

UNOFFICIAL ENGLISH TRANSLATION

To Norges Bank

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Recommendation to remove Alstom S.A. from the observation list

1 Summary

The Council on Ethics for the Norwegian Government Pension Fund Global recommends removing Alstom S.A. (Alstom) from the Fund's observation list, where it was placed in 2011. The Council believes that the risk of future corruption in Alstom has been reduced, and that the current risk now is probably not greater than in other comparable companies. This is based on an assessment of the company's internal anti-corruption systems and the fact that the company's systems will be the subject of ongoing reporting by the company and its external lawyers to the US Department of Justice as a result of a settlement agreement in the US. Furthermore, the recommendation is based on the fact that two-thirds of the company's operations will probably be taken over by General Electric by the end of 2015.

2 Introduction

As a result of the Council's recommendation of 1 December 2010 to exclude Alstom SA, the Norwegian Ministry of Finance decided on 6 December 2011 to place the company under observation for up to four years. The Council was required to keep Alstom under special observation during this period and monitor how the company implemented and developed its anti-corruption system. The Council was also to observe how the company handled the investigation of previous corruption events, and monitor any allegations of new cases of corruption that might arise.

In 2012, 2013 and 2014, the Council submitted observation reports to the Ministry of Finance. The Council's contact with the company during the observation period is summarised below, together with key events since 2014 relevant to the 2015 assessment, the latest developments in Alstom's anti-corruption efforts, and the company's plans to merge parts of its business with General Electric (GE). This is followed by the Council's assessment and recommendation.

3 Sources

After the decision by the Ministry of Finance that Alstom was to be formally observed, the Council monitored the company's operations. Annual meetings between representatives of the Council and Alstom have been held.¹ The Council met the Chief Compliance Officer of Alstom, a representative of Alstom Norway, the company's advisor from the law firm Hughes Hubbard and Reed, Washington DC, who has assisted Alstom in its proceedings with the World Bank, and the company's advisor from the UK law firm Fulcrum Chambers. In addition to these annual meetings, there has also been written communication between the Council and the company's representative in Norway and its advisor in Fulcrum Chambers. The Council has also monitored developments in the various corruption cases that Alstom has been, and to some extent still is, involved in.

In the present recommendation, the Council has, in addition to information from Alstom, placed emphasis on information contained in a settlement in the US and press reports about Alstom.

¹ The first meeting between Council representatives and Alstom was held in February 2012 in Oslo, followed by meetings in January 2013, April 2014 and finally in June 2015 in Oslo.

4 Report for 2015

4.1 Key events since the Council's previous report in 2014 on past corruption charges

Alstom has been under investigation by the Serious Fraud Office in the UK for many years. This resulted in indictments in 2014 and 2015 in three separate cases. Two subsidiaries, Alstom Power and Alstom Network UK², and six former employees in India, Poland, Tunisia, Lithuania and Hungary have been indicted for corruption. Case 1, involving allegations of corruption in India, Poland and Tunisia, was charged in 2015 and is due for trial in May 2016. Case 2, involving allegations of corruption in Lithuania, is scheduled to begin in January 2017.³ It is not known when Case 3, which deals with allegations of corruption in Hungary, can commence. In these three cases, the corruption is said to have taken place between 1998 and 2007.

The longstanding investigation in the United States resulted in Alstom signing a settlement agreement with the US Justice Department in December 2014, in which the company admitted the use of corruption and accepted a fine of USD 772 million. It was acknowledged that the parent company and subsidiaries Alstom Prom, Alstom Power and Alstom Grid, via several of its executives and representatives, had paid tens of millions of USD in bribes to government officials in connection with winning major contracts in many countries, including Indonesia, Egypt, Saudi Arabia, the Bahamas and Taiwan. It was emphasised that the use of corruption was systematic and took place for over a decade, i.e. from the late 1990s until 2011.⁴ Four of the company's former executives at Alstom's office in Connecticut have been directly involved in the criminal proceedings in the United States. Three of these have admitted their guilt and received sentences based on a guilty plea. The fourth person accused in the case is awaiting criminal proceedings in the US in 2015/2016.

A number of the corruption allegations under investigation in 2014 have not yet been concluded, to the best of the Council's knowledge. This applies to the allegations in Brazil, Latvia, Poland, Malaysia and Slovenia.

4.2 Anti-corruption efforts by Alstom in 2015

In the Council's recommendation and subsequent observation reports, Alstom's compliance system was strongly emphasised. The purpose of a company's compliance system is to prevent, detect and sanction violations of laws and regulations. Such a system may give an indication of the risk of future corruption.

