

Geoffrey Cox
Attorney General
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Cc: John Penrose MP

4th October 2019

Dear Attorney General,

Progress of the Serious Fraud Office's Airbus GPT investigation: implications for the UK's international reputation

We are writing to express our serious concern at the ongoing delay to the Serious Fraud Office (SFO)'s foreign bribery case involving Airbus subsidiary, GPT, for alleged corruption on a government to government contract with Saudi Arabia for which the SFO sought consent to prosecute from your office over 18 months ago.

This case, which seems to be held up with your office, should not be put at risk by any potential interference on national security grounds, whether it be a direction on your part to stop the prosecution or withholding consent to prosecute. This would irreparably damage not just the UK's international reputation but also the global fight against corruption.

National security as a consideration in foreign bribery case

As you will know, the OECD Working Group on Bribery found that that the decision in 2006 by the Director of the SFO to terminate an investigation into allegations of corruption relating to BAE Systems on the Al Yamamah project in Saudi Arabia was not consistent with the OECD Convention. You will be aware that the OECD Working Group on Bribery has never accepted that there is a national security exception to the OECD Convention. You will also be aware that the Convention contains no explicit national security exception and that there is no clear legal consensus as to whether a national security exemption applies or not. Significantly, if any national security exception were to exist it cannot be invoked as a broad-

based open-ended exception, but should be limited to life-threatening emergencies and imminent threats.

The OECD has said, notably in its Phase 2 BIS review of the UK in October 2008, that if national security considerations arise in such limited and exceptional circumstances in a foreign bribery case, all alternatives to terminating an investigation or prosecution as a response to the national security consideration should be fully considered. Additionally, the OECD has stated that such considerations must be subject to strict scrutiny particularly to ensure that any prohibited considerations under Article 5 of the Convention, namely the potential effect upon relations with another state, or the identity of the natural or legal persons involved, are rigorously excluded.

UK compliance with Article 5

The OECD has expressed repeatedly its concern since the Phase 2 BIS report in 2008, that Article 5 of the OECD Convention is not clearly binding on UK investigators, prosecutors, or the Attorney General. A letter sent in February this year by the Anti-Corruption Champion to government colleagues to raise awareness of the government's duty to respect the principles of Article 5, though welcome, is not a substitute for a clearly binding legal obligation.

The January 2019 framework agreement between the Attorney General and the Director of the Serious Fraud Office makes no mention of the need for Article 5 to be respected if the Attorney General decides to engage in a public interest consultation exercise within government – sometimes known as a Shawcross exercise. Nor has the UK government provided the OECD with evidence that any use of such an exercise in a foreign bribery case would be publicised and transparent. As of March 2019, the UK has still failed to implement key recommendations from the OECD about Article 5 and the use of Shawcross exercises.

The UK's international reputation

The UK's international reputation was severely damaged by the decision to invoke national security as grounds for dropping the BAE/Al Yamamah investigation. Were the UK to undertake a broad-based open-ended national security assessment in a further foreign bribery case, in the context of the Airbus/GPT case, it would seriously undermine the OECD Anti-Bribery Convention – a Convention that is essential to the global fight against corruption.

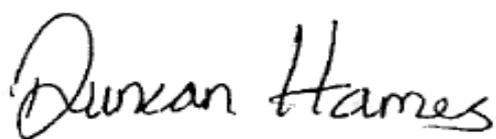
The world has moved on considerably since the decision to drop the Al Yamamah investigation in 2006. Saudi Arabia has ratified the UN Convention Against Corruption and is an active member of the G20 (including the G20 Anti-Corruption Working Group) which has made strong commitments on combating corruption. Saudi Arabia also attends the OECD Working Group on Bribery as an observer. The UK legislated for the Bribery Act in 2010 and the Government since has, to its credit, sought international leadership in the fight against corruption. Ministers often speak with pride of the UK's status as a recognised active enforcer of its foreign bribery laws.

We urge you to make a statement to Parliament at the earliest opportunity as to what is causing the delay in this case, and as to whether you have engaged in or are likely to engage in a public interest consultation exercise in relation to the case. We also urge you in the long-term to ensure that the lessons from this case are fully learned across government, in particular by:

- ensuring that the enforcement bodies responsible for investigating and prosecuting corruption are able to access relevant documentation from government departments in a timely manner;
- instigating an independent review of the role that the Ministry of Defence played in processing and approving any payments made and the procedures that need to be strengthened to ensure this does not happen again; and
- advocating for legislative action which would make Article 5 binding on prosecutors, investigators and on your office.

We look forward to your response

Yours

A handwritten signature in black ink that reads "Duncan Hames". The script is cursive and fluid.

Duncan Hames
Acting Executive Director
Transparency International UK

A handwritten signature in black ink that reads "Susan Hawley". The script is cursive and fluid.

Susan Hawley
Executive Director
Spotlight on Corruption