COUNCIL ON ETHICS
THE GOVERNMENT PENSION FUND GLOBAL

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Recommendation to place Eni SpA under observation

Summary

Due to the risk of gross corruption, the Council on Ethics recommends that Eni SpA be placed under observation. Several current and former senior executives, as well as the company itself, are under investigation for corruption alleged to have taken place in Nigeria in 2011. Eni as a company, its former CEO and the former subsidiary Saipem SpA have also been indicted in Italy for gross corruption alleged to have taken place in Algeria in 2010. The Council notes that Eni has improved its anti-corruption programme since 2009, and has put in place a number of governing documents relating to corruption prevention. Nevertheless, the Council has concluded that Eni has not adequately substantiated that, up to the present date, it has organised and implemented its corruption prevention efforts in the recommended manner, pursuant to international standards and best practices. However, the reason the Council is not recommending that the company be excluded, but instead be placed under observation, is that the company has recently announced changes in its anti-corruption programme and the organisation of its efforts in this area. The Council believes that the matter should be re-evaluated in two years. If, at that time, the company is unable to document that it is working sufficiently effectively to prevent corruption, the criterion for exclusion may then be met.

Eni SpA (Eni) is an Italian energy company. Its operations encompass exploration for and the extraction and production of oil and gas, as well as their transport and refining. Eni has operations in 66 countries. As at 31 December 2015, Eni had 245 subsidiaries and 53 *associates, joint ventures and joint operations,* and employed 29,000 people.

In 2010, Eni and its two former subsidiaries, Snamprogetti and Saipem, entered into so-called *Deferred Prosecution Agreement* with the US Department of Justice with respect to bribes paid over the course of a decade in Nigeria by a joint venture in which Snamprogetti participated. At the same time as this agreement was entered into, Eni was negotiating a high-value contract in Nigeria, to which suspicions of corruption are now being linked by the prosecuting authorities in Italy and Nigeria. In 2007 and 2010, Eni was engaged in negotiations with a company which, according to Eni's own risk assessments, was even in 2007 probably owned by a former Nigerian minister of petroleum. In 2007, he was sentenced in France to three years imprisonment for money laundering, and was ordered by a French appeal court in 2009 to pay a EUR 8 million fine in connection with the same offence. The case in Algeria relates to bribes that Eni's former subsidiary Saipem is supposed to have paid between 2006 and 2010.

From June 2015 until October 2016, the Council of Ethics has engaged in a dialogue with Eni, both through written communications and in meetings. The company has contributed information relating to these matters and has also commented on a draft recommendation. In its dialogue with the Council, Eni has underlined that the company has not been found guilty of any of the corruption charges.

The Council on Ethics makes no assessment of criminal liability. However, on the basis of that which is now known about all the corruption allegations, the Council believes that previous internal systems seem to have failed, and that defects in the company's internal control systems seem to have allowed corruption to have taken place within the organisation.

Eni operates in a number of countries where the risk of corruption is high. For example, according to *Transparency International's Corruption Perception Index*, 2015, Angola,

Libya, Iraq, Venezuela, Nigeria, the Republic of Congo, Russia and Kazakhstan are all in the highest category with respect to the assumed risk of corruption. The oil and gas industry, as well as the construction industry, where large public contracts are common, also exposes the company to the risk of corruption. In the Council's opinion, this places particular demands on the company to have robust systems in place and to implement measures that can effectively prevent, uncover and respond to corruption. With several of the company's current and former leaders standing accused of gross corruption which allegedly took place in many countries, this requirement is even more pressing.

The Council notes that Eni has improved its internal corruption prevention systems since 2009, and that a number of measures are today in place in many parts of the company to prevent corruption. However, the Council believes that, up to now, Eni has not substantiated that its anti-corruption programme will be implemented effectively throughout its operations. This relates particularly to the "tone from the top", risk assessments and anti-corruption training. Reference is also made to the fact that one of the people now indicted in the Algeria case was promoted in 2014 to *Chief Upstream Officer* in Eni's group management, and that the company's former CEO is now also under indictment for corruption in Algeria. Finally, reference is made to the fact that the *Chief Development, Operations and Technology Officer* since 2014 and the former CEO are involved in the case in Nigeria relating to the acquisition of OPL-245. Irrespective of the outcome of these cases, the Council believes that these allegations make it difficult for group management to communicate a zero tolerance for corruption either internally or to its business partners.

However, the reason the Council is not recommending that the company be excluded, but instead be placed under observation, is that Eni has recently made organisational changes that more clearly allocate responsibility for compliance. The Council places particular emphasis on the *Integrated Compliance Department,* which will have complete responsibility for compliance, also in matters of anti-corruption. The company has given notice of several new measures, such as *focal points* in its non-listed subsidiaries, changes in the assessment of corruption risk and self-assessment of the efficacy of its classroom-based educational courses. Furthermore, the Council gives weight to the fact that Eni no longer has control of Saipem. The company's corruption risk therefore seems to have diminished. However, the Council acknowledges that several of these measures are new. What is crucial for an assessment of future risk is how they are implemented throughout the business.

In the coming two years, the Council will monitor developments in the corruption cases currently before the courts, as well as how the board enforces accountability on employees who are implicated in corruption in these and other cases which may be revealed, by means of the company's internal control systems, for example. The Council will also give weight to whether, in future, the board and group management establish and implement an anti-corruption programme that effectively prevents corruption. Should doubts be renewed about the degree to which management is taking responsibility for these matters, the criterion for exclusion may then be met.

