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The Council on Ethics' annual report to the Ministry of Finance on Alstom SA

As a result of the Council on Ethics' recommendation of 1 December 2010 to exclude Alstom SA, the Ministry of Finance decided on 6 December 2011 to place the company under observation for up to four years. The Council on Ethics is required to keep Alstom under special observation during this period and shall monitor how the company works on and develops its system for combating corruption. Further, the Council shall observe how the company handles the investigation of past cases of corruption and monitor whether allegations of new cases of corruption emerge. The Council shall report annually to the Ministry of Finance on the status of the observation process.

In February 2012, a meeting was held between the Council on Ethics and Alstom to discuss the company's efforts to prevent corruption and the Councils' observation of the company. Following the meeting Alstom has provided the Council with additional information in writing about its compliance system.

This is the Council's first annual report on Alstom to the Ministry of Finance, including among other things a summary of developments since the recommendation was issued in December 2010.

Key events since the recommendation was made in December 2010

As stated in the recommendation, the French public prosecutor indicted one of Alstom's subsidiaries for suspected use of bribes in 2010. The subsidiary was Alstom Hydro France and the matter concerned the company's operations in Zambia. Alstom denied culpability in the

matter,¹ and on 8 June 2011 the public prosecutor dropped the charges and the case. Authorities in the U.S. and U.K. are still investigating Alstom for foreign bribery, and authorities in Brazil, Latvia, Poland, Malaysia and Slovenia are conducting investigations into suspicions of domestic bribery.

The British investigation of Alstom's subsidiary Alstom Network UK (hereinafter Alstom) resumed July 2011. This investigation, which is being carried out by the Serious Fraud Office (SFO), had been halted for over a year due to a review of the SFO's search warrant against the residential addresses of two Alstom directors in March 2010. The directors had lodged a complaint against the search warrant on several grounds. On 13 July 2011 the Queen's Bench Division Administrative Court dismissed the complaint on all grounds and the SFO was permitted to examine the evidence seized in the directors' homes. SFO is investigating Alstom on suspicion of using bribes to win overseas contracts for the company, money laundering and other related offences.²

On 6 May 2010, Swiss prosecutors indicted Swiss banker Oscar Holenweger for money laundering, bribery, the falsification of documents and the misuse of funds. Prosecutors argued that Holenweger opened 163 different accounts in his private bank and in commercial banks to help Alstom funnel EUR 66 million to officials in exchange for contracts in South America and Asia. On 21 April 2011, the Federal Criminal Court in Bellinzona acquitted Holenweger of all charges and awarded him more than EUR 340 000 in damages, having found the evidence to be insufficient.³

The remaining Swiss corruption proceedings against Alstom Network Schweiz AG (hereinafter Alstom) were brought to a close on 22 November 2011. The Office of the Attorney General (OAG) issued a summary punishment order under which the company was convicted of violating Article 102 (2), cf. article 322 of the Swiss Criminal Code.⁴ The reason given was that Alstom had failed to implement all necessary and reasonable organizational precautions to prevent the bribery of foreign public officials in Lithuania, Tunisia and Malaysia. The company was fined CHF 2.5 million and ordered to pay CHF 90,000 in proceedings costs as well as a compensatory claim of CHF 36.4 million for the profits obtained by the company. In a press release issued on 22 November 2011, the OAG states that, in cooperation with the Federal Police, it investigated a "further twelve projects in the power station sector, divided over all continents. In this regard, it in some part detected additional breaches of internal compliance regulations. Despite considerable investigative efforts however, no additional acts of bribery could be established for the time after article 102 SCC had come into effect."⁵ The OAG pointed out that the company "had implemented a compliance policy that was suitable in principle, but that it had not enforced it with the necessary persistence." The OAG also stated that the company "failed to meet the standards" expected of a company with more than 75,000 employees worldwide and its compliance section was understaffed, while those employed in this section had insufficient experience working with compliance. Furthermore, those responsible for compliance worked in the same department as the personnel responsible for conducting sales, procurement and lobbying,

¹ Alstom, "Registration Document 2010/11". Available at http://www.alstom.com/Global/Group/Resources/Documents/Investors%20document/ALS2010_DRF-EN-MEL.pdf.

