

**COUNCIL ON ETHICS**  
THE GOVERNMENT PENSION FUND GLOBAL

**To Norges Bank**

8 December 2016

UNOFICIAL ENGLISH TRANSLATION

**Recommendation to exclude Leonardo SpA from the GPFG**

## Summary

*The Council on Ethics recommends the exclusion of Leonardo SpA (Leonardo) from investment by the Norwegian Government Pension Fund Global (GPF) due to the risk of gross corruption. The company has been involved in serious cases of corruption, which is alleged to have taken place in four countries between 2009 and 2014. Three of the cases are still under investigation, while two former senior executives have recently been convicted in Italy for gross corruption in connection with a contract in India. In every case, it is claimed that the company, via agents, bribed public officials. The Council has concluded that Leonardo has not adequately substantiated that it has established systematic internal corruption-prevention procedures that are implemented effectively in its operations. In the Council's opinion, this, combined with previous allegations of corruption and the fact that the company operates in a sector and in countries where the risk of corruption is particularly high, indicates that there is an unacceptable risk that the company may once again become involved in gross corruption.*

Leonardo, which is listed on the Milan Stock Exchange, employs some 47,000 people and is the largest industrial group in Italy. The company manufactures and sells aircraft, defence and security equipment primarily in Italy, the UK, the USA and Poland, though it also has operations in countries such as Turkey, Libya, Saudi Arabia, India, China and Russia.

The company is involved in corruption cases in four different countries. In April 2016, Leonardo's former board chair and CEO, the CEO of AugustaWestland, previously a subsidiary and now an integrated part of the Group, were sentenced to prison terms for gross corruption in connection with a helicopter contract in India. Several of the company's contracts for the sale of defence materiel are being investigated by the authorities in Italy, India, Algeria and South Korea. On the basis of the information available, it seems as though Leonardo's business partners and agents have forwarded bribes to public officials in these countries in order to secure contracts on behalf of the company right up until October 2014. Reference is also made to the fact that a further contract was annulled by Panama's Supreme Court in 2015 as a result of corruption allegations.

From October 2014 until September 2016, the Council on Ethics has engaged in a dialogue with Leonardo, both by means of written communications and in meetings. The company has provided information on the matter, and has also submitted its comments to a draft recommendation.

Leonardo has underlined that none of the allegations of corruption has been levelled at the company as such, and that all the facts relate to its previous management team. The Council on Ethics nevertheless presumes that in a company where senior management is involved in the circumvention of its own routines, there is reason to believe that the risk of non-compliance is substantial, and that more is required to alter the prevailing corporate culture than in companies where corruption occurs further down in the organisation and is more sporadic. The company's attitude towards the allegations gives the impression of an attempt to side-step its corporate responsibilities.

The Council on Ethics makes no assessment with respect to criminal liability, but attaches importance to whether internal rules and guidelines seem to have been broken, and whether there therefore exists a risk of corruption. On the basis of what is now known about the

alleged incidents of corruption, the Council considers that previous internal systems must have failed.

The Council on Ethics notes that, in 2013, Leonardo made substantial changes in its board of directors and group management following the discovery of widespread corruption. In 2013, the board also set up a committee of experts to offer advice on how internal control systems and the anti-corruption programme could be improved. In light of this, it was to be expected that the company, within a reasonable period of time, would implement anti-corruption measures in line with international standards for best practice in the area. However, at the same time as the company set up its external committee, it seems as though agreements continued to be entered into in violation of internal guidelines, for example by not performing sufficiently thorough *due diligence* investigations.

Leonardo operates in a number of countries in which the risk of corruption is high. For example, international indexes rank Libya, Russia and China in the highest category with regard to the presumed risk of corruption. The defence sector, where major public contracts are common and, furthermore, the subject of strict secrecy, also exposes the company to a further corruption risks. An important element in an anti-corruption programme is the continuous mapping of corruption risks. The company performed a wide-ranging assessment of all risks in 2015, but has not documented to the Council's satisfaction that it has a system whereby corruption risk is evaluated internally on a regular basis and effectively counteracted.

Leonardo uses agents in connection with public tenders in many countries, and they are rewarded with so-called success bonuses. The Council considers that the relatively extensive use of agents constitutes the largest corruption risk in the company's operations. The company says that it performs extensive due diligence assessments of third parties. Nevertheless, in 2015 it became known that one of the company's agents was supposed to have bribed a public official in South Korea, without the company's systems having picked up on this. The company states that it will now address this risk by incentivising its employees to use agents to a lesser extent than before. In the Council's view, the heralded scaling back in the use of agents is, in principle, important, but it nevertheless finds it difficult to attach importance to it because there are no specific plans for how and when this reduction will be achieved, or what the final target will be. Furthermore, it seems as though this should have been addressed as soon as the corruption allegations became known several years ago. All the incidents of alleged corruption involve agents. The Council also considers it to be a clear failing in the anti-corruption programmes that agents are not given anti-corruption training. This should be an important part of the preventive efforts made by the company, and is indeed given priority in other companies that are comparable with Leonardo.

In 2015, Leonardo established whistleblowing channels which employees are encouraged to use to report non-compliances. In its dialogue with the Council, the company has stated that it has never been alerted to corruption in its operations. Seen in light of the corruption profile a company like Leonardo has, the absence of such reports could be a sign that its anti-corruption efforts are not well enough communicated down through the organisation, that employees are not adequately encouraged to report their concerns, and that the systems do not function as they should.

Since Leonardo is involved in cases involving serious allegations of corruption which is supposed to have continued up until fairly recently, since the company continues to operate in countries with an extremely high risk of corruption without, at the same time, having

adequately substantiated that it is working effectively to prevent non-compliances, the Council considers that there is an unacceptable risk that the company will once again become involved in gross corruption.

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# 1 Introduction

Leonardo-Finmeccanica SpA (Leonardo) is listed on the Milan Stock Exchange, and is the largest industrial group in Italy.<sup>1</sup> <sup>2</sup> The company manufactures and sells aircraft, defence and security equipment primarily in Italy, the UK, the USA and Poland, though it also has operations in countries such as Turkey, Libya, Saudi Arabia, India, China and Russia.<sup>3</sup> Leonardo has around 25 wholly owned subsidiaries, a large number of indirectly owned subsidiaries,<sup>4</sup> and a workforce of 47,000 people.<sup>5</sup>

At the close of 2015, the GPFG owned 2.09 per cent of the shares in Leonardo, worth around NOK 1.5 billion.

## 1.1 Matters considered by the Council on Ethics

The allegations of corruption involving Leonardo relate to bribes paid to public officials via agents in India, South Korea and Algeria. Leonardo has also been involved in alleged corruption in Panama.

The Council on Ethics has assessed whether there is an unacceptable risk that Leonardo is complicit in or is itself responsible for acts of gross corruption, pursuant to s 3(1)(5) of the guidelines for the exclusion of companies from the Norwegian Government Pension Fund Global (GPFG).<sup>6</sup>

The Council has previously based its assessments on the following definition of gross corruption:<sup>7</sup>

- 1) *Gross corruption exists if a company through its representatives*
  - a) *gives or offers an advantage – or attempts to do so – so as to unduly influence:*
    - i) *a public servant in the execution of public duties or in decisions which may bring the company an advantage, or*

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<sup>1</sup> The company has Issuer ID 128107. The company changed its name from Finmeccanica to Leonardo-Finmeccanica on 28 April 2016 and will be known as “Leonardo” with effect from 1 January 2017. The largest shareholder is the Italian state, which owns around 30 per cent.

<sup>2</sup> The company’s website, <http://www.leonardocompany.com/en/chisiamo-aboutus/Leonardo-leonardo>.

<sup>3</sup> The company’s website, <http://www.leonardocompany.com/en/Leonardo-nel-mondo/international-presence-1>.

<sup>4</sup> The company’s half-year interim report, 30 June 2015, [http://www.leonardocompany.com/documents/63265270/68415737/body\\_Half\\_Year\\_financial\\_report\\_at\\_30\\_June\\_2016\\_with\\_opinion.pdf](http://www.leonardocompany.com/documents/63265270/68415737/body_Half_Year_financial_report_at_30_June_2016_with_opinion.pdf).

