

To the Ministry of Finance

Recommendation 15 November 2007

Contents

1	Introduction	2
2	Siemens	3
3	The basis for the Council’s assessment	3
	3.1 Definition of “gross corruption”	3
	3.2 Unacceptable risk of contributing to gross corruption in the future	4
4	Sources	5
5	Accusations of gross corruption	5
	5.1 Court rulings and administrative decisions	5
	5.2 Ongoing trials	9
6	Other players’ reactions to the accusations against Siemens	13
7	Siemens’ reactions to the accusations	14
8	Siemens’ reply to the Council’s enquiry	16
9	The Council’s assessment	17
	9.1 The Council’s assessment of gross corruption at Siemens	17
	9.2 The Council’s assessment of risk that the Fund through its investment in Siemens may contribute to gross corruption in the future	18
10	Recommendation	20

1 Introduction

At a meeting on 5 March 2007, the Council on Ethics for the Government Pension Fund – Global¹ decided to assess whether the company Siemens AG² should be excluded from the Government Pension Fund – Global due to a risk of complicity in gross corruption.

This is the Council's first recommendation for exclusion on the grounds of gross corruption. Section 3 expounds on the term gross corruption and the elements that will be decisive in the Council's assessment of whether there is an unacceptable risk of the Fund contributing to this.

In Section 5 the Council gives an account of cases that show how Siemens has been guilty of gross corruption through the bribery of public officials, for example in connection with public tenders. The account covers cases during a period of 15 years, from 1992 until October 2007. Some of the ongoing trials in which Siemens is involved are also described. Against this background the Council finds it established that Siemens in a systematic and extensive way has unduly influenced public officials in order to confer an advantage on the company.

Under the Ethical Guidelines of the Government Pension Fund – Global there must exist an unacceptable risk that these acts will continue in the *future* for the Council to recommend the exclusion of a company. It does not suffice that the criteria for gross corruption are deemed to be met concerning past practices.

In accordance with the Guidelines, point 4.5, the Council has contacted Siemens through Norges Bank requesting the company to comment on the draft recommendation. Norges Bank received the company's reply on 3 September 2007. In this letter, Siemens expresses its intention to prioritize anti-corruption measures in the time to come. The measures described include the implementation of a whistle-blowing channel, the centralization of bank accounts to prevent unauthorised payments, and stricter rules for consultancy contracts.

In the Council's view it is nonetheless doubtful whether the measures described by Siemens in its reply to the Council and on the company website will be comprehensive enough to prevent future corruption at Siemens. The numerous and serious corruption cases Siemens has been involved in, and the fact that the company is currently under investigation in Germany's largest corruption probe to date make the Council look at this as a particularly flagrant case. In the wake of the previous big corruption scandal which marked Siemens in the 1990s, the company introduced a series of anti-corruption measures. Nevertheless, the scale and gravity of the corrupt practices revealed after the company's "turnaround" 15 years ago seem unequalled, at least in a European context. Particularly in view of this, the Council finds that the measures Siemens is currently intending to implement seem insufficient to prevent the risk of gross corruption in the future.

The White Paper preceding the Ethical Guidelines allows for the exclusion of companies as a precautionary measure in cases that are very serious from an ethical viewpoint.³ The Siemens case is very serious with regard to the numerous and repeated instances of corruption over many years, the large sums involved, and the insecurity associated with the company's countermeasures. It is thus the Council's opinion that there is an unacceptable risk of the

¹ Hereinafter, "the Council".

² Hereinafter, "Siemens".

³ NOU 2003:22, p 35.

Fund, through its investment in Siemens, contributing to gross corruption. Hence, the Council recommends the exclusion of Siemens AG from the Government Pension Fund – Global.

2 Siemens

Founded in 1847, Siemens is a German multinational manufacturing group headquartered in Munich. In 2006, Siemens had 475 000 employees across more than 190 countries. Siemens' business areas include information technology, telecommunications, automation, building technologies, power generation and distribution, transportation, healthcare and lighting.⁴ In 2006, the turnover amounted to EUR 87.3 billion and more than 80 per cent of earnings are generated outside Germany. Numbering over 800 000 shareholders, the company is listed on the stock exchanges of Frankfurt, London, and New York.

As of 31 December 2006, the Fund held Siemens shares at a market value of NOK 3.138 billion, an ownership stake equivalent of 0.57 per cent.

3 The basis for the Council's assessment

3.1 Definition of “gross corruption”

The Ethical Guidelines, point 4.4, second paragraph, state:

“The Council shall issue recommendations on the exclusion of one or several companies from the investment universe because of acts or omissions that constitute an unacceptable risk that the Fund contributes to (...)

- Gross corruption (...)”

When there is an unacceptable risk that the Fund through its investment in a company may contribute to gross corruption, the Council should recommend the exclusion of the company from the Fund's portfolio. The Council's assessment is twofold. First, the criteria of *gross corruption* must be met. Second, there must be an unacceptable risk that the use of *gross corruption* will continue in the future.

Referring to Norwegian legislation and international conventions, the Council bases its assessment on the following definition of *gross corruption*:

Gross corruption exists if a company, through its representatives,

- a) gives or offers an advantage – or attempts to do so – in order to unduly influence:*
 - i) a public official in the performance of public duties or in decisions that may confer an advantage on the company; or*
 - ii) a person in the private sector who makes decisions or exerts influence over decisions that may confer an advantage on the company,*

⁴ www.nyse.com/about/listed/si.html

and

- b) the corrupt practices as mentioned under letter a) are carried out in a systematic or extensive way.*

In order to consider the conditions of gross corruption to be met, the existence of particularly reprehensible practices are required. The qualifier “gross” refers to the gravity of the infraction. An assessment of the gravity must therefore be made to establish whether there is a marked deviation from the acceptable. Below follows an exposition of the elements which make up the assessment of whether certain practices may be considered *gross corruption*.

Undue influence

If the advantage has an economic value, this will preferably form the basis of the assessment. Additional considerations include whether the transmission of the advantage has occurred in secret, whether it has led to incorrect bookkeeping, and whether it has violated internal guidelines/sector agreements.

Confer an advantage on the company

The purpose of transmitting the undue advantage must have been to achieve an advantage for the company. An advantage may be a competitive edge or another advantage that places the company in a privileged position; typically to gain a contract, conditions of contract, or a permission that the company would not otherwise have gained.

Systematic or extensive way

The condition under letter b) requires that the company can be deemed responsible for the systematic or extensive way in which the corrupt practices are carried out. The requirement as concerns systematic acts implies that the company can be linked to a series of corrupt acts which have been systematized. An important factor regarding the requirement that the corruption must be *extensive* is that it entails large sums. The various corrupt practices are assessed cumulatively.

