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

As a result of the Council on Ethics' recommendation of 1 December 2010 to exclude Alstom SA from the Government Pension Fund Global (GPF), the Ministry of Finance decided on 6 December 2011 to put the company under observation for a period of up to four years. The Council on Ethics is instructed to keep Alstom under special observation during this period and monitor how the company is working on – and developing – its systems to combat corruption. The Council is also to observe how the company handles investigations into acts of corruption that happened in the past as well as monitor whether allegations of new cases of corruption arise. The Council is to report the observation status annually to the Ministry of Finance.

The Council on Ethics held a meeting with Alstom in January 2013 to discuss the Council's observation of the company and the company's efforts to prevent corruption. The company has also been given the opportunity to comment on a draft of this report.

This is the Council's second annual report to the Ministry of Finance.

Key events since the Council submitted its previous report in June 2012

In the report submitted in June 2012, the Council on Ethics provided information on on-going corruption investigations in the UK, USA, Brazil, Latvia, Poland, Malaysia and Slovenia. To the Council on Ethics' understanding, none of these investigations have been concluded. Meanwhile, a new investigation into allegations of corruption in Indonesia has recently been made public.

In April and May 2013, American authorities unsealed charges against a number of executives and former executives in Alstom's American subsidiary. The charges concern the

defendants' 'alleged participation in a scheme to pay bribes to foreign government officials'.¹ According to the Department of Justice,

'...the defendants, together with others, paid bribes to officials in Indonesia, including a member of Indonesian Parliament and high-ranking members of Perusahaan Listrik Negara (PLN), the state-owned and state-controlled electricity company in Indonesia, in exchange for assistance in securing a \$118 million contract, known as the Tarahan project, for the company and its consortium partner to provide power-related services for the citizens of Indonesia. The charges allege that, in order to conceal the bribes, the defendants retained two consultants purportedly to provide legitimate consulting services on behalf of the power company and its subsidiaries in connection with the Tarahan project. In reality, however, the primary purpose for hiring the consultants was allegedly to use the consultants to pay bribes to Indonesian officials.'²

According to the indictments, the scheme was in place as recently as 2009. The indictments also document the role played by the parent company in France. One of the subsidiary's executives, a former Vice President of Sales, had already pleaded guilty of conspiracy to violate the Foreign Corrupt Practices Act in 2012 but this was not made public until April 2013.

The case is also being investigated in Indonesia, where according to local news sources a local politician is being investigated for having received bribes amounting to USD 300,000 in connection with a contract granted in 2004 to Alstom's American subsidiaries Alstom Power Energy System and Alstom Power Inc. This charge was announced in July 2012, when the politician and a representative of Alstom Indonesia were refused permission to travel abroad.³ In January 2013, the authorities' anti-corruption body *Komisi Pemberantasan Korupsi* (KPK) confirmed that both continue under investigation and requested a six month extension of the travel ban.⁴ The accused deny all charges and the company has not commented on the case, apart from saying that it has been informed of the investigation.⁵

As concerns Slovenia, the Council on Ethics stated in last year's observation letter that the European Bank for Reconstruction and Development, the European Investment Bank and Slovenian authorities had stopped financing the expansion of a coal-fired power plant while accusations of improper conduct linked to a contract awarded to Alstom in 2008 were being investigated. In March 2013 it became clear that the financing would be resumed, even though the European Anti-Fraud Office is still investigating the circumstances surrounding the award of the contract.⁶

In last year's letter, the Council on Ethics also informed of a settlement that Alstom had entered into with the World Bank in February 2012.⁷ Alstom admitted irregular payments in connection with a hydropower plant in Zambia in 2002. Alstom Hydro France and Alstom Network Schweiz AG were excluded from participating in projects financed by the World Bank, the Asian Development Bank, the European Bank for Reconstruction and

¹ See the Department of Justice's press releases of 16 April 2013, available at <http://www.justice.gov/opa/pr/2013/April/13-crm-434.html>. See also the press release dated 1 May 2013, available at <http://www.justice.gov/opa/pr/2013/May/13-crm-496.html>.

² <http://www.justice.gov/opa/pr/2013/May/13-crm-496.html>.

³ <http://www.thejakartaglobe.com/home/pdi-p-lawmaker-emir-named-as-suspect-in-power-plant-graft-case/532567>.

⁴ <http://www.thejakartaglobe.com/home/kpk-extends-travel-ban-on-graft-suspect-emir/566117>.

⁵ <http://www.thejakartapost.com/news/2012/07/28/emir-enjoyed-wine-entertainment-paris.html>.

