

Unofficial English Translation

**To Norges Bank**

14.12.2020

**Recommendation to place Thyssenkrupp AG under observation**

## Summary

The Council on Ethics recommends that Thyssenkrupp AG be placed under observation pursuant to the corruption criterion in the Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPFG). Thyssenkrupp is a multinational industrial group comprising 331 companies with a total of 104,000 employees in 60 countries. It is listed on the Frankfurt Stock Exchange. At the close of 2020, the GPFG owned 1.9 per cent of the company's shares, worth approx. NOK 1 billion.

The Council's investigations have shown that Thyssenkrupp, through its subsidiaries, can be linked to suspicions or allegations of corruption in a total of eight countries over a period of more than 20 years. All the allegations relate to the payment of bribes or suspicious transactions – or agreements relating to such transfers of money – via agents and intermediaries to secure contracts for Thyssenkrupp's subsidiaries. In all, the cases relate to payments amounting to tens of millions of US dollars.

The Guidelines for Observation and Exclusion from the GPFG are forward-looking. When assessing the risk of whether Thyssenkrupp will once again become involved in similar incidents, the Council has attached importance to the company's response to the corruption allegations, the assistance it has provided with respect to the Council's investigations and the extent to which it has implemented effective measures to prevent, detect and respond to corruption.

With regard to the company's response to the corruption allegations, it seems clear that Thyssenkrupp has long signalled that it takes corruption seriously. Furthermore, the Council notes that the company has been open to working with the prosecuting authorities and that it has launched internal investigations into the corruption allegations.

The Council's review of the company's systems and routines for the prevention and detection of corruption leaves the impression that Thyssenkrupp has done much to establish a comprehensive and effective anti-corruption programme since the Council last contacted the company in 2014. However, all this must be seen in light of the sector and the countries in which the company operates, as well as its history of corruption allegations. Thyssenkrupp operates in many countries where the risk of corruption is high. In addition, the defence sector is considered to be particularly prone to corruption, not least due to its extensive use of agents.

In the Council's opinion, this places a particular requirement on the company to have in place robust systems with which to prevent, detect and deal with corruption in general, and manage the corruption risk associated with the use of agents in particular. It also presumes that these systems work when they are really needed. However, the ongoing corruption case in Israel, which involves Thyssenkrupp's former agent in the country, gives another impression. The Council notes that in that case there is a significant discrepancy between what the company itself has disclosed and the information the Council has obtained from other sources. More generally, the Council also notes that the company's central administration does not have a complete overview of the number of third parties the group companies do business with, and that it does not have an overview of the third parties who have been rejected on the grounds of corruption risk. The Council attaches importance to the fact that Thyssenkrupp has not instituted standardised maximum amounts for success fees, and that the company has no special criteria or procedures for determining when agents should be the object of more detailed investigations or referred upward to group management.

In principle, this indicates that the risk of Thyssenkrupp contributing to corruption in the future must be deemed unacceptably high. The fact that the Council is nevertheless recommending that Thyssenkrupp be placed under observation at this juncture is due to the company long having

given indications that it takes corruption seriously and because it has demonstrated a willingness to assist the Council's investigations, thereby enabling it to gain an insight into how the company is working to prevent and detect corruption. During the period of observation, the Council will obtain information about these endeavours and monitor whether further cases of gross corruption are detected in the company's operations going forward, see section 6(4) of the GPFG's guidelines.

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# 1 Introduction

The Council on Ethics for the Norwegian Government Pension Fund Global (GPF) has assessed the fund's investments in Thyssenkrupp AG<sup>1</sup> (Thyssenkrupp) against the Guidelines for Observation and Exclusion of Companies from the GPF.<sup>2</sup> The company has been implicated in several corruption cases.

Thyssenkrupp is a multinational group comprising 331 companies worldwide, and employing 104,000 people in 60 countries. It is listed on the Frankfurt Stock Exchange. In addition to steel production, its operations include the manufacture of machine parts and general industrial service provision, as well as the construction of ships and submarines through Thyssenkrupp Marine Systems.<sup>3</sup>

At the close of 2020, the GPF owned 1.9 per cent of the company's shares, worth some NOK 1 billion.<sup>4</sup>

## 1.1 Matters considered by the Council

Thyssenkrupp has been linked to suspicions and allegations of corruption in several countries. A company may be excluded from investment by the GPF if there is an unacceptable risk that it is contributing to or is itself responsible for gross corruption, as stated in section 3(e) of the GPF's guidelines.

The Council on Ethics applies the following definition of gross corruption:

*1) Gross corruption exists if a company, through its representatives,*

*a) gives or offers an advantage – or attempts to do so – in order to unduly influence:*

*i) a public official in the performance of public duties or in decisions that may confer an advantage on the company; or*

*ii) a person in the private sector who makes decisions or exerts influence over decisions that may confer an advantage on the company,*

*b) demands or receives a bribe*

*and*

*c) the corrupt practices mentioned in a) and b) are carried out in a systematic or extensive way.*

*2) In its assessment, the Council also attaches importance to the extent to which the company has a good anti-corruption programme that is organised and implemented in such a way as to enable the company to prevent, uncover and respond to corruption in its operations.*

In the Council's assessment of future risk with respect to corruption, emphasis is placed on how the company has responded to the allegations of corruption, how it has assisted in the Council's inquiries, and the extent to which it has taken effective steps to prevent, detect and

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<sup>1</sup> Issuer ID: 815253

<sup>2</sup> <https://nettsteder.regjeringen.no/etikkradet3/files/2019/12/guidelines-for-observation-and-exclusion-from-the-gpf-01.09.2019.pdf>

<sup>3</sup> Thyssenkrupp Annual Report 2019/2020, <https://ucpcdn.thyssenkrupp.com/binary/UCPthyssenkruppAG/en/investors/reporting-and-publications/link-Annual-Report-2019-2020.pdf>.

<sup>4</sup> Norges Bank's website, <https://www.nbim.no/en/the-fund/investments/holdings-as-at-31.12.2019/fullsize/>.

respond to corruption. The risk of corruption in the business sectors and the countries in which the company operates are important factors in the Council's assessment. The Council takes the position that it is up to the company to substantiate that its efforts to prevent corruption are sufficiently effective.

## 1.2 Sources

Information on the corruption allegations has been obtained largely from the international media, as well as from German and Israeli prosecuting authorities.

The Council's assessment of the company's anti-corruption efforts is based on information published on Thyssenkrupp's website and in its annual reports, as well as from written communications between the Council and the company. The Council has also held one meeting with company representatives.

## 2 The Council's findings

The Council's investigations have shown that Thyssenkrupp, through its subsidiaries, can be linked to suspected or alleged corruption in a total of eight countries over a period of more than 20 years.

