



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 31, 2017

By FedEx

Matthew T. Sanderson, Esq.  
Caplin & Drysdale, Chartered  
One Thomas Circle, NW  
Suite 1100  
Washington, DC 20005

Re: Podesta Group, Inc.

Dear Mr. Sanderson:

This is in reference to your letters of August 22, 2016, September 30, 2016, November 14, 2016, and December 2, 2016, as well as our letter of September 1, 2016, regarding the Podesta Group, Inc. ("Podesta"), and its possible obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* ("FARA" or the "Act") in connection with its representation of the European Centre for a Modern Ukraine ("ECFMU"). Based upon the information you provided, we have determined that Podesta has an obligation to register under FARA. Podesta's obligation to register arises from political activities undertaken within the United States on behalf of the ECFMU, a foreign principal under the Act.

The purpose of FARA is to inform the American public of the activities of foreign agents working for foreign principals to influence U.S. government officials and/or the American public with reference to the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a foreign country or foreign political party. An "agent of a foreign principal" is defined, in pertinent part, as "any person who acts . . . at the order, request, or under the direction or control of a foreign principal . . . and who directly or through another person . . . engages within the United States in political activities for or in the interests of such foreign principal." 22 U.S.C. § 611(c)(1)(i). The term "political activities" is defined in 22 U.S.C. § 611(o) as "any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or foreign political party." The term "foreign principal" includes "a government of a foreign country and a foreign political party, any person outside the United States . . . and a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." *Id.* at § 611(b).

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Based on the materials you provided and the representations in your letters, on or about April 18, 2012, Podesta entered into a contractual relationship<sup>1</sup> with the ECFMU for the purpose of improving ties between Ukraine and the West "with the ultimate goal of Ukrainian admission to the European Union and alignment with other Western institutions."<sup>2</sup> According to the information provided, the ECFMU acted as an intermediary between Ukraine and the West to promote Ukraine's political and economic interests.<sup>3</sup> The email communications and other documents you provided demonstrate that Podesta engaged within the United States in a public relations campaign "to tell the Ukraine story to audiences"<sup>4</sup> within the United States. Podesta's political activities included sending strategic communications to and arranging meetings with U.S. Government officials, members of the U.S. media, and U.S. business leaders to promote Ukrainian public and political interests.<sup>5</sup>

The information provided referenced specific activities, including, but not limited to, securing press interviews in the United States, arranging meetings between Ukrainian government officials and members of Congress and congressional staff, and facilitating the publication in the United States of opinion pieces from "recognized international thought leaders."<sup>6</sup> In addition, Podesta sought to build support for Ukraine in various business communities in the United States and Europe to "bolster support for Ukraine politically."<sup>7</sup> We believe, taken together, that these actions were intended to influence United States officials and the American public "with reference to the political or public interest, policies, or relations of a government of a foreign country or a foreign political party." 22 U.S.C. § 611(o).

While you indicated in your November 14, 2016, letter that Podesta was not retained by the Ukrainian government or a Ukrainian political party, you acknowledged that funding of the ECFMU was provided by individuals "in Kiev who were affiliated with the Ukrainian government and the Party of Regions"<sup>8</sup> and that ECFMU is "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having

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<sup>1</sup> Letter from Matthew Sanderson to Heather Hunt (Sept. 30, 2016) (attaching Engagement Agreement Between the European Centre for a Modern Ukraine and the Podesta Group (Apr. 18, 2012)).

<sup>2</sup> Letter from Matthew Sanderson to Heather Hunt 1 (Nov. 14, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> Email from The Podesta Group PR Team to Rick Gates, "ECFMU Public Relations – The Next 90 Days" 1 (Mar. 22, 2013) (hereinafter the "Podesta PR Team Email") (part of the production attached to the Letter from Sanderson (Nov. 14, 2016) (PD0009867-9869)).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* Documents referencing such activities include, but are not limited to, the Podesta PR Team Email as well as the extensive meeting schedule and materials prepared for the visit to the United States of (b) (6), (b) (7) a member of the Verkhovna Rada (the Ukrainian parliament), on May 8-9, 2013, and (b) (6), (b) (7) planned meetings with members of Congress, Department of State officials, business officials, and NG (b) (6) and (b) (7) thought leaders." (PD0005711-5876).