Table of contents

1 Introduction

Eni SpA is an Italian energy company.[1] Its operations include oil and gas exploration, extraction and production, transport and refining. Eni is listed on the FTSE MIB stock exchange in Milan and the New York Stock Exchange. Eni has operations in 66 countries in all parts of the world, including Venezuela, Mexico, Algeria, Egypt, Libya, Nigeria, the Republic of Congo, Angola, South Africa, Mozambique, Kenya, Saudi Arabia, Oman, Kuwait, Iraq, Kazakhstan, Turkmenistan, Russia, China, India, Indonesia and Pakistan. It also has activities in North America and in a number of European countries.[2] As at 31 December 2015, Eni had 245 subsidiaries and 53 "*associates, joint ventures and joint operations"*, and employed 29,000 people. [3,4]

At the close of 2015, the GPFG owned shares in Eni worth around NOK 7 billion, corresponding to 1.46 per cent of the company's shares.

1.1 Matters considered by the Council

The allegations of corruption involving Eni primarily concern the bribery of public officials in Nigeria and Algeria, the latter through the company's former subsidiary Saipem.

The Council has considered whether there is an unacceptable risk that Eni contributes to, or is itself responsible for gross corruption pursuant to the guidelines for the observation and exclusion of companies from the GPFG, s 3(1)(5).[5]

The Council has previously based its assessments on the following definition of gross corruption.[6]

1) Gross corruption exists if a company through its representatives

a) gives or offers an advantage – or attempts to do so – so as to unduly influence:

i) a public servant in the execution of public duties or in decisions which may bring the company an advantage, or

ii) a person in the private sector who takes decisions or has influence on decisions which may bring the company an advantage,

b) demands or receives bribes,

and

c) the corrupt acts mentioned in letters a and b are carried out in a systematic or comprehensive manner.

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1 The company has Issuer ID 143031.

2 F-20 report 2015, SEC, available at http://www.eni.com/en_IT/attachments/publications/reports/reports-2015/Annual-Report-On-Form-20-F-2015.pdf, and Eni *Integrated Annual Report 2015*, https://www.eni.com/docs/en_IT/enicom/company/integrated-annual-report-2015.pdf.

3 F-20 report to the SEC, 2015.

4 *Eni Integrated Annual Report* 2015.

5 The guidelines' s 3(1) state: "Companies may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for:… 5) gross corruption…" The guidelines for observation and exclusion from the GPFG are available at http://etikkradet.no/files/2017/04/Etikkraadet_Guidelines-_eng_2017_web.pdf.

6 The Council on Ethics' recommendation of 21 December 2015 to put Petrobras SA under observation is available at http://etikkradet.no/files/2016/01/Tilr%C3%A5dning-Petrobras-21.-desember-2015.pdf.

2) In its assessment, the Council also places emphasis on whether the company has a good anti-corruption programme that is organised and implemented in a way that enables it to prevent, detect and respond to corruption in its operations.

With regard to the assessment of the risk that Eni may in future become involved in corruption, the Council has given weight to the corruption allegations that have been made against the company and the company's response thereto, which countries and business sectors the company operates in, and what the company is now doing to prevent corruption. The Council takes the position that it is up to the company to substantiate that it is making adequate efforts to prevent corruption.

1.2 Sources

Information relating to the corruption allegations derives in part from an out-of-court settlement which the company entered into with the US Department of Justice in 2010 (*Deferred Prosecution Agreement*), associated legal rulings in the USA and the UK, as well as legal proceedings in Italy which have been reported by the media.

The assessment of the company's compliance systems is based on information provided to the Council in meetings with the company in December 2015 and in June and July 2016, information that has been sent to the Council up until November 2016, as well as information available on Eni's website. Meetings have been held i.a. with Eni's chair, the Chief Legal and Regulatory Affairs and representatives of the Legal Compliance and Regulatory Department, Italy and Criminal Law Legal Department, the Internal Audit Department, and with the Integrated Risk Management. The Council also met with the previous regional manager for Eni in Sub-Saharan Africa, who was also *Managing Director* for Eni companies in Nigeria from 2009 to 2013. The Council has asked Eni to comment on the corruption allegations, explain its internal anti-corruption systems and show how these are implemented in its operations so that corruption is prevented, uncovered and adequately dealt with. The company has received a draft recommendation and has submitted its remarks thereon.

The Council on Ethics has also commissioned assistance from a consultant with regard to the assessment of anti-corruption programmes in companies that may be compared with Eni, as well as how this work should be organised and implemented in order to comply with international standards and best practice.

2 The Council on Ethics' investigations

The Council on Ethics has examined allegations of corruption involving Eni in six different countries. In Nigeria, Eni has been involved in two corruption cases. In connection with the first case, the company entered into an out-of-court settlement, a so-called *Deferred Prosecution Agreement*, with the US Department of Justice in 2010. The second case is still under investigation.

The allegations of corruption in Algeria between 2006 and 2010 involve senior executives at Saipem's headquarters and at Saipem Contracting Algérie SpA. Up until January 2016, Eni owned 43 per cent of the shares in Saipem, and had a deciding interest - *de facto* control - in Saipem at the time the corruption is alleged to have taken place. The companies also appeared to be tightly woven together, in that leaders of one company often went over to leading positions in the other company. In 2016, according to Eni's press releases, the company has

sold 12.5 per cent of the shares to Fondo Strategico Italiano. Eni now owns 30.4 per cent of the shares in Saipem and no longer has *de facto* control over the company.[7] Corruption allegations have also been made against Eni in Iraq and Kazakhstan, and against Saipem in Kuwait, Iraq, Kazakhstan and Brazil. Eni has recently informed the Council that the prosecuting authority in Milan has discontinued its investigation of alleged corruption in Iraq and Kazakhstan.[8]