In most countries corruption is prohibited by law. In Norway, a legislative amendment was passed in 2003, making the Norwegian penal code one of the most restrictive in this area. Furthermore, international anti-corruption conventions to which Norway is party oblige the states to commit themselves to actions aimed at fighting corruption in the business sector. Norway has a proactive policy in this area – combating corruption is considered a priority in several different sectors both nationally (e.g. the judicial and police sector) and internationally (e.g. the aid and development sector).⁵

3.2 Unacceptable risk of contributing to gross corruption in the future

Pursuant to the Guidelines, point 4.4, the Council shall recommend the exclusion of companies where there is an unacceptable risk that the Fund through its investment may contribute to gross corruption. A company’s pattern of conduct constitutes an important element in the assessment since it may give an indication as to whether there is a future risk of continued gross corruption.

⁵ See the Norwegian government’s website concerning various anti-corruption measures: www.regjeringen.no/nb/dep/jd/tema/Korrupsjon_og_hvitvasking.html?id=1266.

Regarding the assessment of future risk, the White Paper states the following:⁶

“There are several factors that must be taken into account in an ethical risk assessment. First, the nature of the actions one risks contributing to must be evaluated. If the actions are very serious from an ethical viewpoint, a higher degree of diligence on the part of the Fund will be required than in the case of actions that are not as serious. A high degree of diligence will require an active investigation when there are indications that a company in the portfolio is engaged in unethical practices, but it will also require action in the form of exclusion of a company from the portfolio as a precautionary measure. Second, available information on the company’s actions to date must be examined. Normally, this gives indications of whether the company’s unethical practices are likely to continue in the future. In that case, maintaining investments in the company could imply contribution to future unethical actions.”

At the same time it states that “Exclusion should be limited to the most serious cases where the company in which the Fund is invested is directly responsible for unacceptable breaches of norms, and there are no expectations that the practices will be discontinued.”

The Council must therefore conduct an overall assessment, considering previous incidents at Siemens and the anti-corruption measures that are currently being implemented.

4 Sources

The sources used to prepare this recommendation are primarily court documents, including final and enforceable judgements and other decisions against Siemens which are mentioned in more detail below. These include administrative decisions on exclusion of Siemens from public tenders and other types of reactions against the company’s corrupt practices.

With regard to ongoing cases that have not yet been judged by the courts, the Council has drawn on information about the company that has come to light in a broad range of international press, particularly the German. Siemens’ reply to the Council also constitutes an important part of the material. Moreover, the Council has relied on Siemens’ own website and other publicly available information. The information gathering was concluded in the middle of October 2007.⁷

5 Accusations of gross corruption

This section presents some of the most important cases where Siemens or Siemens employees stand accused or have been found guilty of corruption.

5.1 Court rulings and administrative decisions

In Germany corruption charges have been brought against Siemens employees in criminal proceedings. Such trials are also currently ongoing. Moreover, there have been cases in

⁶ NOU (Norwegian Official Report) 2003:22, p 35.

⁷ The date was set with a view to including information about Peter Löscher’s new action plan, scheduled to be made public at the beginning of October 2007 – marking his first 100 days as head of the company; see <http://www.finanzennachrichten.de/nachrichten-2007-05/artikel-8308988.asp>. The proposed measures that then were presented are taken into account in this recommendation.

Singapore and Italy where Siemens has been debarred from public tenders. In Norway a settlement has been reached with Siemens regarding the refund of money to the Ministry of Defence due to overbilling worth millions of NOK on Siemens' part. German public prosecutors suspect Siemens of corruption in 25 countries.

German legislation differs somewhat from the Norwegian, and the main difference in this context is that it does not prescribe corporate penalty. Consequently, individual employees are the ones made responsible for corruption, often being charged with both corruption and breach of trust against the company. Siemens employees, and not the company per se, thus stand accused of corruption in Germany. As far as the Council's assessment is concerned, it is, in principle, of no importance that the employees and not the company are found guilty in corruption, provided the corruption criterion in the Guidelines has been met. Germany has ratified the OECD Convention on Combating Bribery of Public Officials in International Business Transactions. The country has signed, but not ratified, the UN Convention against Corruption of 2003, the Council of Europe's Criminal Law Convention on Corruption of 1998, and the Council of Europe's Civil Law Convention on Corruption of 1999.⁸

Germany 1992 and 1997 – Munich (Die Münchener Klärwerks-Affäre)

In 1992, five Siemens executives in Munich were convicted of bribing a German public official.⁹ The bribes, amounting to several hundred thousand DM, were deposited into an account in a Swiss bank. In return, Siemens gained a large electronics contract for a public sewage treatment plant.^{10 11} The case was called the "Die Münchener Klärwerks-Affäre". During the trial it was revealed that the management was under great pressure to secure contracts.¹² The presiding judge, Günter Bechert, declared that Siemens "... at any cost and with all possible means" tried to win the contract. The judge is said to have asked repeatedly whether bribery was part of Siemens corporate culture, something which the defendants denied. After this judgement, Heinrich von Pierer, the then newly instated CEO at Siemens, made a statement to the media saying that this would never happen again.¹³

In 1997, the sentence was revoked by the Supreme Court, and the case had to go through the judicial system once more, mainly because the court found that it was not about bribery of a *public* official.¹⁴ The sentence from 1997 establishes that the person acting on behalf of the government could not be designated *public official* seeing as the local authority had hired him through a *private* company. He could therefore not be considered to represent the government. This meant that the Siemens employees were not convicted of bribing a public official under the German Penal Code (StGB § 334). Nevertheless, it was established that they had made use

⁸ <http://www.oecd.org/dataoecd/59/13/1898632.pdf>
http://www.unodc.org/unodc/crime_signatures_corruption.html
<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=173&CM=7&DF=10/31/2007&CL=ENG>
<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=174&CM=7&DF=10/31/2007&CL=ENG>

⁹ http://www.handelsblatt.com/news/Unternehmen/Industrie/_pv/_p/200038/_t/ft/_b/1186555/default.aspx/korruption-ist-bei-siemens-nichts-neues.html

¹⁰ Lexetius, summary of court rulings: <http://lexetius.com/1997.490>

¹¹ <http://onwirtschaft.t-online.de/c/99/31/55/9931558.html>

¹² http://www.handelsblatt.com/news/Unternehmen/Industrie/_pv/_p/200038/_t/ft/_b/1186555/default.aspx/korruption-ist-bei-siemens-nichts-neues.html

¹³

http://www.handelsblatt.com/news/Unternehmen/Industrie/_pv/grid_id/1048180/_p/200038/_t/ft/_b/1186555/default.aspx/korruption-ist-bei-siemens-nichts-neues.html

¹⁴ <http://finanzen.aol.de/Klaerwerk-Korruption-1225650577-6.html>

of bribery in order to gain contracts. The facts of the case were still the same, but the legal basis had to be changed. The case was referred back to another section of a lower court pending a final ruling there. However, in the judgement from 1997 the facts of the case were quite clearly presented, and the Supreme Court proclaimed that the employees had made use of corrupt practices to secure the contract for Siemens.¹⁵

