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Via email and press release

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**Re: Inappropriate and Unlawful Intimidation Against
Whistleblowers in the U.S. Novartis Investigation**

Request for Relief and Formal Complaint Before the Council of Europe

Dear President Tsalaganidis, Prosecutor Pliotas, and Secretary Esposito:

We represent citizens of Greece who have voluntarily provided information to U.S. law enforcement authorities concerning violations of the [Foreign Corrupt Practices Act](#) (“FCPA”).¹ These courageous whistleblowers have provided information that the Swiss pharmaceutical company Novartis, A.G. may have made payments to Greek officials in violation of the FCPA. The whistleblowers made their disclosures pursuant to U.S. law, which provides strong protections for confidential informants and prohibits the obstruction of justice in regard to witnesses in U.S. criminal and regulatory proceedings.

Under [U.S. law whistleblowers are entitled to confidentially and anonymity when they report violations of law](#), including the FCPA. It would be a serious violation of international law and anti-

¹ Although we represent these whistleblower in the U.S., we do not in any way represent these individuals in Greece or in any Greek proceedings.

corruption conventions approved by Greece to interfere with the rights of these whistleblowers, and retaliate against them for lawfully providing information to U.S. authorities. Violating the confidentiality of whistleblowers can also constitute a criminal [obstruction of justice](#) under U.S. law, if there is any evidence that violating that confidentiality could result in any harm to the whistleblower. [Numerous administrative cases](#) and [court decisions](#) have upheld the importance of protecting a whistleblower's identity, and [sanctions](#) have been issued when such confidentiality have been violated.

In direct violation of U.S. and international law, Deputy Public Prosecutors of the Greek Supreme Court sent an official request to the U.S. Department of Justice for the names of these anonymous whistleblowers, and asked for other information that would directly or indirectly identify these whistleblowers.² They also requested information that could be used to undermine protections these whistleblowers would also have under Greek domestic law, should their identities be revealed.³ Both [U.S. and European/International law](#) prevent actions such as those taken by the two Prosecutors, and safeguard the anonymity and safety of whistleblowers.

Any actions taken by representatives of the Greek Supreme Court, or other Greek government officials, to request that the United States violate U.S. whistleblower protection laws is clearly illegal. Any attempt to retaliate against these whistleblowers by breaching their right to confidentiality under U.S. law undermines the rule of law, violates international anti-corruption Conventions, violates U.S. securities laws applicable to numerous companies conducting business in Greece, and constitutes an obstruction of justice. Additionally, any actions taken against the attorneys of any whistleblowers that have provided testimony to U.S. authorities is equivalent to further retaliation against the whistleblowers in violation of international law, and must be treated with the same severity as direct retaliation against the whistleblowers.

We hereby request that you immediately cease and desist from any attempt to learn the identities of Greek citizens who have voluntarily provided information to the U.S. authorities. We also request that you withdraw any request to U.S. authorities to expose the identity of these whistleblowers.

This letter also constitutes a formal complaint against the Greek Supreme Court submitted before the Council of Europe. We hereby seek all sanctions and relief available based on the violation of the international anti-corruption conventions approved by Greece and implemented by the Council of Europe.

² *Novartis: The Greek Supreme Court's Move to Ask for Evidence on Protected Witnesses from the US Justice Authorities Raises Questions*, DOCUMENTO (Oct. 26, 2019), <https://www.documentonews.gr/article/novartis-the-greek-supreme-courts-move-to-ask-for-evidence-on-protected-witnesses-from-the-us-justice-authorities-raises-questions>.

³ CRIMINAL PROCEDURAL CODE, art. 47; Ioanna Mandrou, *Prosecutors Seek Clarity on Protected Witnesses' Claims*, EKATHIMERINI (Oct. 25, 2019), <http://www.ekathimerini.com/245872/article/ekathimerini/news/prosecutors-seek-clarity-on-protected-witnesses-claims>.

