

To Mr Robert Zink
acting chief, Fraud Section
Criminal Division
Department of Justice
1400 New York Avenue, NW
Washington D.C. 20005

and

To Mr Geoffrey S. Berman
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Budapest, 2 August, 2019

Dear Mr Zink,
Dear Attorney Berman,

I, the undersigned Miklos Ligeti, in my capacity as statutory representative and head of legal affairs at Transparency International Hungary Foundation (hereinafter referred to as: "**TI-Hungary**"), the Hungarian national chapter of the worldwide Transparency International movement to globally oppose corruption, write to bring to your kind attention the fact that Hungarian authorities are omitting to fairly and reliably investigate into and sanction conducts that involve improper payments under the Foreign Corrupt Practices Act (hereinafter referred to as "**FCPA**") benefiting Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft. (hereinafter referred to as "**MS Hungary**"), a wholly-owned subsidiary of the Microsoft Corporation.

TI-Hungary has taken note of the Non-Prosecution Agreement¹ concluded by and between, *inter alia*, MS Hungary and the United States Department of Justice and the United States Attorney's Office for the Southern District of New York. The Statement of Facts attached to the Non-Prosecution Agreement illustrates the corrupt scheme perpetrated by MS Hungary by two examples, each described in an anonymised format. These cases involve, *inter alia*, the ex-ante fixing of prices in a public procurement process, the collusion between the representatives of the procuring state organ and the representatives of the provider of the procured goods and services, and the leaking by a representative of the procuring state organ of insider information relating to prices to the provider of the procured goods and services. The Statement of Facts concludes that these conducts qualify as a "bid rigging and bribery scheme" aiming to "create inflated margins [...] that were used to fund improper payments under FCPA in connection with the sale of Microsoft software to Hungarian government agencies".

Based on the dates of the transactions and on the purchase price, the National Police and the State-Owned National ICT Ltd. have been identified in the press as procurers of the two procurement processes included in the examples described by the Statement of Facts attached to the Non-Prosecution Agreement.² In a press release³ to react on these suggestions, the National Police did not refute or disclaim in any way either the legitimacy or the validity of

¹ <https://www.justice.gov/opa/press-release/file/1185686/download>

² https://hyg.hu/gazdasag/20190730_Microsoftkorrupcio_Hadhazy_talalt_ket_gyanusitottat

³ https://hyg.hu/gazdasag/20190730_Microsoftkorrupcio_Az_OREK_szerint_ok_mindent_betartottak

such suggestions, but stressed instead that it has abided by all legal requirements throughout the procurement process. The National ICT Ltd. did not publicly react to the suggestions. Furthermore, the United States Securities and Exchange Commission identified in a report⁴ dated 22 July, 2019 Hungary's National Police ('ORFK') and Hungary's National Tax and Customs Administration ('NAV') as procurers of goods and services offered by MS Hungary as part of a sales practice in the framework of which MS Hungary "provided payments intended for foreign government officials in order to obtain business for Microsoft" ['foreign government officials' meaning in this cited report's context Hungarian government officials].

The conducts described and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement 1) have been perpetrated on the territory of Hungary, 2) have benefited MS Hungary, a legal entity duly incorporated in Hungary, and 3) have involved Hungarian citizens, among others employees of the Hungarian government as perpetrators. With regard to these facts, there are multiple grounds based on which Hungary's jurisdiction in this case and the applicability of the Hungarian law to these conducts can be justified beyond any reasonable doubt.⁵

The Hungarian law applicable to public procurement procedures (Act CXLIII of 2015 on Public Procurements, hereinafter referred to as "**Public Procurement Act**") strictly forbids price fixing, bid rigging and collusion. However, statute of limitation may prevent the Hungarian authorities from sanctioning these conducts under the Public Procurement Act, as Subsection 2(a) of Section 152 of the Public Procurement Act stipulates that any process to legally remediate unlawfulness may only be commenced within three calendar years from the occurrence of the conduct concerned.

Nevertheless, the conducts described, and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement constitute offences punishable under Act C of 2012 on the Criminal Code (hereinafter referred to as "**Criminal Code**"). Besides potential abuse of public authority, tax fraud and embezzlement of public funds, each of them felonies punishable with, *inter alia*, custodial sanctions, of special relevance are 'improper payments under FCPA'. The acceptance by a public official, directly or indirectly of an undue advantage qualifies as bribery under Section 294 of the Criminal Code, an offence punishable with imprisonment of up to five years. Equally severe sanctions may be imposed under Section 293 of the Criminal Code to the offering or giving to a public official, directly or indirectly, an undue advantage, on condition that such advantage aims at influencing the public official.

Even though no evidence in support of the bribery of Hungarian public officials was made publicly available, it may reasonably be supposed that improper payments 'in connection with the sale of Microsoft software to Hungarian government agencies' have entailed bribes directly or indirectly payed to Hungarian public officials who exercise oversight over the procurement of the services and goods concerned or otherwise are able to influence the relevant decisions.