<sup>5</sup> The company’s website, <http://www.Leonardo.com/en/one-company/profilo-profile-chisiamo-aboutus-2>.

<sup>6</sup> The guidelines’ section 3 state: “Companies may be put under observation or be excluded if there is an unacceptable risk that the company contributes to or is responsible for:... e) gross corruption...” The guidelines for observation and exclusion from the GPFG are available at [http://etikkradet.no/files/2017/04/Etikkradet\\_Guidelines-\\_eng\\_2017\\_web.pdf/](http://etikkradet.no/files/2017/04/Etikkradet_Guidelines-_eng_2017_web.pdf/).

<sup>7</sup> The Council on Ethics’ recommendation of 21 December 2015 to put Petrobras SA under observation is available at <http://etikkradet.no/files/2017/02/Recommendation-Petrobras-21-December-2015.pdf>.

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

*b) demands or receives bribes,*

*and*

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

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

When assessing whether there is a risk that Leonardo may in future become involved in corrupt practices, the Council has attached importance to the corruption allegations currently being levelled at the company, the company's response thereto, the countries and sectors in which the company operates, and what the company is currently doing to prevent corruption. The Council takes the position that it is up to the company to substantiate that it is making adequate efforts to prevent corruption effectively.

## **1.2 Sources**

The recommendation is largely based on court rulings, information provided by Leonardo and articles published in the international media. Information on the corruption allegations derives, inter alia, from documents relating to court rulings and ongoing investigations in Italy, India, Panama and South Korea, as well as information relating to an ongoing investigation in Algeria that has been reported in the press. The assessment of the company's compliance systems is based on information provided to the Council in meetings with the company in February and April 2016, as well as information available from Leonardo's website. Meetings have been held with the CEO, the *Group General Counsel*, the company's *Senior Compliance Officer*, a representative from *Ethics & Integrity*, the head of *Internal Audit*, as well as the head of *Investor Relations*.

The Council has also held meetings with the sales and marketing directors of the two new business units, the *Helicopters Division* and *Airborne & Space Systems*. The Council has asked Leonardo to comment on the corruption allegations, to account for its internal anti-corruption systems and to show how these systems are implemented in the organisation, such that corruption is effectively prevented, uncovered and dealt with. The company has received a draft recommendation to exclude, and has submitted its comments thereon.

In addition, the Council on Ethics has commissioned the assistance of a consultant with respect to an assessment of anti-corruption systems in companies with which Leonardo may be compared, as well as how this work should be organised and implemented to comply with international standards and best practices.

## 2 The Council on Ethics' investigations

The Council on Ethics has investigated the allegations of corruption against Leonardo in four countries. An Italian court has found both Leonardo's former CEO and the former CEO of AgustaWestland, until recently a wholly owned subsidiary but now an integrated part of the central business group, guilty of corruption in India in 2010. The allegations of corruption in Panama relate partly to contracts accepted by the president of the country in 2010, and involve AgustaWestland, Selex Sistemi Integrati and Telespazio Argentina S.A.<sup>8</sup>

The alleged corruption in Algeria and South Korea also involves AgustaWestland, and relates to events that took place in 2009-2011 and 2014 respectively.

### 2.1 Allegations of corruption in India

Following a 10-year tender process, India's Ministry of Defence signed a contract with AgustaWestland (AW) in 2010 for the purchase of 12 helicopters to be used by the *VVIP Transportation Team* to transport India's president and government ministers.<sup>9</sup> The contract was cancelled by the Indian government on 1 January 2014.<sup>10</sup> The MoD said that the contract had been cancelled "*on the grounds of breach of the provisions of the Pre-Contract Integrity Pact and breach of the terms of contract*". The MoD blamed AW International for the alleged breach of contract.<sup>11</sup> By that time, India had already taken delivery of three helicopters from AW.<sup>12</sup>

As a result of the subsequent investigation into corrupt practices in India, which is supposed to have verified a number of non-compliances with the tendering process associated with the award of the contract, Leonardo and AW were blacklisted as suppliers to the Indian MoD.<sup>13</sup> It seems as though Leonardo risks being excluded from all future tenders relating to the acquisition of defence materiel in India.<sup>14</sup>

This contract is now also under investigation in Italy.

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<sup>8</sup> Until recently, all these companies were wholly owned subsidiaries of Leonardo. Their operations are now an integrated part of the group's corporate structure.

<sup>9</sup> Decision regarding Gautam Khaitan's application to the appeal court, *High Court of New Delhi, Bail Application: 2354/2014*, December 2014, paragraph 2.

<sup>10</sup> *Scrapping of VVIP Helicopter Deal*, Answer by Minister of Defence AK Antony to Unstarred Question 2210 by Arvind Kumar Singh in Rajya Sabha (Council of States), 12 February 2014.

<sup>11</sup> *Blacklisting of AgustaWestland Company*, Answer by Minister of Defence AK Antony to Unstarred Question 1583 by Shri Thaawar Chand Gehlot in Rajya Sabha (Council of States), 5 February 2014.

<sup>12</sup> *VVIP Chopper Deal*, Answer by Minister of Defence Shri Manohar Parrikar to Unstarred Question 2559 by Shri Naresh Gujral, 16 December 2014.

<sup>13</sup> *ZeeNews*, 27 August 2014, [http://zeenews.india.com/news/nation/chopper-scam-india-bans-finmeccannica-from-bidding-future-contracts\\_1460608.html](http://zeenews.india.com/news/nation/chopper-scam-india-bans-finmeccannica-from-bidding-future-contracts_1460608.html), and *Dealing with the Leonardo Group of Companies and Other Companies Figuring in the FIR Registered by CBI in All Procurement/Acquisition Cases, Ministry of Defence (India): D(Vigilance)*, 22 August 2014, <http://www.armingindia.com/MoD-AW.pdf>.

<sup>14</sup> *The Indian Express*, 30 May 2016, <http://indianexpress.com/article/india/india-news-india/manohar-parrikar-agustawestland-chopper-deal-fallout-Leonardo-out-cloud-over-defence-pacts-2825108/>.



### 2.1.1 Auditor General's report on irregularities in the tender process

In August 2013, four months before the VVIP contract was cancelled, the Auditor General of India submitted a report on the contract's tender process to the country's parliament.<sup>15</sup> The report indicated that a number of irregularities had taken place after the appointment of a new Chief of Air Staff in 2005. According to the Auditor General's report, a Russian, a French and an Italian (AW) bidder were selected as potential suppliers following a competitive tender in 2002. However, in 2005, the same year as the new chief of staff was appointed and gained a substantial influence over the tender process, the original requirement that the helicopters must be certified to fly at altitudes of up to 6,000 metres was reduced to 4,500 metres. This is just under the altitude that AW's helicopters are certified for. This, along with other adjustments to the requirement specification which were made by the new chief of staff in 2005, resulted in the MoD being left with only one relevant bidder, AW. That same year, the MoD decided to increase the total number of helicopters to 12, which the Auditor General's report described as "illogical" in light of the country's real need.

### 2.1.2 Investigation in Italy of alleged corruption in connection with the helicopter contract

In March 2016, Leonardo's former CEO and the former CEO of AW were convicted in this case by the appeal court, Tribunal Busta Arsizio.<sup>16</sup> The appeal court concluded that there was a "reasonable belief that corruption took place" and that it had been "validly proven" that illegal payments of between USD 10 million and USD 15 million had been made to Indian public officials.<sup>17</sup> Leonardo's former CEO was sentenced to four-and-a-half years in prison, while the former CEO of AW was ordered to serve four years in jail.<sup>18</sup> As far as the Council on Ethics is aware, this judgment is still not legally binding.

AW Ltd, whose shares are listed on the London Stock Exchange, and AW SpA, which is listed in Italy, both agreed to pay fines of USD 9.2 million and USD 371,000 respectively to the Italian Ministry of Justice to settle the matter in 2014. The fines are administrative penalties and do not imply any admission of corruption.<sup>19</sup> However, the companies acknowledged having used three named middlemen to channel money to the new chief of staff and his family:

*«In particular, the companies admitted that [Leonardo's former CEO] and [the former CEO of AW] had made use of three middlemen [...] and an Indian lawyer [...]. The middlemen were used to pay funds both to the family of [the new chief of staff], the Chief of the Air Force*

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<sup>15</sup> *Report of the Auditor General of India on Acquisition of Helicopters for VVIPs*, Union Government: Defence Services (Air Force), No. 10 of 2013, 13 August 2013.

