

To the Ministry of Finance

15 June 2012

UNOFFICIAL ENGLISH TRANSLATION

**Recommendation to remove Siemens AG from the watch list of the
Norwegian Government Pension Fund Global**

Contents

1	Summary	1
2	Introduction	1
3	Sources	1
4	Report on 2011	2
4.1	Key events in 2011 related to previous corruption revelations	2
4.2	Key events in 2011 related to new corruption revelations	3
4.3	Siemens' anti-corruption efforts in 2011	4
5	The Council on Ethics' assessment	6
6	Recommendation	6

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1 Summary

The Council on Ethics for the Norwegian Government Pension Fund Global (GPF) recommends that the German company Siemens AG (Siemens) be removed from the Ministry of Finance's watch list because the Council finds it unlikely that there currently is a higher risk of corruption in Siemens than in other comparable companies. This is based on an assessment of the company's compliance system, the company's clear message that corruption will not be tolerated, and the way recent cases of corruption have been dealt with in the company.

2 Introduction

As a result of the Council on Ethics' recommendation to exclude Siemens from the GPF in November 2007, the Ministry of Finance decided to place the company under observation for up to four years in March 2009. The Council on Ethics had recommended excluding the company because of the risk of gross corruption in the company's operations.¹ The Council on Ethics and Norges Bank are required to keep Siemens under special observation during this period and report annually to the Ministry of Finance on developments in the company.

In both 2010 and 2011, the Council submitted observation reports to the Ministry of Finance in which no grounds were found to resubmit the recommendation for Siemens' exclusion from the GPF. Following an overall assessment which also includes developments during the last year, the Council finds that there are now grounds to remove Siemens from the watch list.

Below is a summary of the Council's contact with the company throughout the observation period, the main events of relevance for the assessment in 2011, and the latest developments in Siemens' anti-corruption efforts. The report concludes with the Council's assessment and recommendation.

3 Sources

Following the Ministry of Finance's decision to put Siemens under formal observation, the Council on Ethics has monitored the company's operations using the usual monitoring procedures and paying particular attention to developments in the various corruption cases in which Siemens has been, and to some extent still is, involved. Representatives from the Council have also had annual meetings with representatives from Siemens.² The Council has had meetings with the company's main compliance officers, representatives from Siemens Norway, and the independent monitor appointed by U.S. authorities, Dr. Theo Waigel, and his

¹ Recommendation: <http://www.regjeringen.no/nb/sub/styrer-rad-utvalg/etikkradet/Tilradninger/tilradninger/korrupsjon/tilradning-15-november-2007-om-utelukkel.html?id=549087>. Press release from the Ministry of Finance: <http://www.regjeringen.no/nb/dep/fin/pressemelder/pressemeldinger/2009/siemens-settes-under-observasjon-i-korru.html?id=549155>.

² The first meeting between representatives from the Council and Siemens took place in May 2009 in Oslo; the next two meetings were held in Munich in December 2009 and April 2011; the most recent meeting in March 2012 was held in Oslo.

team. In addition to these annual meetings, there has also been verbal and written communication between the Council and compliance officers at Siemens.

In this recommendation, the Council on Ethics has attached importance to information from the public prosecuting authorities and other government agencies, court judgments and coverage of Siemens in the press, in addition to the information provided by Siemens.

4 Report on 2011

4.1 Key events in 2011 concerning previous revelations of corruption

In 2009 Siemens filed a civil suit for damages against eleven former board members and corporate executives, charging them with having facilitated systematic corruption through the inadequate control of the company's operations in the period from 2003 to 2006.³ Nine of the former Siemens executives entered into a settlement with the company. The criminal case against one of the two former senior executives who did not wish to enter into a settlement started at the Munich Regional Court (*Oberlandesgericht* or OLG) in spring 2011. The defendant was charged with failure to fulfil his duties as a manager of the company, among other things.⁴ In May 2011, OLG dropped the criminal case against the manager and ordered him to pay compensation of EUR 175,000 to five charities. The court stated it was dropping the case because the accused was less guilty than originally presumed.⁵ In July, the public prosecutor in Munich dropped the case against the other executive in exchange for paying EUR 400,000 to charities.⁶ Although the cases were dismissed, the civil lawsuit is continuing and Siemens is demanding EUR 5 and 15 million respectively in damages from the two former executives.

