Czech Republic.

The findings based on this evidence imply the founded suspicion that the company SKODA JS paid to Martynenko, in his position as chairman of the said parliamentary commission, bribery money related to the delivery of components to Ukrainian state-owned nuclear power plants in Rovensk und Zaporoshe. Accordingly, the cooperation agreement between SKODA JS and BRADCREST would only be a plausible basis to allow SKODA JS to smuggle the required bribery money outside the company. The fact that Martynenko would be the effective beneficiary of the commissions, that the payment of the commissions has been agreed upon depending on the success, that the commissions paid represent big amounts and that, up to now, no evidence could have been brought about the services rendered by BRADCREST, supports the said suspicion.

In this respect, it is also of interest to notice that in 2008 already, the Ukrainian Internet press mentioned suspicion regarding unlawful kickback payments linked to supplies through NAEK Energoatom.<sup>17</sup>

## **2. Legal aspects**

### **2.1 The Criminal Offences**

Based on the investigations underway up to now, there is a suspicion that the suspected person is guilty of the criminal offences mentioned in the introduction. Dual criminality is also clear according to the point of view of the Federal Prosecutor.

### **2.2 The Limitation Period**

Prosecution is limited after 15 years for the offences in question here, in so far as they are punished by a prison sentence of more than 3 years (art. 305<sup>bis</sup> number 2, art. 322<sup>septies</sup> CC), resp. within 7 years when another sentence might be pronounced (art. 305<sup>bis</sup> number 1 CC).

### **2.3 The competence for ordering of coercive measures**

The Swiss Prosecutor's office is responsible for the order of coercive measures, especially for deciding house searches and the seizure of documents (see art. 198 sect. 1 let. a. in relation to art. 241 et seq. and art. 263 et seq. PPC).

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<sup>16</sup> Appendix 16: Pagina SV.13.0943 B07.101.001.01 E-0104

<sup>17</sup> Appendix 17: print of the article Internet (pagina 22.000-0001 to 22.000-0004)



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### **3. Requests**

Based on the previous allegations, we are asking you for the authorization and the decision of the following investigation acts and the consecutive transmission of the evidence found:

#### **3.1 House Searches**

#### **3.2 Interrogation**

It is required to interrogate the following persons according to the art. 178 let. d. Code of Criminal Procedure (CCP). Informants in this sense are persons who, without being accused

**ESTABLISHMENT OF THE BENEFICIAL OWNER'S IDENTITY**  
(Form A as per art. 3 and 4 CDB)

SV.13.0943 B07.  
102.001.01. E-0009

**A**

Contracting partner:

BRADCREST INVESTMENTS  
Calle 53 Este, Urb Harbella  
Torre Swiss Bank - Piso 2  
Panamá, Republic of Panamá

The contracting partner hereby declares:  
(mark with a cross where appropriate)

- that the contracting partner is the sole beneficial owner of the assets concerned
- that the beneficial owner/s of the assets concerned is/are :

1.	Full name, Date of birth (Company name, Date of incorporation)	Address/Domicile, Country, Nationality (Address/Domicile, Country)
	<u>Harfynenko Mykola</u> <u>12.01.1961</u>	<u>Kiev, Ukraine,</u> <u>Ukrainian</u>
2.	Full name, Date of birth	Address/Domicile, Country, Nationality
3.	Full name, Date of birth	Address/Domicile, Country, Nationality
4.	Full name, Date of birth	Address/Domicile, Country, Nationality

The contracting partner undertakes to inform the bank, of his own accord, about any changes.

Willfully entering false information in this form is a criminal offense.  
(art. 251 of the Swiss Penal Code, forgery of documents; under penalty of penal servitude of up to five years or a prison sentence)

Place and date:

Kiev, 15.01.07

Signature of the contracting partner:

[Signature]  
2. \_\_\_\_\_  
3. \_\_\_\_\_  
4. \_\_\_\_\_



A

## Declaration of identity of the beneficial owner

(Form A pursuant to Art. 3 and 4 CDB)

Account/securities account number:

Contracting partner:

3 405 230Broadcast

Category (where appropriate):

Investments SA

The contracting partner hereby declares that the individual(s)/partnership(s)/legal entity (entities) listed below is/are the beneficial owner(s) of the assets deposited under the above relationship. If the contracting partner is also the sole beneficial owner of the assets, the contracting partner's details must be set out below:

Last name, first name  
(company name)

Date of birth

Nationality

Address/  
registered office

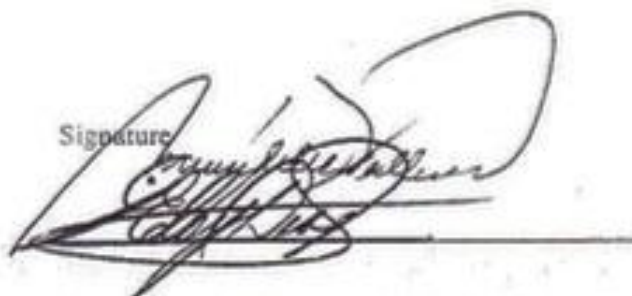
Country

Martynenko, Mykola, 12.01.61, UkraineKiev Ukraine

The contracting partner undertakes to automatically inform the bank of any changes.

Date

Signature

04.02.2011


It is a criminal offence to deliberately provide false information on this form (Art. 251 of the Swiss Penal Code, document forgery; penalty: imprisonment for up to five years or a fine).