Singapore 1996 (debarment 1996-2001)

In 1996, Siemens and four other companies were debarred from public tenders in Singapore for a period of 5 years owing to bribery of a public official. Through the use of a middleman, the companies had paid bribes to the Deputy Chief Executive Officer of the Public Utilities Board (PUB) in order to gain access to confidential information on projects that the PUB was to tender out.¹⁶

The companies have reportedly paid a total of USD 9.8 million to obtain the information. Constituting the biggest corruption case in Singapore to date, the trial against Mr Choy in 1995 sentenced him to 14 years in prison for having received bribes over a period of 18 years. The middleman, Mr. Lee, was also convicted, but was promised immunity. In Singapore, company debarments are determined by the Ministry of Finance, and the minimum penalty is 5 years for such practices. The ban does not only affect the companies directly involved, but also their subsidiaries and companies where the involved persons hold board positions.¹⁷

Italy 2004 – Milan (the Enel case)

In the Enel case,¹⁸ three individuals, Mr. Viegner, Mr. Becker and Mr. Dietrich, were found guilty of corruption through bribery of employees at the state-owned company Enel.¹⁹ The bribes were intended to secure a contract for the sale of gas turbines to Enel. By being awarded the first contract, Siemens could attain a monopoly position in relation to further contracts for the purchase of more turbines and the maintenance of these.²⁰ The court found that the transfer of bribes to Enel employees was meticulously planned and paid via bank accounts in Liechtenstein, Dubai and the British Virgin Islands – not directly to the individuals, but through an intermediary.

According to Italian legislation, companies are obliged to create systems aimed at preventing illegal acts. Moreover, the law says that juristic persons may be held responsible for criminal offences committed by their employees. The maximum sanction is debarment from negotiating public tenders with Italian authorities.

Regarding Siemens' internal control systems, the judgement states the following:

¹⁵ The judgement: <http://www.hrr-strafrecht.de/hrr/1/96/1-233-96.php3>

¹⁶ The relevant authority confirms that Choy Hon Tim was convicted for corruption in 1995, and that the sentence led to the debarment of the companies; Corrupt Practices Investigation Bureau, in Singapore. Communication between the Council and the Norwegian Embassy in Singapore; on file with the Council.

¹⁷ Asiaweek.com 3 March 1996: <http://www.asiaweek.com/asiaweek/96/0301/biz3.html>

¹⁸ The Enel trial at Milan Ordinary Court, 24 April 2004, No 2460/03 TGNR and 950/03RGGIP; on file with the Council.

¹⁹ At the time, the Italian state held a 68% share.

²⁰ Such maintenance work is said to be so complex that only the turbine supplier – who knows how they are constructed – is able to carry out maintenance work on them.

"In the present case one may rule out that Siemens AG has implemented an effective model for organisation, management and control of the company's acts which is fit to prevent crimes of the kind that have occurred [...]. Additionally, it seems as if the company itself has encouraged and has been an accomplice to the offences that Mr. Viegner, Mr. Becker and Mr. Dietrich²¹ have been charged with. The way in which SIEMENS managers carried out their corrupt practices (use of a third party, namely AL NOWAIS, for the payment of the bribes in order to render it more difficult to trace the origin of the money; repeated payments in several "instalments" accompanying the progress of the tender and the contract), and, above all, the existence of accounts and secret funds that could be traced to SIEMENS AG and were destined for (and actually were used for) criminal offences, show the inefficiency of any internal control mechanisms at SIEMENS AG and a lack of action by the entities that were supposed to monitor the compliance with such a framework. It also indicates that the company regarded the payment of bribes as, at least, a possible business strategy, and 'secret funds' had therefore been created to implement this strategy.²²"

The Court also stated that what had been revealed during the enquiry was only part of a far more complex scenario in which a much larger number of people and resources were involved, signifying that there was a concrete and justified reason to fear recurrence. It was considered particularly aggravating that Siemens AG, although the offences perpetrated by its directors received much press coverage, "was adamant and did not offer any reply". The executives had neither been dismissed nor subjected to disciplinary measures, but merely been transferred from one department to another.

The verdict also drew attention to the fact that Siemens during the proceedings had not shown that the company had implemented a new and better organisational model to prevent similar episodes from occurring again, and further that a company of such size and importance in Europe and internationally has an obligation to assume a firm and unequivocal attitude once this kind of situation has arisen. The Court went on to express that the company's inability to offer any information concerning concrete measures aimed at preventing criminal offences in the future could be considered a confirmation of its complicity in the illegal acts that had come to light.

In April 2004, Siemens was convicted of corruption by the Court of Milan and thus barred from entering into negotiations with the Italian public administration for a period of one year. The verdict states that the defendants are guilty of corruption, but that they acted exclusively in the interest of Siemens. Concerning damages, Siemens had reached a settlement with Enel at the end of 2003. The judge did not actually deem this sufficient, declaring that as for the negotiation ban: "*SIEMENS AG's monopoly position is a direct consequence of the illegal acts and can only be met with this ban, which is the sole sanction that makes it possible to*

²¹ See footnote 18. In the verdict there is a footnote here that begins as follows: "Note that Jean Dietrich, who participated in the negotiations with ENEL's directors in his capacity as CEO of SIEMENS AG, was not a subordinate employee and thus not subject to control and administration by others as stated in the accusation, but, on the contrary, was a top executive at SIEMENS AG, and that his declaration of intent per se must be regarded as the company's intention (voluntas societatis)."

²² Excerpt from the Norwegian translation of the verdict, commissioned by the Council; on file with the Council. (Ref to the case: Enel trial at Milan Ordinary Court, 24 April 2002, No 2460/03 TGNR and 950/03RGIP)

restore competition and the undermined market conditions. To this end the Court deems it reasonable that the ban is in force for 1 (one) year.’²³

Germany 2007 – Darmstadt

On May 14th in Darmstadt, Germany, Andreas Kley, former finance director at Siemens was given a two-year suspended prison sentence for commercial bribery and breach of trust against Siemens. Horst Viegner, a former consultant to Siemens, was sentenced to a nine-month suspended prison term for complicity. In part the trial was a continuation of the Enel case²⁴. At the time of the offence Mr. Kley was responsible for trade and finance at Siemens Power Generation, and Mr. Viegner was working as a consultant to Siemens Power Generation.²⁵ With Mr. Kley’s consent, Mr. Viegner allegedly bribed Enel employees in Italy with EUR 6 million in order to secure Siemens a contract with Enel.²⁶ After being transferred from accounts in Liechtenstein and other countries, part of the money was reportedly deposited into the account of an Enel employee’s wife. Both defendants pleaded guilty to bribery. During the proceedings, Mr. Kley is said to have stated that bribery and slush funds were common practices at Siemens.²⁷ Siemens was sentenced to pay back EUR 38 million to the German state as compensation for the profit gained through the Enel contract. The Siemens representative immediately lodged an appeal.²⁸ No final decision has been reached in the case.