<sup>16</sup> *Court Reverses Former Leonardo CEO Orsi's Acquittal*, DefenseNews, 7 April 2016, <http://www.defensenews.com/story/defense/international/europe/2016/04/07/court-reverses-former-Leonardo-ceo-orsis-acquittal/82767690/>.

<sup>17</sup> *Corruption Took Place in AgustaWestland VVIP Chopper Deal, Former IAF Chief SP Tyagi was Involved: Italian Court*, Economic Times (India), 26 April 2016, <http://economictimes.indiatimes.com/news/defence/corruption-took-place-in-agustawestland-vvip-chopper-deal-former-iaf-chief-sp-tyagi-was-involved-italian-court/articleshow/51985855.cms>.

<sup>18</sup> *Ex Leonardo head Orsi gets 4 yrs, 6 mn*, Ansa, 7 April 2016, [http://www.ansa.it/english/news/business/2016/04/07/ex-Leonardo-head-orsi-gets-4-yr6-mn\\_eef0d9ab-f24e-4fdd-90e7-f798a00dbf8b.html](http://www.ansa.it/english/news/business/2016/04/07/ex-Leonardo-head-orsi-gets-4-yr6-mn_eef0d9ab-f24e-4fdd-90e7-f798a00dbf8b.html).

<sup>19</sup> *Judgment of Nicolette Guerrero*, Tribunale Busto Arsizio, 28 August 2014.

*Staff, and directly to [the new chief of staff] himself.»*The companies further admitted to employing the services of an Indian attorney. The settlement agreements disclose that around USD 9.3 million was paid to two of the agents, who transferred the money to the new chief of staff and his family in return for his intervention in the tender process and ensuring that AW was favoured. Apparently, the new chief of staff then made sure that the certification requirement relating to altitude was reduced from 6,000 metres to 4,500 metres. To conceal these payments, false engineering agreements were entered into with companies controlled by the three agents and the lawyer.<sup>20</sup>

### **2.1.3 Investigation in India of alleged corruption in connection with the helicopter contract**

As a result of arrests made in connection with investigations in Italy into alleged corruption in connection with the helicopter contract, a similar investigation was also launched in India. The contract has been under investigation by the Central Bureau of Investigation (CBI) since February 2013, and encompasses a total of 11 individuals and four companies.<sup>21</sup> <sup>22</sup> <sup>23</sup>

### **2.1.4 Leonardo's opinion**

Leonardo has told the Council on Ethics that the allegations that the company paid bribes in India is probably without foundation, and that the company is, moreover, unaware of the subsequent proceedings taking place there. The company has also maintained that it has not been notified of the blacklisting of Leonardo in India. In its dialogue with the Council, the company has underlined that all criminal proceedings in this case refer to matters relating to the company's former management.<sup>24</sup> With regard to the fines that were imposed in Italy on the company's subsidiaries, Leonardo has responded that the public prosecutors rejected the case against the company in 2014 because there were no actual or legal grounds for pursuing it. Furthermore, the company points out that the public prosecutors also attached importance to the fact that, since 2003, the company has improved its compliance system. The reason why the company accepted the fines “...is based solely on reasons of market opportunity...”... “*It is much more one of the measures adopted to define the border between*

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<sup>20</sup> Four months before these agreements were entered into, one of the company's agents entered into an out-of-court settlement with the prosecuting authorities in Italy in connection with the allegations of corruption. He did not admit criminal liability with regard to corruption, but to other financial misdeeds in his role as facilitator for the deal in India. For further details, see: *Middleman on UK-India Deal Agrees Plea-Bargain Over “Bribes”*, *ExaroNews*, 16 April 2014, <http://www.exaronews.com/articles/5238/middleman-on-uk-india-deal-agrees-plea-bargain-over-bribes>, and *AgustaWestland Chopper Deal: Middleman Haschke Enters Plea Bargain*, *Indian Express*, 4 April 2014, <http://indianexpress.com/article/india/india-others/middleman-haschke-enters-plea-bargain/>.

<sup>21</sup> *Inquiry into VVIP Helicopter Deal*, Answer by Minister of Defence AK Antony to Starred Question 135 by Shri Alok Tiwari, 6 March 2013.

<sup>22</sup> *Cancellation of VVIP Helicopter Deal*, Answer by Minister of Defence AK Antony to Unstarred Question 4531 by Shri C.M. Ramesh, 8 May 2013.

<sup>23</sup> ECIR No. DLZO/15/2014AD/(VM), *In the Matter of CBI vs. Shri Gautam Khaitan and Others*, Patiala House Courts: New Delhi, paragraph 4.2.3 (c), 3 July 2014.

<sup>24</sup> Meetings between the Council on Ethics and Leonardo, as well as a letter to the Council on Ethics, 4 August 2016.

*past and present in order to be again operative on the Market in renewed terms and with a renewed effort to prevent, detect and respond to corruption in the future”.*<sup>25</sup>

## **2.2 Allegations of corruption in South Korea**

In January 2013, Leonardo signed a contract worth around USD 375 million for the sale of eight AW159 Wildcat helicopters to the South Korean navy.<sup>26</sup>

At the end of 2014, an extensive investigation was launched into what was described as “wholesale corruption” in the tender processes linked to the country’s purchases of defence equipment. In 2015, the *Korean Office of the Supreme Prosecutor* indicted 63 public employees, mainly from the navy and armed forces.<sup>27</sup> At the same time, it was confirmed that serious irregularities had been uncovered in the selection process for naval helicopter contracts that had been awarded to Leonardo. It was claimed that the test data on which the decision to choose the AW159 was based had been falsified by South Korean public officials.<sup>28</sup>

The evaluation results showed that the AW159 met the military requirements, despite the fact that production of the helicopter was, at that point in time, still not complete. As a result of these findings, eight people who had been involved in the selection of the AW159 were arrested and indicted. These included *Minister for Veterans’ Affairs*, and *Navy Chief of Staff*. The official press release relating to the case refers to two specific criminal offences connected with the AW159 contract: the receipt of money from AW in the period November 2011 to October 2014 “for lobbying high ranking military officers for selection of Wildcat”, as well as the falsification of evaluation documents.

The company has told the Council on Ethics that neither Leonardo nor AW has been formally notified of any investigation being carried out by the South Korean authorities, nor of any other formal steps against suspects in the case.<sup>29</sup> The company has, moreover, underlined that, in any event, this case relates to the previous management.<sup>30</sup>

### **2.2.1 Prosecution of the former Minister for Veterans’ Affairs**

The former *Minister for Veterans’ Affairs*, was arrested and detained in July 2015, following allegations that he helped AW win the AW159 contract. He was convicted in January 2016 at Seoul Central District Court and sentenced to four years in prison for having received bribes for “illegal mediation”.<sup>31</sup>

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<sup>25</sup> Letter to the Council on Ethics, 4 August 2016.

<sup>26</sup> Judgment by Seoul Central District Court, 23<sup>rd</sup> Criminal Division, 2015GOHAP621.

<sup>27</sup> *Joint Investigation Team for Arms Procurement Corruption: Intermediate Report*, Supreme Prosecutor’s Office, Republic of Korea, 16 July 2015, [http://www.spo.go.kr/eng/public/activities/newsbrief.jsp?mode=view&article\\_no=600483&pager.offset=0&board\\_no=675&stype=](http://www.spo.go.kr/eng/public/activities/newsbrief.jsp?mode=view&article_no=600483&pager.offset=0&board_no=675&stype=) .

<sup>28</sup> Press release, Supreme Prosecutor’s Office, 16 July 2015.

<sup>29</sup> Letter to the Council on Ethics, 4 August 2016.

<sup>30</sup> Meetings between the Council on Ethics and Leonardo, 5 February 2016.

<sup>31</sup> Yonhap News Agency, 11 January 2016, *Grandson of Revered Patriot Gets Four Year Jail Term for Bribery*, <http://english.yonhapnews.co.kr/news/2016/01/11/0200000000AEN20160111006400315.html>. The Council on Ethics takes into account that this verdict is not yet legally binding.

