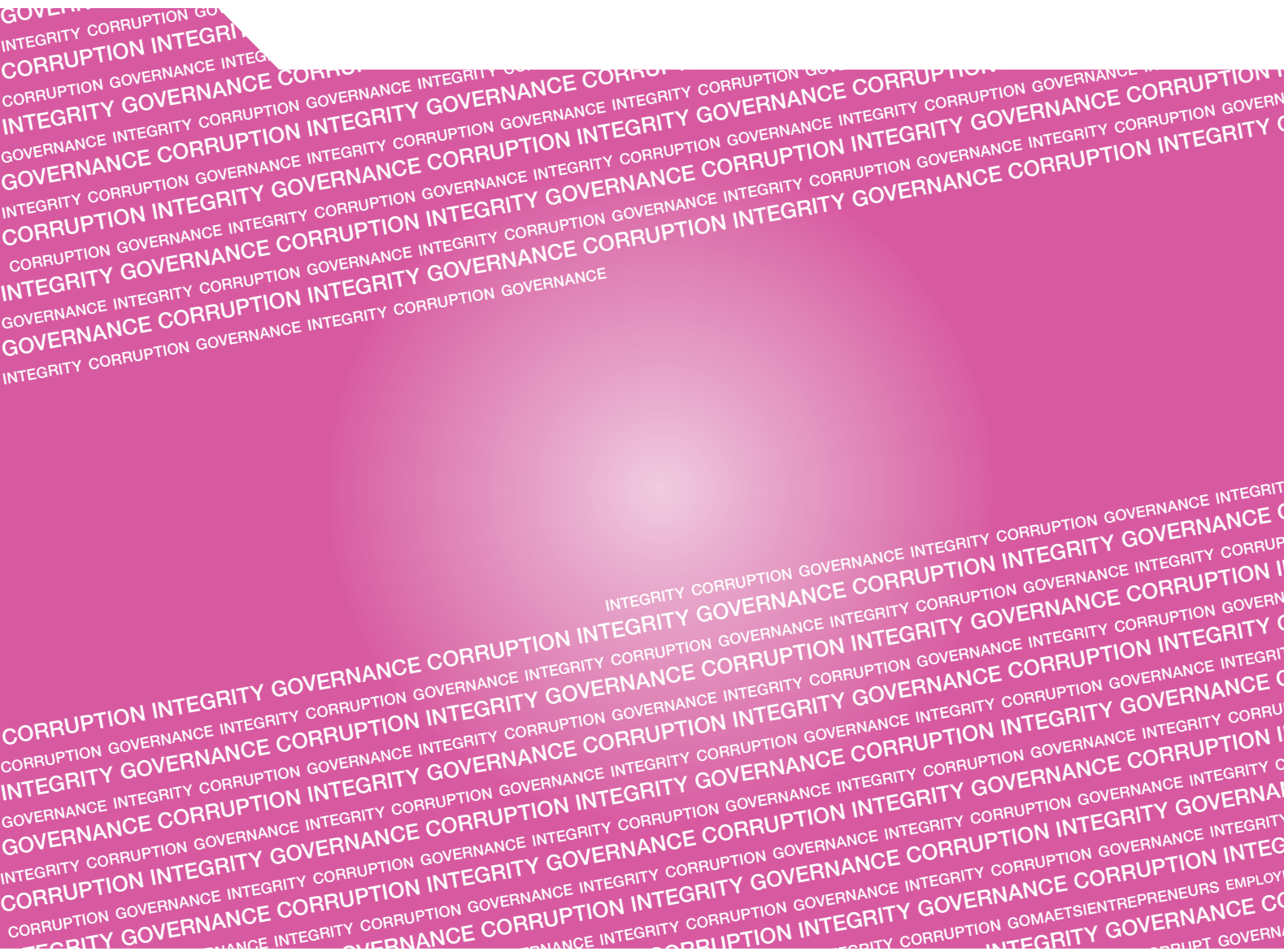
Fighting Corruption in Eastern Europe and Central Asia

