



ROYAL NORWEGIAN
MINISTRY OF DEFENCE

Guidelines

Ethical guidelines for contact with business and industry in the defence sector

May 2011



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Table of contents

Foreword	4
1. General.....	6
1.1 Purpose.....	6
1.2 Scope and boundaries	6
1.3 Relationship to legislation and regulations	6
1.4 Leadership and responsibility	7
1.5 The individual's responsibilities.....	7
1.6 Acceptable and unacceptable conduct	7
1.7 Ethical judgement and grey areas	8
2. Guidelines.....	8
2.1 The basic principle	8
2.2 Defining and clarifying conduct.....	8
2.3 Gifts.....	9
2.4 Hospitality, travel and entertainment	10
2.5 Conflicts of interest	11
3. Consequences of breaches	13
3.1 Introduction.....	13
3.2 Career consequences.....	13
3.3 Reactions pursuant to the Civil Service Act.....	13
3.4 Criminal sanctions.....	14
3.5 Criteria for considering forms of reaction	14
3.6 Responsibility for following up breaches of rules and standards of conduct	15
4. Entry into force	15

Foreword

Ethical Guidelines for contact with business and industry in the defence sector were first issued by the Ministry of Defence in April 2007. This revised edition of these guidelines aims to clarify and simplify the rules that apply. The revision is part of the development of the Ministry of Defence's Action Plan for Attitudes, Ethics and Leadership (AEL).

I would like to underline that contact with business and industry is both important and necessary. Business and industry policy in the defence sector requires a close partnership with business and industry, which in turn requires a clear understanding between the parties of their roles. The guidelines are not intended to limit contact with business and industry. On the contrary, they are intended to provide guidance on how we should conduct ourselves in an ethically proper manner in our contact with business and industry, and ensure compliance with the rules for public procurements. Neither the defence sector's employees nor business and industry should be in any doubt about the ground rules that apply.

We all have a responsibility to ensure orderly and proper relationships with external partners. An open and aware working environment helps to counter the development of undesirable attitudes and actions in the workplace. Such openness and awareness will also encourage reflection on and discussion of dilemmas and difficult situations, which in turn has an important educational effect.

In the interest of the defence sector's reputation in society and the general trust of the population it is essential these guidelines be complied with.



Grete Faremo
Minister of Defence

Ethical ground rules for the defence sector

REPUTATION AND CREDIBILITY

All employees are obliged to perform their tasks and interact with others in an ethically proper manner so as to make a positive contribution to the defence sector's reputation and credibility in society.

OPENNESS

Everyone has a shared responsibility to create a good working environment and develop a culture characterised by openness and integrity. A working environment characterised by openness is a key precondition for proper ethical conduct.

Administration shall be open and transparent, enabling the general public to be apprised of the defence sector's activities. Employees shall provide correct information to other authorities, companies, organisations or citizens.

FREEDOM OF EXPRESSION

Like everyone else, employees have a fundamental right to participate in public discussions, even about the activities of the defence sector.

Individuals are responsible for their utterances not coming into conflict with obligations of loyalty and duties of confidentiality. Duties of confidentiality remain in force also after the persons in question have concluded their service or left their positions.

LOYALTY

Employees are obliged to study and comply with current legal rules and ethical guidelines.

A part of an employee's obligation of loyalty is exercising proper professional discretion in performing his or her service. Employees are responsible for familiarising themselves with political and military policy decisions and guidelines and other decisions and guidelines in their professional areas and shall perform their work tasks in line with them.

Employees also have the right to speak up about improprieties without suffering negative consequences.

The duty to follow instructions and orders does not entail the duty to do anything illegal or unethical.

IMPARTIALITY

Employees shall act in a manner that does not raise doubts about their impartiality.

Employees shall not place themselves in situations liable to influence their official actions. Employees must not take part in discussions and decisions on cases in which they themselves or people close to them have special personal or financial interests.

LEADERSHIP AND RESPONSIBILITY

It is the individual's responsibility to comply with these ethical ground rules. Leaders have a special responsibility as culture bearers and role models. Leaders are also responsible for ensuring individual employees are familiar with the specific ethical guidelines in the agencies and for reacting to breaches of these guidelines.