5.2 Ongoing trials

The Council is aware that at least four corruption cases against Siemens are currently being tried in Germany. In the Council’s overall assessment, the case under investigation by the Norwegian National Authority for Investigation and Prosecution of Economic Crime (Økokrim) is also important. The present section includes an account of these cases.

Germany 2007 – Munich

The Council follows the investigation launched against Siemens by Munich prosecutors. The corruption charges contained in the case reports are both very serious and very detailed. Individuals interrogated in the case have been with the company for a long time and are reported to have given testimonies which place responsibility for the corrupt practices at the very top of the corporate ladder.²⁹

Apparently, the case started after a request for assistance from the judicial authorities in Switzerland and Italy, something which prompted Munich prosecutors to launch an investigation of Siemens staff in November 2006. Employees at Siemens Telecom division were under suspicion of having diverted EUR 20 million via fictitious companies and of

²³ See footnote 22.

²⁴ Enel is a State-owned Italian company.

²⁵ He is also a former director at Siemens, see footnote 23, p 1.

²⁶ <http://uk.reuters.com/article/oilRpt/idUKL1767582120070417?sp=true>

²⁷ <http://www.spiegel.de/wirtschaft/0,1518,471461,00.html>

²⁸ <http://www.spiegel.de/wirtschaft/0,1518,482730,00.html>

²⁹ Wall Street Journal, 31 January 2007, “At Siemens, witnesses cite pattern of bribery”, by David Crawford and Mike Esterl; on file with the Council.

having deposited the money as "slush funds" in Switzerland and Liechtenstein between 2002 and 2006.³⁰ The amount was later altered to EUR 200 million, and it was confirmed that the evaded sums had not been destined for the personal enrichment of the accused. At first, public prosecutors referred to the concept of "breach of trust" against Siemens. As the investigation proceeded, Siemens itself came under suspicion. The prosecutors started using the expression "gross misappropriation of funds", and in December 2006 they applied the term "commercial bribery".³¹ Munich prosecutors are cooperating closely with the judicial authorities in Switzerland, Italy and Liechtenstein.³²

According to the media, Siemens CFO Joe Kaeser has declared that an internal investigation has uncovered EUR 426 million in suspicious payments.³³ Following an internal audit carried out by the US law firm Debevoise and Plimpton, Siemens adjusted the amount to EUR 1.5 billion in September 2007.³⁴ Moreover, it seems as if Thomas Ganswindt, a member of the supervisory board until September 2006, and Heinz-Joachim Neuburger, Siemens CFO until April 2006, are the highest-ranking executives to be arrested in connection with the Munich investigation. According to arrest warrants and detailed witness statements, Siemens is portrayed as a company where the payment of bribes was "common and highly organized".³⁵

Michael Kutschenreuter, former head of the IT department at Siemens, has reportedly made a statement after his arrest placing the blame for the corrupt practices on senior management. Mr. Kutschenreuter apparently said that he personally has also repeatedly been involved in bribery after becoming finance director of the Telecommunications department in 2001. Although bribery was prohibited by law in Germany in 1999, many of his colleagues regarded the bribes as peccadilloes because they served the company's interests.³⁶

According to information reported by the media, two other highly placed executives at Siemens Telecom are also said to have described the use of bribes. Reinhard Siekaczek and Andreas Mattes, former colleagues of Mr Kutschenreuter, have confirmed that the bribes were paid with the management's knowledge. Information has emerged that Reinhard Siekaczek was requested to set up "slush funds" for bribes in 1999 or 2000. These secret accounts are allegedly placed abroad, and Siemens is said to have deposited large annual sums.³⁷

A German arrest warrant issued in 2006 reportedly shows that the prosecution suspects bribery in Egypt, Greece, Indonesia, Kuwait, Saudi-Arabia and Vietnam from 2002 to 2004. Siemens is said to have channelled money through at least three layers of secret accounts, fictitious companies, and local intermediaries. As of March 2007, the prosecution has registered 25 countries in which Siemens is said to be engaged in corrupt practices.^{38,39}

³⁰ <http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/>

³¹ <http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/>

³² <http://www4.justiz.bayern.de/sta-muenchen/stamue1/pr070207.htm>

³³ Financial Times, 9 February 2007, "Siemens broadens bribery inquiries", by Richard Milne; on file with the Council.

³⁴ <http://www.spiegel.de/wirtschaft/0,1518,507018,00.html>

³⁵ Wall Street Journal, 31 January 2007, "At Siemens, witnesses cite pattern of bribery", by David Crawford and Mike Esterl; on file with the Council.

³⁶ See footnote 35.

³⁷ See footnote 35. In the 1990s Siemens is believed to have spent DM 500 million a year in bribes:

<http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/>

³⁸ See footnote 35.

³⁹ <http://www.sueddeutsche.de/wirtschaft/artikel/972/97875/1/>

The scale of the legal proceedings in the Munich case will be significantly reduced as a result of a settlement reached in October 2007. Siemens accepted to pay a fine of EUR 201 million, while Munich prosecutors dropped the charges of corruption at the Com Group. In this respect, the following note has been posted on the company website: *“Siemens accepts the fine imposed by the court and takes responsibility for past misconduct at the Com Group.”*⁴⁰

Germany 2007 – Nuremberg (the AUB case)

The Nuremberg state prosecutor’s office is currently investigating an ex-director⁴¹ at Siemens for having bribed a union representative of the corporate assembly during the period from 2001 to 2005. The employee is charged with breach of trust against Siemens.⁴² It is believed that EUR 14.75 million have been paid to the trade union AUB in order to secure its goodwill towards the company. Between 2002 and 2004, more than EUR 2.5 million have allegedly been transferred from Siemens to the AUB chairman Wilhelm Schelsky. The state prosecutor is also examining whether these funds were used to influence the elections of representatives to the corporate assembly. Mr. Schelsky has been the leader of AUB for 20 years. Before becoming self-employed, he worked for Siemens, but also while self-employed he had close business ties to Siemens. The contract between Siemens and Mr. Schelsky was terminated in 2006 because an internal investigation found that Siemens was not receiving adequate services from Mr. Schelsky in return.⁴³

It was the trade union IG Metall that brought an action against Siemens on the grounds of the company’s illegal favouring of an employer friendly corporate assembly representative.⁴⁴

Germany 2007 – Nuremberg (the Oil-for-food case)

In October 2005, the Independent Inquiry Committee, appointed by the UN, published a report⁴⁵ in which 2,200 companies, including Siemens, were accused of bribing the Iraqi government as a means to win contracts. The report states that practices at Siemens have violated the conditions set out in the Oil-for-Food Programme and the UN sanctions resolutions against Iraq.⁴⁶ Three Siemens subsidiaries, Siemens-France, Siemens-Turkey and Osram-Middle East, were accused of having bribed the Iraqi government with more than USD 1.6 million in order to be awarded contracts worth a total of USD 124.3 million. The bribes were allegedly paid through the companies’ accounts in Jordan.⁴⁷ After the report was published, Siemens declared that the commission’s conclusions were premature and unjustified. Moreover, the company pointed out that only its subsidiaries were accused of bribery. Siemens has not made any further public statement regarding this case.

