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Expert Group “Fighting Transborder Corruption”

Failed in Action

Why European Law Enforcers Are
Unable to Tackle EU-Russian
Transborder Corruption

Report

2017

Failed in Action: Why European Law Enforcers Are Unable to Tackle EU-Russian Transborder Corruption

Analytical report

Working Group “Fighting Transborder Corruption”

EU-Russia Civil Society Forum

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Foreword

You are holding the third investigative report prepared by the Expert Group on Fighting Transborder Corruption of the EU-Russia Civil Society Forum.

In this piece, we have tried for the first time to consider a phenomenon which accompanies European official investigations into cases of transborder corruption where Russian businesses or officials have been involved – that of the inefficiency of the EU law enforcement bodies in prosecuting it.

Russian officials and oligarchs have for years considered Europe a safe harbor for their assets, given the strict rules for security and secrecy of bank accounts in place there. Nowadays, the European community is realizing the need for instruments to track the flows of large private capital from abroad in order to prosecute foreign corruption. This was facilitated, in the first hand, by the adoption of the UN Convention against Corruption in 2003. Article 20 calls for parties to the Convention to adopt legislation foreseeing criminal persecution for illicit enrichment, i.e. “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”. The Article 20 was not ratified by Russian Federation.

Both case studies included in this report – *Flats for Their Russian Excellencies* and *The Khimki Forest: The History of Destruction as Consequence of the “Trading in Influence” Between Russia and France* – demonstrate the lack of power of the EU authorities in fighting transborder corruption. The first case study, by Atanas Tchobanov, the editor-in-chief of the Bulgarian investigative website Bivol.bg, shows how national and EU prosecutors have failed to cut off business relations of Russian Ambassadors in Bulgaria, which often link to crime groups. The second case study, written by the Russian-French independent journalist Anastasia Kirilenko, highlights how the investigation into the destruction of the Khimki forest near Moscow to make room for a motorway, in which the French corporation Vinci is involved, has been impeded over many years.

Both stories describe affiliation of corrupt business – both Russian and European – with power. European prosecutors complain that the Russian law enforcement bodies do not cooperate on cases of international crime and transborder corruption, while Russian civil society activists claim cases should be initiated even without cooperation of the Russian state.

While looking into these two case studies, the Expert Group has come to the following conclusions:

Both Russia and the EU need more transparency and stricter control measures to tackle international complicity in violating norms and rules while realizing large-scale infrastructural or industrial projects. Opaque and improper activities of corporations across the EU-Russia border give rise to suspicions of involvement in corruption on both sides. At the same time corporations

often ignore environmental and social norms and engage with lobbying and activities that lead to the destruction of livelihoods and violation of human rights.

Russia needs to adopt safeguards and agreements on mutual legal assistance in criminal cases with the EU countries. Such agreements should enable cooperation between enforcement agencies and prosecutors on both sides of the border to address international crime and transborder corruption. Stricter controls must apply not only to international business but also to relevant authorities abroad (diplomatic representations) which are currently exempt from both public oversight at home and local policing.

In response to the lack of efficiency of international and state authorities, civil society plays a key role in revealing international crime and corruption, demanding accountability from decision-makers, and fostering new control tools.

The working group “Fighting transborder corruption” was established in 2014 on the initiative of a number of Russian and European activists, journalists and NGO representatives as one of the EU-Russia Civil Society Forum’s expert platforms. The group aims to counteract corruption, as it globalizes and crosses borders together with business, finances and technologies.

Defining and prosecuting transborder corruption

By Harry Hummel and Christopher Starke

In many cases of corruption in Europe, both entities and persons based in the EU and in Russia play a part. Personal enrichment is a strong motivator for improper actions by people in positions of power and must be checked by a strong preventive, corrective and punitive framework. This framework leaves much to be desired in most of the countries involved. In recent years, a lot of information has become available on possible cases of corruption worldwide, also involving the EU and Russia. The question of utmost interest is therefore becoming why these cases continue to occur, why governmental and legal anti-corruption action is – or seems – so limited, and how these limitations can be overcome.

When writing about corruption, one needs to have a clear definition of the phenomenon. This may seem obvious but in practice is not so simple. “Corruption” itself is already more than just a word. It triggers emotions and evaluations, but also uncertainty about what different kinds of behavior it implies. People think of the latest corruption scandal dominating the national and international news, such as the Panama Papers or the FIFA scandal. They may think of bribes being handed out in briefcases or presidents who appoint family members to influential positions. In other words, everybody has an understanding of what corruption is but these can differ from person to person

Standard dictionaries provide broad definitions, identifying corruption as dishonest, illegal behavior by powerful people¹. But these definitions have a circular character for those working to combat corruption, and do not answer the question of what is illegal. They also don’t solve the question of whether behavior that is not illegal can still be considered corrupt.

The main international anti-corruption NGO, Transparency International, more specifically defines corruption as “the abuse of entrusted power for private gain”². This definition includes the abuse of power in the private sector. This is opposed to the one used by the World Bank, one of the international official bodies fighting corruption: “the abuse of public office for private

¹ See for example Merriam-Webster dictionary, <https://www.merriam-webster.com/dictionary/corruption>, and Cambridge Dictionary, <http://dictionary.cambridge.org/dictionary/english/corruption>

² How do you define corruption? Transparency International <http://www.transparency.org/what-is-corruption>

gain”. Fraud and bribery can and do take place in the private sector, often with costly results, the World Bank recognizes, but “public sector corruption is arguably a more serious problem in developing countries [the focus of the work of the World Bank], and controlling it may be a prerequisite for controlling private sector corruption”³.

Although it is not literally saying so, this World Bank statement suggests that corruption is a bigger problem in developing than in developed countries. This may be true but recent estimates of corruption in the EU (using the Transparency International definition) put the level at up to 990 billion euros per year⁴, and estimates for Russia (with a GDP currently about one-tenth of the EU’s) go up to 300 to 400 billion US dollars per year⁵. Therefore, very substantial amounts of money are involved for these “developed” parts of the world as well; we must assume this contributes to economic inequality, erodes trust of citizens in the rule of law, in governing structures and in the political sector, and harms companies that are quality- and efficiency-oriented but unwilling to engage in corruption.

The World Bank also says it is useful to “unbundle” the term corruption “by identifying specific types of activities or transactions that might fall within it”. This is the approach also chosen in international law: the main international convention on the issue, the UN Convention against Corruption (UNCAC)⁶, does not actually define the concept of corruption. It covers a series of behaviors that constitute, or can constitute, corruption: bribery, embezzlement, trading in influence and abuse of functions. Only bribery and embezzlement are mandatory to criminalize for those states that have ratified the convention (almost all states in the world have ratified it, Japan being the main exception). The prohibition of bribery covers both active (offering and giving bribes) and passive bribery (requesting and accepting bribes) and bribery of national as well as foreign officials; the extent to which actions outside the territory of a state can be prosecuted depends on how the state defines its jurisdiction.

The provisions of the UNCAC with respect to bribery of foreign officials largely overlap with those of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This convention has a stronger compliance monitoring system with a specialized OECD working group, but, as is most often the case with this type of convention, defects in its implementation mean there are no real consequences for the states involved. Russia and most EU member states (Croatia, Cyprus, Lithuania, Malta and Romania are exceptions) are party to the convention. A Transparency International report (2015) concludes that of these countries only the UK, Germany, Italy, Austria and Finland are moderately to actively enforcing the convention⁷.

This picture of the need for more decisive action to fight corruption is, with respect to the EU, confirmed by the European Commission’s 2014 Anti-Corruption Report⁸, until now the only one issued although it was planned as a two-yearly exercise. The report covers “specific acts of corruption and those measures that Member States take specifically to prevent or punish corrupt acts as defined by the law, and also mentions a range of areas and measures which impact on the risk of corruption occurring and on the capacity to control it.”

³ How do we define corruption? Helping Countries Combat Corruption: The Role of the World Bank. The World Bank <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>.

⁴ Figure from a study commissioned by the European Parliament from the Rand Corporation, 22 March 2016, <http://www.rand.org/news/press/2016/03/22.html>. The official published European Commission estimate is EUR 120 billion per year: https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en

⁵ See references in note 2 of European Parliament Research Service briefing paper, 12 March 2014, [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140742/LDM_BRI\(2014\)140742_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140742/LDM_BRI(2014)140742_REV1_EN.pdf)

⁶ United Nations Convention against Corruption <https://www.unodc.org/unodc/en/treaties/CAC>.

⁷ Transparency International. Exporting Corruption, 20 August 2015 http://www.transparency.org/whatwedo/publication/exporting_corruption_progress_report_2015_assessing_enforcement_of_the_oecd

⁸ EU anti-corruption report. Report from the Commission to the Council and the European Parliament. Brussels, 3 February 2014 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf

It may be too early to conclude that governmental and intergovernmental action against corruption, and especially transborder corruption, is lacking effectiveness. The first legal instrument explicitly addressing the international dimension of corruption was the Foreign Corrupt Practices Act in the USA (1977). International treaties were created only in the 1990s (OECD, Council of Europe) and after (UNCAC). Only when these agreements came into being did countries such as Germany or the Netherlands criminalize cross-border payments of bribes by companies and end the tax-deductibility of these bribes. Information from the Netherlands suggests that priority given by law enforcement authorities to foreign bribery has remained low, with no active investigating capacity assigned by the Public Ministry; only very recently was it decided to expand capacity on condition that the cost will be covered by returns from fines to be imposed⁹.

Investigative journalists can justifiably argue that major corruption, whitewashing and tax evasion scandals have a stimulating effect on international regulations to control the origins of property and of money kept in accounts¹⁰. Others argue, in a report about EU policies, that as long as core aspects of what should be considered corruption – such as the way public–private partnerships are constructed, and the “revolving door” between politicians and the business world – are not tackled, the fight for honest and truly democratic decision-making is lost¹¹. This is politically a highly charged issue: in reaction to this report, the European Investment Bank stated that it “appears to be a call to anti-corruption campaigners to “challenge modern capitalism”¹².

With respect to Russia, many researchers and commentators argue that “corruption, the trading of favours, embezzlement, and favouritism are not just endemic in Russia, but part of a kleptocratic system of rule through which Vladimir Putin controls the elite”¹³. This means that any fight against corruption in Russia itself will focus on people not inside this system to begin with (perpetrators of petty corruption) or having fallen out of favor, and that international efforts are the main way to tackle major corruption inside the system. Such efforts will however be vehemently opposed¹⁴.

The media clearly play a role as a watchdog to hold political decision makers accountable for their actions¹⁵. By exposing corrupt public officials mass media can prompt investigations by official bodies and convictions of corrupt political actors (vertical accountability). Especially when institutionalized control mechanisms fail, independent and critical media often perform their role as a regulatory body more efficiently than the judiciary. In addition, the media can also have a preventive effect. Many authors argue that corruption is based on three major factors¹⁶: (1) high magnitude of external rewards, (2) low probability of being caught, (3) low magnitude of punishment. If the media fulfill their watchdog role, there is an increased risk for officeholders that their misconduct is exposed and that they will suffer criminal prosecution or a loss of

⁹ Haijer, Friederycke. Speech at a seminar of the expert group on fighting cross-border corruption. EU-Russia Civil Forum. Berlin, 18.12.2016. Information about the researcher: <https://uu.academia.edu/FriederyckeHaijer>.

¹⁰ See for example this overview by the International Consortium of Investigative Journalists of reactions to reports on funds and ownerships kept “offshore”: <https://www.icij.org/blog/2013/04/release-offshore-records-draws-worldwide-response>

¹¹ See for example: Counter Balance. Corrupt but Legal. December 2016 <http://www.counter-balance.org/new-ngo-report-analyses-corrupt-but-legal-practices-in-development-finance/>

¹² Ibid, page 23

¹³ Quote from commentary *Spain versus Russia's kleptocracy* by Marc Galeotti, 4 May 2016, published by European Council on Foreign Relations http://www.ecfr.eu/article/commentary_spain_versus_russias_kleptocracy_7017

¹⁴ The main struggle of this type at the moment is the so-called Magnitsky affair, with the Russian authorities fighting off accusations of major tax fraud by late lawyer Sergei Magnitsky, whose fight is being continued by his former employer Bill Browder, <http://russian-untouchables.com/eng/>

¹⁵ Stapenhurst R (2000) The Media's Role in Curbing Corruption. Washington, D.C.: The World Bank Institute.

¹⁶ Becker, G. and Stigler, G. (1974) Law Enforcement, Malfeasance, and Compensation of Enforcers. The Journal of Legal Studies 3(1): 1–18.

reputation and power. Thus, the personal benefit of corruption decreases and deters potential perpetrators from engaging in corruption in the first place.

The “Fighting Transborder Corruption” group in its latest discussions agreed to employ the Transparency International working definition with the exception that we include “organizational gain”, since many situations seem to involve benefits for companies – or possibly in some cases, for political movements – on both sides, rather than only individual actors. However, during the discussion within the expert group other important questions arose. For example, is corruption always illegal? The working definition refers to corruption as a social phenomenon rather than in a legal framework. The Panama Papers demonstrated that even legal practices can cause public outrage if those practices offend societal norms and values. In those cases the role of investigative journalism is even more important, since a public prosecutor and/or official sanction mechanisms are missing to support the investigation. We agreed to keep the term relatively open so that different kinds of investigation on corruption can be included in the work of the expert group.

The Khimki Forest: The History of Destruction as Consequence of the “Trading in Influence” Between Russia and France

By Anastasia Kirilenko

Introduction

In 2007, the Russian Government signed a decree on deforestation in Khimki, Moscow region, because of the construction of a motorway from Moscow to St. Petersburg. The deforestation, which began three years later, provoked protests from environmental activists and journalists. Civic activists conducted several environmental and anti-corruption assessments. Despite their conclusions about the lack of grounds for the deforestation and suspected conflicts of interests among the Russian officials, deforestation continued and the motorway was constructed and put into operation in 2015. The activists appealed to the French Prosecutor’s Office with a complaint against the builder (the French company Vinci) based on the five articles of the Criminal and Commercial Codes of France, including “bribery of foreign officials”, “concealment of collusion”, “selling out relations” and “misuse of public funds”. According to the complainants (civic activists from Russia and France), Vinci used corrupt means to secure a lucrative contract from the Russian Government for the construction and operation of the motorway – the tender was a fake. The project was declared a “public–private partnership”. However, it was funded 90% from the state budget of Russia. During the next 30 years part of the income from the road operation will be received not by the French company, but by the offshore companies affiliated with persons close to the Russian authorities.

At the beginning of 2017, it is known that the Prosecutor’s Office in Paris has held a pre-investigation, which provides a precedent for this kind of complaint with regard to Russia.

Background. Environmentalists’ fight for preservation of Khimki Forest. Environmental assessment

The project of a toll highway between Moscow and St. Petersburg had been discussed in Russia since 2004. In 2006, during a visit of President Vladimir Putin to France, a letter of intent was signed with the Vinci company. In 2008, a tender was announced in which Vinci took part, but it was canceled as invalid while negotiations were held directly with the company. On July 27, 2009, a contract was signed for the construction of the motorway.

In 2009, construction was delegated to a subsidiary of the Vinci company, while deforestation was carried out by the Russian company Teplotekhnika, starting from July 2010. According to the contract, Vinci also received a right to charge fees for the use of the road for 31 years. The total cost of construction is estimated at 66.081 billion RUB (1.65 billion EUR). The project was supposed to be a public–private partnership, which the European Bank for Reconstruction and Development (EBRD) promised to fund. However, the EBRD refused to finance the project and two Russian state banks (Sberbank and Vneshekonombank) provided a loan to Vinci¹⁷.

From the beginning the project provoked protests from environmentalists.

¹⁷ Notification on holding of a general meeting of shareholders and decisions made at the general meeting. North West Concessionary Company [http://msp-highway.com/investors/issue_documents/R241214%20\(3\).pdf](http://msp-highway.com/investors/issue_documents/R241214%20(3).pdf)

In 2007, a group of civic activists led by Yevgeniya Chirikova announced the creation of an informal movement to protect Khimki Forest. Today the movement is called “Eco-defense” and has its own website¹⁸. The environmentalists have drawn attention to the fact that the new road follows the railroad, then makes a loop through Khimki Forest before returning to the railroad. It also follows the existing M10 road along the same route. What was the reason to make a loop through the forest? (See Figure 1). Why not repair and expand the old road? Before the construction of the road, the forest was a special recreation area protected from logging. However, in 2009, the Government transferred it to the category of industrial forests, where road construction is possible (later Transparency International – Russia would recognize that decision as affected by corruption; for details, see below).