1. GENERAL

1.1 Purpose

The main purpose of these guidelines is to spell out in a practical way what conduct is acceptable and expected of all employees in the defence sector with regard to contact with business and industry. Another equally important purpose is to clarify what conduct is unacceptable and the consequences that breaching current standards of conduct may entail. The aim is not to come up with new rules but rather to clarify and raise awareness of the existing ones. The examples given are not exhaustive. They are meant as examples of situations in which it may be necessary to consider and assess the ethical aspects of an action.

This document is also intended to inform business and industry of the rules and guidelines that apply in the defence sector.

1.2 Scope and boundaries

This document only deals with guidelines and consequences for situations involving defence sector contact with business and industry. Relations between states (contact with other nations in official contexts) are not covered by these guidelines. The same applies to matters involving military ethics and other aspects of ethics pertaining to the civil service.

Contact with business and industry means the contact an employee in the defence sector has with one or more representatives of business and industry in an official context or in a context related to the employee's role as a representative of the Norwegian Armed Forces as a customer of an existing or potential supplier. For example, this may be in connection with the purchase of goods and services, contract negotiations, calls for tenders, use of consultants and implementation of projects. Likewise, the term contact with business and industry will also cover situations where the employee represents the Norwegian Armed Forces as a supplier.

1.3 Relationship to legislation and regulations

The guidelines must be viewed in the context of the legislation and regulations that apply at any given time. Relevant legislation in this context includes: the Public Administration Act, the Public Procurement Act and regulations, section 20 of the Civil Service Act (prohibition against accepting gifts), and the General Civil Penal Code's provisions relating to corruption and trading in influence.

The Defence Acquisition Regulations (DAR) also apply to the defence sector. The DAR contain a special chapter on ethical guidelines and general requirements relating to administrative procedures, including ethical trade.¹ These guidelines must also be

¹ Cf. the Defence Acquisition Regulations subsection 1.8 and 1.9.3 about ethical trade

viewed in the context of the Ethical Guidelines for the Civil Service and any specific ethical guidelines that apply in particular agencies.

1.4 Leadership and responsibility

Leaders at all levels have a particular responsibility to abide by these guidelines. Emphasising ethics is a leadership responsibility. Individual leaders have through their words, actions and leadership style a major influence on the culture and standards of conduct in an organisation. This applies not least to how leaders deal with breaches of the guidelines. In difficult situations, a senior leader, or the Ministry of Defence, if necessary, should be consulted. It is a leader's responsibility to ensure each employee has a knowledge and understanding of the guidelines, both in the event of new appointments and in other respects. It is essential in this context to foster a working environment that encourages openness and reflection, and also encourages employees to bring up matters they regard as contravening laws and regulations or otherwise perceive as improper.

1.5 The individual's responsibilities

Individual employees are obliged to familiarise themselves with these guidelines, as well as other provisions, guidelines and instructions that pertain to their position at any given time, and are personally responsible for abiding by them as carefully as possible. As an employee one also has a shared responsibility for a working environment where collegial vigilance on ethical matters supports and assures the quality of day-to-day service. Employees are obliged to notify their employer of improprieties that may result in damage or loss. If an employee is in doubt as to whether an action or situation is within acceptable limits, he or she must take this up with his or her line manager. If this is perceived as difficult, it is possible to bring up the issue through a special whistleblowing channel, including anonymously.

1.6 Acceptable and unacceptable conduct

A basic principle of ethics in the civil service is that public sector employees shall not allow themselves to be influenced by personal sympathies or antipathies, or by considerations of their own financial gain or that of someone close to them. It follows from this that what is acceptable conduct must lay within boundaries that exclude such influence or avoids the appearance or suspicion of such influence. For that reason an employee must, in all contact with business and industry, keep this in mind and exercise caution. Good questions to ask oneself are:

- Is this situation legal?
- Does it comply with the defence sector's ethical ground rules and internal guidelines?

- Would the relationship or situation “tolerate the light of day” such as being reported in the media, the "neighbour effect" or as open knowledge internally in the organisation?
- Is the choice or action well-justified?

Typically, unacceptable conduct would be accepting gifts or services clearly intended and liable to influence recommendations or decisions in an improper manner. It is worth noting that whether one is actually influenced by a benefit or not is not decisive when assessing whether or not conduct is acceptable. See subsections 2.1 and 2.3 below.