As mentioned in the Council on Ethics' observation report of 4 May 2011, Siemens entered into a settlement with U.S. authorities in 2008 and paid a fine of USD 450 million.⁷ In December 2011, the Securities and Exchange Commission (SEC) and the U.S. Department of Justice⁸ indicted a number of named individuals with violating the Foreign Corrupt Practices Act (FCPA), including eight former Siemens executives and associated consultants. The defendants are accused of having paid bribes of up to USD 100 million to secure contracts for Siemens in South America.⁹ In this regard, in June 2011 the public prosecutor in Munich also indicted one of the accused who had been a member of Siemens' executive board in the period 2000 to 2007. The public prosecutor in Munich has charged the person in question with using

³ See the Council's letter dated 4 May 2011.

⁴ Frankfurter Allgemeine, 25 January 2010, "*Siemens reicht Klage gegen ehemalige Vorstände ein*": <http://www.faz.net/aktuell/wirtschaft/unternehmen/korruption-siemens-reicht-klage-gegen-ehemalige-vorstaende-ein-15104.html>. Munich Regional Court, press release, 19 May 2011: <http://www.justiz.bayern.de/gericht/olg/m/presse/archiv/2011/03062/>

⁵ Spiegel, 19 May 2011, "*Ex-Siemens-Vorstand kommt mit Geldzahlung davon*": <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,763651,00.html>

⁶ Spiegel, 12 July 2011, "*Ex-Vorstand [REDACTED] rechten mit Straffreiheit*": <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,774071,00.html>

⁷ The U.S. Department of Justice, press release dated 15 December 2008: <http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html>

⁸ The U.S. Department of Justice.

⁹ SEC, 13 December 2011, press release: <http://www.sec.gov/news/press/2011/2011-263.htm>. The U.S. Department of Justice, press release dated 13 December 2011: <http://www.justice.gov/opa/pr/2011/December/11-crm-1626.html>

bribery in South America, as the public prosecutor suspects that the accused had knowledge of the bribes paid to Argentinean government officials in the early 2000s.¹⁰

The exposure of corrupt practices at the company's operations in Greece led to the Greek Parliament appointing an investigation committee in 2011¹¹ to examine whether Greek politicians and other public employees involved in the corruption scandal were criminally liable.¹² In January 2011, the parliamentary investigation committee informed Siemens that the Greek state had suffered a financial loss of EUR 2 billion as a result of the company's corrupt practices. Siemens was then informed that the Greek state was going to claim financial compensation for this loss from the company. In April 2011, Siemens entered into a settlement with the Greek state whereby the company pays a total of EUR 270 million, partly by waiving claims for payment for services rendered, partly by funding measures to, among other things, prevent corruption, and partly by committing to invest in the country.¹³

In 2011, Siemens was contacted by a competitor who claimed that Siemens, through its use of bribery in private and public tenders, had caused them to suffer financial losses as Siemens had unfairly won competitive tenders in which the competitor had participated. A dialogue was carried out throughout the year, ending in a settlement where Siemens has paid the competitor an unspecified amount in damages.¹⁴

4.2 Key events in 2011 concerning new corruption revelations

In June 2011 various media reported that at the beginning of the year three Siemens employees in Kuwait had entered into an agreement with an intermediary representing a Kuwaiti minister to pay bribes of EUR 1.25 million to secure Siemens a power plant contract worth EUR 180 million, instead of the contract being awarded to a Japanese competitor.¹⁵ Siemens was informed of the planned bribery through an external notification and immediately launched an internal investigation which prevented the payment of the bribe. Shortly thereafter, the management of Siemens dismissed three experienced mid-level managers who had been involved in the case. The company notified the U.S. authorities at the SEC and the public prosecutor in Munich about the incident, and the latter has initiated corruption investigations against the three dismissed executives. The incident resulted in Siemens losing the tender competition, and the company is now considering pressing compensation charges against its former employees based on loss of reputation and the financial loss that Siemens believes it has incurred.¹⁶

In its statement of 24 January 2012 concerning ongoing litigation during the fourth quarter of 2011, Siemens reports that "The Company remains subject to corruption-related investigations in several jurisdictions around the World".¹⁷

¹⁰ Süddeutsche Zeitung, 11 June 2011, "*Anklage gegen früheren Ex-Vorstand*":

<http://www.sueddeutsche.de/wirtschaft/schmiergeldskandal-bei-siemens-anklage-gegen-frueheren-vorstand-1.1107587>

¹¹ Greek Parliamentary Investigation Committee (GPIC).