2.1 Details of the corruption allegations in Nigeria

2.1.1 Bonny Island

The first allegation of corruption involving Eni's former wholly owned subsidiary Snamprogetti relates to the acquisition of a permit for the extraction of oil on Bonny Island in the Eastern Niger Delta. Between 1994 and 2004, Snamprogetti Netherlands BV, along with the other partners in a consortium, are alleged to have paid around USD 182 million to Nigerian public officials in return for four *Engineering, Procurement and Construction* contracts awarded by Nigeria LNG Ltd. (NLNG). 49 per cent of the shares in NLNG are owned by the Nigerian National Petroleum Corporation (NNPC). The contracts had a total value of around USD 6 billion.[9]

In 2010 an agreement was entered into between the US Department of Justice (DoJ), Snamprogetti, Eni and Saipem regarding payment of a USD 240 million fine for corruption in connection with the Bonny Island contracts. The settlement agreement contains a fairly detailed description of the facts, including the fact that the bribes were agreed between senior executives of the consortium's member companies and agents in so-called "cultural meetings", and that large sums were paid via shell companies to high-ranking Nigerian public officials, including employees at the Ministry of Petroleum and NNPC. [10] The fine was contingent on the companies not being involved in actions that contravened the *Foreign Corrupt Practices Act (FCPA)* for the next two years.[11] The companies also undertook to review their internal anti-corruption systems and improve them where necessary.[12]

In that same year and in relation to the same case, the US Securities and Exchange Commission (SEC) entered into an agreement with Eni and Snamprogetti under which they would pay a USD 125 million fine for corruption and deficient internal control. In particular, it was pointed out that Snamprogetti had concealed the bribes in its financial statements. The SEC pointed out

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7 http://www.saipem.com/SAIPEM_en_IT/sommario/Saipem+Shareholders.page?, and *Saipem Annual Report 2015, p* 5, which states that Saipem has not been under Eni's *"direction and coordination"* since 22 January 2016, http://www.saipem.com/en_IT/static/documents/Annual%20Report%202015.pdf.

8 Email to the Council on Ethics, dated 28 October 2016, and the company's press release of 25 October 2016, https://www.eni.com/it_IT/media/news/Eni-Procura-Milano-richiede-archiviazione-fascicolo-Kazakhstan-Iraq.page.

9 TSKJ comprised the former Halliburton subsidiary KBR, which had the leading position, the French company Technip, the Japanese company JGC Corporation and Snamprogetti Netherlands BV, a wholly owned subsidiary of Snamprogetti SpA. All the partners in TSKJ ended up having to pay substantial fines to the US authorities due to the use of corruption, for which the US Department of Justice held them all liable.

10 Cf. *Deferred Prosecution Agreement, United States of America v. Snamprogetti Netherlands BV*, 1 July 2010, Attachment A (DPA), which is available from the DoJ's website, https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/02/16/07-07-10snamprogetti-dpa.pdf.

11 Cf. DPA, clause 12.

12 Cf. DPA, Attachment C, clause 4.

that Eni had control of Snamprogetti during the entire period in which the corruption took place, including the moment at which the subsidiary entered into the *joint venture*. The SEC further pointed to the fact that Eni had failed to ensure that the subsidiary performed *due diligence* of third parties, and that Eni's internal compliance systems had been insufficient to uncover, prevent and respond to the corruption which had been going on for over a decade.[13]

Eni has emphasised to the Council on Ethics that it has not acknowledged any guilt with respect to corruption in Nigeria. The company has stated that there is no evidence that any of Eni's employees knew of or participated in corruption, and that the US Department of Justice made allegations solely against Snamprogetti and not against Eni. Snamprogetti did admit to criminal liability in the agreement. Eni has further underlined that the company entered into a parallel agreement with the SEC only as a result of its ownership of Snamprogetti. Eni also points out that the company and certain senior executives were under investigation for the same allegations in Italy, but that the prosecuting authority later dropped the charges. Finally, Eni has pointed to the fact that, in the agreement, the US Department of Justice did not ordain that an external overseer be appointed to monitor the company's efforts to improve its anti-corruption programme.[14]

2.1.2 OPL-245

In 2011, through its subsidiary Nigeria Agip Exploration, Eni and Royal Dutch Shell Plc, purchased Oil Prospecting Licence 245 (OPL-245) in Nigeria. The contract price was around USD 1.3 billion, of which around USD 200 million was paid as a signing bonus. Until 2010, the licence was owned by Malabu Oil and Gas Ltd, which is owned by a former Nigerian minister of petroleum. Eni entered into negotiations with him in 2007 and 2010 with a view to purchasing the licence. However, at some time around the start of 2011, the licence was returned to state control. Eni continued negotiating with the government, and the parties finally reached agreement in April 2011. The former minister of petroleum is understood to also have taken part in these negotiating meetings.

The office of the public prosecutor (OPP) in Milan has investigated the circumstances surrounding this purchase. It is estimated that as much as half of the total contract sum of USD 1.1 billion was paid in bribes to public officials in Nigeria in order to close the agreement.[15] After the contract was signed in April 2011 and in accordance with its terms, Eni transferred around USD 1.1 billion to an account at JP Morgan Chase in London belonging to the Nigerian government. According to legal documents filed with a British court, which heard the Italian prosecuting authority's request for the freezing of assets, account transfers have been found indicating that USD 800 million was transferred to the company Malabu Oil and Gas Limited shortly after the contract had been entered into. The prosecuting authority has also claimed that in August 2011, USD 523 million of the USD 800 million was transferred onward from Malabu

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13 *Civil Action No. 4:10-cv-2414, Securities and Exchange Commission vs Eni SpA and Snamprogetti Netherlands BV*, clauses 3, 12, 30 and 31. The companies did not formally address the issue of guilt, which was not a condition for their acceptance of the out-of-court fine. Eni and Snamprogetti have not contested the facts of the case as described in the settlement. The settlement agreement is available from the SEC's website, https://www.sec.gov/litigation/complaints/2010/comp-pr2010-119.pdf.

