

To,

US Department of Justice – Criminal Division

In attention of

Assistant Attorney General – Mrs Leslie R. Caldwell

Chief FCPA Unit – Ms. Daniel Kohn

950 Pennsylvania Avenue, NW

Washington, DC 20530 – 0001

The undersigned **Sandu Gabriel, Romanian citizen (...)** as a **former Minister of Communication and Information Society** and as disadvantaged party due to the engagement of my exclusive responsibility concerning the legal implications that are not imputable, due the judgment of my acts that does not consider the aspects that are imputable to those responsible for the violation of the transnational laws regarding acts of bribery to the governmental officials, in accord with the stipulations established by the special laws :

- **Foreign Corrupt Practice Act**
- **US Securities and Exchange Act**
- **Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - OECD**

Along with the stipulations of :

- **Treaty between Romania and United States of America on legal assistance in criminal matters (signed in Washington, on April 26, 1999)**
  - **The European Convention on dated 29<sup>th</sup> of May 2000 regarding the legal assistance for criminal cause between the states that are members of the E.U. – the Decision of the Council no 2007/62/CE dated 8<sup>th</sup> of October 2007.**
  - **The European convention regarding the transfer of the criminal procedures adopted in Strasbourg at 15<sup>th</sup> of May 1972.**
  - **The European Convention of the Human Rights regarding the right for defense and for a righteous investigation while respecting the international cooperation concerning crimes that lie within other states' attributions and jurisdiction, I present you the hereby.**

INTIMATION

Concerning the official collaborations between the Romanian Government and Microsoft International, between 2000 and 2013, which have materialized by the signing of the following contracts:

· **Contract regarding the Informationized Educational System (SEI MEC), signed between Siveco and Ministry of Education, worth 124 million EUR (contract implemented in 6 stages during 2001 - 2009).**

· **Contract regarding the leasing of Microsoft licenses, type Enterprise Agreement Subscription, signed between the Romanian Government and Microsoft Ireland, intermediated by Fujitsu Siemens Computers GesmbH Austria, worth 105 million USD, conducted in 2004-2009;**

· **Contract regarding the leasing of Microsoft licenses, type Enterprise Agreement Subscription, signed between the Ministry of Communications and Information Society and the consortium D-CON. NET (MCSI MS-EAS), worth 96 million EUR, conducted in 2009-2013 (extended to 2013 with 33 million EUR - the on-going contract)**

The people who are the object of the hereby intimation:

· **Claudiu Florica** - as a former director of Fujitsu Siemens Computers Romania - official collaborator of Microsoft International in the collaboration between the Romanian Government and Microsoft, having the project of educational licenses as object (The contract of leasing of the Microsoft licenses, type Enterprise Agreement Subscription, signed between Microsoft Ireland and the Romanian Government, intermediated by Fujitsu Siemens Computers GesmbH Austria, worth USD 105 million, conducted between 2004 and 2009);

· **Claudiu Florica** - as a former director of D-con net AG - official collaborator of Microsoft which intermediated the collaboration between the Romanian Government and Microsoft, which involved the delivery of software products to 26 public institutions, as well as the renewal of the educational licenses (The contract of leasing of Microsoft licenses, type Enterprise agreement Subscription, signed between Ministry of Communications and Information Society and the consortium D-CON. NET (MCSI MS-EAS), worth EUR 96 million, between 2009 and 2013 (extended in 2013 with 33 million EUR, contract that is still on-going).

· **Lawyer Bostina Doru** - as legal representative of Fujitsu Siemens Romania as well as of D-con net AG in order to serve for the perfection the contracts, the representation and the establishment of off-shore companies on behalf of the directors of the companies that had the status of direct collaborators of Microsoft International, lawyer that had at the same time the incompatible status of lawyer on legal assistance of MCSI and the intermediate person for the illicit money laundering operations based on the relations of trade between the Romanian Government - Fujitsu Siemens collaborator Microsoft and various companies and off - shores.

- **Dragos Stan** - administrator of the company SCOP Computers SA (whose main object of trade was trade with computers, peripheral equipment, and software), which had the role of providing a circuit of the amounts of money that would enable the payment of fees and commissions to certain persons by by the establishment of off-shores companies.
- **Diana Comanici**- as economic manager of Fujitsu Siemens Computers, person who had the task to put pressure in order to make certain unjustified payments.
- **Dinu Pescariu** - which was supposed to provide financial support and to ensure the networking with people who had influence on certain members of the Government, to ensure the opening of the bank accounts located abroad, accounts from which would be performed payments to the ministers or officials involved.
- **Dragos Nicolaescu** - head of Fujitsu Siemens Computers, whose role was to provide technical support, to open bank accounts located abroad, accounts from which would be performed payments to the ministers or officials involved.
- **Pletea Florin** - Microsoft employee, as technical support, and for the opening of bank accounts located overseas, accounts from which would be performed payments to the ministers or officials involved.
- **Sorin Eftenie** - former head of Microsoft Romania who had as tasks - the loan and the prolongation of the educational licenses by the Ministry of Information Society and the Ministry of Education that, contrary to the framework agreement no. 32 / 12.08.2009 concluded, contrary to HG. 460/2009, the contracts for product delivery; there are hints that there had been made payments worth approximately 9 million EUR, for educational establishments