1.7 Ethical judgement and grey areas

There are grey areas where what is right and what is wrong it is not self-evident. The purpose of a gift or its actual value is not always easy to ascertain. Increased awareness, trust and openness regarding grey areas will help to make choices easier and provide a firmer foundation for ethical judgements.

2. GUIDELINES

2.1 The basic principle²

Public sector employees shall not accept gifts or other benefits liable to influence their official actions.

Public sector employees must not use their positions to obtain improper benefits for themselves or others. This also applies in cases where such benefits will not influence their official actions.

2.2 Defining and clarifying conduct

A number of situations are described in the table below, illustrated by traffic lights. The examples are considered relevant within the area of contact with business and industry, but in no way cover all situations. It is neither desirable nor possible to micromanage individual conduct in every context. The guidelines are thus intended to provide guidance regarding the desired assessments and desired conduct in relation to some ethical issues defence sector employees might face in the performance of their official duties. If a situation arises which an employee is unsure of how to deal with, it should be discussed with a colleague or manager. In many cases, openness is the most important means of avoiding suspicion of an improper mingling of private and professional interests.

² Ethical Guidelines for the Civil Service, 7 September 2005

2.3 Gifts

Goods, services, money.

Employees in the defence sector shall not, either for themselves or for others, accept or facilitate the acceptance of gifts, travel, hotel accommodation, hospitality, discounts, loans or other benefits or favours that are liable to, or that are intended by the giver to, influence their official actions, cf. section 20 of the Civil Service Act.

Employees of the Norwegian Armed Forces must not use their positions to obtain improper benefits for themselves or others. This also applies in cases where such benefits will not influence their official actions.³

Exceptions may be gifts of negligible value such as simple souvenirs and gifts with a purely symbolic function.

Correspondingly, one shall exercise care when giving gifts.⁴ It might be regarded as corruption to accept or offer gifts or benefits by virtue of one's position.⁵

 Unacceptable	 Concrete assessment	 Acceptable
Personal gifts not prompted by a special occasion	Personal gifts of negligible value from a supplier prompted by a festival/event	Merchandising articles of negligible value (souvenirs, etc.)
Private discounts on goods/services from suppliers (exception for negotiated personal benefits)	Gifts it is difficult to ascertain the value of	Gifts to the organisation upon major occasions (not personal gifts)
Accepting gifts in your role as a decision-maker	Using suppliers' discounts for the benefit of the organisation	Gifts of negligible value when you have, for example, held a lecture/given a presentation
Accepting loans		
Accepting gifts in your role as a supplier of terms		

Remember:

- In general such gifts are not to be accepted.
- Might the purpose of the gift be to influence you?
- Is the gift liable to influence you?

³ Ethical Guidelines for the Civil Service, subsection 4.5

⁴ Ethical Guidelines for the Civil Service, subsection 4.6




⁵ Breaches of the corruption provisions may result in prosecution and punishment, cf. subsections 276 a-c of the General Civil Penal Code

- How would accepting the gift be perceived by third parties (the general public)?
- If you have any doubts, discuss the matter with your manager.

2.4 Hospitality, travel and entertainment

In the relationship between public administration and business and industry, a certain amount of contact with business and industry is natural. Caution must be exercised in these dealings to avoid placing oneself in a situation that casts doubt on one's integrity. Here integrity refers to one's ability to be honest, incorruptible and to satisfy the requirement for impartiality.

The basic principle is that employers shall cover the costs of their employees' participation in travel, courses, events, etc. Nonetheless, there are some situations in which it may be acceptable for others to cover costs up to a reasonable amount.

	Unacceptable		Concrete assessment		Acceptable
	Professional/non-professional trips/events paid for by others other than your employer		Participation of companion		Moderate working lunch or equivalent dinner ⁷
	Hospitality or similar liable to influence in connection with a procurement or a potential procurement		Networking at social events		Professional event where your employer pays for your travel/accommodation
	Free alcohol in excess of that which is served during a moderate meal		Meals in excess of that which is deemed a moderate working lunch/dinner		
	Participating in private events on the firm's premises		Socialising with suppliers and customers in private		
	Tickets for concerts, sports events or their equivalent		Multiple invitations to working meals in connection with the same project		
	Sexual services ⁶				

⁶ SPH subsection 2.6

⁷ The government's rates pursuant to the special agreement for domestic and foreign travel can be used as guidelines for what may be deemed a working lunch/dinner, cf. Personnel Handbook for State Employees (SPH) (2011) subsections 9.2 and 9.3

Remember:

- The basic principle is that organisations shall cover the costs of their employees' participation in events, travel, and accommodation.
- Remember that whatever you are treated to must tolerate the light of day.
- If you have any doubts, discuss the matter with your manager.

