

**A comparison of selected US and European codes of
business ethics/conduct in defence contractors with
particular reference to bribery and corruption**

by Simon Webley

**Research Director
Institute of Business Ethics**

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Assistance with this research was provided by Katherine Parker and Andrea Werner

1. Terms of Reference

Transparency International (UK) asked the Institute of Business Ethics to examine the codes of Business Ethics of fifteen major US and European defence contractors.

We were asked to concentrate on the following specific issues:

- Bribery
- Corruption
- Conflicts of interest
- Gifts and hospitality
- Relationships with agents and their commissions

The IBE was asked to compare the corporate positions on the topics described in these codes of ethics with Transparency International's Business Principles for Countering Bribery and also, as far as the European companies were concerned, their codes with to the US Defense Industry Initiative Principles.

2. A Note on Methodology

2.1 Corporate Codes of Ethics

Codes of ethics of the following large defence contractors were selected as a sample for comparison for this study (Chart 1):

Chart 1

US	European	Other
Lockheed Martin Raytheon Boeing General Dynamics United Technologies GE Northrop Grumman	BAE Systems Thales Rolls Royce *Smiths Group *Dassault EADS Ericsson Saab	IMI* IAI*

*Because of time and other constraints it was not possible to obtain or locate the current codes of these contractors.

2.2 A Comparison of contents of relevant clauses

Clauses on each of the selected topics set out in the Terms of Reference where listed for the thirteen corporations and their content compared using an Excel spreadsheet matrix (Chart 2)

2.3 The TI Business Principles comparison

The guidance given to staff in the corporate codes for each of the topics was then compared to that set out on the same topics in the TI Business Principles for Countering Bribery again using an Excel spreadsheet matrix (Chart 3)

2.4 Principles comparison The US Defense Industry Initiative (DII)

The six DII Principles were adopted in 1986 and have been subsequently reconfirmed. A list of these is set out in the final section. The first three are the relevant ones (a written code; training on responsibility; reporting of violations). The others are about process (compliance; implementation; accountability).

The policies of the European companies in the sample are compared with the DII standard (Chart 4).

All analysis is based on material that was accessible through the internet or through hard copies of the company codes of ethics.

3. Comments on the content of relevant clauses of codes ethics of larger European and US defence contractors

3.1. Comparisons between companies

The codes of ethics of US companies in the sample listed in Chart 1 are generally more detailed about anti-bribery practices than those of the companies that are European based.

The exception is Thales, a French contractor, which has set up a reference guide on 'ethics in international trade'.

Looking at specific issues, the way companies approach them varies both by country and in the detail of the guidance provided. The US codes tend to be couched in legal style and language while those from Europe concentrate on providing guidance and are written in a managerial form.

Bribery/Corruption

American companies refer mainly to legal compliance (FCPA, OECD Convention on Combating Bribery of Public Officials) on this issue. For the European companies, the avoidance or prohibition of corruption and bribery mainly takes the form of a strong ethical statement condemning the practice and only occasionally backed up with a reference to law. Most UK companies have not yet formally amended their codes to take account of the bribery and facilitation payments clauses in the UK Anti-terrorism, Crime and Security Act 2001. Only Northrop Grunman and Raytheon draw a distinction in their codes between bribery and corruption.

Conflicts of Interest

All but two of the companies in the sample mention 'conflicts of interest' in their codes. However, guidelines on how to deal with conflict range from 'seeking to avoid conflicts of interest' (Saab, Rolls Royce) to the requirement to disclose potential and real conflicts of interest (GE, Ericsson). The American company codes appear to take a more rigorous and detailed approach on this issue compared to the European based ones, Ericsson being the exception among European companies.

Gifts

Some American companies (such as Lockheed Martin and United Technologies) have outlined specific regulations with regards to the level and value of gifts which are acceptable. Other company codes state that the receipt and offer of gifts 'that could influence the outcome of business transactions' are not allowed. These are referred to as improper gifts. Only Lockheed Martin in the sample provides a money value limit for tangible gifts.