Since 2010, Alstom has made a number of changes to improve its internal compliance systems and the procedures for corruption prevention in its entire business. The company has implemented all the suggestions for improvement highlighted by the independent lawyer who

² Alstom Network UK was previously called Alstom International Ltd.

³ Serious Fraud Office press release, 12 May 2015, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/former-alstom-director-faces-uk-corruption-charges.aspx>.

⁴ US Department of Justice press release, 22 December 2015, <http://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery>, and <http://www.justice.gov/file/189331/download>.

was to accompany the company in the legal proceedings with the World Bank.⁵ As a result, Alstom was removed from the World Bank sanctions list in February 2015.⁶

The company states that it still spends considerable resources on preventing corruption in its activities.⁷ The company believes that its most important measures in recent years are as follows: since January 2014 it no longer uses consultants on the basis of performance fees, all financial transactions go via its headquarters in Paris and are carefully audited, and management clearly shows zero tolerance for corruption. The company also points out its successful cooperation with the World Bank.

In addition to the fine imposed as a result of the settlement agreement in the United States, Alstom is bound by rigorous requirements for a period of three years from the date of the agreement being signed. In particular, it has committed itself to apply and maintain the requirements implemented under the World Bank monitorship period. Once again its internal preventative procedures will be scrutinised and evaluated. A further requirement of the agreement is that Alstom will regularly meet and provide written reports to the Department of Justice over the same period. This therefore amounts to a requirement of self disclosure of credible evidence of corruption. The company is also required to provide full details of its compliance measures to the Department in order to satisfy them that the anti bribery and corruption measures are appropriate and meet with the Department's approval. Alstom has stated that the company has already and will continue to cooperate with the authorities and that all suggestions for improvement of internal anti-corruption procedures will be implemented.

4.3 Sale of large parts of the company

In June 2014, it became known that two-thirds of Alstom, i.e. Alstom Power and Alstom Grid, were to be acquired by GE.⁸ These two parts of the business will then become part of GE and be subject to the compliance systems of that company. The current compliance systems in Alstom will continue to apply to the remaining part of the company, which deals with transportation.

5 The assessment of the Council on Ethics

On the basis of current information available, there is no doubt that the risk of corruption in Alstom has been considerably reduced since 2010. The reasons for this are, firstly, that the company has made extensive changes in its internal anti-corruption systems. Secondly, the management now seems to be giving much clearer signals than previously that corruption is unacceptable in the company, and that irregularities will be detected and sanctioned. Thirdly, internal procedures and evidence of corruption issues arising and the resolution of them are in effect to be monitored by the Department of Justice for the next three years. The company assisted by its external lawyers, will meet regularly with the Department of Justice and submit written reports. There is reason to believe that the process will detect and correct any deficiencies in the compliance system. Finally, the Council has noted that two-thirds of

⁵ A meeting between the Council on Ethics and Alstom on 30 April 2014.

⁶ World Bank press release, 23 February 2015, <http://www.worldbank.org/en/news/press-release/2015/02/23/alstom-released-debarment>.

⁷ Meeting between the Council on Ethics and Alstom on 4 June 2015.

⁸ This is published on company's website, <http://www.ge-alstom.com/en/index.html>. In the meeting between the Council and Alstom of 4 June 2015, it was emphasised that it is uncertain exactly when this merger will take place, but it is assumed that it will be completed by the end of 2015.

Alstom, i.e. Alstom Power and Alstom Grid, are scheduled to be acquired by General Electric in 2015.

The company operates in sectors and countries where the risk of corruption is believed to be very high. Despite the fact that Alstom today appears to have a robust compliance system, it is important that the system is monitored and developed in line with the level of risk. The crucial factor in avoiding gross corruption in the future is the development in the company of a pervasive corporate culture of zero tolerance for bribery. Constant development and improvement of internal systems in collaboration with the World Bank during the past three years have resulted in significant improvements in the company's compliance systems. This process is believed to continue in the coming years, partly on basis of the company's own initiatives and also the ongoing requirements of the settlement agreement as required by the US authorities. The Council therefore assumes that the risk of corruption in Alstom is likely to be substantially lower than previously.

The Ministry of Finance decided in 2011 that Alstom should be placed on the observation list for a period of up to four years. On basis of the indicators mentioned above, the Council believes that there is reason for removing Alstom from the observation list.

6 Recommendation

The Council on Ethics recommends that Alstom S.A. be removed from the observation list.

Johan H. Andresen
Chair

(signed)

Hans Chr. Bugge

(signed)

Cecilie Hellestveit

(signed)

Arthur Sletteberg

(signed)

Guro Slettemark

(signed)