Below, we highlight some of the international conventions to which Greece is a party that require Greece fully protect whistleblowers. These conventions also require, either directly or by implication, that Greece respect all U.S. legal protections afforded to persons who allege violations of the FCPA by corporations, such as Novartis, that are under the jurisdiction of the U.S. Securities and Exchange Commission (“SEC”) and U.S. Department of Justice (“DOJ”).

I. GREEK AUTHORITIES MUST PROTECT THE WHISTLEBLOWERS, CONSISTENT WITH ITS INTERNATIONAL OBLIGATIONS

Every nation in the European Union, including Greece, has approved major anti-corruption Conventions that implicitly or explicitly permit whistleblowers to directly communicate their concerns with government officials. The [EU Whistleblower Directive](#), which must be adopted by EU member states by 2021, provides further explicit protections.

The existing conventions that require protection for whistleblowers for which Greece must implement include: U.N. [Convention Against Corruption](#) (Articles 32 and 33), Council of Europe [Civil Law Convention on Corruption](#) (Article 9), U.N. [Convention Against Transnational Organized Crime](#), and the Council of Europe [Criminal Law Convention on Corruption](#).

Greece must ensure that these requirements are upheld in connection with the Novartis whistleblowers.

1. The Criminal Law Convention on Corruption

The Council of Europe’s Criminal Law Convention on Corruption contains two articles that are directly relevant to the concerns expressed in this letter.⁴

First, Article 21 “**Co-operation with and between national authorities**” requires Greece to cooperate with international anti-corruption authorities, such as the U.S. DOJ and SEC, “in accordance with national law.” The national law of the United States explicitly provides for the protection of the identities of whistleblowers in cases filed under the FCPA. Greece must honor these requirements, especially in light of the fact that these authorities were designed to promote the disclosure of corrupt payments to foreign government officials by persons who are at-risk for severe retaliation.

Second, Article 22 “**Protection of collaborators of justice and witnesses**” requires all Greek government authorities to “adopt such measures as may be necessary to provide effective and appropriate protection for ... those who report ... criminal offences” such as bribery.

The protection of a whistleblower’s identity is recognized as one of the most important “measures” that a government can undertake to protect “those who report criminal offenses.” Requesting that the United States violate its domestic laws, and place the whistleblowers directly in harm’s way, is a direct violation of this Convention and international law.

⁴ COUNCIL OF EUROPE, CRIMINAL LAW CONVENTION ON CORRUPTION, ETS 173 (1999).

2. EU Whistleblower Directive

The new [EU Whistleblower Directive](#) includes numerous confidentiality and anonymity protections for whistleblowers.⁵ Articles 13(d) and 16 require that member states provide a confidential process for submission of whistleblower reports that “ensure[s] the identity of the reporting person is not disclosed to anyone beyond the authorized staff members.” Confidentiality protections extend to “any other information from which the identity of the reporting person may be directly or indirectly deduced.”

Further, Article 23 authorizes sanctions for persons that “hinder or attempt to hinder reporting”; “retaliate against [whistleblowers]”; “bring vexatious proceedings against [whistleblowers]”; or “breach the duty of maintaining the confidentiality of the identity of reporting persons.” As noted in the first paragraph of the EU Whistleblower Directive, whistleblowers that report violations of law “play a key role in exposing and preventing such breaches and in safeguarding the welfare of society,” and thus must be protected from retaliation that discourages reporting and creates barriers that block law enforcement from acquiring vital information.

The Prosecutors’ attempts to ascertain the identity of the Novartis whistleblowers is in direct violation of this Directive. By officially requesting the U.S. disclose the whistleblower’s identities and strip their anonymity in Greek Parliamentary proceedings, the Prosecutors are punishing these individuals for reporting corruption to law enforcement. The confidentiality of such witnesses is imperative to their willingness to come forward, as doing so can threaten a whistleblower’s life and livelihood. Such retaliation creates a far-reaching chilling effect. If whistleblowers know that voluntarily providing information to law enforcement will result in revelation of their identity, which will in turn lead to further retaliation, witnesses will no longer disclose evidence necessary to hold wrongdoers accountable and ensure that those involved are held accountable.