Agents and Commissions

Most European company codes do not specifically refer to issues surrounding agents and commissions. On the other hand, US based companies do prescribe compliance to

existing company standards or legal regulations in their dealings with agents. GE is the only company that specifically states the duty of due diligence when agents are recruited. The absence of a reference in a code to this issue does not necessarily imply 'no policy'. It may appear in other instructions to staff.

3.2. Comparison of TI Business Principles and Company Codes

Although none of the companies in the sample completely meet the comprehensive requirements of the TI Business Principles, the anti-bribery policies of US-based companies seem to come closer to the TI model than the European ones. The exception is Thales.

In line with the TI Business Principle 4.2 (policies being consistent with all laws) the US companies repeatedly refer to the Foreign Corrupt Practices Act and the OECD Convention on Combating Bribery of Foreign Public Officials as well as to some other regulations, whereas only a few European companies make reference to existing legislation.

Whistle-blowing and disclosure of relevant information is mentioned in nearly all codes, but again, the US companies take a more rigorous approach to the matter compared to the Europeans.

3.3 Comparison with the US Defense Industry Initiative (DII) Principles

For the reason set out earlier, only the first three of the six clauses of the DII were compared to clauses in the European companies' codes. Five of the companies had a written code though Saab's consists of five clauses of a very general nature.

The most striking conclusion in this comparison is that none of those codes which were examined mentioned training. Further research would have to be done to see if this omission means that none is provided. Other survey data mainly from the UK, indicates that only around 40% of all companies with codes of ethics undertake training about their ethics policies.

On the subject of confidential reporting (hotlines/whistleblowing), three of the five European companies make reference to the availability of such a facility. Generally the operation of these lines is the subject of considerable debate among larger companies with very mixed experience as to their usefulness being reported.

4 Towards a Common Approach to a Code for the Industry

4.1 Developing a 'Best Practice' Code

There is not (and should not) be such a thing as a 'best practice' code. In our opinion, every company must go through the (time consuming) exercise of developing its own expression of its values in the form of a code of ethics/conduct. This will address those issues which impact most on both its internal and external relationships.

Having said that, the Institute of Business Ethics has produced an Illustrative Code. This covers most of the subjects generally found in codes of ethics. This was first produced in 1993 and revised in 2003. It was written to meet requests for a benchmark by which to check individual company codes. It uses wording from existing codes.

The clauses on the issues covered in this Report are as follows:

Bribery

No employee may give money or any gift of significant value or anything else which could be construed as being intended as a bribe to a customer.

Corruption

The company requires and maintains the highest ethical standards in carrying out its business activities. Employees are expected to act according to our ethical principles. Corrupt practices of any sort will not be tolerated. The company will monitor ethical performance regularly and will produce regular reports giving a true and fair view of both our financial and non-financial affairs.

Gifts and Hospitality

The receipt of gifts or substantial favours by employees from suppliers can give rise to embarrassing situations and may be seen as improper inducement to give some concession in return to the donor. The following principles should be observed:

- a. *Gifts and favours must not be solicited.*
- b. *Gifts of money must never be accepted.*
- c. *Reasonable small tokens [below £X] and hospitality may be accepted provided they do not place the recipient under any obligation, are not capable of being misconstrued and can be reciprocated at the same level.*
- d. *Any offer of gifts or favours of unusual size or questionable purpose should be reported immediately to the employee's manager and the company secretary.*

Facilitation payments are small payments or gifts to low-level government officials to 'facilitate' actions or approvals. These payments are illegal for UK companies, and we prohibit any type of facilitation payment made directly or indirectly by any employee or company worldwide.

Political Donations

The company does not participate in party politics or make donations to political party funds or candidates. We will make our position known on matters affecting us or our stakeholders to government at any level.

Conflicts of Interest

No employees may be involved with an activity for personal gain which is in conflict with the company's business interests. Any personal interests or interests of a member of one's immediate family in relation to the company's business must be disclosed. A conflict of interest could include directorships, significant shareholdings and employment of family members.