**Violated legal standards:**

**US Securities and Exchange act:**

- **Section 30 A**, through bribery offence to the governmental officials.
- **Section 13 (b)(5) and rule 13b2-1**, through forgery of documents, including invoices, and altering the consultancy contracts in order to obtain illegal benefits to engage in bribe offences to the government officials.
- **Section 13(b)(2)(A) and 13(b)(2)(B)** – the official collaborators of Microsoft took part in the violation of US Securities and Exchange Act through the noticeable implication in the failure of Siemens AG, as well as Microsoft International to maintain a proper intern control regarding the seizure and the prevention of bribery to the governmental officials in Romania, as well as the noticeable implication in operations of incorrect recording of bribe in the official records of Siemens AG, as well as Microsoft International.

**Foreign Corrupt Practices Act**

**Microsoft Internal Policy for Anti Corruption and Anti Bribery, as well ass Anti-Corruption Policy for Microsoft Representatives (annexed to the hereby intimation )**

**The internal policy of Siemens and Fujitsu Austria, regarding the bribery offences to governmental officials**

**The purpose of the hereby intimation:**

- **The compliance with the global legal standards**
- **The promotion and the fight against corruption, through the removal and calling to account the persons who violate the anti-bribe policy while intermediaries of the big corporations.**
- **The duty that lies within the criminal prosecution authorities' attribution to acknowledge and carry on all the endeavours regarding the violation of the legal standards.**
- **The compliance with the international cooperation regarding the violation of legal standards concerning the cross-border operations**
- **The compliance with the encouragement of fight against violating Foreign Corrupt Practices Act, strengthened by the Plan of reinforcement of the fight against the violation of FCPA stipulation, and holding account of the persons that are guilty of bribery offence to the governmental officials of the Justice Department of United States of America dated 05.05.2016 (Yates Memo).**

**The risks that issue due to the lack of implication of all the decisive factors in the inquiry and investigation of the hereby intimation:**

- **the direct incrimination of the undersigned for acts that not only are imputable to me, but for which I was charged in change of granting the status of whistleblower witnesses and thus favoring them and encouraging them to adopt the same behavior in future acts, to the people who were in fact responsible for the crimes.**
- The risk of encouraging the criminal practices among the collaborators of Microsoft and the encouragement towards the incorrect practices as well as the encouragement towards corruption at a global level, interfering with the healthy economic development.
- The risk of compliance with the legal standard „ne bis in idem” regarding the people guilty of the violation of the legal stipulations of Foreign Corrupt Practices Act, before which a final criminal decree given by the Romanian state could render useless a criminal investigation for holding account of The Federal Ministry of Justice of Austria, as well as the Justice Department of the United States – Organised Crime Department.

**The exposure of the facts:**

The Microsoft file is one of the cases that causes the questioning of the criminal liability of the legal persons regarding the acts of cross-border corruption.

Within the Microsoft file, National Anticorruption Directorate (DNA) has started the prosecution against ten former ministers for alleged corruption acts related to the acquisition of Microsoft's educational licenses for public schools, in onerous conditions for the state budget, "ensuring a possible failure of a 47% discount given by Microsoft in consideration of the Romanian Government, and thus allowing the payment of fees to the persons concerned".

The beneficiary of the discount were the private companies that intermediated the international transactions, and not the Romanian Government.

The acts of receiving bribe committed by the 10 officials is correlative to the bribery offence committed by Microsoft Corporation, legal entity registered in the jurisdiction of the US, in this case, through intermediaries - other local and foreign legal entities.

While the alleged acts of bribery of public officials are under criminal investigation of the Romanian authorities, in order to punish those who are guilty of altering the social relations, considering the proper conduct of the national public services, the criminal acts of **the legal entities guilty of bribery are not the subject of any criminal proceedings, despite the solid clues and evidence that they happened, distorting the normal progress of the right to a fair trial, and to a judgement the trial of individuals with regard to the administration of all the evidence both in favor and to the detriment of the parties, as the situation requires.**