2.5 Conflicts of interest

Impartiality - Integrity

It is important to be aware of situations in which our own interests conflict with those of our employer and to act accordingly. There are legal competence rules in the Public Administration Act, the purpose of which is to ensure trust in public administration⁸. Legal competence means the ability, authority and competence to consider or make decisions in a case.


Special care shall be exercised in relation to suppliers who have employed personnel who were formerly employed in the defence sector in order to satisfy the considerations and requirements relating to legal competence, duty of confidentiality, equal treatment and genuine competition. Personnel who were employed in the defence sector in the last two years shall as a basic principle not be used for direct contact with the Norwegian Armed Forces in a procurement process.⁹


Employees of the Norwegian Armed Forces may not take extra jobs, second jobs, board jobs, or other paid work that are incompatible with the employer's legitimate interests or liable to weaken trust in public administration.¹⁰


⁸ Also see subsection 3-7 of the Regulations relating to Public Procurements. Legal competence assessments in a procurement situation are strict.

⁹ Cf. the Defence Acquisition Regulations

¹⁰ Ethical Guidelines for the Civil Service, point 4.2

 Unacceptable
Processing matters relating to family/close friends
Carry out undocumented or untraceable administrative procedures
Considering matters, including assessing offers from suppliers, when you are a board member or have ownership interests
Participating in competitions or signing procurement contracts with the defence sector. Also includes firms that are wholly or predominantly owned by staff ¹¹

 Concrete assessment
Using the employer's suppliers for private purposes
Socialising with suppliers in private
Employing former staff/recruiting customers
Contact with and use of former employees of the Norwegian Armed Forces in connection with a procurement process
Private acquisitions of real estate and property from own employer
Board/second jobs ¹² and private commercial activities
Use of external advisers when drawing up specifications ¹³ .
Use of employees of the Norwegian Armed Forces in marketing by suppliers

 Acceptable
Public office
Exercising freedom of expression

Remember:

- Do I have private contacts/relationships which could lead to questions being asked about my legal competence?
- How would the situation be perceived by a third party and the general public?
- Legal competence/conflicts of interest must always be assessed in a procurement situation.
- If you have any doubts, discuss the matter with your manager.

¹¹ Cf. the Defence Acquisition Regulations

¹² Cf. SPH subsection 10.13

¹³ Subsection 3-8 of the Regulations relating to Public Procurements

3. CONSEQUENCES OF BREACHES

3.1 Introduction

If breaches of the rules in the chapters 2 and 3 above occur, the employer will judge whether there is reason for sanctions towards the employee. The sanctions vary widely, from an official reprimand or disciplinary penalty to criminal prosecution with a possible prison sentence and dismissal as the outcome. Naturally, the seriousness of the breach of trust will determine the reaction. This chapter will illustrate the consequences various breaches can have. The intention is to increase predictability and more equal treatment in the type of reaction for breaches of rules in the area of contact with business and industry.

3.2 Career consequences

Breaches of the standards of conduct pertaining to the area of contact with business and industry may have career related consequences. It should be noted that a violation of the law is not a necessary condition for such consequences. It may be sufficient for such a reaction that there is a breach of the standards of acceptable conduct set by these guidelines. In higher-ranking positions a high ethical standard is expected, because as role models, leaders will have a substantial influence on the internal culture and behavioural norms in their organisations. This means somewhat more than just sticking within the confines of the law. If by his or her conduct a person at his or her level shows an inability or unwillingness to live up to the ethical standards required, he or she does not have the qualifications or personal characteristics needed to fill a high-ranking position. In certain cases a civil servant can also be temporarily or permanently demoted to a lower grade for violations of the Civil Service Act.

