

To the Ministry of Finance
Recommendation of 1 December 2010

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UNOFFICIAL ENGLISH TRANSLATION

1 Introduction

At meetings held on 15 and 16 September 2008, the Council on Ethics for the Government Pension Fund Global (GPF) decided to assess whether the investments in the company Alstom S.A. (Alstom) entail an unacceptable risk of the Fund contributing to gross corruption under the Fund's Guidelines. The background for this decision was the initiation of investigations into allegations of corruption against the company in three countries in November 2007, as well as the fact that the company previously had been involved in serious incidents of corruption.

Alstom is a French multinational company that specializes in energy and transport infrastructure through its divisions Alstom Power and Alstom Transport.¹ The company employs 96,500 people in more than 70 countries. As of December 2009, the GPF held equity holdings in Alstom amounting to a market value of NOK 1.6 billion.

In several countries, Alstom's employees are accused of having bribed both private and public officials in order to secure contracts. Some of these incidents date back 15 years, whereas others are recent.

The allegations of corruption levelled against Alstom concern several parts of the company's activities. Documentation in the form of judicial decisions and court documents related to settlements shows that three of the company's divisions have been involved in serious corruption incidents between 1992 and 2001. Moreover, the company is currently subject to corruption investigations in *i.a.* Brazil, Switzerland, and the UK. The prosecutors suspect Alstom's employees of having used bribes to secure contracts in foreign countries, even after this was banned by French law in 2000. To conceal the corrupt activities, employees have allegedly used fictitious consultancy contracts and invoices, as well as offshore companies. In the Council's view, the older documented incidents involving corruption and the ongoing corruption investigations in recent times might indicate systematic use of bribery.

The Council has written to the company on three occasions, requesting answers to specific questions as well as comments on the facts of the draft recommendation. Alstom has replied to the Council's enquiries, denying that the company has made use of bribery. Additionally, a telephone conference has been held between the Council and the CEO of Alstom, as well as a meeting with the company's head of compliance.

Through their responses to the Council, Alstom's management has indicated that the company is the victim in this case, thereby laying the blame on individual employees. However, the older corruption incidents that the Council has considered demonstrate that senior managers in the company have been aware of – or even effectuated – the bribes. In the Council's view, the fact that Alstom did not uncover the misconduct or implement thorough measures when different authorities initiated investigations against them, indicates a pattern whereby the company's management does not acknowledge corruption as being a problem and where its compliance system does not seem fit to detect and penalize such misconduct. This is particularly problematic given that Alstom is engaged in operations in countries where there is a high risk for corruption, whilst also operating in industries that are considered very vulnerable to corruption.

Based on this, the Council recommends that Alstom be excluded from the Government Pension Fund Global on the grounds that there exists an unacceptable risk of gross corruption.

¹ Alstom's website: <http://www.alstom.com/home/activities/index.EN.php?languageId=EN&dir=/home/activities/>

2 The Council's considerations

The Guidelines, section 2, subsection (3), state the following:

“(3) The Ministry of Finance may, on the advice of the Council on Ethics, exclude companies from the investment universe of the Fund if there is an unacceptable risk that the company contributes to or is responsible for:

d) gross corruption;”

Firstly, the Council has evaluated whether it is highly probable that the company has committed acts that constitute gross corruption. Secondly, the Council has assessed whether there is an unacceptable risk that the use of gross corruption may continue in the future. Both of these conditions must be met in order for the Council to recommend the exclusion of a company under the corruption criterion. In its first recommendation regarding gross corruption, the Council elaborated on and specified this criterion.²

The Council bases its assessments on the following definition of the concept 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,

and

b) the corrupt practices as mentioned under paragraph (a) are carried out in a systematic or extensive way.

In its overall assessment the Council will attribute importance to the company's previous involvement in incidents concerning corruption, the company's reactions to the allegations of corruption, the company's compliance system, as well as any ongoing investigations and court procedures against the company, its employees or other connected persons.

3 About Alstom

Alstom was founded in 1928 as a result of the merger between Thomson-Houston and Société Alsacienne de Constructions Mécaniques (SACM).³ Today the corporate headquarters are located in Paris, France. Alstom was listed on the Paris Stock Exchange in 1998, and for a short period it was also listed on the London and New York Stock Exchanges before being delisted in 2003 and 2004 respectively.⁴

The company is a leader in the industries of power-generation and rail transport through its units Power System Sector, Power Service Sector and Transport Sector. The Power units design, produce and service a series of products used in the generation of electric power, and the

² Recommendation of 15. November 2007: Siemens AG.

³ At the time the company name was Alsthom.

⁴ New York delisting:

<http://www.adrbnymellon.com/files/AC5052.pdf>

London delisting:

http://www.alstom.com/pr_corp_v2/2004/20556.EN.php?languageId=EN&dir=/pr_corp_v2/2004/&idRubriqueCourante=23132

transportation unit supplies equipment and infrastructure to the rail and maritime transport segments. In the year 2009, Alstom had a turnover of EUR 18.7 billion, employing more than 96,500 people in over 70 countries.⁵

4 Sources

The information concerning previous cases of corruption stems from various sources, including final verdicts, court documents related to settlements and a ruling directed at the company in the form of a fine, as well as an order excluding the company from public tenders as a result of corrupt practices.⁶

With regard to ongoing corruption investigations that so far have not resulted in indictments or judgements, the Council has based itself on information contained in two rulings issued by a federal criminal court in Switzerland, as well as information presented by the international media, in particular the German, British, Swiss and Brazilian press. Furthermore, the Council has carried out extensive research to assess and verify information that has emerged in the press. This has been done by consulting several sources in France, Switzerland, Mexico, Brazil and Italy.

Information about Alstom's compliance system stems from the company's homepage, as well as from the company's response to the Council.

The deadline set for gathering source material was set for November 2010. Sources are cited in the footnotes of this recommendation.

5 The facts of the case

In this section the Council gives an account of some of the most important cases where Alstom has been involved in, or is being suspected of, incidents of corruption.

Several investigations and judicial decisions concerning Alstom or its employees were carried out and rendered at a time when the international legal situation in the area of corruption was unclear. Traditionally, corruption bans have been domestic. Only in 1977 did the USA, as the first country in the world, pass an act that banned American citizens and companies from bribing public officials and politicians *abroad* (Foreign Corrupt Practices Act). In Europe there was no similar legislation; corruption committed abroad was first put on the agenda by the OECD in 1989-90.

In recent years however, several international anti-corruption conventions have been drawn up: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,⁷ the European Council Criminal Law Convention on Corruption,⁸ the European Council Civil Law Convention on Corruption⁹ and the UN Convention against Corruption.¹⁰ This has led most countries today to introduce national bans on the bribery of foreign public officials.

⁵ Alstom's website:

http://www.alstom.com/home/about_us/index.EN.php?languageId=EN&dir=/home/about_us/

⁶ The Supreme Court of the United States, *Man-Seok Cheo vs. USA*, 2007.

Entscheid vom 23. September 2008, 1. Beschwerdekammer Bellinzona, Switzerland.

Entscheid vom 13. Oktober 2008, 1. Beschwerdekammer, Bellinzona, Switzerland.

Tribunale ordinario di Milano, 28 March 2008.

Decimo Tribunal Colegiado en Material Administrativa del Primer Circuito 2008 .

⁷ The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November 1997.

⁸ The European Council Criminal Law Convention on Corruption of 27 January 1999.

⁹ The European Council Civil Law Convention on Corruption of 4 November 1999.

