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EXTREMELY URGENT

Athens, 31.8.2019

Mrs Margrethe Vestager
Commissioner
European Commission
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Dear Commissioner Vestager,

Further to our previous correspondence (cf. my last letter dated 22.8.2019), I am forced to address you again in order to inform you of the extremely negative situation which has ensued due to **the non operation of the HCC.**

As already explained in detail, this has occurred after the voting of the controversial provision of Article 101 of Law 4623/2019, which introduces a conflict of interest clause¹ only for the members of the HCC Board (out of 22 independent administrative authorities) resulting in the automatic premature termination of the serving President, Vice-President and 2 Board members-Rapporteurs, **since the bill in question does not include a transitional provision enabling the completion of the serving members' mandate, pursuant to the relevant EU case law in an identical situation** (ad hoc C-288/12 para 54-55, 61).

Moreover, as already stressed, the Government completed the procedure for the dismissal of the four members of the HCC Board with surprising expedience, although we are in the midst of summer vacations, issuing the Ministerial dismissal orders at a record setting timeframe, **which we immediately contested as null and void filing an application for annulment, as well as an interim measures petition before the Council of State.**

Although the hearing date of our interim measures petition against the Ministerial dismissal orders was set for **August 30th 2019**, the Government hurriedly completed the appointment procedure of the four new Board members (President, Vice-President and 2 Board members-Rapporteurs). The relevant Ministerial decisions were published in the Official Journal late at night on August 29th 2019, for the obvious purpose of influencing the Council of State's ruling

¹ consisting in any form of position or assignment or secondment or other employment in the Prime Minister's office, the Prime Minister's General Secretariat, the office (or political office) of a Government member, Secretary-General or Special Secretary, or in the General Secretariat of the Government for a period of five years preceding their appointment.

and creating a "fait accompli". **We will of course immediately also contest the appointment decisions as null and void filing a new annulment petition before the Council of State.** Consequently, the urgency demonstrated by the Government to appoint a new HCC Administration does not resolve but indeed accentuates the legal dead end, since the lawfulness of the four (4) new Board members' appointment will be disputed in court. It is noteworthy to mention that at the hearing which took place before the competent Parliamentary Committee for Institutions and Transparency on August 27th, 2019 for the issuance of an opinion on the four HCC Board members proposed by the Government, **only the Government majority voted in favor, whereas the five (5) parties of the Opposition abstained from the vote.**

This great disturbance and the HCC's cease of operation would have been avoided if the Government had respected the rule of law, introducing a **transitional provision** to the new bill ensuring that the serving Board members would stay in office until the end of their 5-year mandate, as was already the case in a similar situation (Law 4364/2016, article 282, para 1b).

All the serving members of the HCC Board strongly object to the position adopted by the disputed bill's introductory report, according to which a **non rebuttable presumption on the lack of impartiality** can be based on the mere fact that a person has rendered his/her professional and scientific services as legal or financial advisor to the Prime Minister's cabinet or the cabinet of any Member of the Government, **over the considerable period of five years.** Since the beginning of our mandate until the present day, our impartiality and objectivity has under no circumstances been questioned, not even by the filing of a recusal petition by any party in the cases examined by the HCC. It is also interesting to note that the new clause **does not introduce a conflict of interest for the event that the HCC Board member itself has occupied a position in the Government or in Parliament,** which indeed could create a presumption or even suspicion of political influence!

I would also like to draw your attention to the following facts: a) on August 26th 2019, during the voting of another bill transposing EU Directive 2016/680, the Government rejected the proposal made by a party of the Opposition to expand the new conflict of interest clause to all existing Independent Authorities, b) the serving President of the Consumer Protection Authority (according to his CV in the Authority's official site) for many years occupied a high position in the New Democracy party, which recently won the elections, c) the candidate proposed by the Government for the position of President of the Stock Exchange Commission was a candidate with the New Democracy party at the recent European Parliament elections. **All the above clearly illustrates the purely "photographic" nature of the contested provision, which targeted specific HCC Board members only.**

In any event as already pointed out repeatedly, the contested provision is in blatant violation of EU legislation and case law, which impose the completion of serving Board members' mandate in case of an amendment or remodeling of the legislative framework in force, thus safeguarding Independent Authorities' functional independence (ad hoc judgment in C-288/12 para 54-55 and 61, Directive 1/2019 article 4, as well as EU case law on Member States' obligation during the transposition period of a Directive to abstain from adopting measures which may endanger the objective pursued by such Directive -i.e. Directive 1/2019 in the present case-, C-439/16 para 31-32, C-14/02 para 58, C-129/96 para 50).

In consideration of all the above, I am entitled to express my puzzlement regarding the competent EU institutions' lack of intervention, notwithstanding the obvious nature of the violation of EU legislation and case law and the fact that I have addressed you repeatedly in previous correspondence (first letter to your services dated 5.8.2019).

My perplexity is also due to the fact that, as you are well aware, in previous similar situations (2016), the EU Commission reacted immediately in order to protect the rule of law.

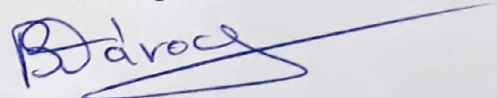
In particular, when a provision on age limits for the HCC Board members was introduced in the Competition Act (article 282 para 1b of Law 4364/2016 which amended article 12 para 3 of the Competition Act), since the then serving President was affected by the new age limit (73), a transitional provision was added in order to avoid the retroactive application of the age limit to already serving members of the HCC Board.

Similarly, when a conflict of interest clause was introduced (article 282 para 1c of Law 4364/2016 which amended article 12 para 7 of the Competition Act) preventing members of the HCC Board to be relatives up to the 2nd degree or spouses of members of Parliament, members of the European Parliament and Government members, since the then serving Vice-President's spouse was a member of Parliament, following the timely intervention of the EU Commission (also mentioned in 2018 OECD Peer Review of Competition Law and Policy, page 85 and footnotes 178-179), the provision was not applied to already serving members, since the then competent Minister of Economy (contrary to the haste demonstrated in our case by the current Minister of Development) did not issue a dismissal order and thus the then Vice-President remained until the end of his mandate.

The puzzling lack of intervention of the EU Commission in the present case enabled the Government to create a situation, which has never before occurred in Greece under a democratic regime (violent and premature dismissal and replacement of serving members of an Independent Authority) and to provoke a very serious issue, as you also admit in your e-mail dated 30.8.2019.

I once more request your immediate intervention, by issuing a recommendation to the Greek Government to add a transitional paragraph to the contested provision of Article 101 Law 4623/2019, which will state that the serving members of the HCC Board remain in office until the end of their mandate, in accordance with EU legislation and the relevant case law of the European Court of Justice.

Best regards,



The President (prematurely terminated) of the HCC
Vassiliki Thanou-Christofilou
Hon. President of the Supreme Court