⁶ <http://www.reuters.com/article/2013/03/08/slovenia-power-funding-idUSL6N0C0BGW20130308>.

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<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23123315~pagePK:64257043~piPK:437376~theSitePK:4607,00.html%20http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23123315~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

Development and the Inter-American Development Bank for a period of three years. This exclusion may be reduced to 21 months if the company complies with the conditions of the settlement agreement. The parent company, Alstom SA, was not excluded on the condition that it introduces a compliance system that is acceptable to the World Bank within a three-year period.⁸ Alstom has stressed to the Council on Ethics that it is cooperating with the World Bank. This includes *inter alia* having an external law firm assess Alstom's measures to strengthen its compliance system on behalf of the World Bank and propose changes to the system.⁹

Alstom's anti-corruption efforts since 2012

In the Council's recommendation and subsequent observation letter, significant emphasis was placed on Alstom's anti-corruption efforts and especially on the company's compliance system. The objective of a company's compliance system is to prevent, discover and punish breaches of laws and regulations. Such a system can say something about the risk of future corruption.

All of the company's compliance instructions, procedures and guidelines are still being implemented through the 'Alstom Integrity Programme' which is the responsibility of the Senior Vice President (SVP) Ethics & Compliance. According to Alstom, this programme was strengthened in 2012, especially on three points: there has been some increase in the number of employees working on compliance issues; written due diligence procedures have been updated; and new procedures for hiring Business Advisors have been established.

Alstom currently has 35 full-time employees who exclusively work on compliance issues.¹⁰ In total, around 1,000 employees work in one way or another on monitoring and promoting the company's Integrity Programme.¹¹ The company has appointed Country Compliance Officers in the UK, Germany, South Africa, Mexico, Russia and the USA.

Alstom has due diligence procedures that are carried out before tenders for contracts are submitted.¹² These procedures are meant to apply to all company sectors and be integrated into the company's main risk-management procedures.¹³

Business Advisors must undergo a three-step approval process (pre-appraisal, due diligence and final approval). Cooperation agreements are only to be entered into with advisors who meet all the conditions the company has stipulated for external advisers.

The company informed the Council on May 2013 that it has decided to implement an external whistleblower system instead of their current internal alert procedure. Alstom has finalised negotiations with the American company Navex Global, which will receive the alerts, and will launch the first phase of the new system during the summer of 2013.

⁸ <http://web.worldbank.org/external/default/main?contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984&querycontentMDK=64069700&theSitePK=84266#cross>.

⁹ Meeting between the Council on Ethics and Alstom on 8 January 2013.

¹⁰ Meeting between the Council on Ethics and Alstom on 8 January 2013.

¹¹ Meeting between the Council on Ethics and Alstom on 8 January 2013. See also the Council on Ethics' recommendation dated 1 December 2010 for a more detailed explanation.

¹² Meeting between the Council on Ethics and Alstom on 8 January 2013. The risk assessment is reported to be based on requirements set in the US Federal Sentencing Guidelines, UK Bribery Act 2011 Guidelines, OECD Guidelines for Multinational Enterprises, ICC Guidelines, Transparency International Business Principles for Countering Bribery, and Transparency International Corruption Perception Index.

¹³ For example, specific Ethics and Compliance clauses are included in contracts, training is given and compliance systems are implemented, as detailed during the meeting between the Council on Ethics and Alstom on 8 January 2013.

The Council's assessment

The company and some of its consultants are still being investigated in a number of countries on suspicion of corruption. Since the last report to the Ministry, new investigations have also been made public concerning allegations of corruption as recently as 2009. The Council is not aware of any public response to these allegations from the company. Moreover, during the past few years Alstom has considerably increased its operations in countries where corruption is widespread and the industries in which Alstom has its core operations also carry a high risk of corruption. It is decisive that the company continue to develop and implement its anti-corruption routines and that the management clearly communicate zero tolerance for corruption in the company as well as create suitable incentives to achieve this.

The Council views the company's measures to develop its compliance system as suitable steps towards improving Alstom's anti-corruption routines. The Council finds it especially positive that the company continues to cooperate with the World Bank in order to improve this work and that it is implementing an external whistleblowing system.

The Council on Ethics will continue to observe Alstom's anti-corruption efforts, *inter alia* through its dialogue with the company. Based on the indictments recently made public by the US Department of Justice however, the Council finds reasons to question the dialogue held with the company so far. The Council will therefore continue to pursue other sources of information as well and will pay particular attention to new allegations of gross corruption by the company.

Sincerely,



Ola Mestad
Head of the Council