¹⁰ The United Nations Convention against Corruption of 31 October 2003.

As concerns the Council's assessment however, it is of minor importance under which *legal* conditions the decisions have been issued, provided that the corruption criterion of the Guidelines *de facto* has been met.

5.1 Previous investigations and court decisions

In its assessment the Council has placed emphasis on court decisions stating that Alstom's employees have used bribes to secure contracts for the company. The first case concerns the use of bribes to secure a contract in South Korea in 1992.¹¹ At the time, such practices were not banned by French legislation. The Council nevertheless attaches some relevance to the incident as it meets the criteria of the Guidelines and constitutes part of a pattern. The Council also presents a decision by Mexican authorities from 2008 and an Italian settlement from 2008. Both cases concern the use of bribery to secure contracts for Alstom.

5.1.1 Investigation in South Korea 1995

In 1995, South Korean public prosecutors launched an investigation into suspicious money transfers from Alstom to two South Korean nationals (hereinafter X and Y). Witness statements revealed that in 1992 the CEO of Alstom Asia had requested X to assist Alstom in finding someone who could influence the South Korean government so that the company would be awarded a contract for the delivery of high-speed trains to a national express rail system.¹² Alstom's chairman is said to have met X and Y at a hotel in Seoul and asked them to influence government representatives in order for Alstom to win the rail contract. In return, X and Y were supposedly promised a one per cent commission of the total contract sum, provided that Alstom was in fact awarded the contract. X and Y are said to have accepted Alstom's offer. In the same month, X apparently met the Secretary-General of the governing party of South Korea, who was also a member of parliament, and asked him to use his influence so that Alstom would be awarded the rail contract.¹³

On 14 June 1994 Alstom was selected as contractor for the rail project and, honouring its agreement, Alstom allegedly transferred some USD 11 million to a Hong Kong account belonging to X.¹⁴ Subsequently, X is said to have paid the Secretary-General WSK 400 million (South Korean won) in return for wielding political influence on Alstom's behalf.¹⁵ Under the Korean penal code, the act of receiving money from a company in order to lobby public officials constitutes a crime.¹⁶

According to the South Korean public prosecutor's office, the investigation of this case was dropped in 1996 following a bribe of USD 80,000 which X paid to the then chief of *Kimpo Airport Police Station*. In 1998, however, the South Korean prosecuting authority reopened the

¹¹ This information derives from a decision issued by the United States District Court for the Central District of California Western Division. Case No. CV 06-01544-RGK (MLG) 'In the matter of the extradition of Man Seok Choe, a fugitive from the republic of Korea. October 10th 2006.' The decision relates primarily to a South Korean extradition request, but it also describes how Alstom secured the rail contract by using bribes.

¹² The Guardian, 16/05/00, 'Scandals Darken Korean Summit'

CEO Ambrose Jean Cariou was as of December 2001 employed by Alstom: http://pagesperso-orange.fr/france-coree/economie/coree2001_cfce11210.htm

¹³ United States District Court for the Central District of California Western Division. Case No. CV 06-01544-RGK (MLG) 'In the matter of the extradition of Man Seok Choe, a fugitive from the Republic of Korea'. 10 October 2006, page 4.

¹⁴ USD 11 292 802

¹⁵ WSK 100 = NOK 0.48

¹⁶ The South Korean law states the following: 'Any person who receives, demands or promises any money or interest in connection with a mediation of matters belonging to the duties of the public official, shall be punished...'

investigation of Alstom's transfers to X and Y. X fled to the USA in 1999, but South Korean authorities requested his extradition.

The United States District Court of California, to which the extradition request was presented, states the following:

*'There is ample information provided by Korea to support a reasonable belief that X accepted money from Alstom¹⁷ in violation of Korean law. Y testified that she and X met with Alstom where they were promised money in exchange for lobbying government officials for the rail contract. Y further testified that she and X approached Z about exerting his influence on behalf of Alstom. A few months after Alstom was awarded the contract, Alstom transferred approximately 11 000 000 USD into X's account. **Alstom CEO Ambroise Jean Cariou confirmed that Alstom paid X in exchange for his lobbying efforts. In addition, Korea has provided copies of the bank records which show Alstom's transfer of money to X's Hong Kong account, and X's subsequent transfer of money to Y's Hong Kong account. Thus, this Court finds that probable cause exists to believe that X is guilty of the first offence charged.**'¹⁸[Text highlighted by the Council]*

On this basis, the Council finds it highly probable that the incidents took place as described above.

5.1.2 Ruling by the Decimo Tribunal Colegiado en Material Administrativa del Primer Circuito 2008

In December 2005, Mexican authorities issued a press release informing that Alstom had been fined USD 31,000 by Mexico's Ministry of the Public Services in July 2004.¹⁹ As a further measure, the decision stated that the company would be excluded from public tenders in Mexico for two years. No criminal charges were brought against the company or any of its employees. Alstom appealed the decision several times, but on 29 August 2008 the *Decimo Tribunal Colegiado en Material Administrativa del Primer Circuito* upheld the ruling issued by the *Secretaria de la Funcion Publica* on 11 July 2007 to fine Alstom and exclude the company from public tenders for two years.²⁰ However, it is unclear whether the authorities' measures were enforced because in its reply to the Council Alstom denies that the company was fined at all or was excluded from public tenders as a result of this. The background for the ruling was that in 2001 Alstom had apparently paid USD 653,000 to two top executives of the electricity utility *LFC-Luz y Fuerza Centro* in order to secure two contracts for Alstom in Mexico worth USD 5.7 million.

In its response to the Council, the company has confirmed that three employees were dismissed as a result of the incident and that the Swiss authorities investigated the case. Alstom did not detect the misconduct themselves, but launched an internal investigation and cooperated with the

¹⁷ At the time the company name was Alsthom.

¹⁸ The United States District Court for the Central District of California Western Division. Case No. CV 06-01544-RGK (MLG) 'In the matter of the extradition of Man Seok Choe, a fugitive from the Republic of Korea'. 10 October 2006, page 18.

Man Seok Choe was arrested by American police in 2006, as an arrest warrant had been issued by the South Korean police. Man Seok Choe invoked the act of *Protection of Personal Liberty* against the extradition decision and ended up being released in the USA. The South Korean arrest warrant against Man Seok Choe was extended till 2010. However, Man Seok Choe died in the USA in December 2009, and on 2 February 2010 the South Korean public prosecutor dismissed the case on the grounds that '*no prosecution right is established*'.

¹⁹ Alstom Annual Report 2003-2004, p. 196: The Mexican Ministry of the Public Services.

²⁰ *Secretaria de la funcion publica, SFP, No. 068/2005 'La SFP inhabilita a Areva T&D S.A. de C.V., por infringir la ley en material de adquisiciones'*.

Sudanese Online:

<http://www.sudaneseonline.com/cgi-bin/sdb/2bb.cgi?seq=msg&board=95&msg=1091181942&func=threadedview>

EIRIS, research briefing, September 2005:

<http://www.eiris.org/files/research%20publications/corporatecodesofbusinessethicsep05.pdf>

prosecutors after the company was made aware of the incident. The Council thus considers that the incident took place as mentioned above.