14 Letter to the Council on Ethics, dated 16 June 2016.

15 Crown Court, Southwark, UK, *Witness Statement in Support Of An Application for a Restraint Order*, 4 September 2014, see also Exhibit 1, *International Letter of Request* from the office of the public prosecutor in Milan to the British Home Office in London. The case was also reported in the *The Guardian*, 29 October 2015, http://guardian.ng/sweetcrude/nigeria-how-oil-revenues-got-diverted-to-private-pockets-report/.

Oil's accounts to Nigerian public officials, including USD 10 million to the former Attorney General. The rest of the approx. USD 1.1 billion is alleged to have been transferred to accounts belonging to the former petroleum minister.[16]

Two of the agents who were supposedly engaged by Malabu Oil and Gas to negotiate the agreement with Eni up until 2010 took legal action in the UK and the USA against Malabu Oil and Gas on the grounds that they had not been paid their rightful consultancy fee in connection with the negotiation process. A number of details regarding the negotiations between Malabu Oil and Gas and Eni are set out in documents linked to these two court cases, and many of these documents have been made public. However, these will not be presented in more detail here.[17]

Eni's current CEO, the company's *Chief Development, Operations and Technology Officer*[18], and its former CEO have been under investigation in Italy since 2014 in connection with allegations of corruption linked to OPL-245.[19]

In 2014, the Nigerian House of Representatives asked the Nigerian government to cancel the agreement with Eni and Shell with respect to the sale of OPL-245, on the grounds that "*(…) it was based on a highly flawed Resolution Agreement (…)"* and further that *"AGIP Nigeria Agip Exploration Ltd (NAB) be formally censured or reprimanded by the House for its role in the 'Resolution Agreement' which lacked transparency and did not meet international best business practices (...)"*.[20]

In June 2015, it was reported in the press that the national Economic and Financial Crimes Commission (EFCC) was investigating allegations of corruption linked to this transaction.[21] In April 2016, Nigerian Agip Exploration was contacted by the EFCC in connection with the investigation into the OPL-245 agreement.[22] At the request of the attorney general and the minister of justice, the director of public prosecutions (DPP) has recommended that the government cancel the agreement with Eni and Shell. The DPP also believes that both companies should be fined for *"illegal activities, including paying money to fraudulent public officials and private citizens in order to secure the bloc"*.[23]

Eni denies all accusations of corruption in Nigeria.[24] Eni has also stated that it has never used agents to close the agreement. The company maintains that two due diligence assessments were

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16 *Restraint Order Prohibiting Disposal of Assets in The Crown Court Sitting at Southwark*, In the matter of Eni SpA and Gianluca di Nardo and Roberto Casula and Vincenzo Armanna and Zubelum Chukwuemeka and Paolo Scaroni and Claudio Descalzi and Luigi Bisignani and Dan Etete, and In The Matter of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005), 8 September 2014, and the Federal Criminal Court, Switzerland, Criminal Court of Appeal, File Number: RR.2015. 150-153, *International Legal Assistance in Criminal Matters for Italy*, 5 October 2015. The case was also reported by *Reuters*, 11 September 2014, http://uk.reuters.com/article/eni-corruption-nigeria-idUKL5N0RC17F20140911. On the basis of the prosecutor's application, Southwark Crown Court and a Swiss federal court, in 2014 and 2015 respectively, have frozen a total of USD 190 million of the purchase price.

17 The documents have been made public in connection with the Italian prosecutor's application for Southwark Crown Court to issue an order freezing assets held in the UK.

18 The person concerned was previously head of operations in Sub-Saharan Africa, based in Nigeria, and *Executive Vice President* in the company's *Exploration and Production Division*.

19 The company's F-20 report to the SEC, 2015, p 92.

20 *House of Representatives Federal Government of Nigeria, Votes and Proceedings, 18 February 2014, p 994.*

21 *Premium Times*, 25 June 2015, http://www.premiumtimesng.com/news.

22 The company's F-20 report to the SEC, 2015, pp 92-93.

23 *Sahara Reporters*, 26 January 2016, http://royaldutchshellplc.com/2016/01/26/shell-eni-in-fresh-trouble-as-nigeria-begins-moves-to-withdraw-opl-245/.

24 This emerges from, among others, Global Witness, *Briefing 17 November 2015*.

made of Malabu Oil and Gas, which Eni had been negotiating with up until 2010, but that neither of the two internal reports could determine with any degree of certainty who was the rightful owner of the company. According to Eni, the reports state only that it was *probable* that the former minister of petroleum was the rightful owner.[25] Eni also points out that the acquisition of the rights to OPL-245 were negotiated directly with the Nigerian authorities, and that payment was made to an account owned by the Nigerian government. Eni further points out that in 2013 the board decided to commission an external law firm to carry out an internal inquiry into these allegations. After reviewing an extensive amount of material, the 2014 inquiry report concludes that *"no evidence of misconduct in relation to Eni and Shell's 2011 transaction with the Nigerian government for the acquisition of the OPL 245 license"* had been found.[26] Eni has also stated that the consultant found no evidence that any Eni employee knew of or had any intention that Nigerian public officials should receive monies deriving from the amount Eni paid for OPL-245.[27]