According to a transcript of the verdict, the former Minister received money from Leonardo/AW for four years, in return for his “*close connections to, human networks with, or influence over high-ranking officials*”, to ensure that the company was awarded AW159 contract.<sup>32</sup> Leonardo is supposed to have known about his role. For example, the verdict refers to an email to the former Minister in which a senior-level employee at Leonardo wrote: “*we need you to actively engage in exerting influence over high-ranking decision makers in Korea*”. Precisely how the former Minister employed his contacts on Leonardo’s behalf is not described in the verdict. The last agreement entered into between the former Minister and Leonardo was, according to the verdict, dated 16 October 2014. The verdict states that the former Minister had received a total of USD 1.1 million from Leonardo for his services, and that he was promised a further USD 500,000 to secure the company contracts in the second phase of the *Maritime Operational Helicopter Program*.

In its dialogue with the Council on Ethics, Leonardo has confirmed that the former Minister was their middleman in South Korea up until his arrest in 2015. The latest integrity due diligence assessment of the former Minister and his company Chang Kong was performed in August 2014. However, this uncovered no so-called “red flags” or risks with respect to the contract.

### **2.2.2 Prosecution of the former Navy Chief of Staff**

The former *Navy Chief of Staff* was the highest ranking defence employee involved in the award of the AW159 contract. He has been indicted for having instructed lower-ranking defence officials to falsify the test and evaluation reports that led to the selection of the AW159.<sup>33</sup> Articles in the South Korean media indicate that the prosecuting authorities believe that the former Navy Chief of Staff has close ties to a Korean-American agent with strong links to AW.<sup>34</sup> <sup>35</sup>

## **2.3 Allegations of corruption in Panama**

In 2010, Panama purchased a radar system, helicopters and a digital map system from Leonardo. The radar system was acquired from Selex Sistemi Integrati SpA. (Selex), the helicopters from AgustaWestland (AW), and the map systems from Telespazio Argentina S.A.<sup>36</sup> The combined value of the three contracts totalled some USD 250 million, with the radar system costing around USD 90 million.<sup>37</sup> The agreements were formalised through a *Memorandum of Understanding* signed by Panama’s former president and Italy’s then president.

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<sup>32</sup> Judgment, Seoul Central District Court, 23<sup>rd</sup> Criminal Division, 2015GOHAP621.

<sup>33</sup> Ibid.

<sup>34</sup> Korea Times, 20 December 2015, *Ex-JSC Head Indicted for Bribery*, [http://www.koreatimes.co.kr/www/news/nation/2015/12/116\\_193586.html](http://www.koreatimes.co.kr/www/news/nation/2015/12/116_193586.html).

<sup>35</sup> Ibid, and Korea Times, 16 November 2015, *FBI’s Help Sought in Defense Corruption Probe*, [http://www.koreatimes.co.kr/www/news/nation/2015/11/116\\_191087.html](http://www.koreatimes.co.kr/www/news/nation/2015/11/116_191087.html).

<sup>36</sup> Ruling by Panama’s Supreme Court, 18 March 2014, Record 578-13, *In the Matter of Corporación la Prensa, S.A vs. Ministry of Public Security (Freedom of Information Request)*.

<sup>37</sup> Newsroom Panama, 13 August 2014, *Anti-Corruption Investigation into Martinelli Era \$250m Contract*, <http://www.newsroompanama.com/news/anti-corruption-investigation-into-martinelli-era-250-million-contract>, and *Judgment of Luis Ramon Fabregas, Third Chamber of the Supreme Court*, 25 August 2015.

Since 2010, the media have also claimed that substantial sums of money were paid to Panamanian politicians, particularly the former president, in connection with the contracts. The payments are supposed to have been channelled through a middleman. The middleman was arrested in Italy in 2014 and charged with various criminal offences, including his involvement in the radar and helicopter contracts which Leonardo was awarded in Panama. According to the Italian prosecuting authorities, he set up the Panama-based company Agafia SA two weeks before the contracts were signed in Panama. Agafia SA was owned by the middleman's partner. Agafia SA signed a consultancy agreement with Leonardo, following which the middleman is supposed to have received 10 per cent of the three contracts' combined total amount. Italian prosecutors further allege that part of this amount was supposed to be paid to Panamanian public officials, primarily the former president.

The Italian authorities have also arrested Leonardo's then *Director of Sales*. The Director in question is accused of having signed the consultancy agreement with Agafia SA and agreeing with the middleman to pay bribes. The prosecuting authorities learned further details of this agreement after tapping their phones.<sup>38</sup>

In September 2015, Panama's Supreme Court issued a ruling which seems to confirm the existence of *prima facie* evidence<sup>39</sup> that the award of the contract to Selex was tainted by corruption. This decision was taken on the basis of the government's application to have the Selex contract set aside. The government submitted that the contract constituted an abuse of power, and that it had been entered into to serve "*private rather than public interests*", in that money was paid to public employees through the company Agafia.<sup>40</sup> The Supreme Court therefore concluded that all three contracts with Leonardo should be set aside.<sup>41</sup>

On 23 February 2016, the two sides came to an agreement to avoid a long and costly legal dispute.<sup>42</sup> Under the agreement, the contract with Selex Sistemi was to be cancelled. Leonardo would repay the contract sum to the state of Panama, which withdrew its application to have the contracts legally annulled. And to normalise relations between the parties, Leonardo agreed to gift a helicopter ambulance to Panama.<sup>43</sup> The agreement does not explicitly mention corruption, but the underlying facts of the case make it clear that Leonardo had overcharged

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<sup>38</sup> *Italian trial could hit Panama politicians*, Newsroom Panama, 15 September 2014,

<http://www.newsroompanama.com/news/panama/italian-law-firm-to-represent-panama-in-bribery-trials>.

Details disclosed during the trial, indicate that the sales director established Agafia Bulgaria so that the money from Leonardo would not have to go via the Panamanian banking system. Attempts have been made in Panama to bring the former president to trial for his role in this case. Up until recently, however, he has enjoyed immunity from prosecution. In 2015, Panama's Supreme Court ordered the country's electoral commission to deprive him of this status. Shortly afterwards, he fled the country.

<sup>39</sup> *Prima facie* evidence is evidence which, on the face of it, is sufficient to establish a fact unless it is refuted. It means that the court has not weighed the evidence presented against the strict requirements applicable in criminal law, but such as it was presented by the state. According to the Supreme Court, the evidence was sufficient for the agreement to be set aside.

<sup>40</sup> *Judgment of Luis Ramon Fabregas, Third Chamber of the Supreme Court*, 25 August 2015.

<sup>41</sup> In its judgment, the Supreme Court points, among other things, to the tapped phone conversations between Leonardo's Sales Director and Lavitola which were used in evidence at Lavitola's trial in Italy.

<sup>42</sup> Cabinet Council Resolution N.10 of 23<sup>rd</sup> February 2016 in Official Digital Gazette (Panama), Tuesday, 1 March 2016.

<sup>43</sup> Agreement between the state of Panama, Leonardo S.p.A, AgustaWestland S.p.A, Telespazio Argentina S.A and Selex S.p.A, Annex to Cabinet Council Resolution N.10 of 23<sup>rd</sup> February 2016 in Official Digital Gazette (Panama), Tuesday, 1 March 2016.

the state of Panama, and that this amount was paid to Agafia and its “beneficiaries”. For its part, Leonardo has not admitted paying money to Agafia, though it has agreed to pay some kind of compensation for the 10 per cent commission in question.<sup>44</sup>

The company has told the Council on Ethics that it is “*fully satisfied with the settlement*”, which provides “*a number of strategic and commercial advantages for Leonardo*”.<sup>45</sup> The company also emphasises the fact that all legal proceedings refer to facts related to the previous management.<sup>46</sup>

## 2.4 Allegations of corruption in Algeria

AW is under investigation following allegations of corruption in Algeria. In 2009, Algeria signed a major contract with the company for the delivery of 100 helicopters to the police and security services.<sup>47</sup>

Although little information on the allegations is publicly available, it is known that the Algerian judicial authorities searched 41 separate locations in April 2015 on the grounds of alleged corruption relating to the AW helicopter deal. One of the locations was AW’s office in Varese.<sup>48</sup> It is also known that the investigations cover claims that AW paid bribes to secure the contract with the Algerian military authorities. Among other things, AW is accused of establishing a so-called “slush-fund”, and that false invoices were issued.<sup>49</sup> The corrupt acts apparently took place between 2009 and 2011.<sup>50</sup>

In a letter to the Council on Ethics, the company writes that this case remains sub judice in Italy, and that it involves two former AgustaWestland CEOs. According to the company, the specific allegations relate to tax evasion and corruption. However, the company underlines that the case refers to facts and actions relating to the previous management. Furthermore, the company writes that it is a victim in the case, and that it is cooperating with the authorities in order to clarify the facts.<sup>51</sup>

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<sup>44</sup> Press release, *Government of the Republic of Panama and Leonardo S.p.A*, 23 February 2016.