### 2.1 Israel

In November 2016, it became known that Israel's attorney general had decided to start an investigation into the Israeli navy's procurement of new 'Dolphin' class submarines built by Thyssenkrupp.<sup>5</sup> In addition to the submarine contract, the investigation was also to examine the purchase of four 'Sa'ar 6' class corvettes from Thyssenkrupp in 2015.<sup>6</sup>

In the early weeks of November 2018, the Israeli police announced the key findings of their investigation into the submarine case in connection with its transfer to the Israeli prosecuting authorities for further legal process. In brief, the investigators said the case related to bribes, fraud, money laundering and other criminal offences committed by a network of public officials, business people and highly placed civilian and military leaders. The criminal offences were alleged to have taken place in the period 2009–2017 in order to promote Thyssenkrupp's business interests in connection with Israel's procurement of submarines and surface vessels.<sup>7</sup> The case has been characterised as one of the largest corruption scandals in Israel's history.<sup>8</sup>

At the beginning of December 2019, the Israeli prosecuting authorities published the first part of its recommended indictment in the case. According to the indictment, those involved are

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<sup>5</sup> The Jerusalem Post, 18 November 2016: *Attorney General orders probe of German submarine deal*, <https://www.jpost.com/Israel-News/A-G-orders-probe-of-German-submarine-deal-473002>

<sup>6</sup> Reuters, 28 November 2016: *'Submarines affair' prompts investigations in Israel and Germany*, <https://www.reuters.com/article/us-israel-submarines-idUSKBN13N1K2>; The Times of Israel, 28 January 2017: *Ya'alon testified against Netanyahu in submarine affair - report*, <https://www.timesofisrael.com/yaalon-testified-against-netanyahu-in-submarine-affair-report/>.

<sup>7</sup> Israel Police, 8 November 2018: *קית תריקה מוים: "תוללוצה תשרפ"*, [https://www.gov.il/he/Departments/news/police\\_8\\_11\\_18](https://www.gov.il/he/Departments/news/police_8_11_18); Globes, 8 November 2018: *Israel Police recommends indictments in submarines affair*, <https://en.globes.co.il/en/article-israel-police-recommends-indictments-in-submarines-affair-1001259815>.

<sup>8</sup> The New York Times, 5 December 2019: *Charges Planned Against Netanyahu Aides in Submarine Graft Scandal*, <https://www.nytimes.com/2019/12/05/world/middleeast/israel-netanyahu.html>.

said to have received a total of approx. NIS 1.2 million (approx. NOK 3 million) in bribes from Thyssenkrupp's sales agent in Israel.<sup>9</sup> Thyssenkrupp engaged the agent in 2009, before which, the person concerned had dealt primarily in real estate.<sup>10</sup> The company claimed to have chosen this person itself because it did not have its own country office in Israel. It also said that it performed a thorough due diligence investigation into the agent and associated companies, without finding anything that gave grounds for concern.<sup>11</sup>

However, media reports allege that Thyssenkrupp was forced to choose the above-mentioned agent by the then commander-in-chief of Israel's navy, instead of the agent the company already used in Israel. Apparently, the threat was that Israel would not order more submarines unless Thyssenkrupp replaced its usual sales agent with the one recommended.<sup>12</sup>

Thyssenkrupp has rejected the Council's request for a more detailed explanation of the circumstances surrounding the change of agent on the grounds that the matter is under investigation in Germany and Israel.<sup>13</sup> The Council has also requested further details of the follow-up and due diligence the company performed on the agent after it had engaged this person – particularly with a view to the PEP<sup>14</sup> risk. Thyssenkrupp has also rejected this request on the same grounds.

The media reports on the engagement of the agent are also supported by the recommended indictment, which states that the then commander-in-chief of the navy, the then deputy head of Israel's National Security Council (INSC) and the agent had jointly agreed that the latter should compensate the two former individuals for recommending him for the role of agent to Thyssenkrupp, and for influencing future vessel purchases from the company. The recommended indictment also states that the agent and the then deputy head of the INSC were known to each other after having served in the navy together. In total, the agent is alleged to have paid NIS 420,000 (approx. NOK 1 million) to the deputy head of the INSC, and NIS 557,000 (approx. NOK 1.4 million) to the commander-in-chief of the navy in bribes from 2014 until the case came under investigation.<sup>15</sup>

From the time he was engaged by the company in 2009 until November 2016, Thyssenkrupp is said to have transferred a total of EUR 10.4 million to the sales agent. It is also supposed to have been agreed that he would receive a further EUR 10 million for his assistance in

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<sup>9</sup> Office of the State Attorney, Israel, 5 December 2019: הפרקליטות החליטה על הגשת כתבי אישום; בכפוף לשימוע בפרשת הצוללות <https://www.gov.il/he/departments/news/05-12-2019-03>;

<sup>10</sup> Haaretz, 27 November 2016: *Report: Israel Changed Its Submarine Acquisition Chief When Netanyahu Became Prime Minister*, <https://www.haaretz.com/israel-news/report-israel-changed-submarine-king-when-netanyahu-became-pm-1.5466584>; The Jerusalem Post, 25 August 2017: *Bubbles, boats, and beats: the Netanyahu scandals*, <https://www.jpost.com/Jerusalem-Report/Troubled-Waters-502438>; Zeit Online, 13 October 2017: *Corruption Allegations Shake German-Israeli Cooperation*, <https://www.zeit.de/politik/ausland/2017-10/arms-exports-israel-germany-corruption-allegations/komplettansicht>.

<sup>11</sup> Letter from Thyssenkrupp to the Council on Ethics, dated 12 April 2019.

<sup>12</sup> Haaretz, 27 November 2016; Handelsblatt, 28 November 2016: *ThyssenKrupp Under Fire Over Israeli Submarine Contract*, <https://www.handelsblatt.com/english/politics/defense-sales-thyssenkrupp-under-fire-over-israeli-submarine-contract/23542908.html?ticket=ST-5355384-IuOogAvWh72Ydlg0N7cl-ap1>. The Council on Ethics has asked Thyssenkrupp for further clarification.

<sup>13</sup> Letter from Thyssenkrupp, dated 5 October 2020.

<sup>14</sup> Politically Exposed Person, defined as a natural person who has or has held a prominent public office. Under the definition drawn up by the Financial Action Task for (FATF), foreign PEPs also include high-ranking officers. (FATF, June 2013: *FATF Guidance. Politically Exposed Persons (Recommendations 12 and 22)*, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/guidance-pep-rec12-22.pdf>).