Starting from 2007, journalist Mikhail Beketov had covered the fight of ecologists for conservation of Khimki Forest in a small, self-published newspaper, *Khimkinskaya Pravda*.

In response, he was subjected to a brutal attack on October 13, 2008. Beketov spent 1.5 years in hospitals; his leg was amputated and his speech paralyzed. Those responsible for the crime have not been found yet. On April 8, 2013, Mikhail Beketov died of a heart attack. When he was already disabled, the court of Khimki found him guilty of slander upon the suit of the Mayor of Khimki, Vladimir Strelchenko, but that decision was canceled. On November 4, 2010, Konstantin Fetisov, an environmentalist and defender of Khimki Forest, was also attacked. In his case, the crime was contracted by an employee of the Khimki City Administration.¹⁹



Mikhail Beketov

Photo: Anastasia Kirilenko, Radio RFE/RL, October 2010

When deforestation started in July 2010, the environmentalists pitched a permanent protest camp. On July 23, 2010, at 5 AM, the camp was attacked by masked men. Then the camp was dispersed by special police, while the journalists Yuriy Timofeev and Elena Kostyuchenko, who tried to make a video, were detained. They were accused of “disturbing public order”. Kostyuchenko received a neck injury²⁰. Such inexplicable cruelty towards the protest participants, even by Russian standards, caused a wide public outcry.

¹⁸Eco-defense – Environmental Defense of Moscow and Area <http://www.ecmo.ru/articles/o-nas>

¹⁹Fetisov’s case “came out of the coma”. RIA Novosti, 28.12.2010
<https://ria.ru/inquest/20101228/314566375.html>

²⁰Vlasenko, Elena. Radio Svoboda office in Khimki: environmentalists detained and forest cut down. Radio Liberty, 23.07.2010 <http://www.svoboda.org/a/2107406.html>

Due to those protests, felling was suspended in August 2010 for further consultations with the public. But at the beginning of 2011, construction continued, even before the assessments were published.

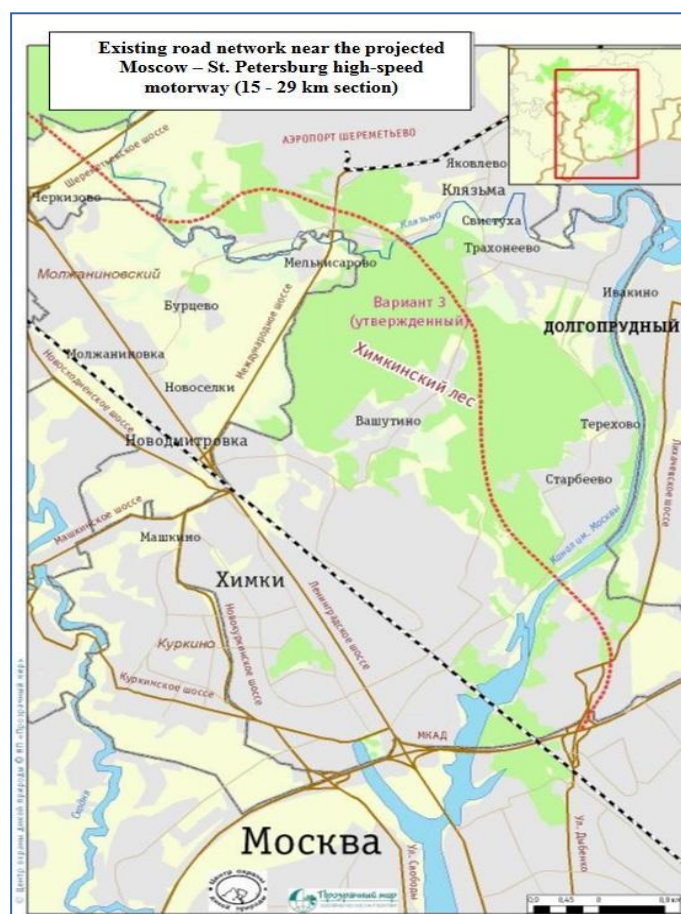


Figure 1. Schematic route of the Moscow–St. Petersburg motorway through Khimki Forest (stipple).

In August 2010, Greenpeace published a conclusion “On the natural value of the Khimki Forest”. It reflected on the route of the road and concluded that the construction “will inevitably destroy one of the three (or four, together with Losinskiy island) largest and biologically most sustainable forest areas within the shelter belt of Moscow”²¹. Another challenge was that a large natural territory would be fragmented into four isolated pieces. Greenpeace stated the following: “*In fact, it would lead to a sharp increase in adverse effects on the remaining natural ecosystems (pollution, noise, penetration of foreign species, collapse of the forest walls adjacent to the motorway, change of the hydro-regime, etc.)*”

Another assessment was carried out by a group of experts, including a member of the Environmental Committee of the State Duma, Tamara Zlotnikova, Director of the Institute of Transport Economics, Mikhail Blinkin, WWF representatives, and others. The expert commission was established on October 13, 2010, by the civic coalition “For the forests of Moscow region”, in line with Russian President Dmitriy Medvedev’s instruction regarding suspension of the construction of the Moscow–St. Petersburg motorway for additional public and expert discussions to be held. In April 2011, the commission published the *Independent environmental assessment of the Moscow–St. Petersburg motorway project (15–58 km section)*²², which reviewed eleven

²¹Greenpeace – Russia. Conclusion on the natural value of the Khimki Forest, 30.10.2010
http://www.ecmo.ru/data/doc/Jul1YaroshenkoKomarova_Greenpeaceo_tcennosti_himkinskogo_lesa.doc

alternative routes. According to both experts, the route selected by the Government was the worst one from an environmental point of view.

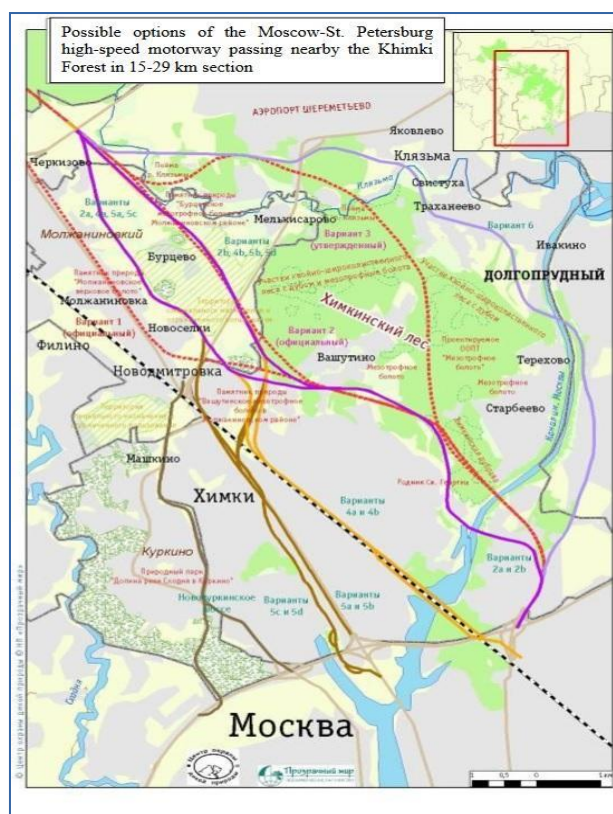


Figure 2. Alternative possible options of the motorway passing near Khimki.
Source: Independent Expert Committee. Independent Environmental Review of the Moscow–St. Petersburg motorway project (15–58 km section), 2011.

In 2010, the environmentalists, led by Yevgeniya Chirikova, wrote a letter to the construction company (Vinci) requesting to review the motorway project. The company shifted the responsibility for the selection of the route and deforestation onto the Russian authorities.

On July 21, 2010, upon request of Radio RFE/RL, a spokesperson of the Vinci company, Vanessa Lattes, gave the following statement:

“The North West Concessionary Company, partially owned by the Vinci Group, received the contract for construction of the first section of the toll motorway from Moscow to St. Petersburg.

The contract signed on July 27, 2009 implies financing, construction, and operation of the first sector of a motorway (43 km), which would relieve the extremely busy M10 route leading to Moscow.

Russian authorities are responsible for the motorway project (including site selection, land acquisition, felling, and rerouting of communications). They contracted the selected entrepreneurs to work in the respective areas. Therefore, at this stage, none of the company members would interfere with the construction. The North West Concessionary Company would start its works only after the plots for construction were provided by the relevant authorities.”²³

In July 2009, when the Russian Government signed the contract with Vinci, the forest had not been transferred from the protected category into the industrial one (permitting felling). This

²³Kirilenko A. Khimki: the French developer is not responsible. Radio Liberty, 23.07.2010
<http://www.svoboda.org/a/2106102.html>

decision was taken by the Government in November 2009. Apparently, construction of the motorway through the forest was not planned before 2005, and the law was later “adapted” to the needs of the project. The agreement with Vinci had been planned since 2006. In 2007–2008 a tender was put out, but its results were canceled, and the Federal Road Agency signed a direct contract with Vinci. Civic investigations (discussed below) sparked suspicions that the tender was a fake, and that a disadvantageous and expensive construction project was chosen because of a corrupt scheme.

Civic investigation: revealing an offshore chain and the project’s non-transparency

Along with the environmental assessments, anti-corruption assessments of the project were carried out.

On April 7, 2010, Transparency International – Russia (TI-R) published an anti-corruption assessment of the Moscow–St. Petersburg motorway project²⁴. The assessment was conducted upon an appeal issued by the movement to protect Khimki Forest on February 10, 2010. TI-R was looking for signs of corruption in the process of the Russian Government’s adopting of the plan for the construction of the motorway by Decree 1642-p (05.11.2009).

TI-R concluded the following: *“While not questioning the expedience of the decision and the need to resolve the transportation problems, TI-R believes that the decision to transfer the forest areas of Istra and Dmitrov forestries into the category of lands of special purpose for the construction of the motorway, as stated in the Decree of the Government of the Russian Federation No. 1642-p (05.11.2009),*

- adopted in line with the provisions containing corruption factors,*
- which has not been fully and amply motivated,*
- in the process of adoption of which the effective law was violated,*
- which does not take into account the categorical protests of the local community, general public, and competent state bodies,*
- which involves private interests of persons participating in the decision making,*

*contains certain signs of a corruption scheme.”*²⁵

Law 172-FZ “On the transfer of lands and land plots from one category to another” (21.12.2004) allows transfer of lands categorized as protected forests into other categories of land “in case of placement of objects of a state or municipal importance, when there are no other options for placement of such objects”²⁶.

TI-R’s conclusion explains that *“the Act of selection of a forest plot No. 03-227 (03.07.2007), attached by the applicant to the request, had no alternative options (columns ‘option 2’ and ‘option 3’ were marked as ‘none’), despite the fact that the alternative options existed and the Federal State Institution ‘Roads of Russia’ knew about them)”*.

TI-R suggested that the decision on the construction of the road involved personal interests of Igor Levitin, the Transport Minister at that time and the Head of the Board of Directors of the Sheremetyevo International Airport. The decision on the construction was within the competence of the Federal Government. However, on April 5, 2005, the Head of Khimki Administration, Vladimir Strelchenko, issued Local Decree No. 367-P on the construction of the motorway, which stated that the new road through Khimki Forest *“would solve the transport problems of the Sheremetyevo Airport, providing for a quick and unimpeded delivery of passengers and cargo”*.

²⁴Transparency International – Russia. Conclusion of the anti-corruption assessment of TI-R on the Khimki Forest, 09.06.2010 <http://transparency.org.ru/antikorrupcionnaia-ekspertiza/zakliuchenie-antikorrupcionnoi-ekspertizy-tcentra-ti-r-po-khimkinskomu-lesu>

²⁵Ibid.

²⁶Federal Law 172-FZ On the transfer of lands and land plots from one category to another (21.12.2004). Rossiyskaya Gazeta, 30.12.2004 <https://rg.ru/2004/12/30/zemli-perevod.html>

Later, that decision was canceled, since the construction of a motorway from Moscow to St. Petersburg falls within the competence of the Federal Government, and Sheremetyevo Airport was no longer mentioned. But Strelchenko had accidentally mentioned the intentions of the authorities.

In his articles, the journalist Mikhail Beketov accused Vladimir Strelchenko of corruption. After the attack on Beketov, his lawyers Stanislav Markelov and Andrey Stolbunov demanded to interrogate Strelchenko. This was not done and Strelchenko appealed to the court with a libel suit; he came personally to the court, which impressed the judge. In November 2010, the Magistrate Court of Khimki found Beketov guilty (he was already disabled by that time) and sentenced him to a fine, although he was not obliged to pay it because the period of limitation had expired. The Court of Cassation canceled that decision²⁷.

More quotes from TI-R's conclusion: "*TI-R discovered that the Minister of Transport of the Russian Federation, Igor Yevgenyevich Levitin, is ex officio the Head of the Board of Directors of the Sheremetyevo International Airport.*"

The Federal State Institution (FSI) 'Roads of Russia' was established by the Federal Road Agency (Rosavtodor), which is subordinate to the Ministry of Transport of the Russian Federation. The FSI 'Roads of Russia' filed a request to the Russian Government for transfer of the forest lands into the category of lands for industry and other special purposes, which led to the adoption of Decree No. 1642-p. Given the subordination of the FSI 'Roads of Russia' to the Minister of Transport of the Russian Federation, I.E. Levitin, and the post of I.E. Levitin in the Sheremetyevo International Airport, there is observed a conflict of interest as regards filing the request."²⁸

Finally, over 150,000 citizens signed appeals asking the President and the Head of Government of the Russian Federation to protect Khimki Forest. However, those appeals "*did not bring any result, as they were filed with the same authorities whose actions were challenged*", TI-R concluded.

Still, due to public resonance, in August 2010 Russian President Dmitry Medvedev convened a hearing in the Civic Chamber of the Russian Federation. The Head of TI-R, Elena Panfilova, presented the organization's findings at that hearing. The hearing was completed on September 16, 2010, but its content was not made public. According to its results, the motorway project was not changed and construction resumed at the beginning of 2011.

Visiting Paris in March 2010, Dmitry Medvedev said the following about deforestation: "*Of course, it's a pity that we have to cut down the oaks. The question is when they were planted and what is their actual value. Anyhow, the project should develop. I will ask my assistants to work on this 'oak problem'.*"²⁹

EBRD became interested in the independent assessments of the project and finally refused to participate in it³⁰.

Meanwhile, on August 26, 2010, the *Vedomosti* newspaper wrote about Georgiy Koryashkin, who was one of the members of the Board of Directors of the North West Concessionary Company

²⁷Kirilenko A. Defendant Beketov was brought to the court by ambulance. Radio Liberty, 21.10.2010 <http://www.svoboda.org/a/2197509.html>

²⁸Transparency International – Russia. Conclusion of the anti-corruption assessment of the Decree of the Russian Government No. 1642-p (05.11.2009) «On the transfer of forest lands of Istra and Dmitrov forestries ... into the category of lands for industry, energy production, transportation, communications, radio, television, informatics, space activities, security and defense, and other special purposes for construction of the motorway", adopted in the framework of the project on construction of the Federal motorway from Moscow to St. Petersburg, 7.4.2010 http://www.ecmo.ru/data/doc/iyun2010_zaklyuchenieantikorrupcionnoyekspertizy.doc

²⁹Kostenko N., Tovkailo M. EBRD saw Khimki Forest behind the motorway. *Vedomosti*, 03.10.2010 <http://www.vedomosti.ru/finance/articles/2010/03/03/ebrr-razglyadel-za-skorostnoj-trassoju-himkinskij-les>

³⁰Ibid.

(NWCC), which was created by Vinci to work in Russia. Previously, Koryashkin worked for over ten years together with the oligarch Arkadiy Rotenberg in different companies.