3. The Civil Law Convention on Corruption

Article 9 of the Civil Law Convention on Corruption states: “Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who **report in good faith their suspicion to responsible persons or authorities.**”⁶ Under this Convention, whistleblowers have the right to report corporate crimes to “authorities.”

Article 11 of the Convention requires the protection of those who give evidence in regulatory or civil proceedings. Again, Greece must explicitly recognize this right, and ensure that no witnesses face intimidation for reporting corruption to any authority. The act of disclosing evidence to regulators is the first step in a whistleblower becoming a witness in a regulatory or civil proceeding. Attempting disclosure of the whistleblower-witnesses sets a precedent that witness intimidation is acceptable, which will discourage future witnesses from providing evidence.

⁵ EUROPEAN PARLIAMENT, WHISTLEBLOWER DIRECTIVE (2019), <https://data.consilium.europa.eu/doc/document/PE-78-2019-INIT/en/pdf>.

⁶ COUNCIL OF EUROPE, CIVIL LAW CONVENTION ON CORRUPTION, ETS 174 (1999) (emphasis added).

4. The United Nations Convention Against Corruption

Article 33 of the United Nations Convention Against Corruption states that “each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the **competent authorities** any facts concerning offences established in accordance with this Convention.”⁷

Article 13-1(d) urges party members to take measures “respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.” Attempting to reveal the identity of confidential witnesses to law enforcement, which will stymie whistleblower willingness to come forward, is inconsistent with this mandate.

5. The United Nations Convention Against Transnational Organized Crime

The UN Convention Against Transnational Organized Crime is premised on international cooperation.⁸ For example, Article 18 mandates “mutual legal assistance in investigations, prosecutions and judicial proceedings” and requires that “mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements.” Other articles that either mandate or require international cooperation are Articles 13 (cooperation), 16 (extradition), 17 (international transfers), and 19 (joint investigations).

Moreover, Article 24 directs state parties to “take appropriate measures ... to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony.” Articles 23, 25, and 32 further lay out specific provisions for persons who give testimony or produce evidence regarding corruption crimes in court cases or government investigations.

The Prosecutors’ actions are inconsistent with these requirements. U.S. law *requires* U.S. authorities to maintain whistleblower confidentiality and anonymity.⁹ Every nation within the European Union is required, “to the fullest extent possible,” to provide “assistance in investigations, prosecutions and judicial proceedings.” By attempting to expose the identity of the Novartis whistleblowers, what the whistleblowers provided to U.S. authorities, and whether the whistleblowers were compensated, the Prosecutors are deliberately intimidating the whistleblowers in an effort to prevent their testimony or any future witness testimony in the case.

⁷ UNITED NATIONS OFFICE ON DRUGS AND CRIME, CONVENTION AGAINST CORRUPTION (2004), (emphasis added).

⁸ UNITED NATIONS OFFICE ON DRUGS AND CRIME, CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO (2004).

⁹ See *Halliburton v. ARB*, 771 F.3d 254 (5th Cir. 2014)(awarding monetary damages to whistleblower due to disclosure of identity). *Accord.*, [ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934](#), IN THE MATTER OF HOMESTREET, INC. & DARRELL VAN AMEN, Rel. No. 79844 (Jan. 19, 2017) (sanctioning company for “taking steps to determine the identity of the presumed ‘whistleblower’”);

This interferes with U.S. investigations, obstructing justice and violating the Convention's mandates.

I. CONCLUSION

The request submitted by the Greek Deputy Prosecutors to pressure the United States to violate its domestic laws and place whistleblowers at severe risk of retaliation and bodily harm constitutes a violation of international law and various Conventions approved by the Greek States.

Parliament and the Supreme Court must retract any request for the names of these whistleblowers, and take immediate action to ensure the whistleblowers are protected to the fullest extent of the law. Furthermore, the Council of Europe should immediately open an investigation into Greece's violation of the laws and Conventions designed to protect whistleblowers.

Thank you in advance for your careful consideration of this information. We look forward to your response. If you have any questions, please do not hesitate to contact my office.

Respectfully submitted,

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