<sup>15</sup> Office of the State Attorney, Israel, 5 December 2019.

connection with the sale of the four corvettes in 2015.<sup>16</sup> His commission for the sale of the three new submarines was supposed to have been EUR 10–30 million if the deal went through. This was calculated on the basis of a contract worth approx. EUR 1.5 billion for the submarines and an agent’s commission of up to 2 per cent.<sup>17</sup> In the Israeli police’s recommended indictment, it is pointed out that these commissions are very high.<sup>18</sup> The Council on Ethics has asked Thyssenkrupp to confirm or amend these figures and provide further details of the types of services that were performed in exchange for these amounts. The company, however, has declined to respond, with reference to the ongoing investigations.<sup>19</sup>

At the end of March 2019, it emerged that the public prosecutors in Bochum, Germany, were also investigating this case.<sup>20</sup> At the start of May 2019, it became known that Israeli investigators – in conjunction with their German colleagues from Bochum – intended to question two executives employed by Thyssenkrupp’s subsidiary Marine Systems in connection with the submarine case.<sup>21</sup> According to Thyssenkrupp, the two executives were interviewed as witnesses, and the company is unaware of any ongoing investigation into any of its subsidiaries or any current or former employees in connection with the case.<sup>22</sup>

## 2.2 Greece and Peru

In the period 1998–2011, the company Atlas Elektronik – which was taken over by a consortium comprising Thyssenkrupp and EADS (now Airbus) in 2006 – is alleged to have paid a total of USD 24 million in bribes to public officials in Greece, in return for contracts concerning the sale of submarine equipment. EUR 13 million is, for example, alleged to have been paid via an intermediary to secure contracts for sonar systems. Atlas is also accused of having paid bribes – again via an intermediary – in connection with the conclusion of a contract for the sale of torpedoes to the Peruvian navy. At the start of June 2017, the prosecuting authorities in Bremen, Germany, decided that Atlas must pay a forfeit of EUR 48 million that was meant to correspond to the profit derived from the contracts in Greece and Peru.<sup>23</sup>

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<sup>16</sup> Globes, 23 November 2017: <https://tinyurl.com/hrztmjbv>; Office of the State Attorney, Israel, 5 December 2019.

<sup>17</sup> Handelsblatt, 21 November 2016: *Sources: Netanyahu Confidant Met ThyssenKrupp*, <https://www.handelsblatt.com/today/politics/handelsblatt-exklusive-sources-netanyahu-confidant-met-thyssenkrupp/23542720.html?ticket=ST-20171316-sVrzOfGuA7eNZiJz0Kjg-ap6>.

<sup>18</sup> Israel Police, 8 November 2018.

<sup>19</sup> Letter from Thyssenkrupp, dated 5 October 2020.

<sup>20</sup> Handelsblatt, 25 March 2019: *Deutsche Staatsanwaltschaft ermittelt wegen U-Boot-Verkauf an Israel*, <https://www.handelsblatt.com/unternehmen/industrie/korruptionsvorwuerfe-deutsche-staatsanwaltschaft-ermittelt-wegen-u-boot-verkauf-an-israel/24143164.html>.

<sup>21</sup> Handelsblatt, 6 May 2019: *Israels Polizei befragt wegen U-Boot-Deals erstmals in Deutschland Thyssen-Manager*, <https://www.handelsblatt.com/unternehmen/industrie/ruestungsgeschaefte-israels-polizei-befragt-wegen-u-boot-deals-erstmals-in-deutschland-thyssen-manager/24308248.html?ticket=ST-405635-wW4ifYEfxVjRgXH5AahW-ap6>.

<sup>22</sup> Letter from Thyssenkrupp, dated 6 November 2020.

<sup>23</sup> Staatsanwaltschaft Bremen, 1 June 2017: *Staatsanwaltschaft Bremen erlässt Verfallsbescheid über 48 Millionen Euro gegen Atlas Elektronik GmbH*, Pressemitteilung 5/2017, <https://www.staatsanwaltschaft.bremen.de/sixcms/media.php/13/Nr%20%205%20.5468.pdf>; [https://www.traceinternational.org/TraceCompendium/Detail/503?class=casename\\_searchresult&type=1](https://www.traceinternational.org/TraceCompendium/Detail/503?class=casename_searchresult&type=1); Reuters, 1 June 2017: *Thyssenkrupp’s Atlas ordered to pay 48 mln euros in bribery case*, <https://www.reuters.com/article/atlas-corruption/Thyssenkrupps-atlas-ordered-to-pay-48-mln-euros-in-bribery-case-idUSL8N1IY3TY>.



## 2.3 Turkey, South Korea, Indonesia and Pakistan

Thyssenkrupp is also accused of corruption or attempted corruption in connection with projects in Turkey, South Korea, Indonesia and Pakistan through Marine Force International (MFI), a joint venture with the German company Ferrostaal. MFI was set up in 2004 to promote the worldwide sale of submarines built by Thyssenkrupp's subsidiary HDW. In 2009, MFI is alleged to have paid EUR 2 million and EUR 250,000, respectively, in suspicious transactions to local agents in Turkey in connection with the sale of six submarines to the Turkish navy, worth a combined total of USD 2.26 billion. In connection with a contract for the sale of six submarines to the South Korean navy, worth EUR 2.5 billion, the company is further alleged to have paid several million euro to an agent who had previously been convicted of bribing members of the South Korean defence force. In Indonesia, the company is alleged to have attempted to camouflage a payment to a local agent by dividing it into smaller sums and recording it under a fictitious purpose. In Pakistan, a local agent with good political contacts is alleged to have planned to use a portion of his success fee to pay bribes amounting to USD 66 million.<sup>24</sup>

## 2.4 South Africa

In 2007, allegations were made that Thyssenkrupp – through its subsidiary Thyssen Rheinstahl Technik (TRT) – had engaged in bribery in connection with South Africa's large-scale procurement of weapons systems in the latter half of the 1990s and up until 2000 ("South African Arms Deal"). The allegations claim, among other things, that in 1995, TRT – with the assistance of an agent – entered into an agreement with the then chair of the South African parliament's defence committee to pay DM 2.5 million in bribes in return for help to secure a contract, worth a total of USD 454 million, for the construction of four corvettes. In the autumn of 1998, the same company, in connection with the same procurement, is also alleged to have agreed to pay USD 3 million in bribes to the then head of procurement for the South African Defence Ministry. The sum in question was paid to a shell company in the spring of 2000. The matter was under investigation by the public prosecution authorities in Dusseldorf, Germany, from 2006 until the case was dropped in 2008. Proceedings were halted partly because it was difficult to prove that the company had paid bribes after it had become a criminal offence to do so under German law, and partly because of legal limitations related to a requirement of proven favour in return.<sup>25</sup>

On the basis of the cases mentioned in sections 2.2–2.4 above, the Council contacted Thyssenkrupp in 2014 to obtain the company's comments on the various allegations and learn

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<sup>24</sup> Spiegel, 11 November 2011: *U-Turn on U-Boats. Thyssen Plans Withdrawal from Submarine Joint Venture*, <http://www.spiegel.de/international/business/u-turn-on-u-boats-thyssen-plans-withdrawal-from-submarine-joint-venture-a-796474.html>; Handelsblatt, 8 June 2015: *Sub Sales Questioned at Thyssenkrupp*, <https://www.handelsblatt.com/today/companies/handelsblatt-exclusive-sub-sales-questioned-at-Thyssenkrupp/23505030.html?ticket=ST-1172211-ggFxfYUKimpdsV5BWUw6-ap6>; Handelsblatt, 18 August 2016: *Submarine deal. A Warning from Islamabad*, <https://www.handelsblatt.com/today/companies/submarine-deal-a-warning-from-islamabad/23540182.html?ticket=ST-1188783-J5eSbLC2Z1s9onuMVTJi-ap6>.