⁴⁰http://w1.siemens.com/pool/en/investor_relations/financial_publications/ad_hoc_announcements/071004_siemens_ad_hoc_message_com_settlement_e_1464784.pdf

⁴¹ Since March 2007 he is no longer a director at Siemens.

⁴² http://www4.justiz.bayern.de/olgn/presse/info/fr_aktuell.htm

⁴³ <http://images.zeit.de/online/2007/11/siemens-schelsky-aub>

⁴⁴ <http://www.spiegel.de/wirtschaft/0,1518,475178,00.html>

⁴⁵ The Independent Inquiry Committee’s report, page 382: <http://www.iic-offp.org/documents/IIC%20Final%20Report%2027Oct2005.pdf>

⁴⁶ S/RES/986, para 8, S/RES/986, para 9, and Iraq-UN MOU, para 5; on file with the Council.

⁴⁷ Focus, “Auch Deutschland schmierten Saddam”: http://focus.msn.de/politik/ausland/irak_nid_20817.html. The Washington Post, “U.N. panel says 2400 firms paid bribes to Iraq”: <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/27/AR2005102700954.html>

”Staatsanwälte wegen Irak-Geschäften bei Siemens”: <http://de.internet.com/index.php?id=2019572>

In May 2006, public prosecutors at Munich and Nuremberg started a probe into these accusations against Siemens, examining whether the incidents will have legal consequences for Siemens in Germany.⁴⁸ In November, 2006 the Nuremberg prosecutors launched an enquiry into Siemens Medical Solutions, Siemens Power Generation and Siemens Power Transmission and Distribution with respect to possible violations of the Foreign Trade Act (Aussenwirtschaftsgesetz).⁴⁹ The Act covers currency transactions, as well as trade in goods, services and capital with foreign countries. The case is still under investigation.

Germany 2007 – Wuppertal (the OLAF⁵⁰ case)

According to information in two important German newspapers, the public prosecutors in Wuppertal, Germany, are investigating a case where executives at Siemens Power Generation (wholly owned subsidiary of Siemens AG) and employees at Lurgi Lentjes Services are said to have bribed an official at the EU's Balkan agency in Belgrade.⁵¹ In 2004, the European Commission Anti-Fraud Office, OLAF, was notified.⁵² OLAF prepared a report which was forwarded to the Wuppertal state prosecution. The investigation will be concluded in 2007.

Norway 2007 – Oslo (Økokrim)

In 2006, Per-Yngve Monsen, a former employee at Siemens Business Services (SBS), blew the whistle on probable violations of the law in the way SBS handled IT supplies to the Norwegian Armed Forces (NAF). Following the alert to Siemens headquarters in Munich about the matter, Mr. Monsen was informed by the Norwegian management that SBS was facing redundancy, and that he would have to resign from his position. He brought an employment tribunal claim arguing that it was the alert about overbilling and not the redundancy which had caused him to lose his job. The court found that the dismissal was unfair, and thus ruled it invalid. Mr. Monsen was awarded a compensation of NOK 1.5 million. The verdict pointed out that Mr. Monsen was probably right about SBS overbilling the NAF, something which led the NAF to investigate the case.⁵³⁵⁴

In 2006, a government probe was therefore launched into the allegations of possible overbilling of the armed forces. The Dalseide Committee was appointed by cabinet decision on 6 January 2006, and in June of the same year it presented the investigative report. The committee concluded that SBS did not fulfil its duty to protect the military's best interests, as stated in the loyalty clause of the contract and normal loyalty principles of contract law. It was uncovered that SBS overbilled the military by NOK 36.8 million in the years 2000-2004.⁵⁵ In December 2006, a settlement was reached between Siemens and the Ministry of Defence about refunding the NAF. In the summer of 2007, an investigative committee consisting of the involved parties concluded that SBS was not guilty of further overbilling.⁵⁶

⁴⁸ Die Tageszeitung, "Irak: Ermittlungen gegen deutsche Firmen": <http://www.taz.de/pt/2006/05/27/a0088.1/text>

⁴⁹ Süd Deutsche Zeitung: <http://www.sueddeutsche.de/wirtschaft/artikel/893/96797/>

⁵⁰ OLAF is the French acronym for the European Commission Anti-Fraud Office.

⁵¹ <http://www.sueddeutsche.de/wirtschaft/artikel/77/92984/> og

<http://www.sueddeutsche.de/wirtschaft/artikel/893/96797>

⁵² <http://www.stern.de/wirtschaft/unternehmen/unternehmen/:Bestechungsskandal-Wo-Jaguar/579202.html>

⁵³ <http://e24.no/arkiv/article1252468.ece>.

⁵⁴ The verdict is from the District Court of Oslo, 29 September 2005, ref TOSLO-2004-99016.

⁵⁵ Investigative report from the Dalseide Committee:

http://odin.dep.no/filarkiv/284017/Granskningsrapport_IKT-kontrakter.pdf

⁵⁶ Dagens Næringsliv, 6 July 2007; on file with the Council.

The investigations carried out by the Dalseide Committee also showed that SBS practiced extensive customer care towards military personnel. SBS is said to have spent NOK 6 million on gifts, travels and entertainment. Two military employees in particular have received significant benefits. Both individuals held positions where they made decisions or influenced decisions which could bring SBS advantages. Such activities are in breach of the gift ban under Section 20 of the Public Service Act and the military's own procurement rules. Certain transfers of advantage may constitute violations of the corruption ban under Section 276 a, b, c of the Penal Code. In the autumn of 2006, the military referred the case to the Norwegian National Authority for Investigation and Prosecution of Economic Crime (Økokrim).

6 Other actors' reactions to the accusations against Siemens

The Council notes that in addition to the purely judicial response there have been other reactions against the company as a result of recent corruption cases.