2.2 Details of the corruption allegations in Algeria

In 2012, the Office of the Public Prosecutor (OPP) in Milan began investigating allegations of corruption in Algeria – the so-called "Sonatrach 2" case. Several former senior executives at Saipem have testified before a preliminary investigation judge, and several key elements of this testimony have been reported in the media. According to media reports and the prosecuting authority's application for a warrant to search Saipem and Eni's offices, senior Saipem executives are alleged to have paid around USD 221 million in bribes up to 2010 in return for the award of contracts by Sonatrach. All told, the contracts were worth around USD 9 billion. The prosecutors claim to be able to document that the bribes were paid out via a Hong Kong-based company called Pearl Partners (HK) Limited.[28] The transfers were carried out via accounts in Switzerland and Dubai.[29] Pearl Partners is linked to an Algerian agent who is alleged to have transferred the bribes from this company's account to Sonatrach employees. According to several articles in the media, two former senior executives at Saipem in Italy are supposed to have admitted receiving EUR 5 million in illegal kickbacks in connection with this case.[30] In Italy this year, one of those executives, the former CEO of Saipem in Algeria, pleaded guilty as charged, and was summarily convicted.[31]

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25 Meetings between the Council on Ethics and Eni, June and July 2016.

26 The company's F-20 report to the SEC, p 92.

27 Letter to the Council on Ethics, dated 16 June 2016.

28 Application for a warrant of search and seizure at the offices of Saipem and Eni, and the offices of the former CEOs of Eni and Saipem, *Procura della Republicca, Presso il Tribunale Ordinario di Milano, Proc.n. 25303/10 R.G.N.R.*, 6 February 2013.

29 See, inter alia, *FCPA-blog*, 9 October 2015, http://www.fcpablog.com/blog/2015/10/9/saipem-and-former-execs-going-on-trial-for-220-million-alger.html, and *La Voce delle Voci*, 4 October 2015, and the prosecuting authority's application for a warrant of search and seizure, *Procura della Republicca, Presso il Tribunale Ordinario di Milano, Proc.n. 25303/10 R.G.N.R.*, 6 February 2013.

30 *L'Espresso*, 6 September 2013, http://espresso.repubblica.it/internazionale/2013/09/06/news/saipem-affari-sporchi-in-siria-1.58540.

31 *Reuters*, 2 October 2015, http://www.reuters.com/article/saipem-algeria-trial-idUSL5N1222ZA20151002, and Saipem's *Annual Report 2015*, p 131, which states that a former senior executive was given *"a plea bargain sentence in accordance with Article 444 of the Code of Criminal Procedure"*, http://www.saipem.com/en_IT/static/documents/Annual%20Report%202015.pdf. The Council has been unable to obtain a copy of the summary conviction on a plea of guilty against Orsi because it is not legally binding.

The former CEO and deputy chair of Saipem's board of directors, the former CEO of Saipem in Algeria, the former *Chief Operating Officer* for the company's *Engineering & Construction Business Unit* up until 2008, the former *Chief Financial Officer* and two agents have all been indicted for corruption in Italy in connection with these offences.[32] Furthermore, Eni, its former CEO and former head of *North African Operations* are also under indictment in the same case, which is scheduled to come before an Italian court at the beginning of December 2016.

Eni has denied any involvement in corruption in Algeria, and points out that it has not been determined by a court of law that the commission Saipem paid its intermediaries in connection with contracts in Algeria was actually forwarded to public officials there.[33] The former head of *North African Operations* was promoted in 2014 to *Chief Upstream Officer* in Eni's group management. Eni also denies any responsibility for alleged corrupt acts perpetrated by Saipem. The company points out that it cannot be held criminally liable under, for example, the US *Foreign Corrupt Practices Act*, pursuant to which it must be proved that Eni knew of the actions taken by its subsidiary or ordered them in some way. Nor can it be held liable under Italian law.[34] In 2015, the company received a legal opinion concerning the issue of liability between Eni and Saipem, which concluded that Saipem is independent of the parent company and that the parent company is not liable under criminal law for actions taken by Saipem.[35] Eni points out that even though Eni, at the time the actions took place, had *de facto* control over Saipem, Saipem was an independent, listed company that had an autonomous board of directors and independent control bodies. Nor did Eni have any influence over Saipem's business operations.[36]

3 International standards for compliance and corruption prevention

On the basis of international standards for compliance and the prevention of corruption in multinational companies, certain key principles can be deduced with respect to measures an enterprise ought to take to establish and implement an effective anti-corruption programme. There are a number of practical guides for this type of work.[37] The Council on Ethics has also obtained advice from a consultant on what is best practice for anti-corruption programmes in

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32 This follows from the prosecuting authority's application for a warrant of search and seizure, *Procura della Republicca, Presso il Tribunale Ordinario di Milano, Proc.n. 25303/10 R.G.N.R.*, 6 February 2013, and Saipem's *Interim Consolidated Report*, dated 30 June 2016, which states that in June 2016 a judge decided that all the suspects should be indicted and stand trial in Italy. In November 2015, the prosecuting authority obtained the court's consent to seize assets worth USD 250 million belonging to the former senior executives at Saipem who are involved in the case, see *Reuters*, 11 November 2015, http://www.reuters.com/article/algeria-corruption-saipem-idUSL8N13658120151111#8uXOOTIqm2L3ifdO.97.

33 Letter to the Council on Ethics, 16 June 2016.

34 Letter to the Council on Ethics, 16 June 2016.

35 Letter to the Council on Ethics, 15 July 2015.

36 Letter to the Council on Ethics, 16 June 2016.

37 A guide to what an anti-corruption programme could look like can be found, inter alia, in the UN's anti-corruption portal TRACK (*Tools and Resources for Anti-Corruption Knowledge*), *Global Compact: A guide for anti-corruption risk-assessment* (2013) and the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010). Transparency International (TI) has listed a number of general recommendations for corruption prevention systems in its document, *Business Principles for Countering Bribery*.

companies that can be compared with Eni. The Council takes the view that the company must be able to document the measures mentioned below.