<sup>25</sup> Landeskriminalamt Nordrhein-Westfalen, 13 February 2007: *Information about the present state of investigations concerning links to the UK and possible links to BAE*, <https://corruptiontribunal.org.za/wp-content/uploads/2018/02/AD8-German-Police-Report.pdf>; Spiegel Online, 5 February 2007: *Bribery Allegations Cloud German Ship Sale to South Africa*, <http://www.spiegel.de/international/spiegel/dubious-defense-deal-bribery-allegations-cloud-german-ship-sale-to-south-africa-a-464319.html>; Mail & Guardian, 14 June 2013: <https://tinyurl.com/5xpwucaz>.

more about the company's anti-corruption systems.<sup>26</sup> At that time, Thyssenkrupp assured the Council that the company placed great emphasis on compliance in general terms and that it stood firmly by its "zero-tolerance" policy with regard to corruption. On this basis, and on the basis of the review of the company's compliance system as it was presented in 2014, the Council decided to put the matter to one side.

### 3 Standards for compliance and corruption-prevention

In its assessment of what a company is doing to prevent future acts of corruption, the Council refers, among other things, to international standards for best practice regarding compliance and combatting corruption in multinational companies. On the basis of these standards, some key principles can be deduced with respect to the steps a company should take to establish and implement an effective anti-corruption programme.<sup>27</sup>

All relevant international bodies presume that top management must be genuinely involved in this effort if a company is to be capable of preventing corruption effectively. It is important that management clearly communicates a zero-tolerance policy on corruption, and that the company communicates the importance of its corruption-prevention activities to its workforce, business partners and representatives.<sup>28</sup>

To be able to define systems tailored to the specific business, corruption risk must be systematically identified and assessed in all areas of the operation. Such assessments are performed on an ongoing basis in connection with third-party due diligence,<sup>29</sup> training and internal investigations. It is a minimum requirement that a company implements robust preventive measures in those areas in which it is most exposed to risk.<sup>30</sup>

To achieve the effective implementation of these systems, good training programmes must be developed for employees and those business partners over which the company has a

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<sup>26</sup> Respectively, email from the Council on Ethics to Thyssenkrupp, dated 22 October 2014, and email from Thyssenkrupp to the Council on Ethics, dated 3 November 2014.

<sup>27</sup> Internationally recognised guidelines and principles for the design of anti-corruption programmes may be found, inter alia, in: ISO 37001:2016: *Anti-bribery management systems – Requirements with guidance for use*; UNODC. 2013. *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, available at [https://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf); U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC). 2012. *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, available at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>; OECD. 2010. *Good Practice Guidance on Internal Controls, Ethics and Compliance*, available at <https://www.oecd.org/daf/anti-bribery/44884389.pdf>; Transparency International (TI). 2013. *Business Principles for Countering Bribery*, available at [http://www.transparency.org/whatwedo/publication/business\\_principles\\_for\\_countering\\_bribery](http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery).

<sup>28</sup> UNODC (2013), Chapter III, (A); OECD (2010), Annex II, (A)(1); TI (2013), point 6.1. See also World Bank Group (WBG). 2010. *Summary of World Bank Group Integrity Compliance Guidelines*, point 2.1, available at <http://pubdocs.worldbank.org/en/489491449169632718/Integrity-Compliance-Guidelines-2-1-11.pdf>.

<sup>29</sup> This includes, inter alia, agents, consultants, lobbyists, suppliers and their subcontractors, distributors, partners in joint ventures and consortia. Source: World Economic Forum-Partnering Against Corruption Initiative (WEF-PACI). 2013. *Good Practice Guidelines on Conducting Third-Party Due Diligence*, point. 1a, p. 8, [http://www3.weforum.org/docs/WEF\\_PACI\\_ConductingThirdPartyDueDiligence\\_Guidelines\\_2013.pdf](http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf).

<sup>30</sup> This follows, inter alia, from UNODC (2013), Chapter II; OECD (2010), Annex II, (A); DOJ and SEC (2012), Chapter 5, pages 58-59; UK Ministry of Justice. 2011. *The Bribery Act 2010 Guidance*, Principle 3, available at <https://www.gov.uk/government/publications/bribery-act-2010-guidance>. More detailed guidance on how such risk assessments may be performed can be found, inter alia, in the Global Compact's *A guide for anti-corruption risk-assessment* (2013), available at [https://www.unglobalcompact.org/docs/issues\\_doc/Anti-Corruption/RiskAssessmentGuide.pdf](https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf).

controlling or decisive influence. Senior executives, middle managers and employees in high-risk positions must, in particular, receive specially tailored training.<sup>31</sup>

Furthermore, it is important that the company perform checks on third parties, so called due diligence, that third parties in high-risk areas are given anti-corruption training and are followed up on a regular basis, and that payments to such third parties are checked and verified as being proportionate to the work performed.<sup>32</sup> The follow-up of third parties may, for example, include regular reviews and updates of risk assessments and due diligence processes, repeated online and database searches to identify new red flags, and regular and/or risk-based audits.<sup>33</sup>

Management must encourage employees to behave in compliance with the anti-corruption programme and to report any suspected breaches of internal regulations. Systems should be established by which employees and others can report wrongdoing anonymously and without risk of retaliation.<sup>34</sup> The company should have a clearly defined procedure for investigating reports of rule violations, and the sanctions imposed on individuals who breach the rules must be made widely known.<sup>35</sup>

The anti-corruption programme must be monitored and improved on the basis of both internal experience and external factors, such as new laws and standards for best practice.<sup>36</sup>

According to such standards, it is crucial that corruption prevention activities be delegated to a separate function or a person endowed with the necessary resources and autonomy. It is presumed that the compliance department has direct access to executive management and to the board of directors.<sup>37</sup>

## 4 Information from the company

### 4.1 Thyssenkrupp's response to the allegations of corruption

In 2007, Thyssenkrupp adopted a “zero-tolerance” policy.<sup>38</sup> Thyssenkrupp's decision to dissolve Marine Force International (MFI) in 2011 was also seen in connection with all the corruption allegations relating to this company. According to Thyssenkrupp, this move clearly signalled its desire to bring marketing and sales activities linked to its shipbuilding operations back under its own management and subject to Thyssenkrupp's compliance regime.<sup>39</sup> At its meeting with the Council, Thyssenkrupp pointed out that MFI was never sanctioned in connection with the allegations of corruption linked to its operations in Turkey, South Korea,

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<sup>31</sup> UNODC (2013), Chapter III, (H); OECD (2010), Annex II, (A), point 8; TI (2013), point 6.4; WBG (2010), point 7.