<sup>45</sup> Letter to the Council on Ethics, 4 August 2016.

<sup>46</sup> Meetings between the Council on Ethics and Leonardo, 5 February 2016, and the company’s letter to the Council on Ethics, 4 August 2016.

<sup>47</sup> AirForces Monthly, 8 September 2009, *AirForces Monthly Exclusive: Algeria Buys AgustaWestland Helicopters*, [http://www.airforcesmonthly.com/view\\_article.asp?ID=796](http://www.airforcesmonthly.com/view_article.asp?ID=796).

<sup>48</sup> DefenseNews, 23 April 2015, *Leonardo-Algeria Helicopter Deal Probed*, <http://www.defensenews.com/story/defense/policy-budget/industry/2015/04/23/Leonardo-algeria-helicopter-deal-probed/26235509/>.

<sup>49</sup> Reuters, 23 April 2015, *New Corruption Probe Targets AgustaWestland ex Managers Over Algeria – Prosecutors*, <http://af.reuters.com/article/commoditiesNews/idAFI6N0WY02C20150423>.

<sup>50</sup> Janes, 23 April 2015, *Leonardo Faces New Investigation in Italy*.

<sup>51</sup> Letter to the Council on Ethics, 4 August 2016.

### 3 International standards for compliance and corruption prevention

On the basis of international standards for compliance and the prevention of corruption in multinational companies which are comparable with Leonardo, certain key principles can be deduced with respect to steps an enterprise ought to take to establish and implement an effective anti-corruption programme. There are numerous practical guidelines relating to this.<sup>52</sup> The Council on Ethics has also received advice from a consultant with regard to what constitutes best practice for anti-corruption programmes in companies that may be compared with Leonardo.

All relevant international bodies presume that senior management must be genuinely involved in the work if the company is to be capable of effectively preventing the occurrence of corruption. It is important that management clearly communicates a zero tolerance for corruption, and that the company communicates the importance of its corruption prevention activities to the workforce, business partners and representatives.<sup>53</sup>

In order to be able to define systems that are tailored to the specific business, a systematic effort is required to identify and assess corruption risk throughout the enterprise. In accordance with best practice, risk assessments are performed by the body within the company responsible for establishing, implementing and improving the anti-corruption programme. Such assessments are performed regularly in connection with the evaluation of third parties, training and internal inquiries. A comprehensive mapping of corruption risk is often performed annually. Important risk factors that must be assessed are the company's size, business model, local and regional factors, and the sector in which the company operates.<sup>54</sup> At the very least, the company must implement sound preventive measures in those areas where the company is most exposed to risk.

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<sup>52</sup> Guidelines for this work can be found, inter alia, in the UN's anti-corruption portal *TRACK* (Tools and Resources for Anti-Corruption Knowledge), *Global Compact: A guide for anti-corruption risk-assessment* (2013) and the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010). Transparency International (TI) has listed a number of general recommendations for the establishment of corruption-prevention systems in its *Business Principles for Countering Bribery*.

<sup>53</sup> UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter III, A; OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010), A, point 1, and TI's *Business Principles for Countering Bribery*, point 6.1, [http://www.transparency.org/whatwedo/publication/business\\_principles\\_for\\_countering\\_bribery](http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery), as well as the World Bank Group Integrity Compliance Guidelines point 2.1, available at <http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/12/489491449169632718/Integrity-Compliance-Guidelines-2-1-11.pdf>.

<sup>54</sup> This follows from, inter alia, UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 2, [https://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf), OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance* (2010), Annex II, A), available at <http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf>. This also underpins *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, (2012), chapter 5, p. 58-59 by the US Department of Justice and Securities and Exchange Commission, available at <http://www.justice.gov/criminal-fraud/fcpa-guidance>, and the UK Ministry of Justice *Bribery Act 2010 Guidance*, Principle 3, <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>.

To achieve the effective implementation of the systems concerned, it is presumed that good training schemes are developed for employees and business partners over whom the company has a controlling or decisive influence. In particular, senior executives, middle managers and employees in at-risk positions must receive specifically tailored training. It is important that the training is made comprehensible for all employees, and that it is based on specific examples drawn from real life, including personal experience. It is also best practice that the company perform self-assessments of whether its training programmes are well designed and effective.<sup>55</sup>

It is also important that the company performs checks on third parties, so-called due diligence, that third parties in at-risk areas are followed up on a regular basis, and that payments to such parties are proportional to the work performed.<sup>56</sup>

Management must encourage employees to act in compliance with the anti-corruption programme and report any suspected breaches of internal rules and regulations. Systems should be established so that employees and others can report matters anonymously and with no risk of reprisal.<sup>57</sup> The company should have a clear procedure for investigating any reported non-compliance with corporate guidelines, and the sanctions to be imposed on individuals who violate the rules must be made crystal clear.<sup>58</sup>

The anti-corruption programme must be monitored and improved on the basis of both internal experience and external factors, such as new legislation and standards for best practice.<sup>59</sup>

According to international standards for best practice, it is crucial that anti-corruption activities are delegated to a dedicated function or a person with the necessary resources and autonomy. It is also important that the compliance department has direct access to group management and the board of directors.<sup>60</sup>

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<sup>55</sup> UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(H), OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(5), TI's *Business Principles for Countering Bribery*, points 6.4 and 6.6, and World Bank Group *Integrity Compliance Guidelines* point 7.

<sup>56</sup> OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(6)(i), TI's *Business Principles for Countering Bribery*, point 6.2, and World Bank Group *Integrity Compliance Guidelines* point 5.

<sup>57</sup> UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(I and J), OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(9 and 11, ii), TI's *Business Principles for Countering Bribery*, points 6.3.1 and 6.5.1, World Bank Group *Integrity Compliance Guidelines* points 8.1, 9.1 and 9.3.

<sup>58</sup> UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(J and K), World Bank Group *Integrity Compliance Guidelines*, point 10.

<sup>59</sup> UNODC, *Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*, chapter 3(L), OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(12), TI's *Business Principles for Countering Bribery*, points 6.8 and 6.10, World Bank Group *Integrity Compliance Guidelines* points 3.

<sup>60</sup> This follows from, inter alia, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, p. 58, the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, (A)(4) and World Bank Group *Integrity Compliance Guidelines* point 2.3.



### 3.1 Italian statutory requirements

Pursuant to Italian legislation on corporate penalties, *Legislative Decree No. 231* of 8 June 2001, companies may be held administratively liable for, among other things, acts of corruption performed by their employees and representatives. The payment of bribes to public as well as private parties is covered by this law. According to the legislation, the company may avoid liability if it documents that, at the time the act took place, it had compliance systems which were meant to prevent corruption. It must, furthermore, have appointed an independent advisory committee (*organismo di vigilanza*) which is responsible for monitoring the implementation and effectiveness of the compliance systems, as well as updating them at regular intervals. This body should be composed of internal and external members. Moreover, the company must document that it has undertaken an assessment of the risk of non-compliance with the legislation, that corruption-prevention procedures have been drawn up and implemented, that there is a system of sanctions to be applied when the law and internal regulations are violated, and that adequate training systems for employees and managers have been established. The company must also ensure that its *Code of Conduct* is updated, and that there is an adequate sharing of information between the relevant bodies.<sup>61</sup>

## 4 Information provided by the company

The company has made it plain to the Council on Ethics that it does not consider itself to have been directly involved in corruption in any country, and that all the facts associated with these cases relate to the previous management. Nevertheless, Leonardo points out that it has taken a number of steps to centralise important group functions and to prevent corruption. In 2013, Leonardo's board set up the so-called *Flick Committee*, whose task was to identify international standards and best practices relating to compliance for a company like Leonardo, as well as offer advice on how these might be achieved. The committee's report was submitted to the board on 31 March 2014.<sup>62</sup> The report provides a clear overview of applicable standards and best practices in the area. However, the committee points out that its mandate was limited to looking forward, which meant that it was prevented from assessing the efficacy of the existing compliance system and the grounds for the alleged corrupt acts involving Leonardo or its employees.<sup>63</sup>

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<sup>61</sup> The requirements for Italian companies' compliance systems, pursuant to article 6 of the *Legislative Decree no. 231/8*, are described, inter alia, in Norton Rose Fulbright, <http://www.nortonrosefulbright.com/knowledge/publications/73424/italy-adopts-new-anti-corruption-law>.