“NWCC does not publish any reports. It became known that Georgiy Koryashkin had been a member of its Board of Directors since 2007 from reports of the Novorossiysk Commercial Sea Port (NCSP), where he also is a member of the Board of Directors (the report shows Koryashkin’s bio). His main position is the Director General of NPV Engineering, controlled by Rotenberg. In spring 2008, when Rotenberg’s structures became co-owners of the port, Koryashkin was elected to its Board of Directors³¹.

A journalistic investigation published by Vedomosti stated the following: “For over ten years Koryashkin worked together with Igor Rotenberg (the son of Arkadiy Rotenberg). Since 1999, they had worked in the Ministry of State Property³² and since 2004 in the Russian Railways. In 2006, Koryashkin became the Director General of ‘NPV Engineering’, while Igor Rotenberg was elected to the Board of Directors of that company. ‘NPV Engineering’ acts in the interests of Arkadiy Rotenberg. Its employees are members of the boards of directors of most of his companies (as confirmed by the representative of ‘Stroigazmontazh’, a holding which united construction companies belonging to the Rotenberg brothers, Arkadiy and Boris).”

Publication in *Vedomosti* was not accompanied by any evaluative comments, but the heading spoke for itself: “Felling under supervision”. In the future, when there is additional evidence of corruption, the last name “Rotenberg” will allow to find grounds for legal prosecution of the Vinci company. Arkadiy Rotenberg is a childhood friend of Vladimir Putin³³. When Putin became President, Rotenberg received a record number of state orders for his construction business³⁴.

In 2011, *Vedomosti* wrote that the road construction project was completed due to Arkadiy Rotenberg, who literally “rescued” it after the protests of environmentalists. According to an official of the Moscow City Administration: “Last year, the Rotenberg brothers’ acquaintance with Vladimir Putin saved the project of construction of the Moscow–St. Petersburg motorway when EBRD refused to finance it. After Putin’s intervention, Sberbank and Vneshekonombank gave attractive loans to the NWCC, instead of the Europeans: 29.2 billion RUB for 20 years”³⁵. The newspaper article also discussed whether Vinci had enough contacts to get a new contract for subway construction, and the official believed that Rotenberg could help, since he had already helped with the M11 motorway project.

At the same time, in 2011, an international network of CSOs Bankwatch became interested in the situation around Khimki Forest. This organization focuses on investigation of corruption schemes involving construction projects harmful to the environment. Article 46 of the Bankwatch Charter foresees “prevention of the harmful effects of international development on the environment and society, as well as promotion of alternative solutions and community participation”. Therefore, it became especially interested in construction of the motorway through Khimki Forest.

On April 30, 2011, Bankwatch published a report on the structure of NWCC. It appeared to consist of a branched network of offshore companies, the final beneficiaries of which were unknown.

³¹Sagdiyev R. Rotenberg’s representative on the Board of Directors of a company which is cutting down Khimki Forest. *Vedomosti*, 26.08.2010

http://www.vedomosti.ru/business/articles/2010/08/26/vyrubka_pod_prismotrom

³²The Ministry of State Property of the Russian Federation was abolished in 2004.

³³Rotenberg: Putin does not help me in business, we’re friends in sports only. *Vedomosti*, 10.07.2013

<http://www.vedomosti.ru/politics/news/2013/07/10/rotenber-putin-ne-pomogaet-mne-v-biznese-my-druzya-tolko-v>

³⁴Kings of the state order – 2016. Forbes Rating, 25.02.2016 <http://www.forbes.ru/rating-photogallery/313039-koroli-goszakaza-2016-reiting-forbes>

³⁵Lyauv B., Proskurnina O. Rotenberg together with the French is going to the Moscow underground.

Vedomosti, 29.08.2011 http://www.vedomosti.ru/business/articles/2011/08/29/vyrubka_pod_prismotrom

The Bankwatch report stated that “*a more careful study of the North West Concessionary Company leads to a complex network of offshore companies ending in the British Virgin Islands and confirms participation of Arkadiy Rotenberg*”³⁶.

This is how the company structure looked in 2009–2011 according to the Bankwatch data:

- 100% shares of the North West Concessionary Company (Moscow) are owned by Vinci Concessions Russie SA (Rueil-Malmaison, France). In its turn, Vinci Concessions Russie SA is co-owned by the following companies: Vinci Concessions Vosstran Russie SAS (Rueil-Malmaison) (25%), Vinci Concessions SA (Rueil-Malmaison) (25%), and Sunstone Holding Ltd. (Limassol, Cyprus) (50%).

- 73.8% of shares of Sunstone Holding Ltd. (Limassol, Cyprus) belong to Croisette Investments Ltd. (Limassol), while the remaining 26.2% belong to Littoral Investments Ltd. (Limassol). 50% of Croisette’s shares and 100% of Littoral’s shares are owned by the company Peak Shores Investment Corp., which is registered in the British Virgin Islands (Tortola). The other 50% of the Croisette shares are owned by another Cypriot company called Olpon Investments Ltd. (Nicosia, Cyprus). Mr. Arkadiy Rotenberg is the owner of 100% of shares in Olpon Investments Ltd. (Nicosia)³⁷.

- Peak Shores Investment Corp. is a dead end. Its registration documents do not contain any data about the shareholders. British Virgin Islands legislation does not require companies to provide such information. However, Bankwatch suggested that the final beneficiary of Peak Shores Investment could be the N-Trans Group, based on the agreement of intent “to establish a joint company” previously concluded between the N-Trans Group and Vinci (see Chart 1).

³⁶Bankwatch Network. Vinci – a cover for oligarchs and tax havens in Russia’s first road PPP. 30.04.2011 http://bankwatch.org/documents/Vinci_oligarchs_taxhavens_Khimki.pdf

³⁷Kleptocracy Initiative, Hudson Institute (<http://archive-project.org/search> Complaint Sherpa v. NWCC, (unofficial English translation), p. 9, 24.06.2013. <https://assets.documentcloud.org/documents/2722126/2013-06-24-Sherpa-v-NWCC-Facts-of-the-Case-P-9.pdf>

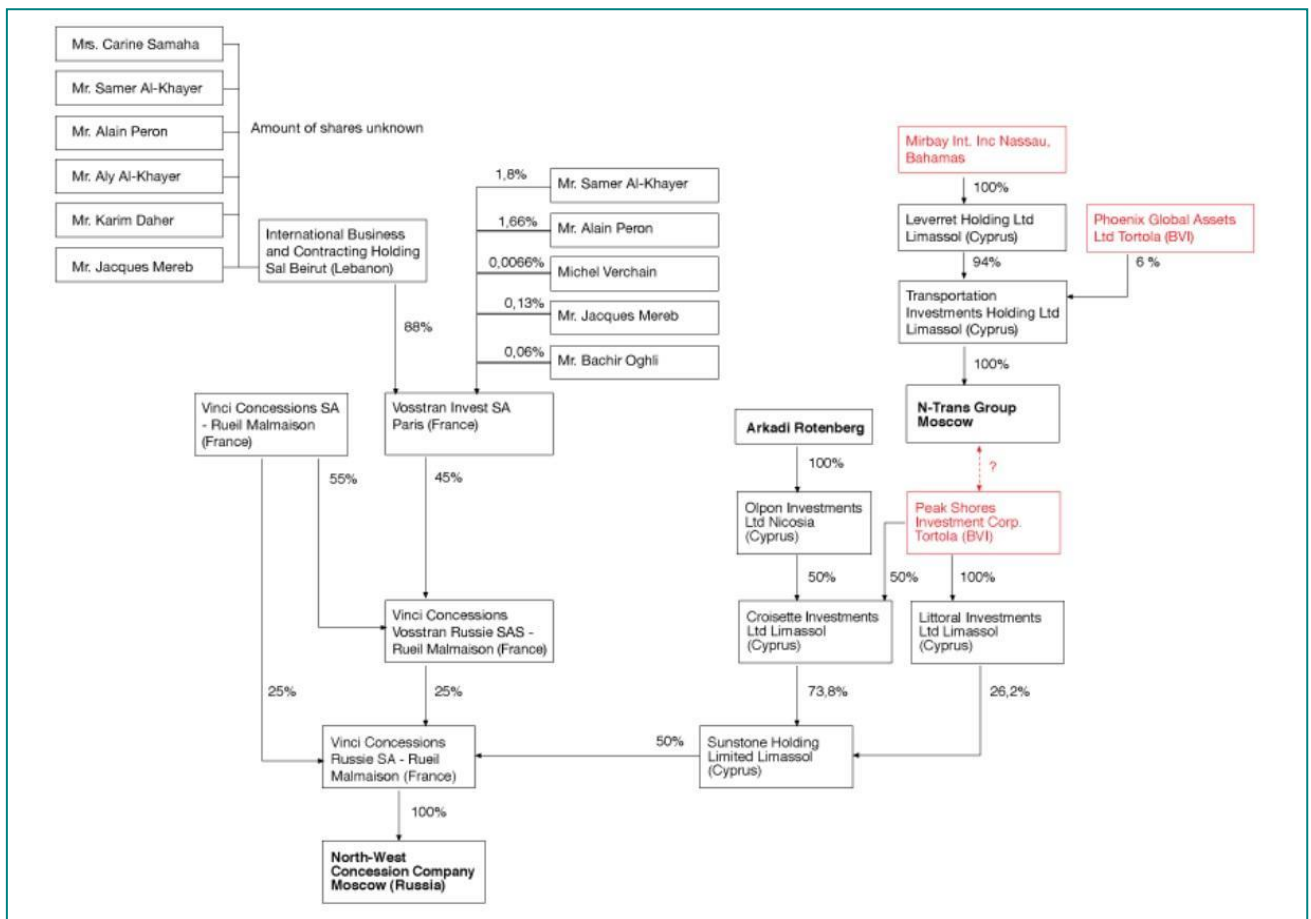


Chart 1. NWCC ownership structure in 2007–2011 (according to the Bankwatch data).

Based on that scheme, in 2009–2011, Arkadiy Rotenberg controlled about 18% of shares in NWCC, which formally was French. His participation was not officially indicated on the company’s website. The company structure would change two more times, as described below in relation to the complaint filed to the Prosecutor’s Office in Paris by civic activists.

Filing a complaint to the Prosecutor's Office of France and a civil suit to the court of first instance

Following the Bankwatch report, the French Sherpa Association became interested in the situation around Khimki Forest. The Association specializes in lawsuits related to cross-border corruption in France.

Sherpa, representing Yevgeniya Chirikova, Bankwatch, Russie-Libertés³⁸ and other activists and organizations, filed a complaint to the Prosecutor’s Office of France relating to alleged acts of bribery of foreign public officials for the deal to build and operate the Moscow–St. Petersburg motorway. On October 3, 2013, it became known that the Paris Prosecutor’s Office had begun a preliminary review of a complaint against the French company Vinci Concessions Russie SA, NWCC owner, as well as “unidentified persons”³⁹.

Sherpa said in the complaint that this became possible through the cooperation of several NGOs, and that the preliminary investigation provided a precedent for France:

³⁸Russie-Libertés. French association whose purpose is to fight for human rights in Russia <https://russie-libertes.org/about/presentation-de-russie-libertes/>

³⁹The complaint against VINCI CONCESSIONS RUSSIE SA: initial inquiry opened by the Prosecutor’s Office of Paris. Sherpa press release (in French), 03.10.2013 <https://www.asso-Sherpa.org/plainte-contre-vinci-concessions-russie-enquete-preliminaire-ouverte-parquet-paris>

“The NGO complainants welcome the opening of a preliminary investigation by the Prosecutor’s Office of Paris after filing, on June 24, 2013, complaints about financial crimes allegedly committed in connection with the construction of the highway between Moscow and St. Petersburg ...

On this occasion, the NGOs would reiterate that the chasm between loud speeches of representatives of transnational corporations about their concern for ethics and reality several thousand kilometers from Paris, away from the eyes of shareholders and consumers, continues to increase ...

It is worth recalling that the investigation on suspicion of bribing public officials and related financial crimes in Russia is excited for the first time by the Prosecutor’s Office of Paris.

Applicants expect from the Prosecutor’s Office (Police)⁴⁰ that it will do its utmost to find the perpetrators of the offenses described, notwithstanding the separate verification, which will certainly be made in the future, after the appointment of one or several investigating judges, given the international, obfuscated nature of the offenses”⁴¹.

According to the French legal system, after applying to the Prosecutor’s Office a citizen may also apply to the investigating judge with a civil suit. This was done on May 10, 2016; thus, there are two parallel procedures. Sherpa lawyer Julien-Larer-Genevois assumes that the investigating judge in the civil lawsuit will be appointed soon⁴².

Sherpa states in a press release: *“The Sherpa Association and Bankwatch, supported by civil society representatives Yevgeniya Chirikova and Mikhail Matveyev, filed a civil suit⁴³ in the corps of Nanterre Prefecture’s investigating judges (a suburb of Paris, at the place of registration of the parent company Vinci-comm.) with the support of the ‘Principle’ Association in defense of Khimki Forest⁴⁴. Thus, the forthcoming appointment of the investigating judge will begin all necessary investigations to establish the truth. While France has strengthened its legal arsenal in the fight against corruption, and French companies are also taking on more obligations in this regard, it is essential that French justice define the qualification of acts that could be committed by a major French company in a country, which is riddled with serious corruption”⁴⁵.*

On November 22, 2016, Yevgeniya Chirikova was first interrogated as a witness relating to the complaint submitted to the Prosecutor’s Office, that is, in a criminal case. The questioning took place in the Central Division to Combat Corruption of the French Police.⁴⁶

Interestingly, in the complaint to the Prosecutor’s Office of France the Sherpa lawyers foresaw difficulties of international investigations and separately agreed on the following point: *“The*

⁴⁰In France it is necessary lodge a complaint with the public prosecutor, who directs the investigation to the police or other law enforcement authorities.

⁴¹The complaint against VINCI CONCESSIONS RUSSIE SA: initial inquiry opened by the Prosecutor’s Office of Paris (in French), 03.10.2013 <https://www.asso-Sherpa.org/plainte-contre-vinci-concessions-russie-enquete-preliminaire-ouverte-parquet-paris>

⁴²A conversation with the author, 17.01.2016.

⁴³Sherpa and partners file a civil suit against Vinci Russie on suspicion of bribing foreign officials. Sherpa press release (in French), Paris, 10.05.2016 <https://www.asso-Sherpa.org/Sherpa-et-ses-partenaires-deposent-plainte-avec-constitution-de-partie-civile-contre-vinci-russie-pour-des-faits-de-corruption-dagent-public-etranget>

⁴⁴Inter-regional public charitable organization, society for the protection of the rights of consumers and environmental protection <http://www.greenstartup.ru/index.php>

⁴⁵Sherpa and partners file a civil suit against Vinci Russie on suspicion of bribing foreign officials. Sherpa press release (in French), Paris, 10.05.2016 <https://www.asso-Sherpa.org/Sherpa-et-ses-partenaires-deposent-plainte-avec-constitution-de-partie-civile-contre-vinci-russie-pour-des-faits-de-corruption-dagent-public-etranget>

⁴⁶ Matveev M. Leader of the Movement to Defend Khimki Forest Meets with French Police. Activatica, 01.12.2016 <http://activatica.org/blogs/view/id/2926/title/leader-of-the-movement-to-save-khimki-forest-gave-testimony-in-france>

*applicants are aware of the difficulty of achieving effective cooperation with certain countries, namely Russia, but it is worth clarifying that France could seek such cooperation*⁴⁷.

In addition, the claimants called on the Prosecutor's Office to respect Circular No. CRIM-04 6/G3-16-06-04 on criminal law, adopted on June 21, 2004 in France at the national level to implement the UN Convention against Corruption of October 31, 2003, which was signed by France:

*"According to Circular No. CRIM-04 6/G3-16-06-04, fixing the general direction of the prosecution policy in France with regard to corruption, the Prosecutor of France should treat complaints on bribery of foreign public officials thoroughly, while ignoring 'all considerations based on commercial national interest or possible negative impact on bilateral relations between the two countries'"*⁴⁸.

In addition, the complaint described context, including the tender for construction of the road.