<sup>32</sup> OECD (2010), Annex II, (A), point 6(i); TI (2013), point 6.2; WBG (2010), point 5.

<sup>33</sup> World Economic Forum-Partnering Against Corruption Initiative (WEF-PACI). 2013. *Good Practice Guidelines on Conducting Third-Party Due Diligence*, point 4(b), p. 14, [http://www3.weforum.org/docs/WEF\\_PACI\\_ConductingThirdPartyDueDiligence\\_Guidelines\\_2013.pdf](http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf).

<sup>34</sup> UNODC (2013), Chapter III, (I) and (J); OECD (2010), Annex II, (A), points 9 and 11(ii); TI (2013), points 6.3.1 and 6.5.1; WBG (2010), points 8.1, 9.1 and 9.3.

<sup>35</sup> UNODC (2013), Chapter III, (J) and (K); WBG (2010), point 10.

<sup>36</sup> UNODC (2013), Chapter III, (L); OECD (2010), Annex II, (A), point 12; TI (2013), points 6.8 and 6.10; WBG (2010), point 3.

<sup>37</sup> This follows, inter alia, from DOJ and SEC (2012), Chapter 5, p. 58; OECD (2010), Annex II, (A), point 4; WBG (2010), point 2.3.

<sup>38</sup> See below under 4.2.

<sup>39</sup> Spiegel, 8 November 2011; Handelsblatt, 8 June 2015.

Indonesia and Pakistan. At the same time, the company confirmed that its experience with MFI led to a reorganisation of the company's sales department and material changes in the compliance regime at the company's marine operations.<sup>40</sup>

With respect to matters in South Africa, Thyssenkrupp informed the Council in a letter dated 3 November 2014 that it had cooperated with the Dusseldorf prosecuting authorities' investigations in the period 2006–2008, and that the company had also carried out its own investigation.

In the same letter, and later at its meeting with the Council, Thyssenkrupp pointed out that its subsidiary Atlas also cooperated fully with the prosecuting authorities in Bremen in connection with their investigation into alleged misconduct in Greece, and that Atlas had also undertaken its own investigation into the matter. Thyssenkrupp disclosed that it had been closely involved in this investigation.

Moreover, after the submarine case in Israel became known in November 2016, Thyssenkrupp immediately launched its own investigation on the basis of the allegations reported in the Israeli media. At the same time, the company terminated its collaboration with the sales agent concerned.<sup>41</sup>

## **4.2 Measures implemented by Thyssenkrupp to prevent, detect and respond to corruption**

In addition to the information published on the company's website, Thyssenkrupp has on several occasions provided supplementary information about its anti-corruption measures, and shared several of its internal guidelines in its letters of reply to the Council on Ethics.

### *Tone from the top:*

The message of 'zero tolerance' for corruption and other rule violations is expressly set out in a policy statement signed by all members of the company's group management, formally known as the executive board (EB). In this policy, the company also makes it clear that it "would rather sacrifice a contract than win it by breaking the rules". According to the company, this policy was adopted as far back as April 2007.<sup>42</sup> Furthermore, Thyssenkrupp has pointed out that its executive board and divisional directors also hold regular meetings with the Compliance Department, at which compliance is the main topic.<sup>43</sup> In response to the Council's request for more specific examples, Thyssenkrupp disclosed that managements at various levels occasionally reject contracts because due diligence investigations show that the risk is too high, even if this results in lost business opportunities. Agreements with sales agents are approved by the management boards (MBs) of the various business areas. At the central level, compliance issues are delegated to the board of directors' audit committee. Under Germany's two-tier corporate governance model, it is not normally the role of the board of directors to involve itself in operational decisions.<sup>44</sup>

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<sup>40</sup> Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020

<sup>41</sup> Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020

<sup>42</sup> <https://www.thyssenkrupp.com/en/company/compliance/compliance-commitment> (Last visited: 16 October 2019). In a letter dated 6 November 2020, Thyssenkrupp also disclosed that compliance is a core value that is laid down in the company's mission statement. <https://www.thyssenkrupp.com/en/company/compliance/what-we-stand-for>.

<sup>43</sup> Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020

<sup>44</sup> Letter from Thyssenkrupp to the Council on Ethics, dated 5 October 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 6 November 2020.

*Risk assessments:*

Thyssenkrupp has stated that the company performed a “bottom-up” risk assessment for its entire global operation during the 2013/2014 financial year. In this connection, compliance officers mapped out risks, primarily linked to competition law and corruption, and the extent to which the company’s compliance programme was being implemented. In the next phase, workshops were staged at more than 100 group companies, at which measures were drawn up for the management and reduction of the risks that had been identified. According to Thyssenkrupp, this risk map is updated continuously through internal and external audits, input from workshops and day-to-day compliance activities, as well as the annual review of the company’s internal control system.<sup>45</sup>

Thyssenkrupp has also provided the Council with examples of the tools it uses in its risk assessment workshops – called Compliance Dialogues – and what their potential outcome could be with regard to the corruption risk in a particular country, as well as an example of a report to the company’s executive board on the substance and results of these risk assessments at an overarching level.

*Code of Conduct:*

In addition to the ethical guidelines set out in its Code of Conduct,<sup>46</sup> Thyssenkrupp has also drawn up a separate set of guidelines covering corruption (Group Regulation Corruption Prevention). The latest published version of this document dates from 1 November 2015.<sup>47</sup> The corruption prevention regulation addresses conflicts of interest, active and passive corruption, contact with public authorities and visits by delegations. The regulation also contains several examples of situations or ‘red flags’ where employees must consult a compliance officer before they approve/accept different types of transactions. The regulation refers, moreover, to separate internal guidelines for handling invitations and gifts, donations and sponsorships, as well as third parties. Thyssenkrupp has shared these guidelines with the Council on Ethics.

*Organisation:*

Thyssenkrupp has stated that, since 2014, it has had a separate Legal & Compliance Department, led by the company’s General Counsel, to whom the Chief Compliance Officer (CCO) reports. Thyssenkrupp’s General Counsel reports to the member of the executive board responsible for this area. This person exercises overall supervision of the compliance programme and therefore also of the anti-corruption programme. The same person reports regularly to the board of directors and audit committee on all relevant issues relating to compliance and ethics. Depending on the issue, the CCO also attends meetings of the full board of directors and the board’s audit committee.<sup>48</sup>

The number of employees engaged in the compliance area at Thyssenkrupp has risen substantially in the past decade. According to Thyssenkrupp, it now has more than 60

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<sup>45</sup> <https://www.thyssenkrupp.com/en/company/compliance/program>;  
<https://www.thyssenkrupp.com/en/company/compliance/external-reviews/internal-controls>.