In light of the Siemens enquiry at Munich, Transparency International Germany (TI) cancelled the company's membership in December 2006. Siemens had joined TI in 1998, following its management's commitment to the implementation of the OECD Convention on Corruption. In 2004, Siemens' membership was put on hold after the company's involvement in a corruption case in Italy (the Enel case). The basis for TI membership is that the organisation believes the company to be committed to combating corruption through the implementation of suitable preventive procedures and checks. However, the Munich police investigation of Siemens in November 2006 uncovered information that eliminated the foundation for the company's membership.⁵⁷

On 25 January 2007, Siemens held its general assembly in Munich. Several shareholders stressed the importance of a review of the company's internal control mechanisms aimed at preventing corruption.⁵⁸ It was pointed out that the confidence in Siemens had been severely compromised as a result of the corruption accusations, and KPMG's handling of Siemens accounts was also questioned. Several shareholders demanded that Heinrich von Pierer and Klaus Kleinfeld should resign from their posts, but the overall vote secured their positions.⁵⁹

As a consequence of recent developments in Europe, particularly in the Munich case, the US Securities and Exchange Commission (SEC) decided, on 26 April 2007, to launch a full-scale probe into Siemens. On 27 August 2007, the SEC and the FBI met the Munich public prosecutors in order to gain insight into the investigation.⁶⁰

Since Siemens is listed in the USA and is accused of corruption in Europe, it is also being investigated by the US Justice Department under the Foreign Corrupt Practices Act.

The Council has not examined these cases in any further detail.

⁵⁷ Press release from TI Deutschland: [http://www.transparency.de/Trennung-von-Siemens.978.0.html?&no_cache=1&sword_list\[\]=Siemens](http://www.transparency.de/Trennung-von-Siemens.978.0.html?&no_cache=1&sword_list[]=Siemens)

⁵⁸ Counterproposal to the general assembly at Siemens: http://www.siemens.com/Daten/siecom/HQ/CC/Internet/Investor_Relations/WORKAREA/hv_ed/templatedata/Deutsch/file/binary/Gegenantraege2007_1425327.pdf

⁵⁹ Der Spiegel: <http://www.spiegel.de/wirtschaft/0,1518,462356,00.html>

⁶⁰ <http://www.zeit.de/online/2007/35/siemens-ermittler>

7 Siemens' reactions to the accusations

Since the beginning of the 1990s, Siemens and its representatives have been subject to criminal proceedings in Germany and other countries on several occasions.

In the initial stages of the investigation in the ongoing Munich case, the management put the blame on a group of disloyal employees that were supposedly behind the corruption.⁶¹ Several former employees have come forward with accusations of corrupt practices in the company, but the management has denied these. In some cases, Siemens is reported to have dismissed whistle-blowers.⁶²

When Siemens became subject to much public attention in connection with the uncovering of the corruption scandals in the early 1990s, the management promoted anti-corruption measures within the company. In 1992, the first sentence was passed against Siemens in the "Münchener Klärwerks-Affäre". At that time, Heinrich von Pierer became the company's new CEO and declared that this should never happen again.⁶³ Mr. von Pierer implemented strict guidelines for corporate governance in 1992.⁶⁴ He also made it mandatory for all managers to sign the internal guidelines on an annual basis to make sure that business practices were in accordance with these.⁶⁵ Simultaneously, a total of 900 compliance officers were placed in the company's 10 departments to ensure that the guidelines were adhered to.⁶⁶

At this stage, Siemens management also cooperated with the OECD disseminating information on the new OECD Anti-Corruption Convention.⁶⁷ In the 1990s Siemens became a member of Transparency International (TI)⁶⁸, as well as joining forces with the Extractive Industries Transparency Initiative (EITI) – an organisation focusing on transparency in money transactions between the extractive industries and developing countries.⁶⁹ Not only did Siemens appear as a company which took corruption problems seriously, but as an international front-runner in the fight against corruption.

Despite the company's anti-corruption measures and expressed good intentions, these initiatives did not prevent the corrupt practices which have later been discovered. Since the 1990s, Siemens has continued to be subject to several corruption investigations in many countries, some of which are presented in this recommendation.

⁶¹ <http://www.manager-magazin.de/unternehmen/artikel/0,2828,450641,00.html>

⁶² For example Rudolf Vogel: <http://www.stern.de/wirtschaft/unternehmen/unternehmen/:Siemens-Mit-Stumpf-Stiel/577903.html> and Per-Yngve Monsen <http://e24.no/naeringsliv/article1414801.ece>.

⁶³ Heinrich von Pierer became CEO in 1992 and chairman of the board in 2005.

⁶⁴ Handelsblatt:

http://www.handelsblatt.com/news/Unternehmen/Industrie/_py/grid_id/1048180/_p/200038/_t/ft/_b/1186555/default.aspx/korruption-ist-bei-siemens-nichts-neues.html ZDF:

<http://www.heute.de/ZDFheute/inhalt/23/0,3672,4089591,00.html>

⁶⁵ Die Welt: http://www.welt.de/wirtschaft/article702722/Ex-Siemens-Vorstand_packt_aus.html?print=yes

⁶⁶ Süddeutsche Zeitung: <http://www.sueddeutsche.de/wirtschaft/artikel/345/99246/print.html>

Stern: <http://www.stern.de/wirtschaft/unternehmen/unternehmen/:Siemens-Schmiergeld-Aff%E4re-Katastrophe-Katastrophe/577353.html>

⁶⁷ Transparency International Deutschland: <http://www.transparency.de/Trennung-von-Siemens.1012.0.html>

⁶⁸ Transparency International's membership conditions:

<http://www.transparency.de/Selbstverpflichtungserklaerung.67.0.html>

⁶⁹ News-report: http://www.news-report.de/nachricht/Politik/1179935550/Siemens_arbeitete_Jahre_mit_Anti-Korruptionsorganisation_EITI_zusammen.html

In the wake of the most recent corruption cases, CEO Klaus Kleinfeld was replaced by Peter Löscher in April 2007, while Gerhard Cromme took Heinrich von Pierer's place as chairman of the supervisory board. Peter Löscher was picked from outside the company. Gerhard Cromme has been with Siemens for many years, and has been a board member since 2003. For some time he also headed the supervisory board's audit committee.⁷⁰

Shortly before Klaus Kleinfeld resigned from his post in April 2007, he presented a new ambitious action plan – Fit for 2010 – for the coming three years. His successor, Mr. Löscher, declared at the end of July 2007 that he will stick to the plan.⁷¹ In his first address to the press Mr. Löscher stated that *“for those of you who think – now Löscher begins; now the revolution begins – I have to disappoint you.”* Mr. Löscher, he prefers to speak of “evolution” rather than “revolution”, and the plan is for changes to take place at the same pace as in past decades.

The Council has watched the development at Siemens and has made a note of certain anti-corruption measures recently implemented by the company. In the Council's view, some of the most concrete measures seem to be that the company now centralizes payments to control the cash flow and that consultancy contracts must be approved by more persons than before. Furthermore, the company is said to have established protected communications channels for whistle-blowing.^{72 73} According to information from Siemens⁷⁴, corporate management will also cooperate with Michael J. Hershman (the founder of Transparency International) with a view to restructuring internal control mechanisms.⁷⁵

At the beginning of October 2007, information emerged on more changes at Siemens.⁷⁶ Mr. Löscher is for example said to have management restructuring plans. Siemens has previously had a three-tiered management structure: coaches who monitor the divisions, the actual division level, and the national subsidiaries around the world. It now seems that the coach level will be eliminated and substituted by directors who hold more central positions in the

⁷⁰ When the Securities and Exchange Commission (SEC) pointed out that it is unfortunate to have the chairman of the board as leader of the audit committee, Gerhard Cromme resigned from his position as leader of the committee: <http://www.compliancemagazin.de/markt/personen/thyssenkruppsiemens240407.html>. According to information in the annex to the letter sent to the Council, Gerhard Cromme is now leader of the board's compliance committee: “Legal proceedings – Third Quarter of Fiscal 2007” p 4.