Apparently, the NWCC deal was not concluded with Vinci with observance of all legal procedures. A protocol of intentions was signed between Vinci and the Russian Minister of Transport (Levitin) on September 22, 2006, on the occasion of Vladimir Putin's visit to France. On October 18, 2007, the tender was announced, which was attended by three companies, including NWCC, created by Vinci specifically for participation in the tender. However, according to the Rosavtodor order of October 28, 2008, the tender was declared invalid because of insufficient qualifications of some participants. As a result, the contract was signed directly between the Ministry of Transport of the Russian Federation, represented by Rosavtodor, and one of the bidders, namely NWCC (which is allowed under Russian law, if the tender is not held). It is worth noting also that NWCC was created on September 4, 2007, i.e. shortly before the official announcement of the tender.

As the complainants reminded, in 2012 the Organization for Economic Cooperation and Development (OECD), in its report *On the application in France of the OECD Convention on Combating Bribery of Foreign Public Officials*⁴⁹, summed up the results of the investigations and sentences for bribery of foreign public officials. Despite the fact that the Convention was signed in 1997, in France such sentences had been passed only since 2008, against three individuals and, finally, against a legal person in 2012. The OECD noted that the French justice system had not conducted a thorough investigation to establish the responsibility of firms, not just individuals in the three first cases⁵⁰. Sherpa, in turn, encouraged the investigation into alleged corruption in the deal struck between the Vinci Corporation and Russian officials in accordance with the recommendations of the OECD, relying on a combination of indirect indications rather than citing "inability to prove the existence of collusion"⁵¹.

Russia needs to make progress as regards the implementation of the recommendations of the OECD to bring national legislation into conformity with the Convention, noted the OECD in October 2016⁵².

⁴⁷Complaint Sherpa v. NWCC, p. 21, 24.06.2013. Source: Kleptocracy Initiative, Hudson Institute <https://assets.documentcloud.org/documents/2722134/Undated-Sherpa-v-NWCC-Complete-Case-in-French.pdf>, <http://archive-project.org/>

⁴⁸Ibid., p. 21

⁴⁹OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997 <http://www.oecd.org/corruption/OECDantibriberyconvention.htm>

⁵⁰Report on the third step of the implementation in France of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (in French), October 2012 <http://www.oecd.org/fr/daf/anti-corruption/FrancePhase3fr.PDF>

⁵¹Complaint Sherpa v. NWCC (complete case in French), p. 23, 24.06.2013. Source: Kleptocracy Initiative, Hudson Institute <https://assets.documentcloud.org/documents/2722134/Undated-Sherpa-v-NWCC-Complete-Case-in-French.pdf>, <http://archive-project.org/>

⁵²Statement of the OECD Working Group on Bribery: Russia's Legislation for Combating International Bribery needs Reform as a Matter of Urgency, 16.10.2016 <http://www.oecd.org/corruption/anti-bribery/statement-of-oecd-working-group-on-bribery-russia-s-legislation-for-combating-international-bribery-needs-reform-as-a-matter-of-urgency.htm>

“We did not limit ourselves to open sources,” said William Bourdon, the Head of the Sherpa Association, in a conversation with the author of this article, after the filing of the complaint in 2013. After conducting its own investigation, Sherpa noted that the structure of the company was changed twice during the 2011–2013 period.

In 2011, the NWCC ownership structure changed for the first time (see Chart 2). Arkadiy Rotenberg remained the beneficiary, but Aleksandr Plekhov was added. Rotenberg now controlled about 3% of the company, and Plekhov about 14% (that is, it can be assumed that a portion of Rotenberg’s share moved to Plekhov, and the total amount of bribes totaled about 17–18%)⁵³ (see Chart 1).

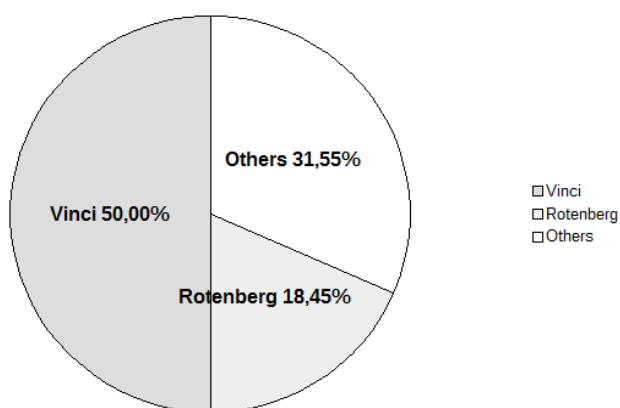


Chart 1. Rotenberg’s share in NWCC in 2007–2011. Source: Author’s calculations based on the Bankwatch data

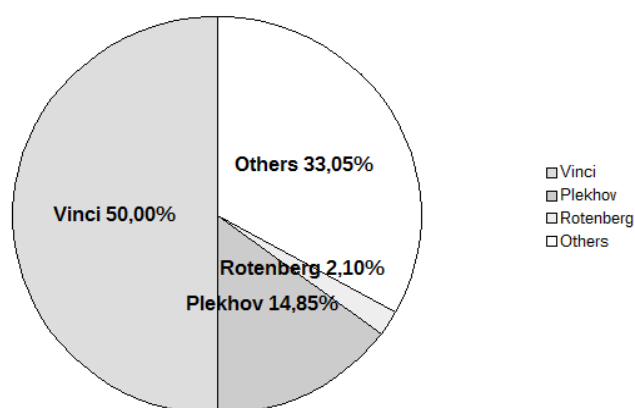


Chart 2. Shares of Arkadiy Rotenberg and Aleksandr Plekhov in NWCC in 2011–2012. Source: Author’s calculations based on the Sherpa data

Aleksandr Plekhov is a well-known Russian entrepreneur and billionaire⁵⁴. Officially, he is the Executive Director of the JSC Vital Development Corporation, the manufacturer of biochemical reagents. This JSC is registered in Cyprus as an offshore company. In the early 2000s Plekhov had common businesses with Oleg Malinin, now Deputy Chairman of the Management Board of the Bank Rossiya⁵⁵.

Suspicious that the natural and legal persons referred to in the complaint may be associated with corruption and receiving bribes has intensified recently.

⁵³See comparative charts based on the Bankwatch and Vinci data.

⁵⁴Plekhov Aleksandr Grigorievich. Who is who <http://whoiswho.dp.ru/cart/person/1936121/>

⁵⁵The composition of the Board of JSC AB Russia <http://web.abr.ru/about/corp/pravlenie/>

On April 3, 2016, the International Consortium of Investigative Journalists (ICIJ) published materials according to which Aleksandr Plekhov was a shareholder of Sunbarn Ltd.⁵⁶, registered in the British Virgin Islands. According to *Novaya Gazeta*, in 2013 this company in one day received loans from three offshore structures, all owned by Arkadiy Rotenberg; the loans totaled USD 185 million over 10 years at under 2% per annum⁵⁷.

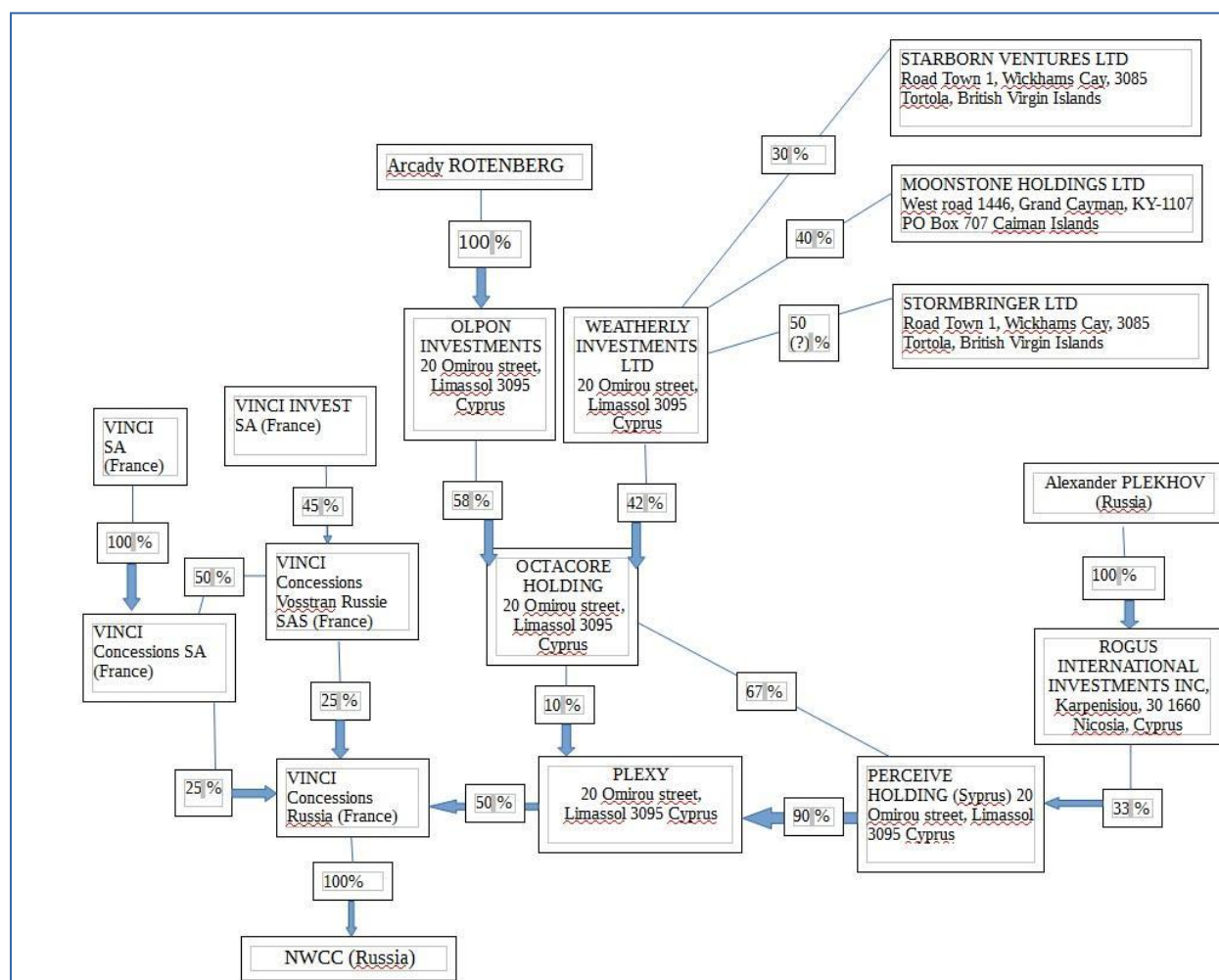


Chart 2. NWCC structure in 2011–2012. Source: Sherpa, 2013

In 2009–2010, Sunbarn Ltd., owned by Aleksandr Plekhov, signed standard contracts for consultancy services totaling USD 30 million with the offshore companies Jabiru Consultants and Pearl Kite Trading. In addition, since 2012 Plekhov has owned company shares of Sonnette Overseas, handled by musician Sergey Roldugin⁵⁸. In 2007, the company received a loan of USD 6 million from businessman Alexey Mordashov and did not return⁵⁹. Arkadiy Rotenberg and Sergey Roldugin have never concealed in their interviews that they are childhood friends of Vladimir Putin. After the resulting resonance in the media after these and other deals led to the suspicion of corruption, a spokesman for Arkadiy Rotenberg reported to the state channel Russia-1 that Rotenberg's companies provided loans to offshore Sunbarn Ltd. in 2013 "in smaller sizes", and that "all loans will be repaid by 2023"⁶⁰. The channel separately noted that "Vladimir Putin was not mentioned directly in Panama papers".

⁵⁶International Consortium of Investigative Journalists (ICIJ) <https://offshoreleaks.icij.org/nodes/12156174>

⁵⁷Gold score. Novaya Gazeta, 3.4.2016 <http://krug.novayagazeta.ru/12-zoloto-partituri>

⁵⁸Organized Crime and Corruption Research Project <https://data.occrp.org/text/2574174?dq=Plekhov&page=1>, <https://offshoreleaks.icij.org/nodes/10210088> scheme

⁵⁹Gold score. Novaya Gazeta, 3.4.2016 <http://krug.novayagazeta.ru/12-zoloto-partituri>

⁶⁰Vesti.Ru. Offshore Sunbarn Ltd will repay loans by 2023 <http://www.vesti.ru/doc.html?id=2739292>

It is interesting to note that property belonging to the offshore Olpon Investments Ltd. was seized on September 23, 2014, in Italy. The reason was that the company was controlled by Arkadiy Rotenberg, who happened to be on the list of Russian citizens subject to EU sanctions imposed in connection with the annexation of Crimea. Thus, the relationship between Olpon Investments Ltd. and Rotenberg was established not only by civil activists, but also the Italian Financial Police⁶¹.

In 2012, NWCC's structure changed again, but its beneficiary remained the same – Arkadiy Rotenberg. The company Mostotrest, engaged in the construction of transportation infrastructure, bought Plexy Ltd. and thus became a co-owner of NWCC. Mostotrest belonged 38.6% to Marc O'Polo Investments Ltd. (Cyprus), and the latter 68.5% to Arkadiy Rotenberg and his son Igor. Thus, the share of the Rotenberg father and son in NWCC is about 13%, and an estimated 4% proceeds to the new beneficiary company N-Trans, this time officially.

According to the data obtained by Sherpa, Marc O'Polo Investments Ltd. belongs 50% to the firm Honeycomb Holdings Ltd. (British Virgin Islands) and the previously mentioned Cyprus firm Sunstone Holdings Ltd. "Identifying beneficiaries of Sunstone Holdings Ltd., Peak Shores Investments Corporation and Honeycomb Holdings Ltd. has not yet been possible", says the Sherpa complaint.

With regard to N-Trans, formally its shareholders are Konstantin Nikolaev, Nikita Mishin and Andrey Filatov⁶². However, the Sherpa complaint stated that it could preserve the interests of its former Director, and former Russian Minister of Transport, Igor Levitin: *"Apparently, the personal interest of Mr. Igor Levitin in the M11 motorway project is not limited to the choice of the route and was in a contract with the company NWCC. Thus, Mr. Igor Levitin within eight years (1996–2004) worked in the company N-Trans (a Russian company with which Vinci has entered into a partnership for the purposes of the project), including six years as General Director, and he, according to the press, retains interests in that company. The end of his 'official' activities within the company coincides with his appointment to the Ministry of Transport and the resurgence of the highway project (March–April 2004). His appointment itself was already a surprise due to lack of experience in public service"*⁶³. In 2012, Igor Levitin resigned from the post of Minister of Transport and was appointed Assistant to the Russian President.

Another co-owner of Mostotrest is Transfingrup, established by the Non-State Pension Fund (NPF) Welfare. Welfare, in turn, was established in 1996 by the JSC Russian Railways (RR).

