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

On 6 December 2011, in response to the Council on Ethics' recommendation of 1 December 2010 to exclude Alstom SA, the Ministry of Finance decided to place the company under observation for up to four years. The Council is required to keep Alstom under special observation during this period, and to monitor the company's anti-corruption efforts and development of an anti-corruption system. The Council is also required to monitor how the company handles investigations into acts of corruption that happened in the past as well as monitor whether allegations of new cases of corruption arise. The Council is required to report annually to the Ministry of Finance on the status of the observation.

In April 2014, the Council on Ethics met Alstom to discuss the Council's observation of the company and the company's anti-corruption efforts. The company has also been given an opportunity to comment on a draft of this report.

This is the Council's third annual report on the matter to the Ministry of Finance.

Key developments since the annual report was submitted in June 2013

In the reports submitted in June 2012 and 2013, the Council on Ethics described ongoing corruption investigations in the United Kingdom, USA, Brazil, Latvia, Poland, Malaysia and Slovenia. As far as the Council is aware, only the UK investigation and some parts of the US investigation have been concluded thus far. Alstom is now also under investigation in France.

On 24 July 2014, the UK Serious Fraud Office announced the conclusion of the UK investigation into Alstom. As a result of the investigation, Alstom Network UK Ltd – formerly called Alstom International Ltd, a UK subsidiary of Alstom – has been charged with corruption. According to the indictment, individuals are alleged to have paid bribes totalling

USD 8.5 million on the company's behalf between 1 June 2000 and 30 November 2006. The bribes related to large, public transport projects in India, Poland and Tunisia. The first hearing in the case took place on 9 September 2014 at Westminster Magistrates' Court.¹ The Serious Fraud Office has also indicated to Alstom that an indictment will be issued against Alstom Power Ltd in October 2014 based on alleged corruption in Lithuania. Alstom does not accept liability in respect of any of these allegations.²

In the observation letter of June 2013, the Council on Ethics noted that the US authorities had published indictments against several current and former employees of a US Alstom subsidiary. In total, four persons have apparently been charged. Three managers at Alstom's subsidiary in Connecticut have now admitted paying bribes on behalf of the company in connection with a contract on Sumatra valued at USD 118 million. The contract concerned a joint venture between Alstom and the Japanese Marubeni Corp. in 2007, the so-called Taharan project. In mid-March 2014, Marubeni also accepted liability for the fact that individuals acting on behalf of the company had paid bribes to win this tender. A corporate penalty of USD 88 million was imposed on the company.³ The fourth Alstom employee associated with the Taharan project and charged with corruption is awaiting trial on criminal charges in the US.⁴ Alstom does not accept liability for the alleged corruption on Sumatra.

According to a news article dated 27 March 2014, court documents from the case against the former employees at Alstom's Connecticut office show that it was discovered during the investigation of the Taharan case in the US that a former Alstom manager attempted to bribe public officials in Indonesia, India and China to secure awards of public contracts to the company.⁵ Alstom has stated that the company is unaware of these allegations.⁶ As regards the alleged corruption in Indonesia, Alstom has stated that it is aware that the Indonesian authorities are investigating the same actions as have been investigated by the US authorities.⁷

According to a news article, on 22 January 2014 the Governor of Sao Paulo requested that an investigation into Alstom be launched in response to allegations of corruption. The request was occasioned by the apparent statement by a former Alstom manager to a French court that Alstom paid bribes to Brazilian officials in 1998 in the form of commissions amounting to 15% of a contract worth USD 45.7 million. According to *Estado de Sao Paulo*, certain Alstom managers are among 10 persons now risking criminal prosecution in connection with these events. It is alleged that the company used three shell companies in Uruguay to channel bribes to Brazilian officials.⁸ However, Alstom has denied any involvement in these

¹ See <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/criminal-charges-against-alstom-in-the-uk.aspx> (18 August 2014).

² Email and letter from Alstom to the Council on Ethics, 10 September 2014.

³ See press release of 19 March 2014, US Department of Justice, <http://www.justice.gov/opa/pr/2014/March/14-crm-290.html> (18 August 2014), <http://www.justice.gov/opa/pr/2013/April/13-crm-434.html> (18 August 2014), and concerning the non-prosecution agreement between the US Department of Justice and Marubeni, see <http://www.justice.gov/criminal/fraud/fcpa/cases/marubeni-corp/marubeni-corp-plea-agreement.pdf> (18 August 2014).

⁴ See <http://www.fcpcablog.com/blog/2014/7/17/third-alstom-exec-pleads-guilty-for-indonesia-bribes.html> (18 August 2014).

⁵ See <http://www.bloomberg.com/news/2014-03-27/alstom-said-to-face-wider-bribery-probe-and-record-fine.html> (18 August 2014), and <http://www.reuters.com/article/2014/03/27/us-alstom-investigation-idUSBREA2Q1NX20140327> (18 August 2014).

⁶ Meeting between Alstom and the Council on Ethics, 30 April 2014, and email from Alstom to the Council on Ethics, 10 September 2014.