All relevant international bodies presume that senior management must be genuinely involved in the work if the company is to be capable of effectively preventing the occurrence of corruption. It is important that management clearly communicates a zero tolerance for corruption, and that the company communicates the importance of its corruption prevention activities to the workforce, business partners and representatives.[38]

In order to be able to define systems that are tailored to the specific business, a systematic effort is required to identify and assess corruption risk throughout the enterprise. In accordance with best practice, risk assessments are performed by the company body responsible for establishing, implementing and improving the anti-corruption programme. Such assessments are performed continuously in connection with assessments of third parties, training and internal investigations. A comprehensive mapping of corruption is often performed annually. At the very least, the company must implement sound preventive measures in those areas where the company is most exposed to risk.[39]

To achieve the effective implementation of the systems concerned, it is presumed that good training schemes are developed for employees and business partners over whom the company has a controlling or decisive influence. In particular, senior executives, middle managers and employees in at-risk positions must receive specifically tailored training. It is important that the training be made comprehensible for all employees, and that it is based on concrete, real-life examples, including personal experience. It is also best practice that the company performs self-assessments of whether the training programmes are adequately targeted and effective.[40]

Furthermore, it is important that the company performs checks on third parties, so-called *due diligence*, that third parties in at-risk areas are provided with anti-corruption training and are followed up on a regular basis. It must also be verified that payments made to such parties are proportional to the work performed.[41]

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38 UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter III,A; OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance (*2010), (A)(1), and Transparency International's *Business Principles for Countering Bribery*, point 6.1. http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery, as well as in World Bank Group *Integrity Compliance Guidelines* point 2.1, http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/12/489491449169632718/Integrity-Compliance-Guidelines-2-1-11.pdf.

39 This follows, inter alia, from UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, Chapter 2, https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf, the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010), Annex II, A), http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf. This is also presumed in *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012), chapter 5, p 58-59, by the US Department of Justice and the Securities and Exchange Commission, http://www.justice.gov/criminal-fraud/fcpa-guidance, and the UK Ministry of Justice *Bribery Act 2010 Guidance*, Principle 3, http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf.

40 UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, Chapter 3(H), the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(5), Transparency International's *Business Principles for Countering Bribery*, points 6.4 and 6.6, and World Bank Group *Integrity Compliance Guidelines point* 7.

41 The OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(6)(i), Transparency International's *Business Principles for Countering Bribery*, point 6.2, and World Bank Group *Integrity Compliance Guidelines* point 5.

Management must encourage employees to act in compliance with the anti-corruption programme and report any suspected breaches of internal rules and regulations. Systems should be established so that employees and others can report matters anonymously and with no risk of reprisal.[42] The company should have a clear procedure for investigating any reported non-compliance with corporate guidelines, and the sanctions to be imposed on individuals who violate the rules must be made crystal clear.[43]

The anti-corruption programme must be monitored and improved on the basis of both internal experience and external factors, such as new legislation and standards of best practice.[44]

According to international standards for best practice, it is crucial that anti-corruption activities are delegated to a dedicated function or a person with the necessary resources and autonomy. It is presumed that the compliance department has direct access to group management and the board.[45]

3.1 Italian statutory requirements

Pursuant to Italian legislation on corporate penalties, *Legislative Decree no. 231* of 8 June 2001, companies may be held administratively liable for, among other things, acts of corruption performed by their employees and representatives. The payment of bribes to public as well as private parties is covered by this law. According to the legislation, the company may avoid being held liable for corrupt acts if it documents that, at the time the act took place, it had compliance systems which were meant to prevent corruption. It must, furthermore, have appointed an independent advisory committee (*organismo di vigilanza)* which is responsible for monitoring the implementation and effectiveness of the compliance systems, and updating them on a regular basis. This body should be composed of internal and external members. Moreover, the company must document that it has undertaken an assessment of the risk of non-compliance with the legislation, and that corruption prevention procedures have been drawn up and implemented, and that a system of sanctions has been implemented that applies when the law and internal regulations are violated, and that adequate training systems for employees and managers have been established. The company must also ensure that its *Code of Conduct* is updated, and that there is an adequate sharing of information between the relevant bodies.[46]

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42 UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(I and J), the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(9 and 11, ii), TI's *Business Principles for Countering Bribery*, points 6.3.1 and 6.5.1, World Bank Group *Integrity Compliance Guidelines* points 8.1, 9.1 and 9.3.

43 UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(J and K), World Bank Group *Integrity Compliance Guidelines* point 10.

44 UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(L), the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(12), Transparency International's *Business Principles for Countering Bribery*, points 6.8 and 6.10, World Bank Group *Integrity Compliance Guidelines* points 3.

45 This follows, inter alia, from *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, chapter 5, p 58, the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(4), and World Bank Group *Integrity Compliance Guidelines* point 2.3.

46 The requirements with respect to Italian companies' compliance systems, pursuant to section 6 of the *Legislative Decree no. 231/8*, are described, inter alia, in Norton Rose Fulbright, http://www.nortonrosefulbright.com/knowledge/publications/73424/italy-adopts-new-anti-corruption-law.

4 Information provided by the company

In its contacts with the Council on Ethics, Eni has always maintained that the company has an anti-corruption programme in line with best practice. Nevertheless, the company has announced several major changes to its anti-corruption programme during this period.

The company's *Code of Ethics* from 1998 declares a zero tolerance for corruption,[47] and a number of internal governing documents and procedures have been established to prevent corruption in its business operations. On two occasions since 2011, Eni has also assessed the efficacy of its anti-corruption programme with the help of external consultants, and received advice on specific improvement measures.