⁶¹See, for example: Sarzanini, F. Ucraina: all'amico di sanzioni Putin congelati i beni italiani dell'oligarca. Corriere Della Sierra (in Italian), 22.09.2014 http://www.corriere.it/cronache/14_settembre_23/ucraina-sanzioni-all-amico-putin-congelati-beni-italiani-dell-oligarca-732a371c-42dc-11e4-9734-3f5cd619d2f5.shtml

⁶²Petrova Yu. Rotenberg got rid of "Mostotrest". Vedomosti, 30.04.2015 <http://www.vedomosti.ru/business/articles/2015/04/30/roterberg-izbavilsya-ot-mostostresta>

⁶³Complaint Sherpa v. NWCC (unofficial English translation), p. 7, 24.06.2013. Source: Kleptocracy Initiative, Hudson Institute <https://assets.documentcloud.org/documents/2722124/2013-06-24-Sherpa-v-NWCC-Facts-of-the-Case-P-7.pdf>

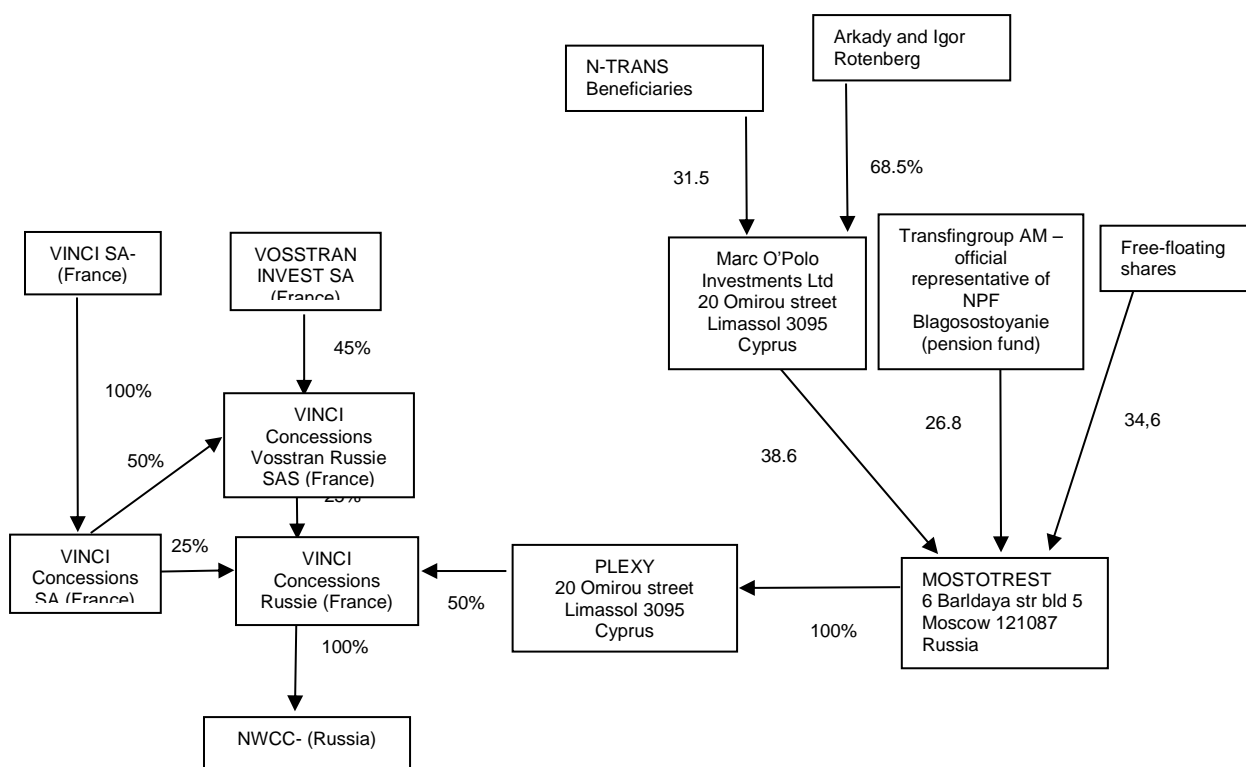


Chart 3. NWCC structure in November 2012–September 2014. Source: Sherpa, 2013

At the beginning of October 2014, Arkadiy Rotenberg, affected by US and EU sanctions, handed his son Igor Rotenberg a share in Mostotrest (26.4%)⁶⁴. Igor Rotenberg became the owner of 68.5% of Marc O’Polo Investments Ltd., controlling 38.6% of Mostotrest (at the end of 2013, 68.5% of Marc O’Polo Investments Ltd. was owned by Rotenberg father and son together). Another 31.5% of Mostotrest belonged to the beneficiaries of N-Trans Nikita Mishin, Konstantin Nikolaev and Andrei Filatov; 29.4% belonged to Welfare and the rest to the minority shareholders.

On April 30, 2015 (i.e. after the initial complaint was filed in June 2013), Igor Rotenberg sold Marc O’Polo’s share in Mostotrest. It was acquired by the company TFK-Finance, whose shareholders are company managers of Welfare, established by RR. At the same time, shareholders of N-Trans sold their shares in Mostotrest, also in favor of TFK-Finance⁶⁵. According to the decision of the Bank of Russia of June 23, 2016, TFK-Finance has the right not to publish statements on the Internet pursuant to the rule on the disclosure of information online⁶⁶.

Thus, probably under the influence of sanctions, Arkadiy Rotenberg and Vladimir Yakunin disappear from affiliates with NWCC. 34% of shares in Mostotrest remain undisbursed. Interestingly, at the beginning of 2017 on the Russian version of the NWCC site its co-owner is indicated as Mostotrest⁶⁷, and on the French version as N-Trans⁶⁸. Prior to August 2015, RR was headed by Vladimir Yakunin. Like Arkadiy Rotenberg, he does not deny close acquaintance with

⁶⁴Arkadiy Rotenberg handed a stake in “Mostotrest” to his son. Forbes– Russia, 13.10.2014 http://www.forbes.ru/news/270411-bratya-rotenbergi-peredali-aktivy-synovyam#_blank.

⁶⁵Starinskaya G. TFA-Finance bought almost 95% of “Mostotrest”. Vedomosti, 19.08.2015 <http://www.vedomosti.ru/business/articles/2015/08/20/605494-tfk-finans-skupila-pochti-mostotresta>.

⁶⁶JSC Tfk-Finance. Post on cessation of the duty of disclosure in the form of a quarterly report and messages about material facts, 12.08.2016 <http://www.disclosure.ru/issuer/GetNews?id=5603007>.

⁶⁷NWCC, business card (in Russian) <http://www.msp-highway.com/about/card/>

⁶⁸NWCC, business card (in French) <http://www.msp-highway.com/about/card/>

Vladimir Putin. Like Rotenberg, Vladimir Yakunin was hit by the EU and US sanctions. In August 2015, he resigned as Head of RR and was replaced by Oleg Belozеров, a former Head of Rosavtodor (2004–2009) and former Minister of Transport (2009–2015).

According to the *Fontanka* investigation, Oleg Belozеров was affiliated with the brothers Arkadiy and Roman Rotenberg. They have been familiar with each other at least since 1998. In 1998, Roman Rotenberg together with Gennady Timchenko created the judo club Yawara-Neva, the Honorary President of which became Vladimir Putin. The business partner of Belozеров is the OJSC Lagoon. Andrey Kadkin participated in the club: according to the SPARK database, he was the founder of Yawara-Neva Ltd., which is building a sports complex. In addition, Belozеров is closely familiar with the former Director of SMP Bank, which is controlled by the Rotenberg brothers⁶⁹. At that time, however, the surname Rotenberg was known only by judo fans. In the 2000s Oleg Belozеров moved to Moscow and held various positions in governmental structures.

The authors of the complaint, Russian and French activists on environmental protection and the fight against corruption asked the French justice system to clarify the purpose of Arkadiy Rotenberg's participation in the project and the, at first glance, highly illogical creation of an offshore structure as co-owner of the road. The authors state: "In any case, the investigation should show the end beneficiaries, even if the British Virgin Islands will guarantee anonymity of ownership. This guarantee may be removed in the future"⁷⁰.

In November 2013, the French news agency CAPA TV addressed a request to Rotenberg himself: *"The Paris Prosecutor's Office accepted a claim for alleged corruption in the financing of the project. It argues that you can participate in a project with the aim of lobbying to help the Vinci company to get construction contracts. What is your response to this assumption? Is it true that you have actively supported the construction project?"*⁷¹. No reply was received.

On November 13, 2013, CAPA TV journalist Nicolas Tonev also sent an inquiry to the spokesperson of the Russian President Dmitry Peskov, asking whether Vladimir Putin was the ultimate beneficiary of the offshores partially owned by Arkadiy Rotenberg. The reply, signed by the Deputy Head of the Press and Information Service of the President of Russia A. Pavlov, stated: *"Vladimir Putin has never been the founder or co-founder of any legal persons, either on the territory of the Russian Federation or in offshore areas. The assumption that Vladimir Putin could support any commercial structures to obtain construction contracts is untrue"*.

Sherpa complained, in turn, that there is evidence of offenses on three articles of the Criminal Code and two articles of the Commercial Code of France:

- Bribery (corruption) of foreign public officials (Art. 435, p. 3 of the Criminal Code of France)
- Concealment of nepotism (Art. 432, p. 14 of the Criminal Code of France)
- Concealment of collusion (Art. L420-1 of the Commercial Code of France)
- Concealment of selling out relations (Art. 433-1 of the Criminal Code of France)
- Misuse of public funds (Art. 241-3 of the Commercial Code of France).

"Russian NGOs that actively participated in the original investigation that led to the filing of the complaint were very satisfied: identification of those responsible for the application of the offense, as well as the likely Court, seems possible in France, while in Russia, as many of you know, this became impossible", said in a press release the Sherpa.⁷²

⁶⁹ Zakharov A. The new Head of the Russian Railways and the Rotenberg brothers. Fontanka.ru, 20.08.2015 <http://www.fontanka.ru/2015/08/20/154>

⁷⁰ Complaint Sherpa v. NWCC (complete case in French), p. 19, 24.06.2013. Source: Kleptocracy Initiative, Hudson Institute <https://assets.documentcloud.org/documents/2722134/Undated-Sherpa-v-NWCC-Complete-Case-in-French.pdf>, <http://archive-project.org/>

⁷¹ Translation of the CAPA news agency request to the representative of Arkadiy Rotenberg, Andrey Baturin, 15.11.2013. A copy is held by the author.

⁷² The complaint against VINCI CONCESSIONS RUSSIE SA: initial inquiry opened by the Prosecutor's Office of Paris. Sherpa press release (in French), 03.10.2013 <https://www.asso-Sherpa.org/plainte-contre-vinci-concessions-russie-enquete-preliminaire-ouverte-parquet-paris>

As of 2016, only the first stretch of the Moscow–St. Petersburg motorway (43 km) was in operation. The road was opened in 2014, and fees have been charged since 2015. According to Yevgeniya Chirikova, it is unprofitable since driving on it is too expensive. Through levying tolls the Government hoped to recoup the costs of the project⁷³, which received loans on favorable terms from Russian state banks. The draft, which was presented as a “public–private partnership” is funded 90% by Russian state banks at favorable terms.

Here is the description of the funding of the project as described on the NWCC website: “*Banking is implemented as a syndicated loan worth 29.2 billion RUB for a period of 20 years from two Russian banks, Sberbank and State Corporation Vnesheconombank. Also, 20-year rouble bonds of the project company for the financing of the project will be issued for a sum of 10 billion RUB, secured by state guarantee in accordance with the decision of the Government of the Russian Federation No. 128 of March 5, 2010*”⁷⁴. Thus, “foreign funding” is presented in the form of bonds issued by Vinci (NWCC) under the guarantees of the Government of Russia.

What is the estimated income from the exploitation of the new road? After 30 years of operation, NWCC should earn about 1.5 billion EUR (in other words, it should recover the cost of construction in 30 years). This figure was cited in the project description by the European Investment Bank. The link is no longer available, but its content was recorded by Bankwatch⁷⁵.

On January 18, 2017, in response to a request from the author of this article, the Vinci spokesperson Emeline Quart reported the following:

“Vinci took note of a press release in which Sherpa Association reports that it filed a civil suit in May 2016 in respect of one of the branches, which indirectly participates in the construction of Moscow – St. Petersburg motorway in Russia.

In June 2013, the group of Vinci companies found out about the complaint of Sherpa, filed on the same occasion. Vinci immediately began to cooperate with justice authorities in order to demonstrate the erroneous nature of the allegations. Sherpa action has not led to prosecution of any company from the Vinci group.

*Vinci again firmly denies Sherpa’s allegations and notes that its new initiative falls within the framework of other slanderous accusations made towards Vinci”*⁷⁶.

The spokesperson ignored the essential question of whether Vinci could provide the contact of NWCC with Rosavtodor (which would eliminate the assumption that it contained a provision on compensation to the concessionaire of the difference between the estimated and actual profits, some of which, on the basis of the NWCC structure, were controlled by Arkadiy Rotenberg, Aleksandr Plekhov and other beneficiaries).

It is noteworthy (and this is also stated in the complaint by Sherpa), that no complete concession contract of Rosavtodor with NWCC is available to the public, making it impossible to evaluate its conditions. It might contain a paragraph on a minimum guarantee of income for the concessionaire, with the difference between the actual and planned revenue being compensated from the budget – this is not uncommon for concession contracts, as it provides guarantees for both the investor and the concessionaire. In this case, the choice of a foreign company supported by offshore structures established by Russian citizens seems logical: damages are compensated

⁷³Investinfra-STO. Federal concession project Head stretch 15–58 km of motorway M11 Moscow–Saint Petersburg <http://www.investinfra.ru/files/prezentacii/111-federalnyi-koncessionnyy-proekt-golovnoj-uchastok-15-58-km-trassy-m11-moskva-sankt-peterburg.pdf>

⁷⁴North West Concessionary Company. Financial closure of a concession agreement for construction and operation of fee-based high-speed motorway Moscow–St. Petersburg on a stretch of 15–58 km. <http://msp-highway.com/press/news/1>

⁷⁵Bankwatch Network. Vinci – a cover for oligarchs and tax havens in Russia’s first road PPP, 30.04.2011 http://bankwatch.org/documents/Vinci_oligarchs_taxhavens_Khimki.pdf

⁷⁶Response to a request by email held by the author.

from the budget of Russia; a part of the compensation goes to the French company, some goes offshore. It becomes clear why the route chosen was the most expensive option, and did not take into account ecological priorities.

Meanwhile, Vinci is under suspicion of corruption in other regions as well. An initial inquiry under the articles “nepotism” and “bribery of officials”, conducted by the Prosecutor’s Office of the District of Saint-Denis, Réunion Island (French overseas department), has ended against Vinci and another French giant, Bouygues. The investigation data was transferred in 2014 to the National Financial Prosecutor’s Office, announces the French investigative website Mediapart⁷⁷. The case has gained resonance because of the cost: in a road construction project worth 1.6 billion EUR, a kilometer was worth 130 million, sums that are incredible for France.

As for Russia, by the end of 2016 Russian roads occupied 123rd place in the world rankings by quality, published by the World Economic Forum (WEF)⁷⁸. Russia’s neighbors in the list were countries such as Gabon (121), Sierra Leone (122), and Lebanon (124). At the same time, according to a study conducted by the state news agency Russia Today⁷⁹, the cost of building one kilometer of road in Russia is three times higher than the EU average. On September 30, 2016, Prime Minister Dmitriy Medvedev criticized corruption in road construction “in some regions” of Russia, but details were not explained⁸⁰.

Conclusions and recommendations

In cases of alleged cross-border corruption civil activists are forced to replace the organs of the state in anti-corruption investigations. However, activists simply have no effective authority and tools as compared to public authorities. Environmentalists are no substitute for the police and the Prosecutor’s Office.

Despite the participation of France in international conventions on the fight against corruption⁸¹, the current efforts of the European countries to combat international corruption leave much to be desired. This is partly due to the legal systems of the British Virgin Islands, the Bahamas, Belize, etc. These island jurisdictions, in accordance with their legislation, shall not be obliged to disclose the end beneficiaries of the registered shares of companies suspected of corruption, and hence, any question shall be interpreted in favor of the suspects. However, proceedings in respect of alleged corruption and laundering budget money are possible even in these jurisdictions. Such precedents with respect to the Russian budget, for example, have occurred in the British Virgin Islands.

It seems to us that European law enforcement bodies should not approach the pre-investigation inspections on suspected cross-border corruption formally, referring, for example, to the absence of evidences from Russia, with which cooperation in criminal matters is difficult. One needs to persevere and to draw conclusions on the basis of the totality of the circumstantial indications, rather than wait for confessions from suspects or evidence of bribery. Imposing sanctions for failure to comply with the conventions of the UN and the OECD is probably worthwhile.

Corruption is becoming more sophisticated, and it would be naive to suppose that it is expressed today only in the transfer of large sums of cash to officials or in the opening of companies in their

⁷⁷On La Réunion, heavy suspicions weighed on the road at 1.6 billion. Mediapart, 24.09.2015 <https://www.mediapart.fr/journal/france/240915/la-reunion-de-lourds-soupcons-pesent-sur-la-route-16-milliard>

⁷⁸Russia took 123rd place in the quality of roads rating. Vedomosti, 30.09.2016 <http://www.vedomosti.ru/economics/news/2016/09/30/659203-rossiya-zanyala-123-e-mesto-kachestva-avtodorog>

⁷⁹The cost of road building in Moscow. Infographics News (Russia Today), 31.08.2010 <https://fr.sputniknews.com/infographies/20100831187331323/>

⁸⁰Medvedev has commented on the differences in the cost of building roads in the regions. RIA Novosti, 30.09.2016 <https://ria.ru/inquest/20160930/1478215768.html>

⁸¹The 2003 UN Convention against Corruption, 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

names. An absence of evidence that offshores have been opened personally by officials should not hinder the investigation.