⁷¹ http://www.siemens.com/index.jsp?sdc_p=fml70suo1457353ni1142524pc132z3&sdc_bcpaht=1127184.s_0%2C&sdc_sid=21248909866&

⁷² According to an international survey 40% of corruption is discovered through whistle-blowing. In comparison, company auditors only disclose some 10% of such practices: www.kpmg.no/arch/_img/9282037.pdf page 4.

⁷³ At the same time the internal guidelines establish confidentiality obligations for the employees: *“Every employee should be concerned with the good reputation of Siemens in each country. In all aspects of performing his/her job, every employee must focus on maintaining the good reputation of, and respect for, the Company.”* It may prove difficult to blow the whistle without breaking this rule. The following is said about confidentiality: *“Confidentiality must be maintained with regard to internal corporate matters which have not been made known to the public. As an example, this includes details concerning the Company's organization and equipment, as well as matters of business, manufacturing, research and development, and internal reporting figures. The obligation to maintain confidentiality shall extend beyond the termination of the employment relationship”*, Siemens Business Conduct Guidelines, articles A2 and E2.

⁷⁴ http://www.focus.de/finanzen/news/aufklaerer_nid_41222.html

⁷⁵ In January 2007, Siemens also employed a former public prosecutor, Daniel Noa, as new leader of the compliance office. After six months he resigned, and his successor, Peter Solmssen, was appointed in October 2007. <http://www.compliancemagazin.de/markt/personen/siemens050107.html>.

⁷⁶ Financial Times, 2 October 2007, the article “Siemens prepares for its cultural revolution”, by Richard Milne, presents information which is said to come from “senior directors”; on file with the Council.

company.⁷⁷ Moreover, the national level will be given less power and no longer conduct the negotiations of large contracts nationally. It seems as if such contracts will be signed at the division level. Furthermore, Peter Solmssen, who has been recruited from General Electric, is said to have taken up the newly created post as legal and compliance executive. The information on the structural changes has not been confirmed by Siemens, but the news about Peter Solmssen can be found on the Siemens website. To the Council's knowledge, there are so far no suggestions regarding changes in the supervisory board.⁷⁸

A US law firm, Debevoise and Plimpton, is working on an internal investigation motivated by the corruption allegations. The law firm reports directly and exclusively to the supervisory board's newly established compliance committee, being assisted by auditors from Deloitte & Touche.⁷⁹ In July 2007, the law firm complained to the board that its investigation was hampered at Siemens offices in countries such as Austria, Greece, and Belgium.⁸⁰ The board's newly appointed compliance committee is charged with monitoring the ongoing investigation and the new measures adopted by the company. This committee is made up of the same members as the audit committee, and its chairman is Gerhard Cromme.⁸¹

8 Siemens' reply to the Council's enquiry

As prescribed by the Guidelines, the Council has sent the draft recommendation to Siemens for comments. This was done at the end of June 2007, and the Council received Siemens' reply within the deadline at the beginning of September.

In its reply, Siemens provides information on the company's internal guidelines, adding that the compliance with these has top priority from now on. The letter also states that, *"Exceptional performance and ethics are not mutually exclusive: They are absolutely essential!"*, *"Siemens is committed to clearing up all misconduct no matter who was responsible, and will endorse the necessary consequences"*, and *"The company has achieved its strength through operational excellence based on high ethical standards."* Siemens annexes an overview of ongoing trials in which it is involved, new anti-corruption measures, and a printout of a presentation on the company's compliance efforts.

A key element in the Council's assessment is to evaluate whether the measures at Siemens are sufficient to avoid an unacceptable risk of the Fund contributing to gross corruption through its investment. Several of the measures presented in the annexes from Siemens are discussed under Section 7. Moreover, there is mention of plans in the company for a "corporate disciplinary committee" charged with imposing disciplinary sanctions in cases of suspected criminal offences or violations of the company's internal policy, or other documented misconduct.⁸² The annexed presentation printout to the reply from Siemens features a quote

⁷⁷ Members of the group that will monitor the divisions appear to be: Mr. Löscher himself, the CFO, the directors of technology, compliance and human resources, as well as heads of the three new "super divisions", Energy, Infrastructure and Health Care; see footnote 76.

⁷⁸ With the exception of the newly instated Peter Solmssen, who is to be both a board member and a director, and Mr. Feldmayer, who at his own request is said to have left his position owing to accusations of his involvement in the AUB case; <http://www.reuters.com/article/marketsNews/idUSWEB382720070328>.

⁷⁹ Siemens's reply to the Council, in the annex "Legal Proceedings – Third Quarter of Fiscal 2007", p 2; on file with the Council.

⁸⁰ <http://www.spiegel.de/international/business/0,1518,druck-496908,00.html>

⁸¹ See footnote 79, p 4.

⁸² See footnote 79. The annex "Legal proceedings – Third Quarter of Fiscal 2007", p 2.

from Mr. Löscher saying, *“I have made the topic of compliance one of my top priorities. There will be no compromises here: Illegal and improper behaviour will not be tolerated under any circumstances.”* The Council is not aware of the context in which Mr. Löscher made this declaration, but it does not seem to have been echoed in the media afterwards.

9 The Council’s assessment

As mentioned, Norway has one of the world’s most rigorous legislations when it comes to corruption. This is in keeping with the developments internationally, as it is recognized that corruption not only is destructive for business relations, but also a contributing factor to poverty and human rights violations in many countries. The Council takes as its point of departure that Norwegian corruption legislation reflects the seriousness of the corruption criterion in the Ethical Guidelines.

9.1 The Council’s assessment of gross corruption at Siemens

With regard to corruption in the company to date, the Council bases itself on existing verdicts and other administrative decisions, as well as on information about ongoing corruption trials in several countries.

As shown in Section 5, Siemens has, through its representatives, used bribes to influence both public officials and private sector staff with a view to winning contracts. Court rulings confirm this with regard to previous case circumstances, and current investigations also seem to concern corrupt practices carried out in a systematic and extensive way.

Two of the verdicts mentioned in this recommendation are based on German law – which does not prescribe corporate penalty. Consequently, the sentences targeted employees directly, and not the company as such. The Italian judgement also refers to employees; nevertheless, Siemens is strongly criticized for the poor routines that made the corruption possible. As a result, Siemens was debarred from public tenders for a period of one year.