<sup>62</sup> The report is available at [http://www.leonardocompany.com/documents/63265270/63871745/FLICK\\_COMMITTEE\\_REPORT.pdf](http://www.leonardocompany.com/documents/63265270/63871745/FLICK_COMMITTEE_REPORT.pdf).

<sup>63</sup> See p. 7 of the Flick Report: "*The Committee has not (nor was it in its duties), carried out an audit verifying the effective level of implementation of the regulatory system within the Group*", and chapter 3.3, p. 19: "*The Committee notes that it is not its task to perform an investigation on the grounds of the charges, nor, on the basis of the modest knowledge of these events, to draw inspiration to infer past areas of weakness.*" The report was also discussed at the meeting between the Council on Ethics and Leonardo, 5 February 2016.

## 4.1 Organisation of anti-corruption activities

In line with the requirements set out in *Decree No. 231*, and as long ago as 2003, Leonardo created the *Surveillance Body*, an independent unit mandated to monitor the effectiveness of its compliance systems, investigate areas of potential risk of non-compliance, report any breaches of the rules and recommend improvements to the systems.<sup>64</sup>

The company has a *Senior Compliance Officer (SCO)* who, according to the company, is responsible for “*the whole compliance matters of Leonardo*”. The position was created at “*the express request of the US Committee of Foreign Investment (CFIUS), after the acquisition of a company in the US*”. The company further points out that the role of SCO is also a requirement under national legislation on the import/export of military materiel.<sup>65</sup>

Leonardo has also informed the Council that there are many different departments in the company with responsibility for different parts of the compliance effort. For this reason, rules have been established regarding the allocation of accountability and good communication flow.<sup>66</sup>

In December 2014, the company’s *Legal Company Affairs and Compliance Department* was divided into two: *Compliance* and *Penal, Ethics & Integrity*. Since 2015, the SCO has led the *Compliance Department*, which is itself divided into two sections: *Business Compliance* and *Trade Compliance*. From the information received by the Council, it seems as though the SCO’s primary task is to provide training and maintain control of the company’s 470 third parties, around 200 of whom are agents, as well as its approx. 15,000 export licences. The SCO reports to the group’s general counsel.<sup>67</sup>

## 4.2 Leonardo’s anti-corruption programme

In meetings with the Council on Ethics, Leonardo has stated that it has established a solid anti-corruption programme that will be implemented throughout the organisation in the years ahead.<sup>68</sup> A number of the existing governing documents were drawn up several years ago, and were improved in 2007, 2009, 2010, 2012, 2013 and 2015.<sup>69</sup> The existing anti-corruption procedures were further developed in 2014 on the basis of the recommendations in the Flick Committee’s report. The committee made a total of seven substantial recommendations and several minor suggestions for improvement.<sup>70</sup>

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<sup>64</sup> The company’s Model 231, last revised and approved by the board of directors on 17 December 2015, [http://www.leonardocompany.com/documents/63265270/63873622/Organizational\\_Model\\_231.pdf](http://www.leonardocompany.com/documents/63265270/63873622/Organizational_Model_231.pdf).

<sup>65</sup> Letter to the Council on Ethics, 4 August 2016.

<sup>66</sup> Letter to the Council on Ethics, 4 August 2016 with associated attachments.

<sup>67</sup> Meeting between the Council on Ethics and Leonardo, 5 February 2016, and letter to the Council on Ethics, 1 August 2016.

<sup>68</sup> Meeting between the Council on Ethics and Leonardo, 5 February 2016.

<sup>69</sup> The Flick Report, point 4, and letter to the Council on Ethics, 5 February 2016.

<sup>70</sup> The Flick Report, 2014. The committee recommended that the company draw up an *Integrity and Anti-Corruption Code* and set up a committee to harmonise the compliance activities being performed by many different bodies within the company. It also recommended a greater focus on internal auditing and information flow, improvements to the whistleblowing systems and a better, more precisely tailored training system, increased communication with third parties with regard to integrity and anti-corruption, participation in

According to the company's *Code of Ethics*, all employees are duty bound to comply with the rules in effect in all areas at all times.<sup>71</sup> In April 2015, the board adopted an *Anti-Corruption Code* to strengthen anti-corruption efforts throughout the group, including all subsidiaries.<sup>72</sup>

The company's current CEO has told the Council on Ethics that the company takes the allegations of corruption extremely seriously, and that he aims to prevent the company from suffering any future damage to its reputation.<sup>73</sup> In its dialogue with the Council, the company has also stated that the CEO, both internally and externally, has made it clear that he expects a radical change in Leonardo's corporate culture. The company has also disclosed that it is participating in several sector-wide initiatives to continuously improve its level of compliance.<sup>74</sup>

On the basis of the information that the Council on Ethics has received in meetings and through written communications, it does not appear as though any specific, structured mapping and assessment of Leonardo's internal corruption risk is carried out. The only specific corruption risk assessment that the company has pointed to is the comprehensive assessment of all risks affecting the company that was performed in 2014 and concluded in December 2015. This also encompassed the risk of corruption.<sup>75</sup>

The *Compliance Department* performs *integrity due diligence (IDD)* of third parties. The department has a staff of around 100 people, some 60 of whom work in the area of export control, while 40 work with IDD.<sup>76</sup>

In February 2016, Leonardo told the Council that all of its contracts are awarded by means of tender processes, in which the company depends on assistance from agents. It is not unusual for these agents to receive between 5 and 12 per cent of the contract sum as a success bonus. According to the company, this is normal for the sector. Because of its extensive use of agents, the company has devoted additional resources to their selection and follow-up.<sup>77</sup> At a meeting with the Council in August 2016, the company stated that it does not depend on agents in all its operations, and that one of the most important steps to prevent corruption moving forward will be to reduce Leonardo's uses of agents by "*building up a stronger*

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international anti-corruption bodies and a tightening up of compliance within the company with regard to trade and anti-corruption.

<sup>71</sup> *Code of Ethics of Leonardo SpA*, 15 April 2013,

[http://www.leonardocompany.com/documents/63265270/63871452/FNM\\_Code\\_of\\_Ethics2013.pdf](http://www.leonardocompany.com/documents/63265270/63871452/FNM_Code_of_Ethics2013.pdf).

<sup>72</sup> Leonardo's *Anti-Corruption Code* contains references to various anti-corruption provisions. It mentions the most important corruption risks that have been identified in the company, and it sets out certain basic principles for how employees are expected to behave in areas associated with the risk of corruption. It also mentions that employees must be given anti-corruption training and that non-compliance will result in sanctions. See *Anti-Corruption Code of Leonardo Group*, 2015,

[http://www.leonardocompany.com/documents/63265270/63872421/Codice\\_Anticorruzione\\_en.pdf](http://www.leonardocompany.com/documents/63265270/63872421/Codice_Anticorruzione_en.pdf).

<sup>73</sup> Meeting between the Council on Ethics and Leonardo, 28 September 2015.

<sup>74</sup> Letter to the Council on Ethics, 4 August 2016.

<sup>75</sup> For example, at the meeting between the Council on Ethics and Leonardo on 5 February 2016, the company said that its general counsel had performed this assessment in conjunction with the CFO and the internal auditing and HR departments. In this connection, "relevant units" were interviewed to identify the most important areas with respect to compliance risk. This included managers with responsibility for high-risk countries. In connection with this process, Leonardo commissioned the assistance of PwC.