⁷ Email and letter from Alstom to the Council on Ethics, 10 September 2014.

⁸ <https://au.finance.yahoo.com/news/french-firm-alstom-brazil-corruption-133324579.html>.

allegations, pointing out that the investigation in Brazil does not concern corruption but rather suspicions of other forms of financial crime.⁹

In its communications with the Council on Ethics, Alstom has stated that the company is under investigation in Poland and France, but that no indictments have been issued thus far.¹⁰

The Council on Ethics has not received further information on the investigation in Malaysia.

In its 2013 report to the Ministry of Finance, the Council on Ethics also noted a settlement reached by Alstom with the World Bank in February 2012.¹¹ In response to irregular payments made in connection with a hydropower plant in Zambia in 2002, Alstom Hydro France and Alstom Network Schweiz AG were excluded from participation in projects funded by the World Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank for a period of three years. The exclusion could have been reduced to 21 months if the company complied with the conditions in the settlement agreement. The parent company, Alstom SA, was not excluded on the condition that it would implement a compliance system acceptable to the World Bank during the three-year period.¹² Alstom has emphasised to the Council that it continues to cooperate with the World Bank. Measures include the engagement of an external law firm to assess – on behalf of the World Bank – the steps taken by Alstom to strengthen its compliance system and to propose changes to the system.¹³

Alstom’s anti-corruption work since 2013

Considerable emphasis has been given to Alstom’s compliance system in the Council’s recommendation and subsequent observation letters. The purpose of a corporate compliance system is to prevent, uncover and penalise breaches of laws and regulations. Such a system may give an indication regarding the risk of future corruption.

Since 2010, Alstom has made various changes to improve internal compliance systems and anti-corruption procedures throughout its entire operation. According to the company, all improvements proposed by the independent monitor as part of the World Bank process have been implemented.¹⁴ Further, in the autumn of 2013, Alstom established an external whistleblowing channel through which anyone may report corruption and other regulatory breaches anonymously. The US company Navex Global receives these reports on the Alstom’s behalf.

The company has stated that it invests considerable resources in its compliance and anti-corruption work. According to the company, the most important anti-corruption measures implemented in its operation in the past year are that it no longer engages consultants on “success fees” (since January 2014), that all monetary transfers pass through its head office in Paris and are audited closely, and that the management communicates very clearly that corruption is unacceptable. The company has also referred to the success of its ongoing cooperation with the World Bank.

⁹ Meeting between the Council on Ethics and Alstom, 30 April 2014, and email and letter to the Council on Ethics, 30 September 2014.

¹⁰ Email and letter from Alstom to the Council on Ethics, 10 September 2014.

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

¹² <http://web.worldbank.org/external/default/main?contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984&querycontentMDK=64069700&theSitePK=84266#cross>.

¹³ Meeting between the Council on Ethics and Alstom, 30 April 2014.

¹⁴ Meeting between the Council on Ethics and Alstom, 30 April 2014.

General Electric's offer to acquire parts of Alstom's operation

In June, the Council on Ethics was informed that General Electric had made an acquisition and merger offer to Alstom. The offer encompasses the three Alstom divisions *Thermal Power, Renewable Energy* and *Grid*. Although the board of directors has decided to recommend acceptance of the offer, no final agreement has yet been signed. According to Alstom, a final agreement will be concluded in 2015. Until the merger, Alstom will continue to operate as at present.¹⁵

The Council's assessment

The sectors in which Alstom primarily operates carry a high risk of corruption. This is evidenced by the corruption allegations made against the company in the international press, which have also resulted in formal investigations. Several former employees of the company have been charged with corruption in the US, and the company has itself been charged with corruption in England. Several corruption allegations remain under investigation.

Over the past few years, Alstom has implemented a range of measures to establish strong corruption-prevention procedures. Alstom also continues to work with the World Bank on the development of internal compliance systems. This signals that active efforts are being made to prevent corruption in the business, thus reducing the risk of future regulatory breaches. However, it is important that the company continues to give priority to anti-corruption efforts and that procedures are utilised and continuously monitored and improved.

The company itself, certain of its employees and some of its consultants remain under investigation, suspected of corruption. Since the previous report to the Ministry, the press has reported on new investigations into instances of corruption, i.e. corruption allegations in Indonesia, China, India and Brazil. The company has itself also stated that an investigation has been launched in France. The basis for all of these allegations is however unclear, as is when the investigation will be completed. It should also be noted that Alstom does not accept liability in respect of any of the allegations, and that many of the allegations have been made in the press without the Council on Ethics being able to obtain further information on them.

The Council on Ethics will continue its observation of Alstom's anti-corruption work, including through dialogue with the company. The Council will also maintain contact with other sources, follow the ongoing case in England and be alert to information on new instances of gross corruption in the company. Moreover, the Council will monitor how the anti-corruption procedures are implemented in all parts of the operation, and how they are monitored and evaluated.

Yours sincerely



Ola Mestad
Chair of the Council on Ethics

¹⁵ Email and letter from Alstom to the Council on Ethics, 10 September 2014.