5.1.3 Court settlement reached in Italy 2008

On 28 March 2008, a so-called “Patteggiamento” settlement was reached at the Tribunale Ordinario di Milano between Italian authorities and Alstom.²¹ Italian criminal procedure allows for this special procedure, provided that a settlement agreement exists between the parties with respect to both the court proceedings and the sentencing, where the latter must not exceed two years. The court deemed it proven that in 2001 four Alstom executives had bribed two public officials at the partly state-owned Italian company Enel in order to secure the so-called Sulcis contract. The employees were given suspended prison sentences of 9 to 11 months, and two of Alstom’s wholly-owned subsidiaries were fined. Among other things the verdict shows that the bribes went through Alstom Prom in Switzerland. An audit revealed that Alstom and Siemens had transferred some USD 6 million to foreign bank accounts belonging to two Enel employees in order to win sub-contractor agreements with Enel. In 2004 Siemens was banned from public tenders in Italy for this reason.²² Alstom was informed about the investigation in April 2003, and is supposed to have initiated an internal investigation of the incident.²³

The documents pertaining to the court settlement show that the court found it proven that Alstom employees used a fictitious consultancy agreement to conceal the bribes, which amounted to two per cent of the total contract sum. The fictitious consultancy agreement was entered into by Alstom’s then European Director for International Operations and an intermediary in Dubai.²⁴ Following this, the Chairman of Alstom Power Inc., who also held the position as Country President in the USA, made an agreement with Enel’s managing director about the awarding of the contract, as well as the size of the bribe. The then Corporate Compliance manager at Alstom signed the fictitious consultancy agreement. During the trial the intermediary from Dubai confessed that his accounts in Switzerland were used by Alstom to conceal the bribes. He was fined 116,000 EUR. The court settlement entailed that Alstom Power Inc. and Alstom Prom Ltd. were each fined EUR 240,000 for the administrative illegality of not having implemented adequate management and organizational models to prevent the use of bribery.

Based on the court's assessment, the Council considers that the incident took place as described above.

5.1.4 Summary of previous cases

Despite there not being any criminal convictions of Alstom employees in the South Korean, Mexican and Italian cases, their facts render it probable that employees in different ways have made use of bribes to secure contracts for the company. In the South Korean case this is evident from the judge’s assertion that there is ‘probable cause’ indicating that the act took place. Among other factors this decision is grounded on the acknowledgement from Alstom’s CEO of paying for lobbying efforts, as well as documents showing the related bank transactions. It is important to

²¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62001C0187:EN:HTML#Footref33>

²² Alstom Annual Report 2003-2004, p. 196. (Investigation by the Prosecutor of Milan)

National Defence Magazine, August 2006, by Fred Shaheen and Kara Bombach: ‘*Anti-bribery enforcement on the increase overseas*’ <http://www.nationaldefensemagazine.org/archive/2006/August/Pages/EthicsCorner2915.aspx>

Shana, 27 July 2003: <http://www.shana.ir/newsprint.aspx?newsid=1698&lang=en>

Transparency International Progress Report 2008, p. 25.

http://www.transparency.org/news_room/in_focus/2008/4th_oecd_progress_report

²³ Alstom’s reply to the Council, 10. November, 2010.

²⁴ Corporate Foreign Policy, 1.april 2010: <http://corporateforeignpolicy.com/china/corporate-foreign-policy-scrutinized-by-bribery>

point out that in 1992 there was no prohibition, either in France or other European countries, on bribing foreign public officials. Such practices were only outlawed through the ratification of the OECD Convention on Combating Bribery. France introduced such a ban in 2000. The incidents in Mexico and Italy in 2001 were consequently criminalized by the time they were carried out.²⁵ In the Mexican case, the authorities found evidence that Alstom employees had resorted to bribery, something that resulted in administrative procedures that would exclude the company from public tenders and fined it. Only in the Italian case, under a so-called 'Patteggiamento' procedure, were Alstom employees held accountable according to penal legislation for the use of bribery.

5.2 Ongoing investigations

In 2007 Swiss, French and Brazilian public prosecutors launched investigations of Alstom in connection with suspicions of corrupt practices. The investigations are still ongoing. In October 2009, Polish authorities initiated the investigation of a public official in Warsaw who is said to have received bribes from Alstom from 1998 till 2002.²⁶ Moreover, in March 2010, British authorities of the Serious Fraud Office (SFO) opened an investigation into Alstom's operations in the UK. In May 2010 Swiss state prosecutors brought charges against an alleged intermediary for money laundering and complicity in corruption on behalf of Alstom.²⁷ One of Alstom's wholly owned subsidiaries was also formally indicted by French authorities in October 2010 for having bribed in connection with business operations in Zambia. The World Bank and the European Investment Bank have initiated an investigation of the incident.²⁸

Below is a description of the public prosecutors' suspicions based on two verdicts issued by a Swiss criminal court, as well as information that has come to light in the international press. In addition to this, the Council has consulted sources in France, Switzerland, Italy, Brazil and Mexico to assess and verify the information that has been reported in the media.

5.2.1 Investigations in Switzerland, France and Brazil

In connection with a probe of *Tempus Privatbank AG* commissioned by the Swiss Banking Commission,²⁹ auditors from *KPMG Fides Peat* discovered documents that supposedly showed that USD 20 million were paid by Alstom to shell companies in Switzerland and Liechtenstein. The amounts are to have been forwarded to Alstom's marketing managers in Singapore, Indonesia, Venezuela and Brazil, who withdrew the amounts in 100-dollar notes.³⁰ The documents describing the transactions were handwritten, something that made the auditors suspect corruption.³¹

The Swiss investigation was suspended in 2006, but reopened in 2007 because new circumstantial evidence was uncovered in connection with the investigation of a Swiss citizen, a former CEO of the previously mentioned *Tempus Privatbank AG*. In light of the new circumstantial evidence the Swiss public prosecutors initiated an investigation in November 2007, while requesting the French and Brazilian public prosecuting authorities for judicial assistance.³² The Swiss prosecutors suspect

²⁵ OECD report on France: <http://www.oecd.org/dataoecd/24/50/2076560.pdf>

²⁶ The News: "Polish-Swiss team probes Warsaw metro-gate corruption case". 25. Februar y 2010.

²⁷ The Swiss public prosecutor's office press release:

<http://www.ba.admin.ch/ba/de/home/dokumentation/medienmitteilungen/2010/2010-05-06.html>

²⁸ Alstoms reply to the Council, 10. November 2010.

²⁹ Eidgenössische Bankenkommission.

³⁰ Transparency International Progress Report 2008, p. 39:

http://www.transparency.org/news_room/in_focus/2008/4th_oecd_progress_report

³¹ The Wall Street Journal, David Crawford, 7 May 2008, 'French firm scrutinized in global bribe probe':

<http://www.offnews.info/verArticulo.php?contenidoID=11027>

³² Herald tribune, Bradley S. Klapper, 23. June 2008: "Swiss judge says Alstom investigation almost complete"

<http://www.offnews.info/verArticulo.php?contenidoID=11027>

people associated with Alstom for misappropriation of funds, corruption and money laundering.³³ In May 2010 the Swiss prosecutors brought charges against an alleged intermediary for money laundering and complicity in corruption on behalf of Alstom.³⁴ The trial was scheduled for 11 November 2010, but was postponed until further notice due to procedural reasons.³⁵