The company has a large number of procedural documents, which also cover *integrity due diligence* of third parties. Training is given to all employees through an online training program, senior and middle managers are given appropriately tailored training, special classroom tuition is given to incumbents of particularly at-risk positions, such as those working in *Procurement, HR, Finance* and *Commercial*.[48] A whistleblower system has also been set up. In 2015 and 2016, several warnings of corruption in the organisation are claimed to have been received.[49]

According to the company's *Corporate Governance Report* and *Management System Guidelines Anti-Corruption*, many organisational units have responsibilities and perform tasks linked to the anti-corruption effort.[50]

In line with the requirements set out in *Decree no. 231*, Eni has established an independent body, called the *Watch Structure*, whose main task is to monitor that compliance measures are adequate and effective, primarily the anti-corruption programme. The *Watch Structure* is supposed to ensure that the programme complies with the requirements provided by law and best practice. This body comprises both external and internal members. It was, for example, the *Watch Structure* that took the initiative for a review of the compliance programme in 2013.[51]

A section of the *Legal Affairs Department*, called the *Anti-Corruption Legal Support Unit* (ACLSU), was established in 2009 to ensure a more effective implementation of the anti-corruption programme. In October 2015, these activities were transferred to a different unit within the Legal Affairs Department. The new unit, called the *Legal Compliance and Regulatory Department* had overall responsibility for all activities relating to the Italian law on corporate penalties, *Legislative Decree no. 231* (Decree 231), as well as corruption prevention.[52] A separate unit under the Internal Audit Department is responsible for investigating reports of alleged wrongdoing, while the HR Department has a key role in implementing the internal training programme in conjunction with the ACLSU, now called the

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47 The company's press release, https://www.eni.com/en_IT/company/governance/the-internal-control-and-risk-management-system.page.

48 Eni's comment on the recommendation to place the company under observation, 28 November 2016

49 Meeting between the Council on Ethics and Eni, 4 July 2016.

50 *Corporate Governance Report* 2014, https://www.eni.com/docs/en_IT/enicom/publications-archive/governance/shareholders-meeting/2015/Corporate-Governance-Report-2014.pdf, *Management System Guideline Anti-Corruption* (MSG Anti-Corruption), November 2014, https://www.eni.com/docs/en_IT/enicom/company/MSG-Anti-Corruption.pdf.

51 Meetings between the Council on Ethics and Eni, 24 June 2016.

52 Meetings between the Council on Ethics and Eni, 9 December 2015.

ACC.[53] Corruption risk has been included in the company's integrated risk model, which the Risk Department has primary responsibility for. However, it is the Legal Affairs Department which has, up until now, been responsible for identifying this risk. The identification of corruption risk has been carried out with the help of external consultants.[54]

In July 2016, Eni announced the creation of an *Integrated Compliance Department*, independent of the Legal Affairs Department and reporting directly to the CEO and the board of directors. This department will henceforth be responsible for compliance in matters encompassed by *Decree 231*, including anti-corruption.[55] The former head of the *Legal Compliance and Regulatory Department* will lead the new department.[56]

The company has also explained that so-called *focal points* have been established in unlisted subsidiaries to ensure better communication on corruption-related issues between these subsidiaries and Eni's central organisation.[57] Furthermore, the company is considering performing self-assessments of the efficacy of its classroom tuition.[58] In its comment on the Council's recommendation to place the company under observation, Eni writes that the online training program already contains a self-assessment of its efficacy, because students must perform two tests, with the pass mark set at a minimum of 80 per cent. The Council has also recently been told that improvements are going to be made in the way the corruption risk is mapped and assessed internally.[59]

Eni has emphasised to the Council on Ethics that none of the ongoing corruption cases has come to a legally binding verdict. Furthermore, the company points out that the internal investigations which were carried out after the corruption allegations became known have not revealed that the company can be held responsible for corruption.[60]

5 The Council on Ethics' assessment

Based on the documentation available, the Council has considered whether there exists an unacceptable risk that Eni has been involved in actions which, under the guidelines, constitute gross corruption, including whether the corrupt practices have been performed in a comprehensive and/or systematic manner, and whether there is a risk that the company may once again become involved in similar incidents.

The Council on Ethics has not evaluated whether Eni may be held criminally liable for corruption. Such an assessment does not fall within the Council's mandate or competence. However, the Council gives weight to the fact that Eni, at the same time as the company entered into an out-of-court settlement with the US Department of Justice with regard to corruption in Nigeria in 2010, was negotiating an extremely valuable contract in that country,

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53 Eni Anti-Corruption MSG.
54 Presentation to the Council on Ethics, meeting in Milan, 9 December 2015.
55 The company's press release, dated 29 July 2016, https://www.eni.com/en_IT/media/2016/07/eni-the-board-of-directors-approves-actions-to-reorganize-the-structure-of-enis-internal-control-system-and-risk-management-functions.
56 The company's press release, dated 5 September 2016, https://www.eni.com/en_IT/media/2016/09/eni-brings-forward-the-creation-of-its-compliance-management-structure.
57 Eni's comment on the recommendation to place Eni under observation, 28 November 2016.
58 Meetings between the Council on Ethics and Eni, 4 July 2016.
59 Meetings between the Council on Ethics and Eni, 4 July 2016, and email from the company, dated 20 October 2016.
60 Letter to the Council on Ethics, dated 15 July 2015.

to which suspicions of corruption are now being linked by the prosecuting authorities in Italy and Nigeria. In 2007 and 2010, Eni was engaged in negotiations with Malabu Oil which, according to Eni's own risk assessments in 2007 and 2010, was probably owned by a former Nigerian minister for petroleum. He was convicted of money laundering in France in 2007, and was ordered by a French appeal court in 2009 to pay a EUR 8 million fine in connection with the same offence. Eni maintains that it did not know for certain that the company was owned by the former minister, nor did the company eventually enter into an agreement with Malabu Oil, but with the Nigerian authorities themselves. Nevertheless, the Council gives weight to the fact that the company's compliance system did not lead to the termination of negotiations when the risk of corruption became known. Furthermore, the Council considers that the agreement which was finally entered into would also involve an unacceptable risk of corruption in light of the fact that Malabu Oil continued to participate in the negotiations regarding the agreement's terms and conditions.