² Serious Fraud Office, Press release dated 24 March 2010. Available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/directors-of-alstom-arrested-in-corruption-investigation-following-raids-on-nine-properties.aspx>.

³ Criminal Court in Bellinzona, Switzerland, "Urteil vom 21. April 2011". Available at http://bstger.weblaw.ch/pdf/20110421_SK_2010_13.pdf (accessed 17 July 2012). Swissinfo (21 April 2011), "Holenweger acquitted of money laundering", available at http://www.swissinfo.ch/eng/swiss_news/Holenweger_acquitted_of_money_laundering.html?cid=30061936.

⁴ Swiss Criminal Code Art 102 (2): Liability under the criminal law and Art 322: Bribery of foreign public officials.

⁵ Office of the Attorney General (OAG), Press release dated 22 November 2011, available at <http://www.news.admin.ch/message/index.html?lang=de&msg-id=42300>.

which gave them insufficient independence as inspectors. Finally, the OAG highlighted that the company has implemented the necessary measures to ensure that its current compliance system no longer is considered deficient pursuant to article 322 of the Swiss Penal Code. The OAG also announced that Alstom, “in the course of the criminal proceedings now brought to a close, has made considerable efforts to rectify the detected inadequacies in the context of the fight against corruption.” Alstom did not appeal the decision.

As mentioned in the Council’s recommendation, in September 2008 Alstom decided to take legal action against a journalist in the Wall Street Journal, who had written articles about the Swiss investigation of Alstom. The company argued that the articles constituted libel and did not respect the presumption of innocence. On 1 March 2011 the Criminal Court in Nanterre dropped the case and acquitted the reporter of the charge of defamation.⁶

The Malaysian Anticorruption Commission (MACC) announced on 8 December 2011 that, as a result of the Swiss investigation, it had decided to initiate its own investigations of Alstom’s alleged payment of bribes in the country.⁷ According to Malaysian newspapers, the CEO of Alstom, Mr. Patrick Kron, promised to cooperate fully with the commission.⁸

Like the French authorities, the World Bank investigated Alstom Hydro France and Alstom Network Schweiz AG for the use of bribes in connection with a World Bank-financed hydropower project in Zambia. On 22 February 2012, the World Bank announced that it had entered into a settlement with Alstom, which had acknowledged the facts of the case. It concerned a bribe of EUR 110,000 paid by Alstom in 2002 to a company controlled by a former public official in the Zambian government. Under the settlement Alstom had to pay approximately USD 9.5 million in damages and was excluded from World Bank projects for the next three years. The exclusion can be reduced to 21 months provided that the company complies with the terms of the settlement agreement. The company has confirmed to the Council on Ethics that it will cooperate with the World Bank to reduce the exclusion period.⁹ The parent company Alstom SA was not excluded under the condition that the company introduce a compliance system deemed acceptable by the World Bank within a period of three years.¹⁰ As a result of the Agreement for Mutual Enforcement of Debarment Decisions of 8 April 2010, Alstom Hydro France and Alstom Network Schweiz AG are also excluded from the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank.¹¹

In February 2012, the Slovenian Anti-Corruption Commission informed the public about its investigations of a public tender which Alstom Power won in Slovenia in 2008. The Commission claimed to have found a number of reprehensible circumstances, including conflicts of interest and the facilitation of business secrets. The Commission does not go into further detail on account of the ongoing investigation.¹² The European Bank for

⁶ Alstom, Press release dated 3 March 2011. Available at <http://www.alstom.com/news-and-events/press-releases/Case-against-the-Wall-Street-Journal/>.