<sup>76</sup> Meeting between the Council on Ethics and Leonardo, 5 February 2016.

<sup>77</sup> Meeting between the Council on Ethics and Leonardo, 5 February 2016.

*internal commercial network at divisional level, properly incentivised, significantly limiting the use of agents and sales promoters*". The company has explained that although the CEO announced this measure at a corporate event at the end of June 2016, there is no specific overall plan for how this shall be achieved. According to the company, this is because the details of the plan had yet to be finalised when the initiative was announced. However, the company has explained that following its reorganisation, the HR Department will be responsible for all reward and incentive schemes, and that the various divisions will be given responsibility for implementing this specific plan.<sup>78</sup>

With regard to anti-corruption training, the Council has not received any information about the existence of a comprehensive plan for who should be trained in what, by whom and how often. In its dialogue with the Council, Leonardo has pointed to several individual cases over the past two years in which employees in high-risk positions and relevant governing bodies have received anti-corruption training by, among others, internal and external lecturers.<sup>79</sup> Further details of the training given can be found in the governing documents. According to the company's *Anti-Corruption Code* and *Model 231*, the HR Department is supposed to ensure that all employees receive the necessary anti-corruption training. HR "*defines the annual planning of training*",<sup>80</sup> and, according to *Model 231*, will also "*manage the training of staff on the contents of the Decree and on the implementation of the Model*".<sup>81</sup>

According to the Council's most recent consultations with the company, the SCO advises on training in general. The SCO also holds training courses himself, but as far as the Council understands it, this primarily involves training *Compliance Department* staff in how to do their jobs.<sup>82</sup> The Council has also received a copy of the eLearning program that is given to all employees. This program seems to contain a lot of factual information and questions about the Flick Committee, but does not include any dilemma training based on specific examples of corruption cases or other relevant topics. Nor does it seem to be designed such that employees can provide feedback on whether the training is effective and what could have been improved.

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<sup>78</sup> Video conference between the Council on Ethics and Leonardo, 7 August 2016.

<sup>79</sup> In its letter to the Council on Ethics, dated 4 August 2016, Leonardo states that in 2015, training was given to 150 senior executives and employees in high-risk positions. In June and July 2016, further training in "*business trade and compliance*" was given to about 200 people. Mr Flick, who chaired the Flick Committee, is also supposed to have held a training session for board members and *Statutory Auditors* in connection with a board meeting in June 2015, and for the *Surveillance Body* in connection with its meeting in December 2015. Furthermore, in April 2015, an external consultant held an anti-corruption workshop on relevant legislation and compliance best practice. A total of 60 people attended this session, which was meant for employees in high-risk positions. On two occasions in September 2015 Leonardo's general counsel provided classroom tuition on the *Anti-Corruption Code* at the company's head offices. This was aimed at middle managers and the CEOs of subsidiaries, as well as employees in high-risk positions. Furthermore, a two-day workshop was held in 2016 for employees in high-risk positions, Day 1 of which related to anti-corruption systems and was led by internal and external lecturers. The SCO acted as moderator. Finally, the company points out that new online anti-corruption modules have been created, which all employees will be required to take, with effect from September 2016.

<sup>80</sup> *Anti-Corruption Code of Leonardo Group*, 2015, point 9.

<sup>81</sup> *Model 231*, point 3.

<sup>82</sup> Meeting between the Council on Ethics and Leonardo, 5 February 2016.

The company has stated that training is not given to third parties. However, when contract are entered into, agents sign a form confirming that they have read all relevant governing documents and that they are aware of their obligations to the company.<sup>83</sup>

Non-compliance with the company's rules and regulations may be reported through several channels, including directly to the *Surveillance Body*, via the company's website or to an anonymous email address.<sup>84</sup> The board of directors adopted a set of *Whistleblowing Management Guidelines* in March 2015.<sup>85</sup> According to these guidelines, the *Surveillance Body* receives and registers all reports relating to rule violations. The reports are then sent to the *Disclosure Committee* for further consideration. Both internal auditing and the semi-external *Surveillance Body* are involved in the subsequent follow-up of the reports.<sup>86</sup>

The company has stated that whistleblowing is an important topic in the online training program, and that implementation of the whistleblowing programme was, moreover, an important element at the anti-corruption workshop held in 2015. Reference is further made to the fact that the US subsidiary, DRS, has an external recipient for all reports of alleged wrongdoing, which permits non-compliances to be reported anonymously. DRS also has an *Ethics Helpline*, from which employees can seek advice and guidance on how to report potential rule violations.<sup>87</sup>

The company has disclosed that it received 15 so-called whistleblower reports in 2015, but that none of these related to corruption. The company states that it has never received any reports of corruption either through its official reporting channels or in person from a subordinate to a superior.<sup>88</sup>

### 4.3 The most important organisational changes

Leonardo's current CEO, who took up his post in May 2014, has initiated a wide-ranging process to restructure the entire Leonardo group. The objective of this restructuring effort is to create a more streamlined and efficient organisation by transforming Leonardo from a holding

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<sup>83</sup> Video conference between the Council on Ethics and Leonardo, 7 September 2016.

<sup>84</sup> This follows from both *Anti-Corruption Code of Leonardo Group*, 2015, and *Model 231*.

<sup>85</sup> This document is available at

[http://www.leonardocompany.com/documents/63265270/63873320/body\\_Linee\\_di\\_indirizzo\\_Gest\\_delle\\_segn\\_23\\_03\\_2015clean\\_EN\\_REV\\_IA.pdf](http://www.leonardocompany.com/documents/63265270/63873320/body_Linee_di_indirizzo_Gest_delle_segn_23_03_2015clean_EN_REV_IA.pdf).

<sup>86</sup> The *Disclosure Committee* comprises the head of *Internal Audit*, the head of *Legal, Corporate Affairs and Compliance*, the head of *Human Resources and Organization, Security* and the head of *Administration, Finance and Control (CFO)*, see *Whistleblowing Management Guidelines*, 2015, the meeting between the Council on Ethics and Leonardo, 5 February 2016. If the *Disclosure Committee* believes there are grounds for further investigation, a request therefor must be sent either to *Internal Audit* or *Human Resources and Organization, Security*, depending on the subject of the report, see *Whistleblowing Management Guidelines*, 2015 and the meeting between the Council on Ethics and Leonardo, 5 February 2016. According to the company's *Whistleblowing Management Guidelines*, the *Disclosure Committee* is supposed to receive proposals for improvements and forward them to the external *Surveillance Body*, which will, in turn, inform the CEO and relevant board subcommittees. *Internal Audit* or *Security* monitors the implementation of the action plan, and reports progress to relevant governing bodies. The internal regulations stipulate that sanctions be imposed on those responsible for any non-compliances uncovered.

<sup>87</sup> Letter to the Council on Ethics, 4 August 2016.

<sup>88</sup> Meetings between the Council on Ethics and Leonardo, 5 February and 4 April 2016.

company to an integrated industrial concern. The business is now divided into four sectors and seven divisions, which include the activities of the previously wholly owned defence-industry subsidiaries AW, Alenia Aermacchi, Oto Melara, Selex ES and WASS. The four new sectors are 1) *Helicopters*, 2) *Aeronautics*, 3) *Electronics, Defence & Security Systems* and 4) *Space*.<sup>89</sup>

Following the arrest of Leonardo's previous board chair, who was also its CEO, a new board chair was named in July 2013. Of the other 10 board members, two were elected in 2011, one in 2013 and seven in 2014. The current CEO was appointed in 2014. Some of the other members of group management are also new, including the Group General Counsel and the current heads of Internal Audit and Human Resources. The executives now in charge of the four new sectors created as part of the restructuring process were or are the CEOs of the subsidiaries AW, Selex and Telespazio. The former CEO of AW now leads the *Helicopters* sector, the former CEO of Selex heads *Electronics, Defence & Security Systems*, and the former CEO of Telespazio is now in charge of *Space*.<sup>90</sup> These individuals have had a long career in the group.<sup>91</sup> However, the company has said that, in conjunction with a firm of external consultants, an integrity assessment was carried out on all three before they were appointed to their current positions of leadership.<sup>92</sup>

In other respects, the creation of the *Senior Compliance Officer* position in 2015 appears to be key to the anti-corruption effort. Before this, there was no central unit in the Leonardo Group that ensured counterparties were systematically assessed with regard to the risk of corruption. Furthermore, internal auditing for the entire group has now been centralised. The company's internal anti-corruption rules were also codified in its *Anti-Corruption Code*, and the company's subsidiaries are also required to have procedures and mechanisms in place to combat corruption. In this way, anti-corruption activities are embedded in all group companies.