Law

The company will respect the traditions and cultures of each country in which it operates. Where there is conflict between local custom and the principles and values set out in this code, this code will guide all employees while they are acting on the company's behalf.

4.2 Some Wording from the Codes of Defence Contractors on Selected Issues

Bribery

The Company is committed to conduct its activities free from the unfair influence of bribery and to foster anti-corruption awareness among its employees and business relations throughout the world.

Corruption

Corruption undermines trust, impedes the pursuit of democracy, erodes social and economic development and destroys the concept of fair play in a competitive global marketplace. In accordance with the U.S. Foreign Corrupt Practices Act (FCPA), the Organization for Economic Cooperation and Development's Anti-Bribery Convention (to which the U.S. is a signatory), and similar laws and regulations of other countries, our employees, agents, and representatives generally may not offer anything of value for the purpose of influencing a government official to make an improper decision in their official capacity. Likewise, we are committed to transparency in our record-keeping, accounting, and other business transactions.

Conflicts of Interest

Disclose (your) outside activities, financial interests or relationships that may present a possible conflict of interest or the appearance of a conflict. Make (your) disclosures in writing to (your) manager as well as to company legal counsel or (your) business' finance manager.

Gifts

Gifts, benefits, reimbursements and entertainment — An ...employee may not offer or accept gifts, benefits, reimbursements or entertainment to or from a third party that would constitute a violation of laws or that could affect, or appear to affect, the professional judgment in the performance of the respective work or duties for ...or a third party.

Agents & Commissions

Be careful when retaining agents to represent (our) interests outside the United States. Foreign consultants, agents, sales representatives, distributors, or contractors must comply with 's standards of doing business.

5. Some Conclusions

The main conclusion from this desktop survey is that the US defence contractors in the sample have well developed policies expressed in their Codes of Ethics about bribery and related topics compared to the European companies.

It appears that a number of major European contractors do not have a readily available code though more work would have to be done to establish this. Experience from the UK suggests that some large companies (not necessarily in the defence industry sector) now have a separate code covering procurement practises. These are often made available on a 'need to know' basis.

Guidance about relations with regulators and agent are noticeably absent from European codes.

The section in all codes dealing with implementation has little to say about training in their application for resolving ethical dilemmas.

There is *prima facie*, sufficient convergence in the approaches that the majority of European companies take to ethical issues to establish a 'European Defence Contractors Initiative' on the same lines as the US DII, which, in ethical terms, is not very demanding.

Some Sources

- US Defense Industry Initiative on Business Ethics and Conduct <http://www.dii.org>
- TRACE 2004 Survey of Corporate Anti-Bribery Programs. TRACE International <http://www.traceinternational.org>
- Transparency International (2003) Business Principles for Countering Bribery: An initiative of Transparency International and Social Accountability International http://www.transparency.org/building_coalitions/private_sector/business_principles.html
- The Trace Standard: Doing Business with Intermediaries Internationally (2002) <http://www.traceinternational.org>
- Codes of Ethics and International Business by Simon Webley, Institute of Business Ethics (1997) <http://www.ibe.org.uk>
- Developing a Code of Business Ethics: A guide to best practice including the IBE Illustrative Code of Business Ethics by Simon Webley (2003) <http://www.ibe.org.uk>

The DII Principles

The DII Principles were adopted at the time of the establishment of the DII in June 1986, and have been periodically reconfirmed. The Principles are:

(1) Each Signatory shall have and adhere to a written code of business conduct. The code establishes the high ethical values expected for all within the Signatory's organization.

(2) Each Signatory shall train all within the organization as to their personal responsibilities under the code.

(3) Signatories shall encourage internal reporting of violations of the Code, with the promise of no retaliation for such reporting.

(4) Signatories have the obligation to self-govern by implementing controls to monitor compliance with federal procurement laws and by adopting procedures for voluntary disclosure of violations of federal procurement laws to appropriate authorities.

(5) Each Signatory shall have responsibility to each other to share their best practices in implementing the DII principles; each Signatory shall participate in an annual Best Practices Forum.

(6) Each Signatory shall be accountable to the public.