⁷ Malaysian Anti-Corruption Commission (MACC), Press release dated 8 December 2011. Available at http://www.sprm.gov.my/images/files/PR_8_Dec_2011_ALSTOM_Issue_ENG.pdf.

⁸ The Star Online (12. March 2012), “Alstom to cooperate with MACC”, available at <http://biz.thestar.com.my/news/story.asp?file=/2012/3/12/business/10860809&sec=business>.

⁹ World Bank, Press release dated 22 February 2012. Available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23123315~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

¹⁰ World Bank, “Listing of Ineligible Firms & Individuals”. Available at <http://web.worldbank.org/external/default/main?contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984&querycontentMDK=64069700&theSitePK=84266#cross>.

¹¹ See the website of the Asian Development Bank for a helpful overview over mutually enforced debarments as well as the agreement’s text at <http://lnadbg4.adb.org/oai001p.nsf/>.

¹² Commission for the Prevention of Corruption of the Republic of Slovenia. The Commission’s interim report can be downloaded at http://www.kpk-rs.si/download/t_datoteke/2724 (in Slovenian). An unofficial English translation is available at <http://bankwatch.org/sites/default/files/StateCommissionReport-corruption-TE56-23Feb2012.pdf>.

Reconstruction and Development, which is financing the project together with the European Investment Bank and Slovenian authorities, informed Greenpeace and Bankwatch in a letter in April 2012 that it had frozen all payments towards this project until such a time when it is clear that the conditions for the payments are met.¹³ The Wall Street Journal reported that same month that the European Investment Bank is also investigating this case.¹⁴ The project concerned the expansion and renovation of a coal-driven power plant.

Alstom's anti-corruption work since December 2010

In the Council's recommendation, Alstom's anti-corruption work, particularly its compliance system, was given considerable weight in the assessment of the future risk. The purpose of a company's compliance system is to prevent, detect and react to violations of internal and external laws and regulations. Consequently, such a system may provide information about the risk of future corruption. Since 2009, Alstom's orders in emerging markets have risen from 35 per cent to 60 per cent of its total orders in 2011.¹⁵ Expansion in markets where there is a high risk of corruption requires the implementation of robust anti-corruption systems by the company, and that the top management clearly communicates zero-tolerance towards corruption within the company.

Alstom's compliance programme, "Alstom Integrity Programme," implements all of the company's compliance instructions, procedures and guidelines and is the responsibility of the Senior Vice President (SVP) for Ethics & Compliance (E&C). According to Alstom, the programme has continuously been strengthened since 2001 and in 2010/2011 the E&C department has added three employees, which means that Alstom has 20 full-time compliance positions.¹⁶ All of the company's main sectors have a compliance officer who reports to the SVP E&C and who is responsible for the implementation of compliance measures in the respective department. In addition, Alstom has today 250 Ethics & Compliance Ambassadors who have been recruited on a voluntary basis and dedicate 10 per cent of their working hours to compliance-related work.¹⁷ While Alstom does not report publicly on its compliance budget, Alstom's SVP for E&C informed the Council that the department has sufficient resources.

In 2011, the company's compliance management discussed the possibility of publicly disclosing non-compliances, but decided not to initiate such reporting at this time.¹⁸

With respect to the training of staff, Alstom has stated that it continues to educate its employees on matters of Ethics and Compliance. In total 5,700 employees have participated in training arranged by Compliance Officers since 2006. In addition to this, 35,000 employees have carried out a web-based training programme on anti-corruption and competition law during this time period.¹⁹

In October 2010, Alstom informed the Council that surveys would be conducted in 2011/12 to assess employee awareness and understanding of the Integrity Programme.²⁰ In its meeting with the Council in February 2012, Alstom said that it will not conduct such a survey at present in light of the many compliance measures the company has initiated over the past year, but that the initiative is still valid for the future.²¹ The company nevertheless informed

¹³ Available at <http://bankwatch.org/documents/response-EBRD-Sostanj-loansuspension-16Apr2012.pdf>.