The Swiss investigation is supposedly threefold:³⁶

- First, the investigators suspect French nationals connected to Alstom of having bribed foreign public officials in connection with infrastructure projects in South America and Asia. These investigations are taking place in cooperation with Brazil, covering corrupt practices from 1998 to 2003. French investigators were also involved in this part of the investigation.
- The second part of the investigation is directed at a Swiss citizen, who is said to have been partially involved in these practices as an intermediary.³⁷
- The third part of the investigation targets Alstom Prom AG in Switzerland. On 21 August 2008, Swiss police carried out searches on various company premises, taking former Alstom employees into custody. According to the public prosecutor's press release, one of the suspects is the former head of Alstom's corporate compliance department.³⁸ The police suspect company employees or persons connected to the company of having paid bribes since the year 2000.³⁹

A Swiss ruling from 23 September 2008 presents the Swiss public prosecutor's suspicions against Alstom, namely that the company has channelled money earmarked for bribes through *Alstom Prom AG* in Switzerland.⁴⁰ According to several media sources, the investigation is said to have uncovered that the corruption amounts to hundreds of millions dollars, which appear to have been paid to individuals in Asia and South America from 1995 and at least until 2006, with the intention of securing contracts for Alstom in countries such as Brazil, Venezuela, Singapore and Indonesia.⁴¹ The amounts were supposedly deposited in shell companies in Switzerland, USA, Singapore, Hong

³³ The Swiss public prosecutors office, press release:

<http://www.ba.admin.ch/ba/de/home/dokumentation/medienmitteilungen/2008/2008-08-22.html>

³⁴ The Swiss public prosecutors press release:

<http://www.ba.admin.ch/ba/de/home/dokumentation/medienmitteilungen/2010/2010-05-06.html>

³⁵ Press release from the court in Bellinzona, Switzerland, 4. November 2010:

http://www.bstger.ch/scheda_comunicato.asp?id=67&idL=de

³⁶ Transparency International Switzerland:

http://www.transparency.ch/de/aktuelles_schweiz/meldungen/2008_09_30_Alstom.php?navanchor=

³⁷ Former CEO at Tempus Privat Bank AG.

³⁸ Schweizerische Eidgenossenschaft, 'Hausdurchsuchungen bei Alstom Prom AG', Medienmitteilungen, BA, 22.08.2008:

<http://www.iht.com/articles/ap/2008/08/22/business/EU-Switzerland-Alstom-Investigation.php>

Wall Street Journal, "Swiss prosecutors widen probe of Alstom payments.":

<http://online.wsj.com/article/SB122126539807730749.html>

³⁹ Handelsblatt, "Alstom fühlt sich zu unrecht beschuldigt":

<http://www.handelsblatt.com/unternehmen/industrie/alstom-fuehlt-sich-zu-unrecht-beschuldigt%3B2047352>

Wall Street Journal, "Swiss prosecutors widen probe of Alstom payments":

<http://online.wsj.com/article/SB122126539807730749.html>

Transparency International Sveits:

http://www.transparency.ch/de/aktuelles/meldungen/2008_10_30_Alstom_Hoehe_Schmiergelder.PHP

⁴⁰ Schweizerische Eidgenossenschaft, 'Hausdurchsuchungen bei Alstom Prom AG' Medienmitteilungen, BA, 22.08.2008.

⁴¹ Süddeutsche Zeitung: 'Korruption – passt schon':

<http://www.sueddeutsche.de/wirtschaft/artikel/244/173728/>

The New York Times, 'Alstom asserts it was victim of corruption' 16.05.2008:

<http://www.iht.com/articles/2008/05/16/business/alstom.php>

Kong, Bahrain, Thailand and Liechtenstein. Such shell companies may operate as intermediaries in money transactions without having assets or activities of their own. The companies are not illegal *per se*, but they are well suited to conceal suspicious money transfers, particularly if they are located in closed jurisdictions where there is a lack of transparency in financial matters.⁴²

According to *KPMG Fides Peat's* investigative report and the state prosecutor's press release, Alstom has used intermediaries, *inter alia* a Swiss national, to carry out the aforementioned transactions.⁴³ Following the French prohibition on bribery of foreign officials in 2000, Alstom is said to have hired the Swiss national to create shell companies and manage the company's secret bank accounts. The Swiss middleman is supposed to have transferred USD 12 million from Alstom to various shell companies in 2001, USD 1.5 million in 2002, and USD 800 000 in 2003. He is said to have received a two percent commission.⁴⁴

French public prosecutors suspected Alstom employees of having bribed foreign public officials in the period 1995 to 2003. In 2008 Alstom requested civil-party status in the proceedings, arguing that the company was the victim of fraud that had inflicted an economic loss on the company. During the investigations, the French police questioned a former consultant to Alstom in connection with suspicions of corruption in South America and Asia.⁴⁵ In an interview with the Wall Street Journal the consultant apparently said that he was only doing his job: '*I never took a cent for myself. I didn't think the transactions were illegal, because they were done to get civil-engineering contracts around the world.*'⁴⁶ The consultant also explained that he thought the payments were legal because they were ordered by senior executives at Alstom.⁴⁷ During the police interrogation he is said to have testified that he managed an account named '*Zurich*' in BNP Paribas' Swiss subsidiary. The account is said to have been part of a whole network of accounts and shell companies created for Alstom in Liechtenstein, Switzerland, USA, Singapore, Hong Kong, Bahrain and Thailand with the purpose of hiding bribes. Moreover, the consultant is said to have testified that in 1999 USD 1.8 million were transferred via one such shell company called *Janus Holding*.⁴⁸ In its reply to the Council, Alstom reports that the part of the French investigation relating to the Swiss intermediary was dismissed by the French prosecutors in October 2009 due to lack of evidence for prosecution.⁴⁹ To the Council's knowledge, there is still an ongoing investigation of Alstom in France and charges have been raised against a wholly owned subsidiary of Alstom.

In connection with the Swiss investigation of Alstom Prom AG, the Federal Criminal Court in Bellinzona, Switzerland, issued yet another ruling in October 2008. The Court granted a request to release Alstom's seized documents. Alstom demanded that the documents seized during the search in their offices in May should be released. According to the public prosecutor, the documents showed payments made by Alstom to consultants who did not deliver any form of verifiable

⁴² So-called tax havens.

⁴³ The Swiss public prosecutor's press release:

<http://www.ba.admin.ch/ba/de/home/dokumentation/medienmitteilungen/2010/2010-05-06.html>

⁴⁴ The Wall Street Journal by David Crawford, "*Swiss prosecutors widen probe of Alstom payments*", 13. September 2008: <http://online.wsj.com/article/SB122126539807730749.html>

⁴⁵ The New York Times: "*Alstom asserts it was victim of corruption*":

<http://www.nytimes.com/2008/05/16/business/worldbusiness/16iht-alstom.4.12965635.html>

Financial Times, "*SFO quizzes Alstom UK chefs in graft probe*" 24. March 2010:

<http://www.ft.com/cms/s/0/47cddb54-372f-11df-b542-00144feabdc0.html>

⁴⁶ The Wall Street Journal, by David Crawford, '*Alstom being scrutinized in global bribe investigation*':

<http://www.livemint.com/2008/05/06175447/Alstom-being-scrutinized-in-gl.html?type=tp>

⁴⁷ The Wall Street Journal, David Crawford quoted by Transparency International:

<http://www.ti.or.id/en/news/8/tahun/2008/bulan/05/tanggal/06/id/2937/>

⁴⁸ TagesAnzeiger, 6 May 2008 '*Holenweger in Fall Alstom verstrickt*'.