¹² See also the Council's observation letter dated 4 May 2011 for more information on Siemens' use of bribery in Greece.

¹³ Siemens, press release dated 5 April 2012.

¹⁴ Siemens' website, Legal proceedings, 10 November 2011.

¹⁵ Der Spiegel, 10 June 2011, "*Siemens deckt neue Korruption auf*":

<http://www.spiegel.de/wirtschaft/unternehmen/0,1518,767774,00.html>

¹⁶ Die Welt, 11 June 2011, "*Wieder Korruption bei Siemens*":

http://www.welt.de/print/die_welt/wirtschaft/article13424818/Wieder-Korruption-bei-Siemens.html

¹⁷ <http://www.siemens.com/press/pool/de/events/2012/corporate/2012-q1/2012-q1-legal-proceedings-e.pdf>

4.3 Siemens' anti-corruption efforts in 2011

Siemens' compliance system is organised on three levels: prevent, detect and respond.¹⁸ The different levels each comprise a number of measures designed to ensure that business operations are conducted in compliance with external and internal rules and regulations. In 2011 the compliance budget was unchanged at approximately EUR 100 million, comprising 600 full-time compliance positions. The Council has described the company's compliance programme in greater detail in its letter of 3 September 2008 and in previous years' observation reports.

Siemens maintains that in recent years the company has developed and strengthened its compliance system so that compliance is now an integral part of the company's standard business processes. To achieve this, the company has among other things a rotating system for compliance officers whereby employees with a business background join the Compliance organization for 3 to 5 years before again taking over positions in the business group.¹⁹ This rotation system should ensure that the operational Compliance function has a continuous exchange with the enterprise and therefore maintains a sound understanding of business and risk. In addition, the company has given priority to communicating the importance of all managers in all departments being held fully accountable for compliance. This means that responsibility for compliance cannot be shifted to the compliance officers, but must be assumed by everyone. Last year, the executive-leadership team of the global compliance organisation, Chief Compliance Officer, Mr. Josef Winter and the Chief Counsel Compliance, Dr. Klaus Moosmayer, visited Siemens branches in more than 25 countries to inform them about the significance and implications of this responsibility. Mr. Winter and Dr. Moosmayer emphasised in particular that the message of zero tolerance towards corruption must not only come from the top management, but also must be conveyed and implemented by the company's middle managers. The compliance management team emphasises, among other things, that violations of national and international anti-corruption legislation may lead to external investigations being initiated, for example pursuant to the Foreign Corrupt Practices Act (FCPA) or the United Kingdom Bribery Act. They may also lead to exclusion from projects from multilateral development banks, which will have major financial consequences for the company.

Siemens has also conducted surveys among employees in 2011, so-called Compliance Perception Surveys, aimed at mapping the employees' knowledge about – and attitudes towards – compliance. The surveys revealed good fundamental understanding among the employees, and only four per cent think that compliance is not an integral part of the company's business processes.

To achieve a sustainable compliance system, the company says it is going to place greater emphasis on identifying risk factors in the company's commercial operations so that the compliance system can be adapted to the relevant risk profile. In this respect, in the past year Siemens has focused specifically on compliance in Russia, as this market poses a particularly high corruption risk. A separate compliance-investigation department in Moscow has been set up in order to manage this risk better. In recent years, the company's Compliance Investigation departments have delegated certain investigative duties to the Human Resources department, so that the investigation departments can prioritise their resources on high-risk cases such as the Kuwaiti case.

¹⁸ Siemens' Annual Report 2011, "Compliance report", p. 34.

¹⁹ The Council on Ethics' meeting with Siemens, 26 March 2012.

Siemens reports annually on the number of alerts, internal investigations and sanctions against employees. In 2011, the *Ask us* information department²⁰ received 1,740 inquiries from employees, down from 3,077 in 2010. The company says that this decrease is natural, as the employees now know more about compliance than before and have direct and personal contacts with their respective Compliance Officers.²¹ The company's two secure notification channels, the *Tell us* information department and the company's external Ombudsman, received 787 reports of incidents in 2011, compared with 582 the previous year. 683 of the incidents reported in 2011 were considered plausible and were therefore investigated further. A number of notifications now go directly to the compliance officers in the individual departments, which, according to the company, is an indication of the employees' confidence in the company's compliance organisation. In 2011, 306 disciplinary sanctions were imposed on employees, compared with 448 in 2010. Of this year's sanctions, 77 were dismissals.²² Most of the compliance violations pertain to conflicts of interest, improper handling of confidential information and violations of laws and regulations intended to protect the company against accounting errors.