<sup>7</sup> Podesta PR Team Email, at 2.

<sup>8</sup> Letter from Matthew Sanderson to Heather Hunt 2, 3 (Nov. 14, 2016).

its principal place of business in a foreign country.”<sup>9</sup> Accordingly, ECFMU is a “foreign principal” under FARA. See 22 U.S.C. § 611(b)(3).

In your correspondence, you note that Podesta registered under the Lobbying Disclosure Act, 2 U.S.C. § 1601 *et seq.* (“LDA”), claiming that the exemption in Section 613(h) of FARA applies.<sup>10</sup> You indicated that while your client was initially inclined to register under FARA, because the ECFMU was a foreign entity, Podesta decided instead to register under the LDA on the ground that the ECFMU represented it was not “directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a government of a foreign country or a foreign political party.”<sup>11</sup>

We have reviewed the information you have provided, however, as well as the lobbying reports that Podesta filed under the LDA, and we have determined that FARA registration is required for the above-described political activities, because, regardless of who “supervised, directed, controlled, financed, or subsidized” ECFMU, Podesta’s work on its behalf was not to benefit commercial interests of ECFMU, but instead was to promote the political or public interests of a foreign government or foreign political party, such that the LDA exemption cannot apply. The exemption provided in Section 613(h) of FARA, upon which Podesta relied, applies to lobbying activities conducted to benefit the bona fide *commercial* interests of “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its *principal place of business* in a foreign country.” 22 U.S.C. § 611(b)(3) (emphasis added). It is not available to an entity or individual that engages in the United States in political activities promoting the political or public interests of a foreign government or foreign political party. See 22 U.S.C. § 613(h) (excluding § 611(b)(1), foreign countries and political parties, from its scope). Indeed, the pertinent Department of Justice regulation expressly states that “in no case where a foreign government or foreign political party is the *principal beneficiary* will the exemption under [22 U.S.C. § 613](h) be recognized.” 28 C.F.R. § 5.307 (emphasis added); see also 28 C.F.R. § 5.300 (“The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.”). As demonstrated in the information you provided, Podesta undertook to promote Ukraine’s public and political interests in the United States, making the Ukrainian government and/or the Party of Regions the principal beneficiaries of its activities.

In conclusion, we have determined that Podesta must register under FARA, because the firm’s activities on behalf of the ECFMU constitute “political activities” as defined under the Act and were conducted at the order, request, or under the direction or control of a foreign principal (the ECFMU) in furtherance of, and for the purpose of influencing, U.S. government officials, and sections of the public within the United States, with reference to the political or public interests, policies or relations of a foreign government or foreign political party. Podesta

<sup>9</sup> See Agreement (Apr. 30, 2012) (attached to Letter from Matthew Sanderson to Heather Hunt (Sept. 30, 2016)).

<sup>10</sup> Letter from Matthew Sanderson to Heather Hunt 4-5 (Nov. 14, 2016).

<sup>11</sup> Agreement (Apr. 30, 2012) (attached to Letter from Matthew Sanderson to Heather Hunt (Sept. 30, 2016)). See also Draft Letter from Kenneth Gross to (b) (6), (b) (7)(C) “Use of LDA Exemption from Foreign Agents Registration Act for Services for the European Centre for a Modern Ukraine” (May 18, 2012) (attached to Letter from Matthew Sanderson to Heather Hunt (Sept. 30, 2016)).

therefore cannot rely on the exemption set forth in Section 613(h) of FARA in these circumstances, because the principal beneficiary of the political activities conducted within the United States was the Ukrainian government and/or the Party of Regions.

Useful information and forms needed for registration may be found on our website at <https://www.fara.gov>. Please effect Podesta's registration under FARA, filing any necessary short form registration statements within thirty (30) days of the date of this letter. If you have any questions or wish to meet with us regarding our determination, please contact me by telephone at (202) 233-0776 or by email to [FARA\\_public@usdoj.gov](mailto:FARA_public@usdoj.gov).

Sincerely,

b(6)

Heather H. Hunt  
Chief, FARA Registration Unit

Caplin & Drysdale, Chartered