⁴⁹ Alstoms reply to the Council, 4. January 2010.

service in return. In favour of the documents' release Alstom argued that the company's ongoing operations should be taken into consideration; the documents were necessary in order to continue paying the consultants. The prosecutors' arguments for seizing the documents are stated in the ruling, namely that they suspect Alstom employees of having operated with fictitious consultancy contracts since 2000. Alstom is said to have transferred CHF 70 million (Swiss francs) annually to consultants.⁵⁰ Overall, this amounts to over 500 million CHF in the period the prosecutors are investigating. It appears from the verdict that a large part of the payments are described as suspicious, because the consultants have not provided any form of verifiable service in return.⁵¹ Several millions are said to have been destined for foreign officials with a view to securing large contracts for the company in Italy, Zambia, Mexico and elsewhere. In the case concerning Zambia, EUR 1 million has apparently been transferred to a minister in Zambia through a shell company.⁵² One of Alstom's subsidiaries is now charged with bribery in connection with operations in Zambia. The World Bank and the European Investment Bank are also involved in the investigation of the incident.

In May 2008, federal authorities in Brazil confirmed to the Brazilian press that they are investigating Alstom.⁵³ There are two ongoing investigations: one criminal investigation at the federal level and a civil investigation at state level in São Paulo. The investigators are examining 139 contracts that Alstom signed with São Paulo authorities totalling USD 4.6 billion. Bank statements inspected by the police are said to show that between 1998 and 2001, one of Alstom's consultants in Brazil received USD 1.4 million via a Swiss account belonging to the company he controls. In April 2009 it was reported that the public prosecutor in São Paulo had dropped three of 29 cases brought against Alstom in 2008.⁵⁴

5.2.2 Investigations in the UK and Poland

In March 2010, having investigated Alstom for six months, the Serious Fraud Office (SFO) and British police carried out the largest corruption raid in the UK to date. A total of 150 officers were deployed in a three-day raid at five of Alstom's premises in the UK. Alstom's UK president, financial director and legal director were arrested and interrogated on the grounds of suspicion of bribery aimed at winning energy and transport contracts for the company in Africa and the Middle East. The suspects were later released. The media claims that the amounts transferred from Alstom's operations in the UK and Switzerland are in the order of GBP 90 million. The SFO initiated its investigation into corruption, money laundering and false accounting following a request from the public prosecutor in Switzerland.⁵⁵

In October 2009, the Polish police launched an investigation of a public official in Warsaw based on suspicion of corruption. He is said to have received bribes from Alstom in order to award the company a EUR 105 million contract in 1998 for the construction of a subway system.⁵⁶

⁵⁰ Based on the current exchange rate, this amounts to NOK 389 221 000.

⁵¹ Entscheid vom 13. Oktober 2008, 1. Beschwerdekammer, Bellinzona, Switzerland, section 3.

⁵² Entscheid vom 13. Oktober 2008, 1. Beschwerdekammer, Bellinzona, Switzerland.

Entscheid vom 23. September 2008, 1. Beschwerdekammer Bellinzona, Switzerland.

Tagesanzeiger, 28 October 2008: 'Alstom: 500 Millionen Schmiergeld?'

⁵³ Maktoob Business, 'Businessman alleges Alstom paid bribes for Brazil project: report', 29 May 2008:

<http://business.maktoob.com/NewsDetails-20070423154838->

[Businessman alleges Alstom paid bribes for Brazil project report.htm](http://business.maktoob.com/NewsDetails-20070423154838-Businessman-alleges-Alstom-paid-bribes-for-Brazil-project-report.htm)

⁵⁴ Journal Extra Alagoas, 29 April 2009.

⁵⁵ SFO press release: <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>

⁵⁶ The New York Times, 29 March 2010, 'Alstom at center of web of bribery inquiries'.

5.2.3 Summary of investigations

The investigations currently in progress in Switzerland and the UK seem to be extensive, both in regards to the size of the amounts and the number of countries involved. The public prosecutors suspect that the company's units in both Switzerland and the UK have been used in connection with the disbursement of bribes. So far the Swiss public prosecutor has brought charges against one of Alstom's alleged middlemen in Switzerland. It is uncertain if the public prosecutor's office may press further charges. The investigation in the UK is still in an initial phase and it will therefore take time before any charges may be presented. The investigations in Brazil and Poland concern nationals who allegedly received bribes from Alstom. The investigation in France is partly aimed at Alstom's subsidiary, and in October 2010 the prosecutors raised formal charges. The company has confirmed the investigation in Switzerland, Brazil, UK and France, but has not yet commented on the investigation in Poland.

6 Alstom's reactions to the exposure of corruption

The company's responses to the incidents and allegations of corruption are of interest to the Council, as these reflect the corporate management's attitude towards corruption. The reactions will be included as one of several elements in the assessment of whether there is a future risk of continued gross corruption.

In 2006 Alain Toubiana, President of Alstom in Mexico, commented on the Mexican corruption case in a report to the US Securities and Exchange Commission:

*'Our company is fully committed to the strict compliance of the laws of Mexico and we take the resolution very seriously and with much preoccupation. From the moment the facts were reported in 2001, through the support in the investigation process, Alstom has collaborated in full openness with the authorities. Alstom is examining the order of the Ministry and confirms its intention to look positively to the continuity of its operations in the fields of energy and transportation that we believe are essential for attaining the infrastructure development that the country needs.'*⁵⁷

Shortly afterwards, Alstom dismissed three employees, including the Country President, who were responsible for the bribery. In addition to initiating an internal investigation of the case, the management is to have cooperated with Mexican authorities and the Swiss state prosecutors.⁵⁸ However, Alstom appealed the decision to exclude the company from public tenders several times, before it was finally upheld in 2008.⁵⁹

The court settlement in Milan in 2008, where four Alstom employees were found guilty of corruption, was referred to by Alstom as a settlement that did not concern *'bribery, but (...) mistakes in the contract process...'*⁶⁰

However, in the documents relating to the settlement, the Italian judge points out the following: *'...in particular, the examination of the case documents, also regarding the factors that are to be assessed at this stage, shows **numerous and deliberate incidents of corruption** related to the awards and control of public tenders regarding the supply of equipment, machinery and components necessary for the construction of electric power plants.'*

⁵⁷ Securities and Exchange Commission: <http://www.secinfo.com/dsVs4.147.htm>

⁵⁸ Alstom's reply to the Council, 10. November 2010.

⁵⁹ Transparency International OECD progress report 2008: http://www.transparency.org/news_room/in_focus/2008/4th_oecd_progress_report

⁶⁰ The New York Times, 29. March 2010, *'Alstom at center of web of bribery inquiries'*.

*In view of this, with regard to the factors presented to the judge in the present case, it is evident that the verdict cannot be acquittal under section 129 of the Criminal Justice Act, considering everything that has come to light through all the documents in this case, especially what is shown by the investigation abroad, more specifically regarding bank statements, wire tapping and the analysis of the seized documents, **in addition to the statements made by the individuals involved, who, in a large number and to a great extent, have admitted responsibility for what will very briefly presented in the following...***⁶¹ [Text highlighted by the Council]

In its reply to the Council the company stresses that none of the defendants pleaded guilty to the charges and that they held important positions in the company.

'(...) we reiterate that neither Mr. X who was our SVP Representation Compliance and therefore held to a very high standard of care of supervision nor Mr. Y ever accepted guilt nor would they ever had accepted the sentences handed out had they believed that the Patteggiamento procedure could be equated with a plea of guilty to corruption.'