The supervisory authorities of the EU could draw more attention to the so-called foreign investment in Russia (actually 90% financed by Russia itself) in “public–private partnerships” and to coordinate efforts within the EU. French industrial giants have a business partnership with Russians suspected of money laundering in Spain. This situation has interested the civic activists who are studying the cash-flow schemes. However, the law enforcement agencies of the EU countries should not wait for another environmental activist or journalist-investigator to be attacked or forced to emigrate from Russia, but act proactively, in other words, constantly monitor and keep track of the dark activities of corporations abroad. European law enforcement authorities should also pay specific attention to concession contracts with state guarantees to the concessionaire which potentially contain elements of international corruption.

Flats for Their Russian Excellencies

By Atanas Tchobanov

It is a duty of an ambassador to promote the business relations between his country and local entrepreneurs. However, it seems that a number of recent Russian Ambassadors in Sofia went far beyond this, using their business contacts to also promote their personal wealth.

Part I: The Ambassador's Flats

Lyudmila Genadievna Isakova, the wife of His Excellency the Russian Ambassador in Sofia Youri Isakov, is not a successful real estate investor. From 2010 to 2012, she lost a pretty large amount of money from real estate transactions.

In May 2010, Mrs. Isakova paid € 221,000 for a luxury flat of 163 square meters (Sq m) on "Dondukov Blvd", in the heart of Sofia⁸². This is € 1,300 per Sq m and matches the average prices in the central Sofia area at the time – € 1,192 per Sq m, according to imot.bg⁸³.

The Ambassador's family lives in the official residence of the Embassy and this flat was obviously an investment. But the Isakovs didn't make any profit. In December 2012, two and a half years after the acquisition, Mr. and Mrs. Isakov sold the same flat for € 143,000⁸⁴, or € 858 per Sq m. At that time, the average price in central Sofia was € 904 per Sq m.

Sofia did not escape the global real estate crisis and from 2010 to 2012, real estate prices had a negative trend. From 2013 on, these prices have been recovering slowly but even now a square meter in the city center is cheaper than in 2010. However, there was hardly a worse moment to sell this asset than when the family did. In two years, Mr. and Mrs. Isakov lost almost € 80,000, probably more than the annual salary of the diplomat.

The Sofia flat is not the only acquisition of the Isakovs in Bulgaria. In 2009, one year after Mr. Isakov took office, he bought two other properties: a 57 Sq m flat⁸⁵ in the luxury resort Saint Tomas on the Black Sea, south of the city of Burgas (€ 57,000) and two 60 Sq m flats⁸⁶ in the Golf and Spa Resort in Pravetz, the hometown of former communist dictator Todor Zhivkov (€ 73,800).

Therefore, the total real estate expenses of the Isakov family from 2009 to 2010 amount to around € 354, 000. And the family lost more than 20% because of the unfavorable market.

⁸² Bulgarian Real Estate Register excerpt Mrs. Isakova Sofia 2010

⁸³ Imot.bg online real estate agency statistics

⁸⁴ Bulgarian Real Estate Register excerpt Mrs. Isakova Sofia 2012

⁸⁵ Bulgarian Real Estate Register excerpt Mr. Isakov Sofia 2009

⁸⁶ Bulgarian Real Estate Register excerpt Mr. Isakov Sofia 2009

There is no way to verify whether Mr. and Mrs. Isakov's income matches the Ambassador's real estate expenses during his stay in Bulgaria because Russian diplomats are not required to submit income declarations, though this is mandatory for other Russian officials. A plausible estimation is that the annual salary of Mr. Isakov is about € 50,000-60,000; so, the family was either investing in real estate money earned before they arrived in Bulgaria or they had another source of income.

From the “Energy Oligarchs” to the “Energy Ambassador”

Mr. Youri Isakov served as Russian Ambassador to Bulgaria until August 2016, when he was finally replaced by Mr. Anatoly Makarov. From the very beginning, he was labeled “the Ambassador of the Russian Energy Sector” for promoting and supervising the big Russian energy projects in Bulgaria – the South Stream gas pipeline, the Burgas–Alexandropoulos oil pipeline and the Belene NPP.

In 2013, it was Mr. Isakov, at the peak of his glory and power, who together with then-Prime Minister Plamen Oresharski gave the green light to the soldering of the first pipes of the South Stream gas line. However, both projects were abandoned before Isakov left the Embassy in 2016.



PM Plamen Oresharski and His Excellency Youri Isakov assisting at the soldering of the first pipes of the South Stream pipeline in Bulgaria

It seems logical that big Bulgarian energy companies that are trading, reselling and processing Russian gas and oil maintain privileged relationships with the Russian Embassy. Being on good terms with the Russians is obviously a key factor for success in this business.

Whether coincidence or not, two Bulgarian companies, one linked to Gazprom and another linked to Lukoil, sold flats to Mr. and Mrs. Isakov.

According to a source, requiring anonymity, the flat on “Dondukov Blvd” was a kind of *corporate gift* to the Ambassador from the company Overgas, owned by energy oligarch **Sasho Donchev**.

Mr. Donchev had personally visited the flats that a real estate agent had selected for the Ambassador and discussed the price, the source said. And while there is no direct proof of such a *gift*, which would mean outright corruption, there is evidence that Overgas officials were involved in the transaction.

Overgas is a close partner of Gazprom, owning a distribution network in Bulgaria and selling Russian gas to private and corporate customers. It was created in the 1990s as a joint venture between Gazprom and the Bulgarian company Multigroup. The link with Gazprom is also substantiated by the fact that Mr. Youri Viakhirev, son of former Gazprom Chair Rem Vyakhirev, was a partner in Overgas Inc.

The company that sold the Sofia flat to Mrs. Isakova is named Best Estates BG. The firm was created in 2009 and the single shareholder in it is OG Enterprises Limited⁸⁷, registered in the British Virgin Islands (BVI). By November 17, 2009, a bank document⁸⁸ shows that the company's capital, amounting to BGN 640,000 (€ 320,000), was available in its bank account in Sofia.

The newly created company appointed three directors. One of them was the son of Sasho Donchev, **Georgi Donchev**⁸⁹, while the Director of Overgas Holding, Yavor Manuilov, was the proxy of the company⁹⁰.

A few days after the company was incorporated in the Trade Registry, on December 4, 2009, it bought the flat on "Dondukov Blvd" from another company for € 204,000⁹¹. Next, on May 5, 2010, the same flat was sold to Ms. Isakova.

Only a month after Ms. Isakova sold the flat at a big loss, Best Estates BG transformed itself and became a limited company with a single director – Georgi Donchev. The last owner of Best Estates BG was the consulting firm DD Management. DD Management is represented by Mr. Sasho Donchev⁹², one of the directors of Overgas.

Although Best Estates BG was created with the purpose to buy and sell real estate and to promote construction, its only activity on the real estate market has been the purchase of this flat and its resale⁹³. It clearly looks like that the firm was created for this single purpose and padded with offshore money to buy the flat on "Dondukov Blvd", only to sell it later to the Ambassador's wife.

Ms. Isakova paid the flat cash

Approached with questions, Mr. Donchev rejected any allegations about a *corporate gift*. He admitted he was controlling OG Enterprises and explained that Best Estates BG was created to acquire rights under a license to study prospects of oil and gas deposits on the territory of Bulgaria. Asked about the origin of the funds deposited as Best Estates BG Ltd. capital he said the funds are "from commercial activity".

After lawmakers Delyan Peevski and Yordan Tsonev passed a bill banning the participation of offshore companies in companies holders of such permits (gas and oil prospects), Mr. Donchev explained, Best Estates sold the rights to another company under the control of Overgas Holding JSC. He also pointed out that the company that remained without activity was not liquidated and was transformed into Best Estates BG Ltd., and has another activity since November 20, 2012.

However, we could find no evidence of any such gas and oil prospects permit delivered to Best Estates, and the bill banning concessions for offshores was passed not in 2012, but in 2013.

Mr. Donchev rejected firmly any suspicions about a *corporate gift* to Mrs. Isakova. He said she paid € 221,000 in cash to Best Estates BG.

Mr. Donchev has not been involved in major corruption scandals in recent years. He is the owner of the newspaper *Sega*, one of the last shelters for critical journalism in Bulgaria, a country ranking 113th in the RSF Freedom of the Press report for 2016. He is publicly promoting liberal values and reducing government "red tape" for the business.

⁸⁷ Source: Bulgarian Commercial Register Best Estates BG file

⁸⁸ Source: Bulgarian Commercial Register Best Estates BG file

⁸⁹ Source: Bulgarian Commercial Register Best Estates BG file

⁹⁰ Source: Bulgarian Commercial Register Best Estates BG file

⁹¹ Bulgarian Real Estate Register excerpt Best Estates BG Sofia 2009

⁹² Source: Bulgarian Commercial Register DD Management file

⁹³ Bulgarian Real Estate Register excerpt Best Estates BG Sofia all records

“There isn’t anything or anyone that has helped me to create the trade relations between my company – Overgas – and Gazprom”, Mr. Donchev stated. He referred to a US diplomatic cable revealing the US pressure to eliminate the intermediaries in gas trading. “With the support of the Russians, the Bulgarian Prime Minister accomplished the task assigned to him and suspended Overgas from the natural gas trade”, he said.

According to another US State Department diplomatic cable⁹⁴, in the 1990s Mr. Donchev was connected to powerful organized crime groups such as Multigroup and VAI Holding, dealing with all kind of dirty business, including racketeering, illegal drugs and prostitution. Actually, there are very few Bulgarian businessmen who do not come from this background.

Gazprom, but also Lukoil

Mr. and Mrs. Isakov bought the two flats in Pravetz from the company Tera Tour Services, owned by the father of Valentin Zlatev, the CEO of Lukoil. In the same classified cable, published by Wikileaks, Zlatev is exposed by US diplomats as a powerful kingmaker linked to Russian intelligence.

The declared price of the transaction was € 73,000, which matches current flat prices in this luxury resort⁹⁵.

Uncannily, the third company that sold the Black Sea flat to Mr. Isakov was linked to the South Stream Project. This is Glavbolgarstroy⁹⁶, the company that was leading the consortium selected to construct the Bulgarian section of the pipeline in a public procurement procedure worth over € 1 billion.

Part II. His Excellency in business with a mobster and vodka

In 2005, Bulgaria was a fresh member of NATO, on the eve of its EU accession and under pressure by Western partners to fight corruption and organized crime. That’s one of the reasons why then-US Ambassador in Sofia James Pardew prepared and sent to Washington an extensive report on Bulgarian organized crime – the already-quoted State Department cable, revealed by Wikileaks.

A number of organized crime groups are listed in this text, among them VAI Holding, also known as VIS-2: *“As the largest player in the drugs market, VAI controls trafficking routes, production facilities, and distribution networks. The group is also involved in trafficking stolen automobiles from Western Europe to the former Soviet Union. Its other criminal activities include extortion and racketeering, illegal arms trading, gambling, prostitution, and smuggling.”*

Those conclusions were most likely inspired by the well-informed US intelligence and law enforcement services. After all, earlier in his career, His Excellency James Pardew was a military intelligence officer.

At that same time Anatoly Potapov, Pardew’s Russian colleague in Sofia, had more important tasks than analyzing “who is who” in Bulgarian organized crime. He was busy planning his future life and business after retiring from office.

⁹⁴ Wikileaks. Bulgarian organized crime https://wikileaks.org/plusd/cables/05SOFIA1207_a.html

⁹⁵ Bulgarian Real Estate Register excerpt Mr & Mrs Isakov Botevgrad 2009-2012

⁹⁶ Bulgarian Real Estate Register excerpt Mr & Mrs Isakov Sozopol 2009-2012



His Excellency Anatoly Potapov, Russian Ambassador in Bulgaria 2004–2008

Mr. Potapov left his diplomatic post in July 2008 but it did not take too long for him to return to business in Bulgaria. In 2009, he became officially a member of the Board of Directors of the company V.R.B. Group⁹⁷. His son Sergey joined the board of V.R.B. at the same time⁹⁸.

Mr. Potapov's business partner⁹⁹ was and still is Plamen "Gandhi" Vassilev Timev, described by Ambassador Pardew as one of the "high-ranking members" of VAI. Yes, this is the same criminal group involved in all kinds of illegal business.



Plamen Timev, a.k.a. "Gandhi"

In 2007, "Gandhi" was arrested and accused of financial fraud¹⁰⁰. But his criminal connections date from far earlier. Plamen Timev, who was once an architect, was the owner of the Varna football clubs Spartak and Chernomorec and in business with one of the most famous gangsters of the 1990s.

⁹⁷ Source: Bulgarian Commercial Register V.R.B. Group file

⁹⁸ Source: Bulgarian Commercial Register V.R.B. Group file

⁹⁹ Source: Bulgarian Commercial Register V.R.B. Group file

¹⁰⁰ Хиндлиян С., Николов К. Пламен Тимев – Ганди арестуван за измама. (In Bulgarian) Mediapool.bg 17.05.2007 <http://www.mediapool.bg/plamen-timev-gandi-arrestuvan-za-izmama-news128675.html>

Nowadays, “Gandhi” owns and manages a myriad of companies. One of them is V.R.B., whose headquarters are in Sofia. V.R.B. trades in goods and in 2013 it declared to the revenue services a comfortable net profit of over BGN 897,000.

The secret behind this profitable trade is Russian vodka. Timev’s company is the official importer in Bulgaria of the well-known vodka brands “Stolichnaya” and “Moskovskaya”, produced by the Chernogolovka spirits factory. Having a former Russian Ambassador as a partner is probably very advantageous for alcohol import activities, which are closely monitored by Customs.

However, Potapov’s family seems to have even closer links to Bulgaria. His wife and sons started investing in real estate while he was still in office, our investigation has discovered.

In February 2008, months before his father retired, Sergey Potapov bought the company Integrated Visions EOOD¹⁰¹. Then on June 20, 2008, he bought a flat in the St. Helene and Constantine sea resort, near the city of Varna. According to notary deeds, he paid BGN 73,800 (€ 37,000)¹⁰². Afterward, Sergey injected some money to increase the Integrated Visions capital to up to BGN 596,500.

A month after her husband Anatoly retired from the diplomatic job, Tatyana Potapova bought two companies: Irix¹⁰³ and Quadrex¹⁰⁴. She paid BGN 691,000 (€ 350,000) for Irix and BGN 60,650 (€ 31, 000) for Quadrex.

Irix was a bargain. The company annual report for 2008 displayed a comfortable cash availability of BGN 775,000. However, part of this money came from the same family. Mrs. Potapova bought Irix on August 28, 2008; only three weeks earlier, on August 6, 2008, Irix sold two flats in Sofia to her son Nikolay Potapov¹⁰⁵. He paid BGN 459,620 (€ 230,000) for the flats, located in the highly affluent Lozenets district.

Then, in 2011, Tatyana Potapova decided to increase the capital of Irix to BGN 1 million. She wired BGN 381,850 to the Bulgarian bank account of the company¹⁰⁶. After that she donated Irix to her other son, Sergey Potapov¹⁰⁷.

Quadrix was a bargain too: the company managed to exchange with the State three modest flats in Sofia for one valuable land plot in the ski resort of Borovetz¹⁰⁸.

So far, the Potapov family assets look pretty good: two flats in Sofia, a flat in Varna, a plot in the mountains and BGN 1 million in cash.

Therefore, the total assets of the Potapov family in Bulgaria exceed BGN 2 million (€ 1 million). Are these savings from life-long, honorable diplomatic service, or...? The Ministry of Foreign Affairs has refused to comment and as we have noted above, assets declared by Russian Ambassadors are not available for public scrutiny.