⁴ https://www.sec.gov/litigation/admin/2019/34-86421.pdf?_ga=2.215845267.562655709.1564393537-565093790.1399991880

⁵ Hungary's jurisdiction is based primarily on the territorial principle, meaning that to actions performed or occurring on the territory of Hungary the Hungarian law shall apply. As one of the adhesive principles of jurisdiction, the personality principle also justifies Hungarian jurisdiction, meaning that to acts performed by Hungarian citizens, the Hungarian law shall be applicable under certain conditions defined in the respective regulations. In relation to public procurement processes, European Union regulations implemented by Hungarian laws define the jurisdiction, but in principle, to public procurement processes taking place in Hungary, the Hungarian law applies.

To the best knowledge of TI-Hungary, Hungarian authorities have not launched any investigation into the conducts described and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement. In an official response⁶ to a question on a journalist's behalf, the Office of the Metropolitan (Budapest) Chief Prosecutor stated that the authorities of the United States have not provided information regarding the conducts described and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement to the Office of the Metropolitan (Budapest) Chief Prosecutor. Besides, in response to a question by Mr Attila Mesterhazy, an opposition Member of the Parliament (Hungarian Socialist Party), Hungary's Chief Prosecutor disclosed on 16 October 2018 that a formal criminal complaint by an individual relating to the conducts described and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement had been rejected on 24 April 2018 because no suspect of any criminal conduct could be established.⁷

Publicly available information relating to the Hungarian authorities' determination to investigate into and sanction the conducts described and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement is controversial. On 26 July, Hungary's Chief Prosecutor stated in a response he gave to a question by a journalist that the "Office of Hungary's Chief Prosecutor is going to ask if the United States Department of Justice possessed any information indicating the suspicion of a criminal offence in relation to the Microsoft case that could be shared with the Office of Hungary's Chief Prosecutor and which could serve as the basis of a criminal investigation to be launched by the Hungarian authorities".⁸ However on July 31 the Minister overseeing the Prime Minister's Office mentioned at his regular weekly press conference that the "Hungarian authorities have no official information of MS Hungary's corruption scandal".⁹

Stressing the lack of 'official information' has over the past couple years become a standard method employed by the Hungarian government to substantiate why authorities fail to examine suspected wrongdoing and perceived corruption. The fact that a very senior member of the Hungarian administration uses this argument is disquieting and in light of many years' experience, may give rise to anticipations that competent authorities will omit to take appropriate action. Such anticipations are amplified by the fact that Hungary's National Police are involved in the perpetration of the conducts described and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement, a disturbing fact in itself.

Taken all the above into account, in order to prevent high level corruption with a political connotation from going unsanctioned in Hungary again, TI-Hungary turns to the United States Department of Justice and to the United States Attorney's Office for the Southern District of New York. We kindly ask you to consider examining the possibility to take measures in accordance with the United Nations Convention Against Corruption (hereinafter referred to as "UNCAC"). UNCAC, to which both the United States of America and Hungary are signing parties, was ratified in both countries.¹⁰ Under Article 15 UNCAC on bribery of national public officials

⁶https://index.hu/gazdasag/2019/07/29/microsoft_magyar_allam_korrupciogyanu_vizsgalat_buntetes_szoftverek_usa_kornanyzat_korrupcio/

⁷ <https://www.parlament.hu/irom41/01775/01775-0001.pdf>

⁸ https://hvg.hu/gazdasag/20190726_microsoft_korrupcio_orban_usa_igazsagugyi_miniszterium_legfobb_ugyeszseg

⁹ https://444.hu/2019/07/31/gulyas-szerint-a-microsoft-korrupciosbotranyarol-a-magyar-hatosagoknak-semmilyen-hivatalos-tudomasa-nincsen?fbclid=IwAR2Vg4T6Iqrr5ZuqZMbdZK_aksUyD1PYzpoJ5OED45yslBxJcYxc61111ho

¹⁰ <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

„Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.”

Hungary fulfils this requirement as Sections 293 and 294 of the Criminal Code define both the active and the passive bribery of national public officials as felonies.

Under Article 38 UNCAC

“Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.”


With regard to the provisions of UNCAC cited above, TI-Hungary would like to suggest the United States Department of Justice and the United States Attorney’s Office for the Southern District of New York to consider proactively informing the Hungarian authorities in relation to the conducts described and the acts defined in the Statement of Facts attached to the Non-Prosecution Agreement and sharing all evidence in their possession with the Hungarian authorities without waiting for any formal, official request or for a subpoena on their behalf.

TI-Hungary also kindly requests the United States Department of Justice and the United States Attorney’s Office for the Southern District of New York to acknowledge receipt of this letter and to inform TI-Hungary of any action taken based on our request.

Please do not hesitate to contact TI-Hungary if you have any questions about this situation of concern.

I am looking forward to your kind response.

Yours very sincerely,


Miklós Ligeti

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