3.3 Reactions pursuant to the Civil Service Act

Pursuant to section 14 of the Civil Service Act, an employee may be subjected to a disciplinary penalty for, inter alia, infringements of official obligations or failure to fulfil official duties. An infringement of the prohibition of gifts will be affected by this provision. As a disciplinary penalty, the employee may be given a written reprimand or lose one month's to two years' seniority. The disciplinary penalty will be entered into the permanent record or personnel file and will clearly have career consequences. An ordinary reprimand is not a disciplinary penalty.

If the employee has exhibited gross negligence in his or her service or is in gross breach of his or her official duties, or despite a written warning or reprimand has repeatedly breached his or her official duties, he or she may be summarily discharged pursuant to section 15 of the Civil Service Act.

From a legal disciplinary perspective the following means can be used as sanctions: arrest, fines, restrictions of liberty and reprimands. An ordinary reprimand is not a disciplinary action.

3.4 Criminal sanctions

Pursuant to the provisions of subsections 276 a and 276 b of the General Civil Penal Code, accepting or offering gifts or other favours, such as free trips, may be regarded as corruption or even gross corruption. The penalty is fines or a prison term of up to three years, or up to ten years if the situation involved gross corruption.

Likewise, a benefit that is solicited, received or accepted, given or offered, may be regarded as an improper advantage intended to influence the performance of a job and may therefore be classified as trading in influence pursuant to subsection 276 c of the General Civil Penal Code. The penalty for trading in influence is also fines and up to three years' imprisonment.

Case law in this area establishes a fairly strict standard of conduct. Therefore, it does not take very much for corruption, even gross corruption, to be deemed to exist.

Reactions pursuant to the Civil Service Act do not prevent the imposition of criminal sanctions in the same case. Furthermore, a demand for discharge may be included in a criminal case.

3.5 Criteria for considering forms of reaction

Accepting gifts or other benefits is usually called a "transfer of advantage". There are factors that apply in judging such transfers and thus the degree of seriousness if one has "crossed the line". Such factors may include:

- The nature and value of the advantage
- The time of the transfer
- The purpose of the transfer for the giver and recipient
- The context and occasion
- The recipient's place in the decision-making hierarchy or in the contractual relationship (greater responsibility in a position of a high level of trust)
- Relationship between the giver and recipient
- The scope of the transfer of advantage
- Absence of openness about the transfer of advantage
- Financial harm to the Norwegian Armed Forces
- Harm to the reputation of the Norwegian Armed Forces.

These factors will count in considerations of the choice of form of reaction to breaches of the rules. The Ministry of Defence and the military leadership are intent on these guidelines being abided by and on there being adequate reactions to unacceptable conduct.

3.6 Responsibility for following up breaches of rules and standards of conduct

It will always be the individual manager and employer who will be responsible for initiating and/or undertaking reactions vis-à-vis an employee who has breached the current rules or standards of conduct. The case procedure and person who issues the decision will vary, depending on seriousness, choice of form of reaction, grade of position and place in the organisation. In cases pertaining to violations of the Civil Service Act, for example, the decision will be made by the appointment body (appointment committee). If the person in question is a Ministry employee, the minister makes the decision, normally after obtaining a statement from the appointment committee. In instances where a violation of the General Civil Penal Code is suspected, e.g. gross corruption, the employer shall consider on a case-by-case basis whether the matter should be reported to the police.

In the judgement whether there has been breaches of rules and standards of conduct, the rights of the employee shall be ensured.¹⁴

4. ENTRY INTO FORCE

These guidelines are operative in the defence sector from the date they are published. They replace the guidelines dated April 2007, but are otherwise not intended to replace existing rules and thus do not supersede other rules or documents. However, agencies need to ensure that their own ethical guidelines are harmonised with these, so that they correspond with the clarification provided in this document in relevant areas.

¹⁴ Cf. Civil Service Act subsection 18 a o.

Published by: Royal Norwegian Ministry of Defence

Public institutions may order additional copies from:
Norwegian Government Administration Services

Internet: www.publikasjoner.dep.no

E-mail: publikasjonsbestilling@dss.dep.no

Telephone: + 47 22 24 20 00

Publication number: S-1001 E

Print: Norwegian Government Administration Services

06/11 - Impression 500