At this time, the **Criminal File no 1191/1/2015 and nr. 1865/5/2016 in appeal, is on trial of Romanian court – High Court of Cassation and Justice**, file which has the object of holding accountable of the undersigned as a former Minister of Communication and Information Society, along with other three parties which held the status of business people, alleged intermediaries of influence peddling. Therefore, out of 10 Ministers and of the people who held the status of collaborators/intermediaries of Microsoft International, which were the object of investigation as well, **I am the only person left to hold the criminal liability for acts that concern people under the jurisdiction of the Romanian court, as well as people that are under the jurisdiction of the American and Austrian courts, and I am obliged to respond having denied the right of a judgement based on fair evidence.**

**My incrimination was based on the denouncement made against the undersigned by Mr. Florica Claudiu, official collaborator of Microsoft International, against the undersigned, and his collaborator, Mr. Dinu Pescariu, business person, in order to avoid once again a possible incrimination due to the registration of the said denouncement, which granted them the status of witnesses of a criminal scheme that was started and carried on by themselves between 2000 and 2013. Therefore, the criminal prosecution authorities granted them the status of whistleblower witnesses, status that involved their decriminalisation, their impunity, as well as the possibility to maintain the benefits of the money obtained illegally by the violation of the Romanian laws, the stipulations of FCPA, and the Internal Anti-Corruption and Anti-Bribery Policy of Microsoft and Siemens Austria.**

In March 2013, the vice-president of Microsoft International, **Mr. John Frank has publicly declared** that the special department of Microsoft concerning the identification of bribery offence to the governmental officials **has noticed possible violations of the Internal Anti-Bribery policy, as well as of the FCPA stipulations, by Romanian collaborators.** At that time, due to being an internal investigation of Microsoft, and not having the answer from the investigation authorities from Romania, it was concluded that these suppositions might be ungrounded. **Subsequently, all these suppositions have proven real, as a result of the denouncement and the admission of the direct collaborator of Microsoft in Romania, Mr. Florica Claudiu in front of the criminal prosecution authorities that he committed an act of bribe offence to the governmental officials.**

The reduced culpability of the undersigned, as well as the legality and correctitude of the contract approved by the undersigned through HG 460/2009 is enforced by the Report made by the Control Body of the Prime Minister, Report which targets the irregularities of the contracts, the failure of holding public auctions between 2000 and 2008, and the forgery of the documents in the detriment of Microsoft International (related by and large in the denouncement attached hereby).

The Report of the Control Body does not point at any illegalities concerning HG 460/2009, which was the only HG who targeted entering a perfectly legal contract based on an auction organised at european level.

**The Control Body only considered that the educational licenses that were object to the contracts signed with the Ministry of Education starting with 2004 had expired, and that the pressure that was put on me to renew them by Annexes for HG 460/2009 was illegal, for HG460/2009 only aimed at service packs for 26 public institutions.**

For a better understanding of the faulty manner in which i was charged with the liability for acts committed before i was appointed as Minister (2004-2009), as well as for acts that lie within the direct collaborators of Microsoft attributions, it is mandatory to present you te following:

**The Romanian criminal prosecution bodies have granted immunity of the criminal liability to the persons that held the official status of partners/ intermediaries of Microsoft, thus rendering them whistleblower witnesses, resulting in their impunity and the possibility to illegally benefit of the money obtain by bringing prejudice to the Romanian State, Austrian State and the American State.**

As any other large company, **Fujitsu Siemens AG, as well as Microsoft, possess special intern departments for monitoring, training and control in order to prevent the risk of violating Foreign Corrupt Practices Act.**

When companies like Microsoft and Fujitsu Siemens enter into a governmental contract with another country, apart from the service pack itself, they sign a distinct contract regarding the risks and responsibilities, which contains articles regarding the non-infringement of the internal anti-bribery policy and of FCPA, clauses that are exclusively in charge of their collaborators, Fujitsu Siemens and D-con-net.AG in the hereby file.

This aspect is enforced by the active monitoring of TRACE International (organisation that entered a supervision contract with Microsoft), which targets the identification and the prevention of the possible acts of bribe offence committed by Microsoft's collaborators.

**Conclusion: the direct collaborators of Microsoft, respectively Fujitsu Siemens AG and D-con-net AG were aware of, had signed and assumed the contractual clauses of non-infringement of the anti-bribery policy towards the governmental officials by the violation of Foreign Corrupt Practices Act, which excludes the possibility of self-denouncement and the illegal benefits that derive from the status of whistleblower witness.**

The direct collaborators of Microsoft come primarily under suing the systematic **violation of the FCPA government regulation as follows:**

- **Section 30 A** through bribery offence to the governmental officials.
- **Section 13 (b)(5) and rule 13b2-1**, through forgery of documents, including invoices, and altering the consultancy contracts in order to obtain illegal benefits to engage in bribe offences to the government officials.
- **Section 13(b)(2)A and 13(b)(2)(B)** – the official collaborators of Microsoft took part in the violation of US Securities and Exchange Act through the noticeable implication in the failure of Siemens AG, as well as Microsoft International to maintain a proper intern control regarding the seizure and the prevention of bribery to the governmental officials in Romania, as well as the noticeable implication in operations of incorrect recording of bribe in the official records of Siemens AG, as well as Microsoft International.