## 5 Assessment of the Council on Ethics

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

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<sup>89</sup> Meetings between the Council on Ethics and Leonardo, 5 February and 4 April 2016. The seven divisions are: Helicopters, Aircraft, Aerostructures, Airborne & Space Systems, Land & Naval Defense Electronics, Defense Systems and Security & Information Systems.

<sup>90</sup> Meeting between the Council on Ethics and Leonardo, 5 February 2016.

<sup>91</sup> According to Bloomberg, among others, the former CEO of AW has been employed in the Leonardo Group since the late 1990s, the CEO of Telespazio since 2002, and the former CEO of Selex since 2009. Further details regarding the shake-up of group management can be found in *DefenseNews*, 24 October 2015, <http://www.defensenews.com/story/defense/policy-budget/industry/2015/10/24/moretti-puts-stamp-new-Leonardo-leadership-team/74421526/>.

<sup>92</sup> Letter to the Council on Ethics, 4 August 2016.

The Council on Ethics has not considered whether Leonardo may be held criminally liable for corruption. Nor does such an assessment fall within the Council's mandate or competence. In its assessment, the Council has attached importance to whether the company seems to have acted in violation of internal and external guidelines and procedures, and whether this may result in a risk of corruption.

On the basis of the information available on alleged corruption involving Leonardo, the Council on Ethics finds that there is an unacceptable risk that the company may be responsible for actions which must be considered gross corruption, or that there is a risk of corruption taking place in the company's operations, since employees seem to have acted in violation of relevant anti-corruption guidelines and procedures. The Council places particular emphasis on the fact that the former CEOs of both Leonardo and AgustaWestland have recently been sentenced to terms of imprisonment for gross corruption in connection with the sale of helicopters in India. Furthermore, the Council attaches importance to the fact that the company's contracts for the sale of defence equipment have been investigated by the Italian, Indian, Algerian and South Korean authorities. On the basis of the information available, it seems as though the company's business partners and agents have forwarded bribes on behalf of the company to public officials in these countries in order to win contracts. It must, moreover, be pointed out that a further contract was annulled by Panama's Supreme Court in 2015 on the grounds of alleged corruption.

Moreover, the Council has assessed whether there exists an unacceptable risk that Leonardo may once again become involved in similar acts. In this assessment, the Council emphasises the corruption risk to which the company is exposed, how the company has responded to the allegations of corruption, as well as the extent to which the company has implemented anti-corruption systems capable of preventing, revealing and dealing effectively with corruption in its operations.

Leonardo operates in a number of countries where the risk of corruption is high. For example, Libya and Russia are ranked in the highest category of assumed corruption risk in Transparency International's *Corruption Perception Index 2015*, while China and Saudi Arabia do not do well in TI's *Government Defense Anti-Corruption Index 2013*. Major public procurement contracts in this sector expose the company to a further risk of corruption. In addition, several studies have found that the defence industry is particularly susceptible to corruption. This is partly due to the fact that a great many details surrounding tender processes and contracts are withheld from public scrutiny on the grounds of national security, that the contracts frequently involve both private companies and public defence bodies, and that defence budgets in many countries are high compared with the budgets in other parts of the public sector. In Leonardo's case, the company uses agents in connection with public procurement tenders in several countries. Certain agents are paid relatively high success bonuses and the company has a practice of entering into repurchasing agreements. It is well known that such practices lead to a high corruption risk. In the opinion of the Council, this in particular requires the company to have robust systems in place and to implement systematic measures to prevent, uncover and deal with corruption in an effective way. Given that several of the company's senior officers have been convicted of gross corruption, and several of the company's contracts remain under investigation for corruption in four countries, this requirement becomes even more essential.

In light of what has been known about corruption in Leonardo since 2013, it was to be expected that the company would quickly implement measures to reduce the risk of new incidences of corruption in line with international rules and standards of best practice. However, Leonardo does not seem to have done so. At the same time as the company set up the Flick Committee to provide advice on corruption prevention, contracts were apparently still being entered into in probable violation of internal guidelines. This included inadequate due diligence investigations and the payment of fees out of proportion to the services provided. It seems likely that this carried on in South Korea right up until six months after the Flick Committee had submitted its report in April 2014. Irrespective of the outcome of the ongoing legal proceedings, this demonstrates, in the Council's opinion, that key corruption prevention routines were not complied with in the company, even after management had put corruption prevention at the top of the corporate agenda. The Council also finds it significant that former senior executives seem to have been directly involved in the contracts that have been entered into in violation of the company's own rules and regulations. In a company where senior management is involved in the circumvention of its own routines, there is reason to believe that more wide-ranging efforts will be required to change the prevailing culture than in organisations where corruption occurs only sporadically and at lower levels in the system.

The Council notes that Leonardo has gradually improved its internal corruption-prevention systems since 2007, and that more extensive improvement initiatives have been implemented following the recommendations made in 2014. Furthermore, the Council has taken account of the company's very recent restructuring process, whose objective has been to increase control and improve efficiency in all parts of the group. The Council presumes that, in principle, these measure could help to reduce the risk of corruption in the company.

Nevertheless, the Council considers that Leonardo has failed to substantiate that the company has adequate systems in place and that it has organised the implementation of its anti-corruption programme effectively and in line with international standards and best practice. This assessment rests on several factors.

The company has not documented that it has routines for the internal mapping and assessment of corruption risk, as prescribed in international standards and best practices for comparable companies. This is crucial for being able to adapt the anti-corruption programme to changes in the company's risk profile.

Furthermore, the company has training guidelines and procedures, but has failed to adequately document that the training is carried out to the extent and with the emphasis needed to achieve common standards and a zero tolerance for non-compliance throughout the company.

The Council finds it remarkable that employees have not reported any cases of corruption, particularly considering the large number of employees and the company's risk profile. When no one reports any incidents of attempted corruption, it seems reasonable to assume that the company's anti-corruption efforts are not well enough communicated down through the organisation, that employees are not sufficiently encouraged to report their concerns, and that the systems do not work as well as they should.

However, it is Leonardo's use of agents and how the company manages this risk that is of decisive importance for the Council. The use of agents constitutes probably the very greatest risk of corruption in the company's operations. It is good that the company now seems to wish



to address this issue. At the same time, the Council finds it difficult to attach importance to the announced scaling back in the use of agents as long as no specific plans exist for when and how this reduction will be effected, nor what the ultimate target number should be. Moreover, the Council points out that instead of acting with respect to this matter several years ago, when it first learned of the corruption allegations, Leonardo has only recently announced its intention of doing so. Other companies which also sell defence equipment in the same countries as Leonardo have acted much faster with respect to this issue, in that practically all use of agents was eliminated as an immediate response when the corruption allegations became known. Furthermore, the Council estimates that the failure to provide agents with anti-corruption training is a clear weakness in the anti-corruption programme. This should play an important role in the company's preventive efforts, and is given a high priority in other companies that are comparable with Leonardo.

The company has made extensive changes to its board of directors and group management after widespread corruption was uncovered in its operations in 2013. This in itself may be seen as signalling a change of course. At the same time, in meetings with the Council on Ethics, the company has repeatedly stated that it considers the allegations of corruption to be wholly without foundation. But with two former chief executives recently having been convicted of corruption, the company's protestations rather give the impression of an attempt to side-step Leonardo's corporate responsibilities.

Based on the information available, the Council therefore concludes that there is an unacceptable risk that Leonardo may once again become involved in gross corruption.

## 6 Recommendation

The Council on Ethics recommends that Leonardo be excluded from the GPFG due to an unacceptable risk of gross corruption.

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Johan H. Andresen  
Chair

(sign.)

Hans Chr. Bugge

(sign.)

Cecilie Hellestveit

(sign.)

Arthur Sletteberg

(sign.)

Guro Slettemark

(sign.)