However, the counts of the charges against Mr. Y state the following:

*'... once more it needs to be emphasized that the defendant during the procedures has behaved correctly, **acknowledged his responsibility** and provided the prosecuting authority with an **important contribution** as regards the **investigation and the establishment of other defendants' responsibilities**, something that justifies the admission of mitigation to the extent indicated above.'*⁶² [Text highlighted by the Council]

The Magistrate's court in Milan emphasized that Y acknowledged responsibility for the action and assisted with the clarification of the other defendant's responsibilities in the same case. Y was held responsible under the provisions of the Italian Penal Code and was handed a suspended prison sentence of 11 months.

With regard to the accusations of corruption in France, Brazil and Switzerland, Alstom confirmed, in August 2008, that French public prosecutors had carried out a search on their premises in Paris, but that Alstom did not have suspect status in the case and that they cooperated with the French investigators. Patrick Kron, CEO and chairman of Alstom, declared that they were related to circumstances dating back to the 1990s, of which he had no knowledge.⁶³ He has pointed out that the company sees itself as *'a victim of former employees' unlawful acts'*⁶⁴, having also stated that:

*"I know nothing about any payments that may violate international rules. As I already said, I am assuming that our company works in accordance with international trade rules. I have taken all necessary steps and shall take all necessary steps to ensure that our processes are well developed and that our control systems defend us from all types of violations."*⁶⁵

In connection with the ongoing investigation in Switzerland Alstom's press contact, Philippe Kasse, has denied all accusations and stressed that there is no evidence to support the accusations.⁶⁶ Moreover, Alstom has confirmed that the company did carry out an internal inquiry

⁶¹ Tribunale ordinario di Milano, 28 March 2008, page 23.

⁶² Tribunale ordinario di Milano, 28 March 2008, page 27.

⁶³ Handelsblatt, *'Alstom fühlt sich zu unrecht beschuldigt'*:

<http://www.handelsblatt.com/unternehmen/industrie/alstom-fuehlt-sich-zu-unrecht-beschuldigt%3B2047352>

⁶⁴ See footnote 63.

⁶⁵ Unofficial translation. Handelsblatt, *'Ich vergleiche uns nicht mit Siemens'*:

<http://www.handelsblatt.com/unternehmen/industrie/ich-vergleiche-uns-nicht-mit-siemens;2047338>

⁶⁶ See footnote 65.

into the accusations of corruption related to the investigations in Switzerland, France and Brazil, and no wrongdoing was detected.⁶⁷

According to the magazine *Der Spiegel*, a press contact at Alstom is said to have pointed out that Alstom has changed its corporate culture so drastically in recent years that all employees holding managing positions during the period in question have now left the company.⁶⁸ However, the Council has received confirmation from Alstom that one of the executives who received a suspended prison sentence in Milan, worked as a Vice-President of Global Business Partners at Alstom's corporate headquarters in Paris until the middle of 2010.

In September 2008 Alstom notified that it would sue a journalist at the *Wall Street Journal* who had written about the Swiss investigation into the allegations of corruption against the company. Alstom argued that the articles constituted 'libel and [did] not [respect] the presumption of innocence.'⁶⁹ In addition, Alstom announced that they 'are studying legal recourse against the publication of privileged information related to an ongoing judicial investigation in Switzerland.'⁷⁰ In September 2009, the journalist was summoned to a hearing at the tribunal in Paris, where he was informed of his suspect status in the lawsuit. French police is not investigating the case and will let the company present the evidence against the journalist.

Alstom has confirmed the recent raids in the UK, and the company has pointed out that it cooperates closely with the investigators. At the same time the company has made clear that the investigation is not directed at the parent company in France. Alstom informed the Council that it has completed an internal investigation.

The company has neither confirmed nor denied the investigation launched in Poland.

At the company's General Assembly Meeting in May 2008, half a year after the exposure of allegations of corruption, the ongoing investigations were not on the agenda.⁷¹ The accusations of corruption were not discussed in the General Assembly Meeting the following year either.⁷²

7 Alstom's internal compliance system

The purpose of a company's compliance system is to prevent, detect and react to violations of internal and external laws and regulations. Consequently, the internal compliance system may provide information about the risk of unethical actions continuing in the future. The Council has assessed the material that is publicly available about Alstom's internal compliance system. This is one of several elements assessed to consider whether there is *future risk of continued gross corruption*.

⁶⁷ Alstom's reply to the Council, 10. November 2010.

The Financial Times, 24. March 2010, "SFO quizzes Alstom UK chefs in graft probe":

<http://www.ft.com/cms/s/0/47cddb54-372f-11df-b542-00144feabdc0.html>

⁶⁸ Der Spiegel 20/2008, p. 82 (10 May 2008) 'Alstom will aufklären'.

⁶⁹ Offnews, 'French firm scrutinized in global bribe probe':

<http://www.offnews.info/verArticulo.php?contenidoID=11027>

⁷⁰ Alstom Brazil's website, press release:

<http://www.br.alstom.com/home/newsroom/news/pressreleasesbrazil/52260.EN.php?languageId=EN&dir=/home/newsroom/news/pressreleasesbrazil/&idRubriqueCourante=25360>

Morningstar News, 'Alstom denies WSJ report on bribes; plans legal action':

http://news.morningstar.com/newsnet/ViewNews.aspx?article=DJ/200809150800DOWJONESDJONLINE000305_univ.xml

The Financial Times: 'Alstom chief defends business practises':

http://www.ft.com/cms/s/0/eff700d6-1b97-11dd-9e58-0000779fd2ac.html?nclink_check=1

⁷¹ Alstom's website: <http://www.alstom.com/investors/annual-general-meeting/archive-2008/>

⁷² Alstom's website: <http://www.alstom.com/investors/annual-general-meeting/>

The fact that Alstom operates in the energy and transport sectors, where large public contracts are common, and also has activities in countries where corruption is widespread, means that the company is exposed to an elevated risk of corruption.⁷³ Over the last six months, the company has entered into contracts in countries like Iraq, Kazakhstan, India, Russia, Egypt and China. These countries are ranked 175, 105, 87, 154, 98 and 78 respectively in Transparency International's corruption index. Alstom's internal compliance system must therefore meet rigorous standards.

Alstom's compliance program was designed by the top management of Alstom in 2000. The company currently has 17 full-time employees who are responsible for the implementation of the program. Of those six are based in France, one in England, China, USA and Brazil respectively, two are based in India and five are based in Switzerland. Furthermore, the company has appointed 250 employees as so-called "compliance ambassadors". In addition to their regular duties they are tasked with disseminating information about the compliance program in the company's various divisions.

Alstom's *Code of Ethics* outlines the company's visions, values and ethical principles. It states that the company does not accept any form of corruption in its operations. '*No undue advantage in order to obtain business*' is one of their three fundamental principles. It also states that employees who violate the code may be subject to civil or penal prosecution and possibly dismissal. Alstom's *Code of Ethics* is partly characterized by stating general principles and partly by constituting legally formulated rules. The company's Annual Report from 2007/2008 informs that the management distributed 89,000 copies of the *Code of Ethics* to its employees in 2007.⁷⁴ Alstom has distributed the booklet before, but it was the first time the booklet was distributed in 17 different languages. The *Code of Ethics* makes reference to the *Corporate Instructions*, which treat in more detail the defined rules and procedures. The *Corporate Instructions* are not publicly available. Alstom signed the *Global Compact* in 2008. This means that the company should avoid bribery, extortion and other forms of corruption, and also develop policies and concrete programmes to address corruption.⁷⁵

When it comes to the training of employees, Alstom informs on its website that 800 senior managers concluded an Ethics & Compliance training program three years ago, and that the company has introduced similar programs in some countries where Alstom operates. In that regard, only Italy is mentioned on the company's website. In its 2008/2009 Annual Report Alstom states that 1,200 individuals were trained as part of the Internal Control Project in 2005 and that 380 finance professionals and managers were trained in the past two years. A further 3,400 people participated in the Internal Control Self-Assessment Exercise.⁷⁶ The Annual Report further informs that 1,000 employees responsible for handling consultants have received training through the *Ethics & Compliance* programme, while 1,150 have concluded a web-based programme on anticorruption and competition law during the past year. In January 2010 the company distributed an updated version of the Code of Ethics, as well as an accompanying web-based training programme directed at 30,000 employees in management positions.