¹⁴ The Wall Street Journal (30 April 2012), "Alstom Bid Draws Scrutiny". Available at <http://online.wsj.com/article/SB10001424052702304868004577375923946945092.html?KEYWORDS=alstom+%22European+Investment+Bank%22>.

¹⁵ Alstom, "Registration Document 2010/11". p. 3.

¹⁶ Alstom, "Registration Document 2010/11". p. 3.

¹⁷ For additional information, see the Council on Ethics' recommendation of 1 December 2010.

¹⁸ Meeting between the Council on Ethics and Alstom February 2012.

¹⁹ Alstom, "Registration Document 2010/11". p. 51.

²⁰ Meeting between the Council on Ethics and Alstom October 2010.

²¹ Meeting between the Council on Ethics and Alstom February 2012.

the Council that it has introduced annual reporting procedures whereby 500 top executives report on the implementation of the Integrity Programme. The purpose is to monitor the programme's performance and contribute to a corporate culture characterised by integrity.²²

There have been no significant changes to the company's alert-procedure for employees who discover violations of laws and regulations. Employees must still notify their immediate supervisor and, if the whistle blower has reason to believe that this will cause problems or that the case will not be investigated, he or she may contact the division's Country President or Legal Counsel in Brazil, China, Germany, India, the U.K. or United States. Alternatively, the employee may send an e-mail to alert.procedure@alstom.com, which will be received and considered by the company's General Counsel and its SVP for Ethics & Compliance in consultation with relevant actors.²³ Between 80 and 90 per cent of all notifications are made using the e-mail address, and the majority of the notifications concern fraud and incompetence. The company has no plans to create an anonymous or external alert line, connected for example to an independent lawyer, which may evaluate the information. Likewise, the company does not have any plans to publicly disclose the notifications it receives along with any subsequent actions.

Until June 2011, Alstom Network in Switzerland and Alstom International Ltd. in the U.K. were responsible for paying consultants once the E&C department had approved their appointment, undertaken due diligence, drafted contracts and checked proof of services. In recent years the E&C departments have been under investigation for corruption in Switzerland and the U.K. Alstom has now centralized the payment process at Alstom's headquarters in Paris.

In September 2011 the Alstom Integrity Programme was certified for two years by the ETHIC Intelligence Certification Committee with assistance from the Swiss auditing firm SGS, which previously certified the company's handling of external sales consultants. In April and May 2011, the Alstom Power & Transport division and Alstom Grid respectively were certified for two years. The certification implies that Alstom's anti-corruption policies have been designed and implemented to correspond with international best practice.²⁴

The Council's assessment

The Council considers the company's actions such as the centralization of consultant payments to the company's Headquarter, additional anti-corruption training of staff, third-party certification of its compliance system and the creation of several full-time compliance positions, to be appropriate measures in its efforts to improve anti-corruption procedures. The Council considers it particularly positive that the company wishes to cooperate with the World Bank to improve this work.

The company and some of its consultants are still being investigated for suspected bribery, and several new investigations have been opened against the company after the Council on Ethics issued its recommendation. In the last few years, Alstom has expanded its business activities considerably in countries where corruption is widespread. The industry sectors in which Alstom has its core business are also subject to a high risk of corruption. It is essential that the company continue to develop its anti-corruption practices and that the management clearly communicate zero tolerance towards corruption in the company as well as create appropriate incentives to achieve this.

²² Alstom's presentation at its meeting with the Council on Ethics January 2012.

²³ Alstom's presentation at its meeting with the Council on Ethics January 2012.

²⁴ See Alstom's website, <http://www.alstom.com/ethics/ethics-intelligence-certificate/>.

The Council on Ethics will continue the observation of Alstom's anti-corruption work through a dialogue with the company's compliance officers. The Council on Ethics will also monitor whether information on incidents of gross corruption in the company may arise from other sources.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Ola Mestad".

Ola Mestad

Chairman