<sup>46</sup> Thyssenkrupp: Code of Conduct,  
[https://ucpcdn.thyssenkrupp.com/\\_legacy/UCPthyssenkruppAG/assets.files/media/unternehmen/compliance/code-of-conduct/2019/po-co-cpl-0332-v03-en\\_code\\_of\\_conduct-neu\\_final.pdf](https://ucpcdn.thyssenkrupp.com/_legacy/UCPthyssenkruppAG/assets.files/media/unternehmen/compliance/code-of-conduct/2019/po-co-cpl-0332-v03-en_code_of_conduct-neu_final.pdf).

<sup>47</sup> Thyssenkrupp, 1 November 2015: Group Regulation Corruption Prevention, Version 02,  
[https://d2zo35mdb530wx.cloudfront.net/\\_legacy/UCPthyssenkruppAG/assets.files/media/unternehmen/transparency-international/group\\_regulation\\_corruption\\_prevention.pdf](https://d2zo35mdb530wx.cloudfront.net/_legacy/UCPthyssenkruppAG/assets.files/media/unternehmen/transparency-international/group_regulation_corruption_prevention.pdf).

<sup>48</sup> Letter from Thyssenkrupp to the Council on Ethics, dated 6 November 2020,  
<https://www.thyssenkrupp.com/en/company/compliance/compliance-organization>;  
<https://www.thyssenkrupp.com/en/company/compliance/external-reviews/leadership>.

employees working full-time on compliance. These are divided into four departments, each with responsibility for a different aspect of compliance:

1. The Awareness & Prevention Department is responsible for the strategic development of the company's compliance programme, including measures to combat corruption. In addition to the sharing of knowledge and standardised advisory activities, this work also includes the creation of company-wide guidelines and the development of training concepts.
2. The Operations & Projects Department further develops and standardises the programme through various projects, and supervises internal compliance reporting.
3. The Investigation Department both performs regular compliance audits and investigates suspected irregularities.
4. The Segments & Regions Department has special responsibility for providing compliance-related advice and training in high-risk regions, through dedicated regional compliance officers, of which there are 11 in total.

Compliance officers in the various business areas also provide assistance in the form of advice and classroom tuition. They report directly to the CCO. Those employees working full-time with compliance are also supported by a network of 260 managers in the various companies within the group who have also been given special responsibility for compliance.<sup>49</sup>

At the same time, Thyssenkrupp underlines that the Compliance Department is responsible for numerous other activities in addition to anti-corruption. The most important of these relate to measures to combat cartel behaviour (antitrust) and money laundering, data protection and export controls. Everyone working on compliance at Thyssenkrupp is responsible for the application of antitrust and anti-corruption measures. Several are also responsible for other measures in addition to these.<sup>50</sup>

#### *Training:*

Thyssenkrupp has stated that it provides basic training in the company's anti-corruption programme to employees worldwide in all necessary languages. In the 2018/2019 financial year, around 4,800 employees worldwide are supposed to have completed classroom training, primarily linked to antitrust law and corruption prevention. The company's first anti-corruption eLearning course was launched in 2006. This has subsequently been updated three times, in 2008, 2012 and 2015, respectively. According to Thyssenkrupp, this programme had been completed 58,000 times by the close of the first quarter 2020, which gives a coverage rate of 97 per cent.<sup>51</sup>

The company has further disclosed that it provides differentiated training to employees in high-risk positions, middle managers and senior executives/board members. According to Thyssenkrupp, the company also has processes by which it evaluates the effectiveness of the training, including participant surveys at the end of each course.<sup>52</sup> In principle, the company does not provide training to third parties, such as consultants and intermediaries, though it does do so where this is deemed necessary from a risk management point of view.<sup>53</sup>

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<sup>49</sup> <https://www.thyssenkrupp.com/en/company/compliance/compliance-organization>. Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 5 October 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 6 November 2020.

<sup>50</sup> Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020.

<sup>51</sup> <https://www.thyssenkrupp.com/en/company/compliance/external-reviews/support-to-employees>. Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 6 November 2020

<sup>52</sup> <https://www.thyssenkrupp.com/en/company/compliance/external-reviews/support-to-employees>

<sup>53</sup> Letter from Thyssenkrupp to the Council on Ethics, dated 25 November 2019.

Thyssenkrupp has also shared some examples of its training materials with the Council on Ethics, one of which contains examples of concrete cases.

*Use of third parties and integrity due diligence (IDD):*

Thyssenkrupp's compliance programme was introduced in 2007. The company has disclosed that, since then, it has handled its relations with third parties, particularly sales agents, as a key risk factor in all parts of the programme.<sup>54</sup> Thyssenkrupp has therefore drawn up specific guidelines for the company's use of third parties, including sales agents and consultants offering services linked to offset agreements. One of the main purposes of these guidelines is to prevent corruption. The guidelines provide rules which are intended, among other things, to help ensure that the fees paid to third parties are proportional to the services provided, and that payments are not transferred to accounts whose beneficial owner is uncertain.<sup>55</sup> With regard to the use of third parties who already have a relationship with the customer or who are engaged at the behest of the customer, the guidelines make it clear that these must, in general, be subject to very critical assessment. Thyssenkrupp has shared with the Council both its current guidelines and those applicable from 2009 to 2016. In addition, the Council has received an example of a checklist from Thyssenkrupp's own IT-based Business Partner Compliance Tool (BPCT), with compulsory red flags and checkpoints. As far as the Council can see, these checkpoints largely correspond to the requirements set out in international guidelines for this area.

In response to the Council's questions, the company has disclosed that there are no special criteria or procedures for when specific agents or contracts should become the subject of more in-depth external investigation, or when they should be referred on to the CCO or executive board.<sup>56</sup> Nor has the Council been allowed to see a specific example of an agent/contract that has been rejected because due diligence investigations have shown the corruption risk to be too high.