In 2007 the company introduced an Alert Procedure for employees who discover breaches of laws and regulations. Employees should primarily notify their superiors, but if they have reason to

⁷³ Transparency International Corruption Perceptions Index 2010:

http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

⁷⁴ Alstom: 'Activity and Corporate Responsibility Report 2007/2008', p. 62 and p. 169.

⁷⁵ Alstom website: 'Alstom joins the global compact':

http://www.alstom.com/home/about_us/corporate_responsibility_new/intro_developpement_durable/alstom_rejoint/51617.EN.php?languageId=EN&dir=/home/about_us/corporate_responsibility_new/intro_developpement_durable/alstom_rejoint/

UN Global Compact homepage: <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/principle10.html>

⁷⁶ Alstom annual report 2007/2008 p. 167.

believe that doing so will cause problems or that the incident will not be investigated, they may use the Alert Procedure.⁷⁷ This implies that the employee contact the company's Group General Counsel or the Senior Vice-President (SVP) of Ethics & Compliance.⁷⁸ In other words, the company's compliance department as well as the company's legal department is informed. The company's legal department is thus responsible for investigating internal alerts and possibly initiate internal investigations, while at the same time also being responsible for defending Alstom externally if the company faces public prosecution. The company further states that '*All measures will be taken to respect employees' wishes for confidentiality.*'⁷⁹ How this is to be ensured through an internal alert procedure is not described. Besides, the *Code of Ethics* imposes strict confidentiality rules on the employees: '*do not share information with third parties not authorised to receive it*'. The company has only opened the door to anonymous alert procedures in the USA where this is decreed by law.

In March 2009, Alstom received a "*Specific AC Certificate*" from the ETHIC Intelligence International Certification Committee for the company's compliance procedures vis-à-vis external service providers.⁸⁰ The certification committee at ETHIC Intelligence International was commissioned by Patrick Kron to check the quality of Alstom's compliance procedures for external service providers in relation to international best practice, as well as controlling the quality of the implementation of these procedures within each corporate unit.⁸¹ Following an audit period of 4 months, the certification committee concluded that Alstom's procedures and the implementation of these were in accordance with international best practice, and it issued a certificate for 2 years. The certificate applies only to a small part of Alstom's overall compliance system, i.e. the part referring to certain external service providers. Such sales agents are used in 30% of the company's total revenue. The approval system consists of five comprehensive steps, where the agents are approved at various levels within the company. It usually takes between one to two months to approve an agent. According to Alstom about 60 agents are approved each year.⁸²

Alstom's reporting on the compliance system seems to be limited. Among other factors this is due to the fact that the company does not make public information on the control and audit system, it does not release investor dialogues regarding the issue, nor does it report whether there actually have been alerts or cases of non-compliance. Since the compliance program was implemented in 2000, no surveys of employee understanding and awareness of the program have been carried out.⁸³

⁷⁷ Alstom's Code of Ethics, p. 9.

http://www.alstom.com/home/about_us/code_of_ethics/files/file_43585_51500.pdf

⁷⁸ General Counsel of the Alstom Group:

http://www.alstom.com/pr_corp/2006/corp/35641.EN.php?languageId=EN&dir=/pr_corp/2006/corp/&idRubriqueCourante=15445

⁷⁹ Alstom's Code of Ethics: http://www.alstom.com/home/about_us/code_of_ethics/files/file_43585_51500.pdf

⁸⁰ Alstom's website, '*Alstom ethics and compliance rules certified by ETHIC Intelligence International*':

http://www.alstom.com/home/news/news/business_news/57175.EN.php?languageId=EN&dir=/home/news/news/business_news/

ETHIC Intelligence International website:

http://www.ethic-intelligence.com/media/extra/Certificat%20ALSTOM%202009_landscape.pdf

⁸¹ Certification Committee ETHIC Intelligence International: '*SPECIFIC AC Certificate, decision to award and registration of ALSTOM's policy governing the management and control of sales and marketing agents*', Paris, 12 March 2009.

⁸² Alstom's reply to the Council, 10. November 2010.

⁸³ Alstom's reply to the Council, 10. November 2010.

8 Alstom's reply to the Council's enquiry

In accordance with the Guidelines, the Council sent a draft recommendation to Alstom for comments. This was done for the first time on 7 August 2009, and the Council received Alstom's reply on 9 September 2009. Subsequently, the Council held a telephone conference with CEO Patrick Kron and lawyers from the Compliance and Legal Department. This conversation was followed up with a letter containing another 13 questions. In January 2010 the Council received a reply from Alstom. After reviewing the company's response, the Council in May 2010 sent a new draft recommendation for comments. The Council received a response and a request for another meeting in June 2010. In October, a meeting was held between the Council and the head of the compliance department at Alstom. The Council then sent a letter with detailed questions to the company's legal department and the compliance department. In November 2010 the Council received a reply from the company. Alstom's response is mainly cited above in Chapter 7. In general Alstom has highlighted the following:

In its replies to the Council, Alstom denies the accusations of corruption, pointing out that the Council's draft recommendation is mainly based on information presented by the press and that it therefore is mistaken. CEO Patrick Kron points out that Alstom is an ethical company and is not involved in any form of corruption, having several times fired employees and consultants who have been involved in unethical practices. Alstom stresses that the company is the victim whenever employees have used bribes to secure contracts for the company, and that these individuals are violating the company's internal guidelines. Alstom gives an account of the measures that the company has implemented since 2001 in order to prevent bribery. The company also refers to the control mechanisms in place to enforce the guidelines.

9 The Council's assessment

Based on the available documentation, the Council has assessed whether Alstom should be excluded in accordance with the Guideline's criterion on corruption.

First, the Council has assessed whether it is highly probable that the company has committed actions that constitute gross corruption according to the Guidelines, including whether the corrupt practices have been carried out in an extensive or systematic way. The Council's assessment takes into consideration that there are various constructions of liability in different legal systems; for instance, some have and others do not have corporate penalty. This means that the Council may conclude that a case involves gross corruption even if the company itself has not been found guilty by the court system, because it has been established that company representatives committed the acts.

In the Council's view, the court rulings issued in the USA and Italy, as well as the Mexican administrative proceedings described in Chapter 5, show that the company has been involved in corruption in the past. Despite the fact that neither Alstom nor its employees were convicted under *criminal law* for the incidents involving corruption in South Korea, Mexico or Italy, the authorities found evidence that employees had resorted to bribery in order for the company to win contracts. In the Italian case Alstom's employees were held accountable under criminal law for bribery aimed at securing a contract, and two of Alstom's wholly-owned subsidiaries were fined for not having prevented the corrupt practices. The method used by employees included fictitious consultancy agreements and commission payments via offshore accounts. The common denominator in all three cases is that the top management of the units in question has been directly involved in the corruption. In the South Korean case the CEO of Alstom Asia organized the bribery, and in the Mexican case Alstom's Country President, among others, facilitated the bribery and was therefore forced to resign once the incident became known. In the Italian case four Alstom senior executives

were responsible for committing the bribery. These cases show that corruption has taken place in various company divisions and that it occurred over a long period of time.