The Council notes that the company and senior executives of Eni and Saipem have been indicted in Italy in connection with alleged corruption in Algeria. In its annual report for 2015, Saipem disclosed that the payment to an agent contravened the company's guidelines, but has not admitted criminal liability. Eni has claimed that the company has no liability under criminal law for the actions of its subsidiary Saipem. As previously mentioned, the Council has made no evaluation of criminal liability. What is important for the Council's assessment of the case is the degree of control the parent company has over a subsidiary. Eni had *de facto* control over Saipem right up until January 2016. Eni has explained that it was expected that all subsidiaries would establish anti-corruption policies and procedures, which included an expectation that they would perform a corruption risk assessment of third parties. When the parent company has this type of authority to instruct a subsidiary, it should also be presumed that the parent company has a responsibility to follow up that its instructions are complied with. The fact that executives have frequently transferred between the companies may also indicate that Eni has taken such a responsibility. The Council considers that this form of control may have an impact on its assessment of whether a company should be excluded from the GPFG.

Although the allegations of corruption relate to matters which took place some time ago, the Council still feels they should be accorded weight. The Council points out that it generally takes a long time before corruption is uncovered, investigated and a verdict handed down. The criminal case in Italy has only now come before the court.

Moreover, the Council has assessed whether there exists an unacceptable risk that Eni may once again become involved in similar acts. In this assessment, the Council emphasises the corruption risk to which the company is exposed, how the company has responded to the allegations of corruption, as well as the extent to which the company has implemented effective anti-corruption systems that are organised in a way that makes them capable of preventing, revealing and dealing effectively with corruption in its operations. Furthermore, the Council has in previous cases taken the position that actions in the past can say something about the risk of corruption in the future.

Eni operates in a number of countries in which the risk of corruption is high. For example, Angola, Libya, Iraq, Venezuela, Nigeria, the Republic of Congo, Russia and Kazakhstan are all in the highest category with respect to the presumed risk of corruption in *Transparency International's Corruption Perception Index*, 2015. The oil and gas industry, as well as the construction industry, where major public contracts are common, also expose the company to the risk of corruption. In the Council's opinion, this places particular demands on the company to have robust systems in place and implement measures which can prevent, reveal and deal effectively with corruption. With several of the company's current and former

leaders standing accused of gross corruption, which allegedly took place in many countries, this requirement is even more pressing.

The Council notes that Eni has improved its internal corruption prevention systems since 2009, that the company has a number of governing documents for transactions and activities involving the risk of corruption, and that more measures are today being implemented to prevent corruption in the so-called risk areas. Nevertheless, the Council considers that Eni, up to the present, has not substantiated that the anti-corruption programme will be implemented effectively throughout its operations. This includes, among other things, risk assessments and anti-corruption training. Nor does Eni make any self-assessment of the efficacy of its classroom-based educational courses.

The Council accords weight to the way management has handled the fact that the sitting CEO is under investigation for gross corruption. The Council on Ethics also points out that one of the people currently indicted in the Algeria case was, in 2014, promoted to *Chief Upstream Officer* in Eni's group management, and that a former CEO is now also under indictment for alleged corruption in Algeria. Finally, the Council on Ethics points out that the *Chief Development, Operations and Technology Office*r since 2014 and the former CEO are under investigation in in Nigeria in the case relating to the acquisition of OPL-245. Irrespective of the outcome of these cases, the Council feels that the allegations make it difficult for group management to communicate a zero tolerance for corruption both internally and to external business partners.

In principle, the factors mentioned above argue for the criterion for exclusion having been met. However, the reason the Council is not recommending that the company be excluded, but instead be placed under observation, is that the company has very recently announced organisational changes which more clearly allocate responsibility for compliance. The Council places particular emphasis on the new *Integrated Compliance Department*, which is to assume complete responsibility for compliance, also in matters of anti-corruption. The company has disclosed several new initiatives, including the establishment of *focal points* in unlisted subsidiaries, changes in the assessment of corruption risk and self-assessment of the efficacy of classroom-based educational courses. Furthermore, the Council points out that Eni has reduced its shareholding in Saipem and that the overall risk of corruption may therefore have diminished. However, the Council acknowledges that several of the corruption prevention measures are new. What is decisive for the Council's assessment moving forward is how they are implemented throughout the business.

In the coming two years, the Council will monitor developments in the corruption cases currently before the courts, as well as how the board enforces accountability on employees who are implicated in corruption in these and other cases which may be revealed, by means of the company's internal control systems, for example. The Council will also give weight to whether, in future, the board and group management establish and implement an anti-corruption programme that effectively prevents corruption. Should doubts be renewed about the degree to which management is taking responsibility for these matters, the criterion for exclusion may then be met.

6 Recommendation

The Council on Ethics recommends that Eni SpA be placed under observation due to the risk of gross corruption.

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Johan H. Andresen Chair	Hans Chr. Bugge	Cecilie Hellestveit	Arthur Sletteberg	Guro Slettemark
(sign.)	(sign.)	(sign.)	(sign.)	(sign.)