On the basis of the settlement reached between Siemens and the World Bank in 2009, the company has committed itself to pay USD 100 million over the next 15 years to non-governmental organisations engaged in anti-corruption efforts. The Siemens Integrity Initiative has initially selected 31 projects and funding agreements were signed in 2011, amounting to a total of USD 37 million. Through the Siemens "Collective Action" to promote compliance, "Clean Business" information campaigns have been launched in Brazil ahead of the World Cup in 2014 and the Olympic Games in 2016, among others, while in China studies of compliance and national law have been initiated and a "compliance club" has been established for Chinese executives.

In its third working year, the independent monitoring unit, introduced as part of the settlement between Siemens and the U.S. legal and financial authorities in 2008 and headed by Dr. Theo Waigel, the former Finance Minister of Germany, has monitored the implementation of the unit's previous recommendations and the company's risk assessments as well as conducted surveys to determine the sustainability of Siemens' compliance system. The unit selected eleven countries for closer monitoring, including China, Russia, Nigeria and Indonesia. In view of the unrest in the Middle East, an evaluation of the company's financial control mechanisms in Bahrain, Egypt and Libya has also been conducted.²³ The monitoring unit has interviewed over 880 employees in 2011, including sales and account managers, compliance officers and financial managers. Each year, the monitoring unit makes recommendations concerning measures to improve Siemens' compliance system. All of the 114 recommendations from the unit's first year of operation have now been implemented, and 86 per cent of the 29 recommendations made in the second year have been implemented. In 2011, the monitoring unit has made another nine recommendations. Based on findings from tests and interviews, Dr. Waigel has issued a certificate in which he confirms that Siemens has implemented a comprehensive compliance system capable of detecting and preventing bribery. In 2011, the monitoring unit has not found any instances of corruption that were not captured and dealt with by the compliance system.

This year the monitoring unit is focusing on "the tone from the Middle", the company's risk analysis and assessment, projects operated from the company's head office, follow-up of the

²⁰ Fiskal 2011 (year end 30 September) Siemens' Annual Report 2011. The "Ask us" help desk encourages employees to ask questions about compliance issues.

²¹ Siemens' Annual Report 2011, p. 74.

²² Meeting between the Council on Ethics and Siemens, 26 March 2012.

²³ Meeting between the Council on Ethics and Siemens, 26 March 2012.

nine new recommendations, and visits to selected countries, including Austria and Russia. Pursuant to the settlement agreement between the company and the U.S. authorities, in its fourth year the compliance system shall go from being a system that is monitored by Dr. Waigel's monitoring unit to a sustainable compliance system that no longer requires an external monitoring unit.

5 The Council on Ethics' assessment

Against this background, the Council on Ethics finds that during the observation period Siemens has shown that it is both willing and able to turn the company's negative culture around through the design and implementation of a new compliance system, by following the monitoring unit's recommendations promptly, and by communicating clearly the company's zero tolerance for corruption, both internally and externally. The company operates in sectors and countries where the risk of corruption can be very high. Despite the fact that Siemens now appears to have a robust compliance system, it will therefore be important that the system is monitored and developed in line with changes in the risk-profile. The key to avoiding serious corruption in the future will nevertheless be the development of a pervasive corporate culture based on a policy of zero tolerance for bribery.

In 2009, the Ministry of Finance decided that Siemens should be placed on the watch list for a period of up to four years. The Council on Ethics' understanding is that during the period of observation the Council can both issue a recommendation for exclusion if the elements observed develop negatively, and can issue a recommendation that the company be removed from the watch list if the Council on Ethics judges that there is no longer an especially high risk of the guidelines being breached. After an overall assessment, the Council on Ethics finds that there are now grounds to remove Siemens from the watch list.

6 Recommendation

The Council on Ethics recommends that Siemens AG be removed from the watch list of the Norwegian Government Pension Fund Global.

Ola Mestad Chair (sign.)	Dag Olav Hessen (sign.)	Ylva Lindberg (sign.)	Gro Nystuen (sign.)	Bente Rathe (sign.)
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