The illegalities presented above are enforced by the internal policy of Microsoft „Internal policy for Anti-Bribery to the Government officials” , as well as the „ Code of Conduct of Siemens Austria”

Connected to the events presented above, my guilt is represented by the strength to recognise certain acts that are not directly related to the situation presented, but which expose the facts and helps the criminal prosecution bodies in the process of charging the responsible people with the criminal liability, as well as a possible start of an international cooperation investigation and the establishment of a rogatory commission which would have helped in a righteous solutioning of the cause. **At the same time, the intimation of the undersigned represents an indirect report of the violation of FCPA ammendments**, as proof standing my refusal to approve the renewal and the supplementation of the budget in order to extend the validity of the educational licenses.

The only sollaboration contract between the Romanian Government and Microsoft International that the undersigned has approved of was approved by HG460/2009, the only contract for which there was held an auction at european level, auction that certified the legal aspects and transparency in the process of making a decision.

**The guilt evoked by the direct collaborators of Microsoft, as well as the denouncement and the guilt evoked by Mr. Lawyer Bostina are not only hardly credible, but also null and void and represent a direct insult for the Romanian legal system, as well as the legal system of the contractual partners because of the following aspects:**

- the direct collaborators of Microsoft were completely aware of what they were doing, of what behavior they should have adopted considering the contractual clauses of non-infringement of the anti-bribery policy of FCPA, as well as under the constant monitoring of the internal department of Microsoft regarding the possible violation of the policies.

- the pressure that Mr. Lawyer Bostina made is culpable through the light of his lawyer status responsible for international businesses and representative of big corporations – status that requires the knowledge of the extra-community legislation, respectively Foreign Corrupt Practices Act, as well as the internal policy regarding a well functioning and the ethical policy of the companies Microsoft and Fujitsu Siemens.

The problem that arises is the one of establishing the balance of the liability and the legal enforcement of the laws, through the direct incrimination of the undersigned for acts that are not only imputable to my person, but for which I was charged in change of granting the status of whistleblower witnesses and thus favoring them and encouraging them to adopt the same behavior in future acts, to the people who were in fact responsible for the crimes.

Therefore, if a balanced, transparent investigation was made regarding the real social danger, as well as the cross-border operations that have been made, these can be revealed through a simple analysis concerning the imputable violation of the law, responsibilities and real benefits brought to the Romanian State, the Austrian State and the American State. This analysis not only will reveal an enormous difference, but it will also rise a question mark before the compliance to the applicable laws and to the balance of law applicance.

I would like to mention that the undersigned does not institute to your honor, and that only as vulnerable person unrighteously charged for acts that are not imputable to me, i request you to consider the mandatory legal reglementations applicable in Romania, which target the special cases such as the one presented above.

**Your investigation is of extreme importance and represents the fundament of a good collaboration regarding various litigations that concern the violation of the laws from two states.**

At the same time, i would like to mention that your investigation has a direct effect on the righteous judgement of the undersigned, considering two points of view:

- If the parts involved in the bribe offence act towards the Government officials that is stipulated in FCPA and subsiriary in the internal policy of Anti-Bribery of Microsoft and Siemens Austria, are not met directly, thus the incrimination of the undersigned for acts of receiving bribe and traffic influence during the collaboration with Microsoft can no longer considered valid.
- The second situation regarding the violation of the FCPA through bribe offence towards the Government officials would be proven, the course of my investigation would be changed so that i can no longer be charged for acts of which i am the subject of and that target other people. Within the investigation of the romanian criminal prosecution bodies, these persons not only are not charged for their acts, but are also granted the possibility to bring direct prejudice to the Romanian State, the Austrian State and the American State.

I would also like to mention that the risk is still present due to the encouragement of these policies. To support my statement I would like to add that to this day, these acts are still practiced in Romania through the various collaboration contracts between the Romanian State and Microsoft International, contracts whose key intermediators are the same people mentioned in the hereby intimation.

**If the investigation that is object of the hereby intimation is already on course and is the object of the Department of Justice – the Criminal Division, Antifraud section, i request on behalf of the status of the undersigned, to communicate the status of your investigation at the chosen residence for correspondance in Romania, Bucharest, Polona Street, no. 35, ap.2.**

Annexed hereby:

- the intimation of the undersigned
- the internal policy of microsoft regarding the bribe offences towards the Government Officials
- Code of Conduct of Siemens Austria AG

I thank you for your understanding and the trust that I have for your institution makes me confident that you will investigate the case righteously.

Regards,

**Gabriel SANDU**