Thyssenkrupp has stated that its anti-corruption guidelines also apply to third parties engaged by the company, such as sales agents and other intermediaries. Third parties must also sign the company's Supplier Code of Conduct. Contracts with third parties must also contain specific anti-corruption clauses, and allow Thyssenkrupp to audit all aspects of the assignment concerned. The company has further disclosed that it uses the BPCT to perform due diligence inquiries of third parties. In connection with high-risk transactions, external information-gathering assistance may also be engaged. A key aspect of these investigations will be to identify the beneficial owner of the third-party company. In principle, it is the sales departments that are responsible for these due diligence inquiries, but they must consult the relevant compliance department in the event of any doubt and in connection with high-risk transactions.<sup>57</sup>

In response to the Council's questions regarding the remuneration of its sales agents, Thyssenkrupp has stated that the majority of the contracts with these agents provide for a success fee (bonus), which normally corresponds to some few percent of the sales contract concerned. However, the company does not have any standardised cap on the amount of remuneration payable. Bonuses are therefore generally decided by the size of the contract and the pertinent percentage rate. This applies in particular within Marine Systems. At the same time, Thyssenkrupp has disclosed that the larger the value of the individual project, the lower

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<sup>54</sup> Letter from Thyssenkrupp to the Council on Ethics, dated 12 April 2019.

<sup>55</sup> <https://www.thyssenkrupp.com/en/company/compliance/external-reviews/third-parties>

<sup>56</sup> Letter from Thyssenkrupp to the Council on Ethics, dated 5 October 2020

<sup>57</sup> <https://www.thyssenkrupp.com/en/company/compliance/external-reviews/third-parties>. Letter from Thyssenkrupp to the Council on Ethics, dated 6 November 2020.

will be the percentage rate. It is also pointed out that contracts with agents are entered into for a single project, and that the contracts must contain an agreed absolute maximum figure.<sup>58</sup>

The Council has also asked whether there are predetermined thresholds for when payments to third parties must be referred upward to the CCO or executive board. The company has replied that, in principle, the management boards (MBs) of the individual business areas are the ultimate decision-making authority with regard to approving contracts with sales agents and substantial payments. However, Thyssenkrupp has not disclosed the thresholds at which payments must be approved by the MBs. The company has further stated that the vast majority of agents are registered in the BPCT and that all these are therefore assessed by a compliance officer. If a preliminary inquiry into the third party concerned reveals a medium compliance risk, final approval must be granted by the MB. If a potential third party is a politician, member of parliament or government, civil servant, or holder of some other public office, this must be reported to a compliance officer, and they must always be approved by the MB in the business area concerned.<sup>59</sup>

The Council has also requested more detailed information about the number of third parties (sales agents, consultants, etc) Thyssenkrupp currently has contracts with, particularly in Marine Systems. The company has disclosed that the number of sales agents being used by this business area is in the low two-figures and has been reduced by over 70 per cent in the period 2016 to 2020. Apart from this, the Council has received no further information on other agents employed by the company. According to Thyssenkrupp, this is due to a lack of central oversight over the number of agents the different business areas have at any given time.<sup>60</sup>

At the same time, the company has underlined that all its current agents are subject to very thorough inquiries and ongoing monitoring. In this connection, Thyssenkrupp has disclosed that the BPCT automatically ensures that a new due diligence assessment is performed on all registered agents every two years. Furthermore, all registered agents are checked against an external database on a daily basis. According to the company, if matters emerge here that are deemed problematic, the compliance officer will immediately initiate a new assessment of the agent.

The Council has also asked how many third parties are rejected due to corruption risks. To this, Thyssenkrupp has replied that the approval of third parties is not a straightforward process. A great deal of consultation back and forth between the business area and the compliance officer may be required before a decision is taken on whether the company should sign a contract with an agent. The decision is often taken before the BPCT is applied. This tool is also unable to categorise the different rejections on the basis of whether they are due to commercial reasons or the assessment of risk, including the risk of corruption. Consequently, it is difficult to generate statistics in this area. Asked for details of the company's specific plans to reduce the number of sales agents and other third parties, Thyssenkrupp has stated

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<sup>58</sup> Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 5 October 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 6 November 2020.

<sup>59</sup> Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 5 October 2020. Letter from Thyssenkrupp to the Council on Ethics, dated 6 November 2020.

<sup>60</sup> According to the letter from the Council on Ethics dated 13 March 2019, and the letter of reply from Thyssenkrupp dated 19 April 2019. Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020. Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020



that this is delegated to the business areas and that the Compliance Department has not set specific reduction targets.<sup>61</sup>

*Whistleblowing and associated investigations:*

Thyssenkrupp has disclosed that it has whistleblowing systems in place to enable the anonymous reporting of wrongdoing or suspected wrongdoing to the Compliance Department in 34 different languages, either online or via a telephone hot-line. Such reports may also be submitted to line management or the external ombudsman.<sup>62</sup> The system does not allow the ombudsman to report wrongdoing or suspected wrongdoing directly to the board of directors.<sup>63</sup> The Investigation Department is responsible for following up reports of possible corruption, in close cooperation with the company's internal auditing function. The former is primarily responsible for the legal aspects relating to the investigation, while the latter is primarily responsible for data collection and the generally more technical aspects of the investigation (forensics).<sup>64</sup>

The Council has requested further details from the company regarding the number of corruption-related reports it has received in recent years, how many have been confirmed and how it has responded. The Council has also requested access to Thyssenkrupp's internal procedures for investigating and following up reports of possible corruption. Given the sensitivity associated with the company's whistleblowing and investigating systems, the Council must visit the company's headquarters to view them. This is not currently possible due to the Covid-19 pandemic.

## **5 The Council's assessment**

Based on the available documentation, the Council has assessed the GPF's investment in Thyssenkrupp against the corruption criterion in the Guidelines for Observation and Exclusion from the GPF. The Council has firstly considered whether there is an unacceptable risk that Thyssenkrupp has contributed to or has itself been responsible for gross corruption, including whether said corruption has been performed in a widespread and/or systematic fashion.

The Council's investigations have shown that, through its subsidiaries, Thyssenkrupp can be linked to suspicions and allegations of corruption in a total of eight countries, over a period of more than 20 years. As far back as 2014, the Council determined that the risk of the company being involved in gross corruption was sufficiently high that there were grounds to take a closer look at it. Since then, Thyssenkrupp's subsidiary Atlas has been ordered to pay a EUR 48 million forfeit for its actions in Greece and Peru, while the former agent of Thyssenkrupp's subsidiary Marine Systems has a central role in a major corruption case in Israel. All the allegations relate to the payment of bribes or suspicious transactions – or agreements relating to such transfers of money – via agents and intermediaries to secure contracts for Thyssenkrupp's subsidiaries. Overall, this concerns many millions of USD in payments. On

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<sup>61</sup> According to the letter from the Council on Ethics dated 13 March 2019, and the letter of reply from Thyssenkrupp dated 19 April 2019. Meeting between Thyssenkrupp and the Council on Ethics, 7 August 2020. Letter from Thyssenkrupp to the Council on ethics, dated 6 November 2020.

<sup>62</sup> <https://www.thyssenkrupp.com/en/company/compliance/submitting-a-report>.

<sup>63</sup> Letter from Thyssenkrupp, dated 25 November 2019.