¹⁰¹ Source: Bulgarian Commercial Register Integrated Visions file

¹⁰² Bulgarian Real Estate Register Sergey Potapov 2008

¹⁰³ Source: Bulgarian Commercial Register Irix file

¹⁰⁴ Source: Bulgarian Commercial Register Quadrix file

¹⁰⁵ Bulgarian Real Estate Register Irix 2008

¹⁰⁶ Source: Bulgarian Commercial Register Irix file

¹⁰⁷ Source: Bulgarian Commercial Register Irix file

¹⁰⁸ Bulgarian Real Estate Register Quadrix 2007

Why European law enforcement bodies are not efficient enough to fight transborder corruption

By Anastasia Kirilenko and Konstantin Rubakhin

Transborder corruption is a special type of crime, which is difficult to investigate and to punish. Given that prosecution of corruption in Russia is regulated from the “top”, meaning that even officials charged with embezzlement on a grand scale get off with a ridiculous term or are even found innocent¹⁰⁹, Russian civil society rests its hopes on foreign justice. It is believed that European law enforcement bodies are less corrupt and would be capable of punishing “our” corruptionists, while the courts are considered to be more independent compared to the *de facto* situation in Russia.

In practice, however, things are much more complicated. The law enforcement bodies of the EU countries cannot replace the Russian law enforcement bodies. In order to take a case to court, pass a sentence, or merely initiate a criminal case in one country, there is a need for incriminating evidence on both sides of the border. Gathering such evidence implies goodwill and cooperation between law enforcement bodies across borders. If a country has a high level of corruption (e.g. Russia)¹¹⁰, it is likely that the offenders will influence the country’s law enforcement bodies, and, as a result, the criminal cases against them will fail not only inside the country, but also abroad, for example, in Europe.

This article focuses on examples when citizens of Russia or former USSR countries have been suspected of laundering money abroad. Foreign prosecutors cannot fully investigate the origin of such money. It is assumed that it could have been stolen from the state budget with the help of corrupt officials or through government contracts. Another option is that the money comes from serious crimes organized by criminal groups, whose activities are not investigated in Russia because of the corruption in the law enforcement bodies.

According to the Dutch researcher of transborder corruption, Friederycke Haijer, prosecutors from European countries often prefer to initiate cases on money laundering than on corruption. This is explained by the fact that it is extremely difficult to prove indications of transborder corruption, while investigation of money laundering is easier in terms of cooperation between the law enforcement bodies of different countries and such cases have more chance of reaching the court¹¹¹. It is noteworthy that in Spain there is a single body dealing with corruption and transnational organized crime. It is called the “Special Prosecutor’s Office to Fight against Corruption and Organized Crime”, or simply the “Anti-Corruption Prosecutor’s Office”.

¹⁰⁹ See the case of former Russian Defense Minister Anatoly Serdyukov. Weiss, Michael. Corruption and Cover-Up in the Kremlin: The Anatoly Serdyukov Case. *The Atlantic*, 29.01.2013. <http://www.theatlantic.com/international/archive/2013/01/corruption-and-cover-up-in-the-kremlin-the-anatoly-serdyukov-case/272622/>

¹¹⁰ See for example the 2016 Corruption Perceptions Index of Transparency International.

¹¹¹ Haijer, Friederycke. Speech at a seminar of the expert group on fighting cross-border corruption. EU-Russia Civil Forum. Berlin, 18.12.2016. Information about the researcher: <https://uu.academia.edu/FriederyckeHaijer>

Lawyers and journalists speak about the possibility of a “political solution” in Germany, Spain or France not to institute proceedings against top Russian officials and businessmen or to close existing cases¹¹². However, it is extremely difficult to prove such assumptions. Even when the former German Chancellor Gerhard Schroeder joined the Gazprom corporation (only four months after his resignation in March 2006), he did not violate any of the legal norms. But in July 2015, the German Parliament passed a law according to which such behavior of an official is illegal. According to an analysis of conflicts of interest, an official must refrain from working in relevant businesses for 12–18 months after his resignation¹¹³. It is also difficult to prove Schroeder’s role in closing the case against Russian citizens, including officials, initiated in 2000 by the Prosecutor’s Office of the German city of Darmstadt on suspicion of money laundering¹¹⁴. Officially, the case was closed due to the expiry of the period of limitation in 2009¹¹⁵.

It seems that in some cases, law enforcement bodies of European countries have made a pragmatic decision to deport foreign criminals, to cut off the channels of money laundering, to close the company involved, and, if possible, to forget about the Russian citizens’ guilt.

Among all “Russian mafia” cases, only the case of the Izmailovo Group has actually reached the court and received a sentence, in Germany in 2010. The main witness in the case, who was under the protection of German justice, was threatened during the trial by the defendants’ lawyer (at least, the judge found his questions threatening)¹¹⁶. Other witnesses, including several Russian oligarchs, refused to participate in the process. As a result, almost the only positive effect of this case was the recognition of the group’s existence. In addition, one of the group’s leaders, Aleksandr Afanasyev, received a short prison term.

Another resonant international case, known as the “Spider Web” case, which started in Italy in 2002, resulted in a complete failure. Crime bosses and companies created with participation of the Russian Ministry of Railways were suspected of money laundering. However, the detained Russian citizens were finally released. One of the main suspects, Alimzhan Tokhtakhunov (nickname “Taiwanchik”), who was arrested in Italy and is also wanted in the US (he was on Interpol’s “red list”), is currently free and meets with journalists in Moscow. The British journalist Tom Balmforth noted that Tokhtakhunov gives interviews through the former head of the Russian branch of Interpol, Vladimir Ovchinskiy¹¹⁷. According to Tokhtakhunov’s lawyer, Italy was waiting for the proof of Tokhtakhunov’s guilt from the US, because “Italy itself did not have any”. In the meantime the term of provisional arrest has expired¹¹⁸.

As noted in the report *Russian Mafia and International Money Laundering* (2009) by the Prosecutor of Tivoli (Italy), Luigi De Ficchy, describing the case of Taiwanchik and other operations, in its judgment of 2003 the Supreme Court of Cassation of Italy required prosecutors

¹¹² In 2013–2016, such assumptions were made by the lawyers of the French organization SHERPA and journalists of the German newspaper Frankfurter Rundschau in conversations with the author of this article.

¹¹³ Law on Amendments to the Law “On the Federal Minister” and to the Law “On the Legal Relations of the Parliamentary Secretaries of State – Members of the Government”) (in German). Entered into force on 25.07.2015.

<http://dipbt.bundestag.de/extrakt/ba/WP18/651/65141.html>

¹¹⁴ Roth, Jürgen. The Gangsters from the East (in German). Europa Verlag, 2003, p. 96. Der Spiegel magazine also wrote about this case: Balzli, Beat. Traces to the Kremlin? (in German) Der Spiegel, 19.05.2003. <http://www.spiegel.de/spiegel/print/d-27163314.html>

¹¹⁵ Treser, Tanja. Marktplatz Geldwäsche-Verfahren gescheitert. Focus, 06.07.2009.

http://www.focus.de/finanzen/news/marktplatz-geldwaesche-verfahren-gescheitert_aid_414204.html

¹¹⁶ Sentence of the Regional Court of Stuttgart against Aleksandr Afanasyev, Oleg Rifert et al (in German). 2010, p. 47. <http://www.documentcloud.org/documents/2800007-2010-07-07-Afnas-ev-Case-Judgement-in-German.html>

¹¹⁷ Balmforth, Tom, Kirilenko, Anastasia. For Reputed Crime Boss Known As Taiwanchik, Moscow Is “Paradise”. RFE/RL, 31.05.2013. <http://www.rferl.org/a/russia-alimzhan-tokhtakhunov-taiwanchik-indictment/25003328.html>

¹¹⁸ Varyvdin, Maksim. “200 police officers and helicopters participated in my detention”. Kommersant-Vlast, 16.09.2002 <http://kommersant.ru/doc/341014>

to provide complete evidence of the criminal origin of money laundered in the country: *“However, this requires cooperation of the countries from which the money comes. But legal assistance from such countries is complicated: response terms are too long, while the responses themselves are evasive and of little use for the investigation”*¹¹⁹. After that, the Department for Fighting against Mafia of the Prosecutor’s Office of Italy signed Memoranda of Understanding with the Prosecutor’s Offices of the post-Soviet countries, including the Russian Prosecutor General’s Office. Luigi De Ficchy also highlighted the risk of bribery of European law enforcement bodies by the crime bosses from the former USSR. He pointed to the fact that a full investigation of the activities of Russian criminals abroad is hindered by their “affiliation with power”: *“Given the affiliation of the Russian mafia with the Russian authorities, their activities cannot be investigated in full in Western Europe, as it depends on the Russian energy”*¹²⁰.

A Russian citizen, businessman and ex-deputy of the State Duma, Andrey Skoch, suspected by the intelligence organizations of several EU countries of belonging to criminal groups, in 2015 lobbied for the removal of information about his links with Russian organized crime (specifically the Solntsevo group) from the documentation of French intelligence (DGSI). The former head of DGSI, Bernard Squarcini, is suspected of corruption¹²¹. In order to maintain a positive public image, Skoch funded translations of Russian writers into French and supported bilateral cultural cooperation¹²².

Another Russian oligarch, Oleg Deripaska¹²³, accused in the money laundering case in Spain (see below) and suspected of having links with organized crime in Russia and the US, has also engaged with the French government. The ongoing investigations did not prevent Deripaska from receiving a loan from the French bank BNP Paribas¹²⁴ and conducting an IPO of his company Rusal in Paris¹²⁵.

A major problem preventing European law enforcement bodies from investigating transborder corruption is the absence of agreements on legal assistance between Russia and European countries.

Back in 1995–1996, a citizen of Germany, Willi Niemahn, who had been running a business in St. Petersburg since 1991, repeatedly appealed to the German Ministry of Justice to address the absence of an agreement on legal assistance between Germany and Russia to prevent cars stolen in Germany being sold in Russia and not returned. Niemahn described in his appeals to the German Ministry of Justice in detail his long fight, during which he received formal responses from Germany, while in the end top police officers in St. Petersburg were found guilty of supporting the “business” and accused of corruption¹²⁶.

¹¹⁹ Luigi De Ficchy, Prosecutor of the Italian Republic in the Court of Tivoli. Report of the Meeting of the Supreme Council of Judges: “New mafia: foreign criminal organizations operating in Italy”, Rome, 12–14 January 2009. “Russian Mafia and transnational money laundering” (in Italian), p. 13. http://www.distretto.torino.giustizia.it/documentazione/D_1958.pdf

¹²⁰ Ibid, p. 15

¹²¹ Lazard, Violette, Michel, Caroline. Combines, passe-droits ... Bernard Squarcini, l'ex-espion qui s'y croyait encore. L'OBS, 11.2.2016. <http://tempsreel.nouvelobs.com/justice/20161102.OBS0595/combines-passe-droits-bernard-squarcini-l-ex-espion-qui-sy-croyait-encore.html>

¹²² The list of books published by the French publishing house L'aube in partnership with the Debut fund (established by Skoch) can be found on the publisher's website: <http://www.editionsdelaube.fr/catalogue/lenfantperdu>

¹²³ Comment Oleg Deripaska a conquis Paris (How Deripaska conquered Paris). La tribune, 26.01.2010. <http://www.latribune.fr/journal/edition-du-2701/evenement/353135/comment-oleg-deripaska-a-conquis-paris.html>

¹²⁴ The loan was issued in 2008 and resulted in a scandal. See BNP, Deripaska in the debt spat 09.11.2011. <https://themoscowtimes.com/articles/bnp-deripaska-in-debt-spat-10703>

¹²⁵ Rusal was let into Paris (in Russian). Interfax, 25.01.2010 <http://www.interfax.ru/business/120453>

¹²⁶ Appeals of the German citizen Willi Niemahn, Director of the Joint Venture Hanse Trade St. Petersburg, to the German Ministry of Justice, sent by fax on 09.04.1996 and 05.11.1996 (<http://www.rusprofile.ru/id/9102416>). Copies are held by the authors of this article.

Currently Russia has no such agreements on mutual legal assistance in criminal cases with the majority of European countries¹²⁷. In theory, Interpol membership should be enough to ensure cooperation on transborder corruption. However, in practice, Russian citizens suspected of different offences are not extradited through Interpol¹²⁸.

In France, a preliminary investigation is ongoing into a complaint lodged by the Sherpa Association and activist Yevgeniya Chirikova, leader of the movement to protect the Khimki forest. The complaint was filed several years ago, based on five articles of the Criminal Code of France, most importantly those on “bribery of foreign officials” and “selling contracts”. The authors of the complaint suggested that the French construction company Vinci bribed Russian officials to obtain a favorable state contract in Russia. According to the Sherpa lawyer, Julien Larer-Genevois¹²⁹, “The French Prosecutor knows that cooperation with the law enforcement bodies in Russia is complicated, so we did not expect any immediate results and filed a second complaint with the police investigating judge”. Yevgeniya Chirikova was questioned in this case in November 2016. In spite of the actions undertaken by the French police, the result of the pre-investigation was not clear: the police officer who conducted it complained that the Russian law enforcement bodies did not cooperate on such cases. Meanwhile, Chirikova argued that the case should be initiated even without cooperation of the Russian law enforcement bodies¹³⁰.

In early 2011, the Prosecutor of the Spanish Special Prosecutor’s Office against Corruption and Organized Crime, Mr. Jose Grinda called the Schwerin District Prosecutor’s Office in Germany to open criminal proceedings against the Russian citizen Gennadiy Petrov. According to the Spanish data, he was involved in laundering of money from the Russian budget in Germany and Luxembourg in 2008, which he used to purchase the shipyard Wadan Yards in Mecklenburg-Vorpommern, Germany. The German Prosecutor’s Office did not open the investigation. According to an interview given by the Schwerin Prosecutor’s spokesperson to the *Frankfurter Rundschau* newspaper, a check was carried out and “the facts were not confirmed”. “There will be no other comments”, the spokesperson said¹³¹. This case is being investigated in Russia, but most likely it is against the secondary actors. At least, Gennadiy Petrov is not mentioned.

The issue of the shipyard’s bankruptcy was raised by the German Chancellor Angela Merkel at her meeting with Russian President Dmitriy Medvedev in Sochi in 2009. The bankruptcy caused major protests in Germany, and investors from Russia, who were close to Gazprom and also worked in the “North Stream” project, were presented as “saviors” of the German enterprise¹³². There were no public reports about pre-investigation of that case. Dubious transactions through accounts of shipyards owned by Russian citizens continued in 2015. The German magazine *Focus* referred to the information provided by the Hypovereinsbank to the investigating customs bodies. It is noteworthy that after that information was translated into Russian, it was removed from the magazine’s website¹³³ and is now available only in a pdf version¹³⁴. Lack of information about the investigation and further discussion of the issue between the Chancellor of Germany and the President of Russia aroused suspicion that the investigation in Germany was being put under

¹²⁷ The full list can be found here: “Bilateral international treaties of the Russian Federation on legal assistance”. http://www.consultant.ru/document/cons_doc_LAW_126898/

¹²⁸ This principle is set forth in Art. 61 of the Russian Constitution, as well as in the Federal Law of 25.10.1999, “On ratification of the European Convention on Extradition, Additional Protocol and Second Additional Protocol”. http://pravo.gov.ru/proxy/ips/%3Fdoc_itself%3D%26%26nd%3D102062477%26%26page%3D1%26rdk%3D0%3D0%3D0#10

¹²⁹ Based on conversation with A. Kirilenko (one of the article’s authors) on 14.12.2016.

¹³⁰ Interview with E. Chirikova conducted by A. Kirilenko on 15.12.2016.

¹³¹ Kirilenko, Anastasia. Volle Kraft voraus in den Untergang. *Frankfurter Rundschau*, 5.12.2016.

<http://www.fr-online.de/wirtschaft/wadan-werft-volle-kraft-voraus-in-den-untergang,1472780,34990164.html>

¹³² Rescue in sight for the Wadan Yards shipbuilding group. The official website of the German Chancellor, Angela Merkel, 08.14.2009. https://www.bundeskanzlerin.de/ContentArchiv/EN/Archiv17/Reiseberichte/ru-sotschi_en.html

¹³³ How Putin’s oligarchs could launder their millions in Germany. *Inopressa*, 29.04.2016.

<http://www.inopressa.ru/article/29Apr2016/focus/oligarchen.html>

¹³⁴ Zoll erwischt. Die Werften und die Karibik-Millionen. *Fokus*, 30.04.2016 (№18 / 2016), p. 36.

pressure. Several media complained of coming under pressure from Russian oligarchs when trying to shed light on the case¹³⁵.