The Council’s deliberations take into account that there are varying attributions of legal responsibility under different judicial systems; for example, some systems include corporate penalty, whereas others do not. This means that the Council may draw conclusions regarding the existence of gross corruption in a case even if the company has not been found directly guilty, as long as it has been established that representatives of that company have carried out the actions on the company’s behalf. It seems a prevalent characteristic that the acts have been committed with the management’s knowledge and with a view to winning contracts for Siemens, not in order to achieve personal gain for the employees.

The Council attributes importance to what may be perceived as Siemens’ own admission of corruption through accepting a considerable fine to avoid part of the legal proceedings in the Munich case (2007).⁸³

Siemens’ conduct reveals a long-standing pattern of corrupt practices perpetrated to serve the company’s interests. The acts have been committed in many countries and they include the

⁸³ “Ad-hoc Announcement according to § 15WpHG (Securities Trading Act)”, Siemens website, 4 October 2007: <http://w1.siemens.com/en/investor/index.htm>.

transfer of large sums. The great number of cases, their nature, and the substantial amounts of money involved imply that this is one of the most comprehensive corruption cultures investigated in any listed company, at least in a European context. Therefore, the irregularities at Siemens must unquestionably be considered serious under the Guidelines.

9.2 The Council's assessment of risk that the Fund, through its investment in Siemens, may contribute to gross corruption in the future

It is laid down as a condition in the Guidelines' point 4.4 that there must be an "unacceptable risk" of the company contributing to violations in the future if the Council is to recommend its exclusion.

The White Paper preceding the Guidelines states that exclusion may be used as a precautionary measure in cases which are very serious from an ethical viewpoint.⁸⁴ At the same time, it says that exclusion should be limited to the most flagrant cases. An overall assessment and a concrete appraisal in each case are therefore required.

Moreover, the White Paper stresses that the breaches must either be ongoing or that there must be an unacceptable risk of such violations occurring in the future if they are to lead to exclusion. Previous patterns of conduct, which may be more or less systematic and/or extensive, may give an indication as to whether there is a future risk of continued use of corruption. The White Paper establishes that "*The purpose is to reach a decision as to whether the company in the future will represent an unacceptable risk for [the Fund].*"⁸⁵ The wording of point 4.4 makes it clear that the probability of the Fund's contribution to present and future acts or omissions is the matter to be assessed.

This recommendation discusses decisions of a judicial nature that refer to acts committed in the past. Information on the company's earlier conduct may give an indication as to its future conduct. The number of corruption sentences associated with Siemens during recent years and the number of current trials against the company indicate that effective measures must be implemented if the risk of future corruption is to be considerably reduced. The Council's main concern is therefore to assess whether the steps that the company has now taken, and that are known to the Council, may be sufficient to prevent corruption.

The Council attributes importance to how Siemens has responded to the disclosure of corporate corruption, partly through the documentation Siemens has provided as a reply to the Council's request and partly through publicly available information on the measures currently adopted by the company. The measures considered most effective by the Council are the centralization of bank account handling, altered routines for the signing of consultancy contracts, as well as the introduction of an ombudsman through whom the employees may report violations of the law or business conduct guidelines.

As previously mentioned, the board has appointed a so-called compliance committee to monitor the ongoing investigation and the proposed corporate measures. This committee is made up by the same members as the former audit committee and is chaired by Gerhard Cromme. In the Council's view, there is uncertainty as to whether the committee will be able to make sufficiently independent assessments as it mainly consists of the same people who

⁸⁴ NOU 2003:22, p 35.

⁸⁵ See footnote 84.

earlier failed to detect corruption at Siemens and is being headed by the same person who previously conducted this work and did not succeed in disclosing corporate corruption.

Siemens is also in the process of establishing a disciplinary committee to assess cases where employees' violations of the law or company policy are suspected. A proposal of possible sanctions for such breaches was presented to the board at the end of September 2007, but information is not available as to the board's decision in this case. According to the proposal, corrupt employees may risk sanctions such as lower wages, transfer, no promotions, or bonus cuts. However, reporting corruption to the police does not seem to be part of the sanctions.⁸⁶

The fact that Siemens has appointed an ombudsman seems, in itself, an effective measure. Retaliation against whistle-blowers is also prohibited by internal business conduct guidelines. However, Siemens' internal policy establishes strict confidentiality obligations in several areas. There is a risk that these confidentiality obligations may prevent that for example cases regarding disclosure are brought to light. Considering Siemens' previous history in whistle-blowing cases this is an area that ought to be of particular importance to the company.

Compared with the other exclusion criteria contained in the Guidelines, the corruption criterion poses additional challenges. A company may implement measures to prevent human rights violations and environmental damage, and the effect of the measures can be more easily examined once they have been implemented. When it comes to corruption, this may be more complex because corruption occurs in secret and is only brought to light after disclosures and investigations. This makes it difficult to verify how effective anti-corruption measures are.

The anti-corruption measures implemented by the company at the beginning of the 1990s seemed ambitious. They included the introduction of strict guidelines to which managers had to sign compliance statements every year, as well as the placement of 900 corporate compliance officers. Siemens was considered an international front runner in terms of combating corruption. Nevertheless, the corrupt practices that have been uncovered after the company's "turnaround" 15 years ago are of a magnitude and gravity which seem unequalled, at least in a European context. Particularly in light of this experience, the Council deems it uncertain whether today's announced measures will be effective. In the Council's view they do not seem sufficient.

The Council is aware that it may be problematic for a company to publicly acknowledge the existence of very reprehensible practices in its midst. In view of the documented irregularities in this case, the Council is nonetheless surprised that Siemens, in its letter of reply to the Council through Norges Bank, claims that "*The company has achieved its strength through operational excellence based on high ethical standards.*" In the Council's opinion this is a rather inapt description of the company's conduct in this context, indicating that the company underestimates the gravity of the case. There is a risk that such downplaying of the situation may cause a possible process of change in the company to occur slowly.

It is uncertain to what extent and when any measures will produce effect. The Council considers it problematic to maintain its investments in Siemens once the uncertainty prevails concerning *if*, and possibly *when*, sufficient measures will be implemented. Based on an overall assessment, the Council finds that there is an unacceptable risk of Siemens' continued involvement in gross corruption in the future.

⁸⁶ <http://www.spiegel.de/wirtschaft/0,1518,506486,00.html>

10 Recommendation

Based on this assessment of the substance of the accusations against Siemens, and in view of the Ethical Guidelines, point 4.4, the Council recommends that the company be excluded from the Government Pension Fund – Global owing to an unacceptable risk of the Fund, through its investment in Siemens, contributing to gross corruption.

Gro Nystuen
Chair

(sign.)

Andreas Føllesdal

(sign.)

Anne Lill Gade

(sign.)

Ola Mestad

(sign.)

Bjørn Østbø

(sign.)