Since 2007 five states have initiated corruption investigations against Alstom. The ongoing investigations seem to concern large bribes used to win contracts for the company. The federal prosecutors in Switzerland suspect Alstom employees of having used an intricate system to facilitate and conceal the bribes,⁸⁴ including the use of fictitious consultancy agreements to conceal suspicious money transfers, as well as shell companies and secret accounts in several closed jurisdictions. The public prosecutors have now brought charges against Alstom's alleged intermediary and charged him of complicity in corruption. The recently initiated investigation in the UK also relates to suspicion of bribing public decision-makers to secure the company contracts in Africa and the Middle East. The French public prosecutors have formally charged Alstom's subsidiary for the use of bribery in connection with operations in Zambia. The World Bank and the European Investment Bank are now engaged in this case.⁸⁵

Alstom's past involvement in incidents of corruption, where large amounts were paid by high-ranking company executives, as well as the recent corruption investigations against the company's alleged use of fictitious consultancy contracts, offshore companies and secret accounts to conceal bribes, indicate that the practices must be considered serious according to the Guidelines. Based on an overall assessment, the Council finds that the criterion of *gross* corruption has been met.

The next question that the Council has assessed is whether there is an unacceptable risk that the use of gross corruption will continue in the future.

The present recommendation has looked into decisions of a legal nature that refer to acts committed in the past. Information about the company's previous conduct may provide an indication as to the company's future behaviour. The three documented instances involving corruption dating from 1992 and 2001, as well as the extensive corruption investigations currently underway against Alstom, suggest that the company must take effective measures if the risk of future corruption is to be significantly reduced. It is reasonable to expect that a company has solid routines and that it announces the implementation of certain measures following serious accusations and incidents of corruption. The Council's main concern is therefore to assess whether the steps taken by Alstom and which are known to the Council may be sufficient to prevent corruption. The Council attaches importance to the way in which Alstom has responded to the disclosure of corruption in the company, partly through the documentation that Alstom has sent to the Council and partly through information that has emerged in the media.

The company reports that it has implemented a series of measures since the Italian case in 2001 aimed at improving the internal guidelines and control systems. The Council makes a particular note of measures aimed at centralizing consultancy agreements and certifying this system, increasing the number of employees in compliance positions, the establishment of alert procedures and the execution of internal corruption inquiries. These are measures which, seen in isolation, are suitable for preventing corrupt practices. In view of the five ongoing corruption investigations against company representatives, however, the Council questions the implementation and efficacy of the company's measures.

The investigations in Switzerland and in the UK are directed at alleged incidents involving corruption committed after 2000. If there is a foundation for the suspicions, this indicates that the

⁸⁴ The New York Times, 'Swiss judge says Alstom investigation almost complete':

<http://www.ihf.com/articles/2008/06/23/business/alstom.php>

Der Spiegel, "Did Alstom bribe like Siemens?" by Jürgen Dahlkamp 1. July 2008:

<https://www.spiegel.de/international/business/0,1518,563161,00.html>

⁸⁵ Alstoms reply to the Council, 10. November 2010.

company's compliance system is not particularly well functioning when it comes to combating corruption. Alstom's reply to the Council shows that the company has not received a single alert regarding corruption since the implementation of the Alert Procedure in 2007. In the USA the company has an anonymous whistle-blowing channel, but in other countries employees are encouraged to report upwards in the system, to the Country President or the SVP of Ethics & Compliance. Considering who has previously been involved in incidents of corruption, these solutions may seem unsuitable. In the Mexican case, it was the Country President who arranged the bribery; in the Italian case Alstom's Country President for the USA and the company's SVP of Ethics & Compliance were the ones responsible for the bribery.

The company has never registered a non-compliance related to corruption. It is the company's legal department in cooperation with the compliance department which handles internal alerts and non-compliances. The former department is also tasked to defend Alstom externally if the company should be subject to public prosecution. This could potentially place the department in a problematic position.

The internal corporate guidelines establish that employees who have been involved in corrupt practices shall be dismissed and possibly be subject to criminal proceedings. The Council doubts that this is done consistently, among other reasons, because the company in April 2003 was informed about the Italian investigation, but none the less allowed two of the responsible managers for the bribe continue in their positions. One of the individuals continued his post as a compliance manager until December 2005. The other individual worked as a Vice President for Global Business partners at the Alstom headquarters in Paris until the middle of 2010.

In its reply to the Council Alstom has further pointed out that there has been an internal investigation into the allegations of corruption following the investigations in Switzerland, Brazil, UK and France. The investigation did not uncover any reprehensible conditions. The Council observes that as a rule the company does not itself uncover incidents of corruption, but rather that the cases brought to light so far are a result of interventions and investigations by the authorities.⁸⁶ The Council is aware that it may be problematic for a company to publicly admit the existence of very reprehensible practices in its midst. In light of the documented incidents in this case, the Council is nevertheless surprised that Alstom denies involvement in corruption in its response to the Council.

In recent times the company has entered into contracts in countries like Iraq, Kazakhstan, India, Russia, Egypt and China. According to Transparency International's corruption ranking, all of these countries are considered high-risk areas as far as corruption is concerned.⁸⁷ This, in addition to the fact that Alstom is currently under investigation by five prosecuting authorities, means that the company should implement adequate measures to prevent bribery. However, Alstom has not announced any radical changes to its internal-compliance system; the company considers itself "best in class" in this area. The Council further notices that the management is not willing to acknowledge even well documented instances of corruption, and therefore questions the company's ability to recognize ongoing problems. In the one case in which Alstom has acknowledged the use of bribery, the management considers that the company is the victim, and thus transfers the responsibility for the misconduct onto individual employees. In the Council's opinion, this indicates that the management of Alstom does not take the problem seriously enough.

⁸⁶ Der Spiegel, "Did Alstom bribe like Siemens?" by Jürgen Dahlkamp 1. July 2008: <https://www.spiegel.de/international/business/0,1518,563161,00.html>

⁸⁷ The countries are ranked respectively 175, 105, 87, 154, 98 and 78 on the Transparency International Corruption Perception Index 2010.

There is not as extensive evidence of systematic corruption in this case compared with the Siemens case.⁸⁸ The Council notices however that there are three documented cases of corruption, that there are five ongoing corruption investigations against the company and that Alstom, in contrast to Siemens, has shown very little willingness to acknowledge that a problem exists and to clean up. In the Siemens case, it was particularly the intervention and investigation of American authorities that led to the management actually acknowledging the misconduct and implementing comprehensive cleanup in their own ranks. This element is absent in the present case.

In view of the above, the Council deems it improbable that Alstom will be able to prevent future gross corruption. Based on an overall assessment the Council finds that there is an unacceptable risk of continued use of bribery in the future.

10 Recommendation

The Council on Ethics recommends that Alstom SA be excluded from the investment universe of the *Government Pension Fund Global*.

Gro Nystuen Chair	Andreas Føllesdal	Anne Lill Gade	Ola Mestad	Ylva Lindberg
(sign.)	(sign.)	(sign.)	(sign.)	(sign.)

⁸⁸ The Council's recommendation of 15. November 2007. Siemens AG.