In the meantime, investigations into money laundering involving top Russian officials have been quite successful in Spain. In June 2016, the Anti-Corruption Prosecutor's Office reported on an operation called "Usury", which included searches in Tarragona. Russian MP Aleksandr Torshin appeared to be involved in the activities of a criminal group which laundered money in Spain¹³⁶.

Another investigation relates to the so-called Tambov–Malyshev group, which has carried out activities in Spain since 2006. The group members are suspected of money laundering through real estate transactions. In 2016, the Russian MP Vladislav Reznik and the Deputy Head of the Federal Drug Control Service, Nikolay Aulov, were put on the wanted list¹³⁷. The latter was considered by the investigation as the right hand of the crime boss Gennadiy Petrov, because, according to the evidence gathered through phone tapping, he used to receive a salary from Petrov. His main function was to ensure that no criminal cases were brought against the group in Russia. In addition, he acted as a business mediator and sold contact information for Russian officials.

It was said in the indictment that the group "was integrated into the police institutions of Russia", such that it is not prosecuted at home. The report of the Spanish Prosecutor's Office, sent to the court in May 2015, stated the following: *"Inaction of the Russian authorities as regards institution of criminal proceedings against Aulov and Sobolev can lead to initiation of individual cases against them in Spain in accordance with the provisions of the UN Convention against Corruption, signed in New York on 31 October 2003, as well as the provisions of the UN Convention against Transnational Organized Crime, adopted in New York on 15 November 2000"*¹³⁸.

However, at the beginning of 2017, there was no information about initiation of such individual cases against the former Russian officials (in 2016, the Federal Drug Control Service was disbanded and Aulov retired from the state service). However, it is important that the Prosecutor's Office of Spain referred to the UN Convention against Corruption of 2003. Apparently, they are looking for a legal basis which would allow them to prosecute Russian officials suspected of crimes on the territory of Spain without participation of the Russian authorities.

During the search conducted in Gennadiy Petrov's house in Spain in 2008, documents were found proving money laundering involving some members of the already-mentioned Izmailovo Group. As a result, in April 2007, the Spanish Prosecutor's Office instituted criminal proceedings against individual businessmen Iskander Makhmudov, Oleg Deripaska and others, allegedly related to those transactions.

In Spain, as in many other European countries, criminal proceedings are co-led by the investigating prosecutor and the judge. According to the investigating prosecutor Jose Grinda, in an interview given to *The Insider* in 2011, the case was sent for investigation in Russia¹³⁹ by the judge Fernando Andreu on the basis of the Strasbourg Convention on the Transfer of Proceedings

¹³⁵ According to the editor of Deutsche Welle's Political Department in a conversation with one of the authors of this article, A. Kirilenko, October 2016.

¹³⁶ Kirilenko, A. Aleksandr Torshin called one of the members of "United Russia" related to the Taganka criminal group. Open Russia, 16.06.2016. <https://openrussia.org/post/view/16043/>

¹³⁷ Harding, Luke, Luhn, Alec. Spain issues arrest warrants for Russian officials close to Putin. The Guardian, 04.05.2016. <https://www.theguardian.com/world/2016/may/04/spain-issues-arrest-warrants-for-russian-officials-close-to-putin>

¹³⁸ Kirilenko, A. The case of the Russian Mafia: "Tolik", "Sasha", "Tsar". The New Times, 28.11.2015. <https://newtimes.ru/stati/temyi/c47ea037eccec1f40ed9ae5b46032297-delo-rysskoi-mafuu-toluk-sasha-car.html>. See the original document (in Spanish), 29.05.2015, p. 504.

https://docs.google.com/document/d/1T2pUKz1QTwaeZ-R1D_3o6MZw07o2yE2uEE2KCKN0kAQ/edit

¹³⁹ Kirilenko, A. What would be the result of Russian mafia case? In the interview given to the Insider in 2015, 12.07.2015. <http://theins.ru/politika/17298>

in Criminal Matters, 1972 (ETS No. 073)¹⁴⁰. Jose Grinda was abroad at the time and did not know about this step.

The authors of the present article do not have a copy of the request sent by the Russian Prosecutor General's Office to the Prosecutor's Office in Spain, on the basis of which the case was transferred to Russia. However, the main purpose of the Strasbourg Convention was to avoid double prosecution, when offenders are prosecuted for the same actions both at home and abroad.



Jose Grinda (second right), Anastasiya Kirilenko (right), October 2015

Similar requests were repeatedly sent by the Russian Prosecutor General's Office to the Spanish Prosecutor's Office, asking to transfer Gennadiy Petrov's case from Spain to Russia. The General Prosecutor's Office of Russia pointed to the need to avoid double prosecution in a criminal case and insisted that it could organize the investigation with regard to its own citizens, and, if convicted, to ensure their social rehabilitation¹⁴¹. However, in 2015, the judge José de La Mata refused to satisfy these requests¹⁴².

¹⁴⁰ European Convention on the Transfer of Proceedings in Criminal Matters.

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/073>

¹⁴¹ Refusal to transfer the case of "Russian mafia" to the Russian Federation (in Spanish).

<http://www.documentcloud.org/documents/2793037-2015-09-18-Refusal-to-Handover-the-Case-on.html>

¹⁴² Kirilenko, A. The case of the Russian Mafia: "Tolik", "Sasha", "Tsar". The New Times, 28.11.2015.

<https://newtimes.ru/stati/temyi/c47ea037eccec1f40ed9ae5b46032297-delo-rysskoi-mafuu-toluk-sasha-car.html>



Генеральная прокуратура
Российской Федерации

ул. Б. Дмитревская, 15а
Москва, Россия, ГСП-3, 125993

11.11.2014 № 34/3-334-12

На №



На Ваш запрос сообщаем, что 10.04.2007 Центральным следственным судом № 4 Национальной аудиенции Королевства Испании в отношении Махмудова И.К., Дерипаски О.В. и иных лиц возбуждено уголовное дело №101/2007-D по ст. 515 (создание преступного сообщества), ст. 301 («отмывание» денежных средств) и ст. 305 (преступление против Государственной казны) Уголовного кодекса Королевства Испании.

Данное уголовное дело с квалификацией содеянного по ст.ст. 174, 210 УК РФ 07.12.2012 передано заместителем Генерального прокурора Российской Федерации в порядке ст.ст. 151, 459 УПК РФ для дальнейшего расследования в Следственный департамент МВД России.

Срок предварительного следствия по делу продлен до 10.02.2015.

Заместитель начальника управления по надзору
за расследованием особо важных дел

В.В. Игнашин

АО № 127126

Генеральная прокуратура Российской Федерации
№34/3-334-2012/Наз35534-14

Reply of the Prosecutor General's Office to the request regarding the status of the case against O. Deripaska and I. Makhmudov (2014)

Unlike in Gennadiy Petrov's case, the cases of Oleg Deripaska, Iskander Makhmudov, and others were transferred to Russia under the condition that they would be properly investigated at home. Though Makhmudov is one of the defendants in the case, no investigation has yet been conducted into him. Since the case was transmitted from the Russian Prosecutor General's Office to the Ministry of Interior Investigative Department, the investigation has been formally extended several times, but in fact has not taken place. The case is supervised by the Deputy Head of the Investigative Department Yuriy Shinin, who has direct contacts with people around Makhmudov and who also supervises other criminal cases related to this oligarch's companies¹⁴³. In August 2014, the Spanish Prosecutor Grinda wrote a letter setting out the details of criminal activities of the "Russian mafia" abroad and calling for an independent investigation of the case by the Spanish justice system¹⁴⁴.

In our opinion, that situation can be qualified as misuse of an international treaty designed to facilitate cooperation between Russia and European countries in the fight against transborder crime. The Strasbourg Convention on the Transfer of Proceedings in Criminal Matters, 1972 (ETS No.073) was used to complicate the investigation, to seek to close the case "due to the expiry of the period of limitation", and to hinder the investigation in Europe.

This case can illustrate the ability of the European law enforcement system to coordinate between the EU Member States and civil society.

¹⁴³ Rubakhin, Konstantin. It fell apart. Radio "Liberty", 24.12.2016.

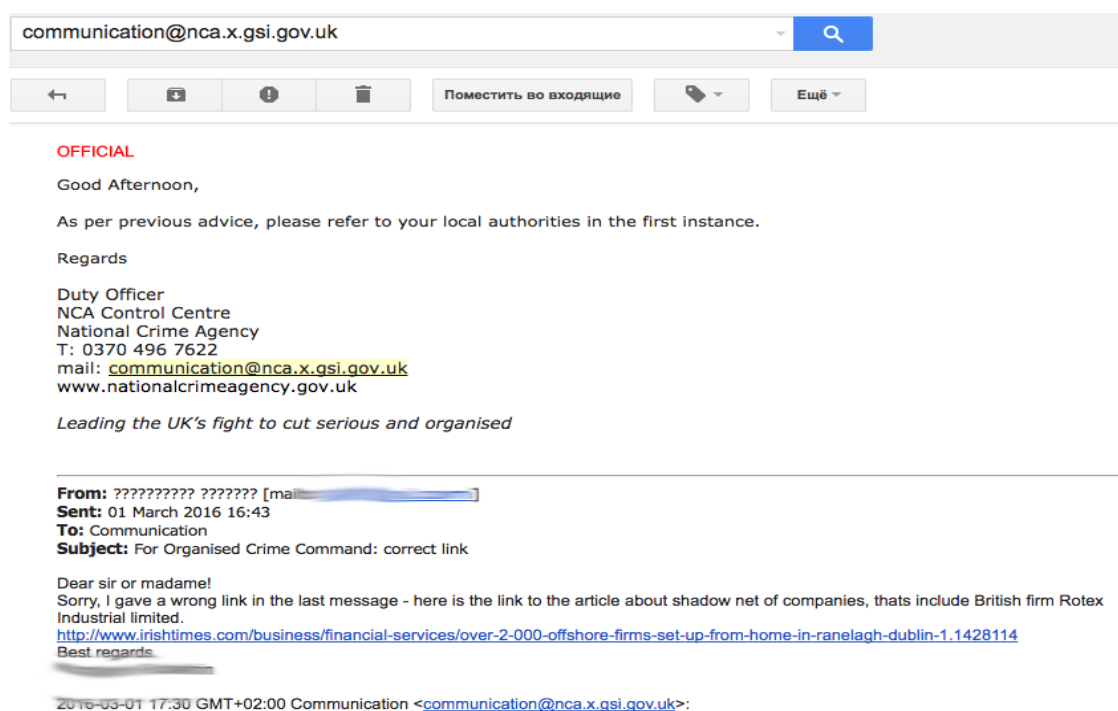
<http://www.svoboda.org/a/28191091.html>

¹⁴⁴ Rubakhin, Konstantin. Spanish Prosecutor calls for continuation of investigation of the "Russian mafia" case. http://rubakhin.org/?page_id=976

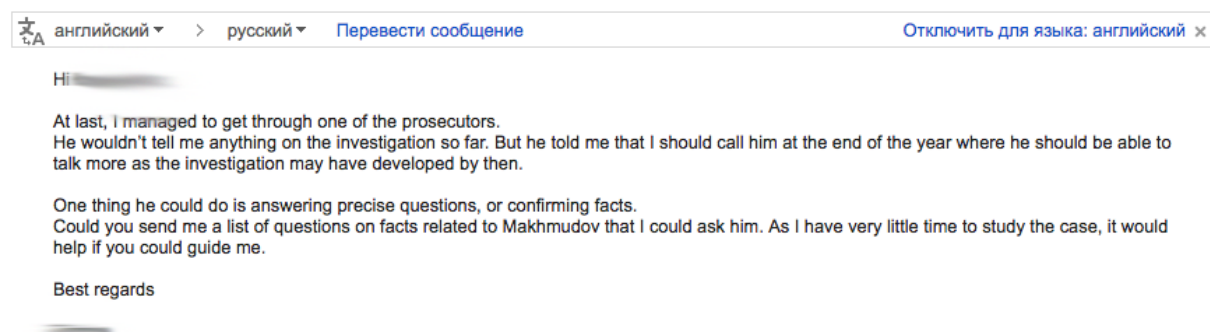
Members of the Expert Group on Fighting Transborder Corruption of the EU-Russia Civil Society Forum made an appeal upon suspicion of money laundering, based on the materials of criminal cases related to the Izmailovo Group and financial schemes involving Iskander Makhmudov, Andrey Bokarev, and Michail Chernyi. The appeal was sent to the law enforcement bodies of the countries where the dirty money could have been transferred (France, Switzerland, Germany, Estonia, Lithuania, the United Kingdom, and Ireland). The results of the appeal are presented below.

Ireland: No response.

UK: Correspondence took place and the author of the appeal was advised to refer to the authorities in Russia, though it was indicated that the British company in question was involved in the chain of possible illegal operations.



France: The correspondence became possible due to the assistance of a journalist working at a leading French newspaper. Before that, there was no response to the letters sent to the official address of the Prosecutor's Office. As of the beginning of 2017, the appeal is being considered and a response is expected regarding the status of the investigation.



Germany: German NGO, which is a member of the EU-Russia Civil Society Forum, assisted in filing the appeal. According to German law, appeals should be submitted to the federal state/s where the crime took place, in this case Bavaria and North Rhine-Westphalia. The preliminary investigation was completed and the documents were sent to the Prosecutor's Office.

Switzerland: No response. A Swiss journalist who assisted on this issue noted that in the German part of Switzerland, where the appeal was submitted, it is more difficult to initiate such investigations than in the French part. Currently, an appeal is being prepared referring to the Geneva companies which took part in the chain.

Estonia: After submission of the appeal and participation of Expert Group members in a meeting with diplomats and members of the Estonian Government in Tallinn, the author of the appeal was invited to the police department, where the presumed representatives of the Defense Police Department questioned him. No visible action has been taken as a result of the meeting.

Lithuania: The appeal was accepted and a response was provided saying that the work had started and the applicants would be kept informed. It coincided with a resonant scandal in Lithuania, whereby the Lithuanian Railway Company purchased utilities from Transmashholding, belonging to Andrey Bokarev, Iskander Makhmudov, and French company Alstom.

Summing up the results of the work, the following recommendations can be made as regards the interaction of civil society organizations with European law enforcement bodies.

1. In many countries, media support of the case is crucial. Make sure your appeal contains links to media materials and ask local journalists to send requests to the law enforcement bodies, requiring them to provide information about the work on your appeal.
2. Appeals from local CSOs receive more attention. In addition, local CSOs can advise you on the structure of the law enforcement bodies and help to maintain contact with them.
3. When filing an appeal, make sure you receive feedback (at least a response saying that your appeal has been accepted and is being processed). The best thing is to have direct contact with the officer responsible for your case. Feedback is easier to receive through a local journalist, as law enforcement bodies are obliged to reply to him/her.
4. It is recommended to refer in your appeal to existing criminal cases that have been initiated in Europe or the United States. The documents of such cases are a source of unique information in themselves. They can be obtained through official requests from media or CSOs, or through direct contact with the responsible officers.

Analyzing the general state of investigation of transborder corruption in Europe, one can say that the private interests of companies and individuals involved in dirty operations with large amounts of money usually dominate over general political statements about the need to counteract the influence of Russian dirty money in European politics. A vivid example is the case of the 1990s Russian crime boss Michail Chernyi, whose name used to be on the Interpol list but was removed in 2016.

There is a need for a single strategy for international investigations, which would encompass scandals related to corruption and other criminal offences involving Russian criminals, such as the Spanish cases of Gennadiy Petrov and Iskander Makhmudov, criminal proceedings in the Baltic countries, the case of the Vinci corporation in France, and the Alstom bribery cases in different countries. In this regard, the main obstacles are the slow exchange of information between the police and investigating bodies in different countries and the lack of coordination with civil society representatives.

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Colophon

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The EU-Russia Civil Society Forum was established in 2011 by non-governmental organisations as a permanent common platform. At the moment 150 NGOs from Russia and the European Union are members of the Forum. It aims at the development of cooperation between civil society organisations from Russia and EU and greater participation of NGOs in the EU-Russia dialogue. The Forum has been actively involved in the issues of facilitation of visa regime, development of civic participation, protection of the environment and human rights, dealing with history, fighting transborder corruption, and civic education.

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