<sup>64</sup> <https://www.thyssenkrupp.com/en/company/compliance/external-reviews/internal-controls>. Letter from Thyssenkrupp, dated 5 October 2020.

this basis, the Council considers that there is an unacceptable risk that Thyssenkrupp has contributed to gross corruption.

The Council has further considered whether there is an unacceptable risk that Thyssenkrupp will, in future, be involved in similar acts. In this assessment, the Council attaches importance to how the company has responded to the allegations of corruption, how it has assisted in the Council's inquiries, and the extent to which the company has implemented effective measures to prevent, detect and respond to corruption. The corruption risk in the sector and the countries in which the company operates is also a key factor in this assessment.

It seems clear that Thyssenkrupp has long indicated that it takes corruption seriously. One example of this is the company's 'zero tolerance' policy, adopted in 2007. The dissolution of Marine Force International in 2011 points in the same direction. Furthermore, the Council notes that the company seems to have cooperated with prosecuting authorities, and that it has launched internal investigations into all the major corruption allegations. In addition to their signal effect, such investigations may also provide important lessons for the company, which can help it prevent similar incidents in the future.

The Council also attaches importance to the company's assistance and information sharing in connection with the Council's investigations. Thyssenkrupp has granted access to many of the internal documents the Council has requested. The impression is that the company has sought to provide good answers to as many of the Council's questions as possible. This is a precondition for the Council's ability to assess corruption risk, and may also be an indication that the company takes the risk of corruption seriously.

The Council's review of the company's systems and routines for the prevention and detection of corruption also leaves the impression that Thyssenkrupp has done much to put a comprehensive and effective anti-corruption programme in place since the last time the Council was in touch with the company in 2014.

However, all this must be viewed in light of the business sector and the countries in which the company operates, as well as the company's history of corruption allegations. Thyssenkrupp operates in many countries where the risk of corruption is high. In addition, the defence sector is considered particularly prone to corruption, not least because details of tender processes and contracts are exempt from public disclosure on the grounds of national security, and because the contracts are often extremely large. Like other companies in this sector, Thyssenkrupp also makes use of agents in connection with public procurement processes in several countries. As a result of the company's compensation systems, some agents may be paid extremely large fees. Such a practice involves a high risk of corruption, which is also confirmed by the company's own history, where the use of agents and intermediaries has played a key role in the vast majority of the suspicions and allegations of corruption.

For this reason, it is, in the Council's opinion, particularly incumbent on the company to have in place robust systems with which to prevent, detect and deal with corruption in general, and handle the corruption risk associated with the use of agents in particular. It also presumes that such systems must work when they are really needed. Since 2007, Thyssenkrupp has had as its declared policy that it would "rather sacrifice a contract than win it by breaking the rules". The company also states that it has, since then, handled relations with sales agents as a key risk factor in all parts of its anti-corruption programme. Such agents are supposed to be kept under continuous monitoring. As regards the case in Israel in particular, the company has also assured the Council that it performed thorough background checks before it selected the agent concerned, without finding anything of significance.

The company's version of how the agent concerned was selected does not, however, tally with the picture painted by media reports and the prosecuting authorities' recommended indictment. This applies to both the agent's relevance for the job, the risk associated with his background and the circumstances surrounding his actual engagement. The Council has therefore asked Thyssenkrupp for a more detailed explanation of the circumstances surrounding the change of agent, and further details of what follow-up and inquiries the company performed with respect to the agent after that individual was engaged. However, the company has declined to respond, citing the ongoing investigations.

According to media reports, the agent in question is supposed to have received more than EUR 10 million from Thyssenkrupp for services to the company, in addition to have been promised a similar amount for services relating to the sale of corvettes and several submarines to the Israeli navy. The Council has asked Thyssenkrupp to confirm or, if appropriate, correct these figures, and has requested further information about the kinds of services that were performed in exchange. The company has, however, declined to respond. At the request of the Council, Thyssenkrupp has disclosed that it has not set a standardised maximum figure for success-fee payments, which means that, in principle, the agent's remuneration in such cases is determined by the size of the contract and the percentage rate concerned.

The Council has also asked how many third parties are rejected due to corruption risks, to which Thyssenkrupp has replied that it does not generate data for this. Nor has the Council been allowed to see a concrete example of an agent/contract that has been rejected because the due diligence investigation revealed that the risk of corruption was too high. The company has disclosed that, in principle, the MBs at the individual business areas are the ultimate decision-making authority with respect to approving contracts with sales agents and the payment of substantial sums thereto. Yet it also points out that compliance officers are routinely consulted in connection with such decisions. At the same time, the Council notes that Thyssenkrupp does not have any special criteria or procedures for when specific agents or contracts should be subject to more thorough external investigation, or when they should be referred upward to the CCO or executive board. The Council otherwise notes that the company's central administration does not have a complete overview of how many third parties the group companies do business with or plans to reduce their number.

All in all, therefore, the Council does not consider that this provides sufficient assurance that Thyssenkrupp will always be able to adequately handle the corruption risk in such cases, which will be a necessary precondition if it is to realise its stated goal of preferring to sacrifice a contract rather than risk breaching the rules to win it. With regard to the company's handling of the corruption risk associated with the use of agents, the Council is also unsure how firm a grip Thyssenkrupp's central management has on the various business areas and subsidiaries. Six years ago, Thyssenkrupp assured the Council that it stood firm on its 'zero tolerance' policy with regard to corruption, yet has subsequently become embroiled in one of the largest ever corruption scandals in Israel.

In principle, this indicates that the risk of the company contributing to corruption also in the future must be deemed to be unacceptably high. The Council's decision not to recommend Thyssenkrupp's exclusion from investment by the GPFG at this juncture, but rather to place it under observation, is due to the fact that the company has long shown indications that it takes corruption seriously and has demonstrated a willingness to assist in the Council's investigation, thereby enabling it to gain an insight into how the company is working to prevent and detect corruption. On this basis, the Council takes the view that there are grounds to observe the company's performance going forward, pursuant to section 6(4) of the GPFG's guidelines.

The Council will monitor closely whether new circumstances linked to the company’s operations come to light, and will observe Thyssenkrupp’s anti-corruption activities through, among other things, continued dialogue with the company. If, going forward, further instances of gross corruption in the company’s operations are uncovered, or if the company is unable to show that it is doing enough to prevent, detect and deal with corruption in its operations, the conditions for recommending the company’s exclusion from investment by the GPFG may well be met.

## 6 Recommendation

The Council on Ethics recommends that Thyssenkrupp AG be placed under observation due to an unacceptable risk that the company is contributing to or is itself responsible for gross corruption.

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Johan H. Andresen Chair	Hans Chr. Bugge	Cecilie Hellestveit	Brit Rugland	Trude Myklebust
(Sign.)	(Sign.)	(Sign.)	(Sign.)	(Sign.)