Asset Declarations for Public Officials

A TOOL TO PREVENT CORRUPTION



OECD

SIGMA

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Foreword

Corruption is a key threat to good governance, democratic processes and fair business competition. Fighting corruption and promoting good public governance are among the main priorities of the OECD. In addressing corruption and good governance, the OECD takes a multidisciplinary approach which includes fighting bribery of foreign public officials, combating corruption in fiscal policy, public and private sector governance and development aid and export credits. The OECD is a leader in setting and promoting anti-corruption standards and good governance principles. It ensures their implementation through peer reviews and monitoring of member states and by providing policy-makers with analysis and recommendations. It also helps non-members to improve their domestic anti-corruption and good governance efforts by fostering sharing of experience and analysis and through regional programmes.

The Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is one such regional anti-corruption programme. Over the past decade, the ACN (www.oecd.org/corruption/acn) has been the main vehicle for sharing OECD experience and promoting anti-corruption programmes in this region. Countries participating in the ACN have been introducing and reforming their asset declarations systems over the past years, and continue to face challenges in ensuring the effectiveness of these systems.

The SIGMA – Support for Improvement in Governance and Management – programme is a joint initiative of the OECD and the European Union, principally financed by the EU. SIGMA (www.sigmaweb.org) provides assistance in a broad range of public governance and management areas, including public integrity. SIGMA currently works with EU candidate countries, potential candidates, and European Neighbourhood Partners.

The report was prepared jointly by the ACN and SIGMA. It provides a systematic analysis of existing practices in the area of asset declarations in Eastern Europe and Central Asia and in some OECD countries in Western Europe and North America, and presents policy recommendations on the key elements of asset declaration systems. These recommendations will be useful for national governments and international organisations engaged in development, reform and assessment of asset declarations systems at country level.

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Introduction

Objectives of the study

A great number of countries around the world have introduced systems of asset declaration for public officials in order to prevent or combat corruption. Many believe that asset declarations can be a powerful tool in this regard; however, the impact of such systems on actual levels of corruption is not well known. This study aims to help furnish a clearer picture by providing an analysis of existing practice in the area of asset declarations of public officials, in particular in former socialist countries in Eastern Europe and Central Asia, and in some OECD member states in Western Europe and North America.

The study begins with policy recommendations for national governments and international organisations engaged in the development, reform and assessment of such systems on a country level. The analysis that follows and case studies that conclude the report provide the basis for those recommendations. Key elements of the systems are reviewed, as are the historical background and objectives that led governments to establish them. The analysis further examines the legal framework of the systems as well as the institutional arrangements for their management. It reviews the categories of public officials and related individuals who are required to submit declarations, as well as the particular information required. Attention is paid to procedures for processing and verifying declared information, and sanctions for violations. Various approaches to public disclosure of the information contained in declarations are also reviewed. Issues of cost-effectiveness and overall usefulness are covered as well. Four case studies are presented – from Lithuania, Romania, Spain and Ukraine – as well as many additional country examples and references.

Methodology

The focus of this study is on countries in Eastern Europe and Central Asia. However, in order to analyse the experience of these countries in a broader international context and to identify trends and offer recommendations of global relevance, available information about other countries and regions has also been examined, including – as mentioned above – some OECD member states in Western Europe and North America. The coverage is vast, and references to regions/country groups are in no way meant to suggest political allegiances.

The study draws upon two main kinds of information sources: primary data collection from countries in Eastern Europe and Central Asia, and a review of available literature. To collect country data the ACN Secretariat, together with SIGMA, designed a questionnaire and requested officials in the state bodies responsible for asset declarations to complete them. The questionnaire covered the declaration system's purpose and legal basis as well as the institutional set-up, officials covered, kinds of information to be declared, procedure of declaration, verification of declarations, sanctions for violations, public access, and

system assessment. The questionnaire was completed by 20 countries – Albania, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Montenegro, Romania, Slovenia, Spain (Catalonia), Tajikistan, and Ukraine. Analysis and tables comparing various systems aimed at covering all 20 countries; however, this was not possible in all cases, as completeness and accuracy of data varied substantially. Data provided in the tables were compiled by the authors based on the answers to questionnaires. Available data for other countries and regions were added for comparison.

The literature review comprised books, comparative studies and assessments of national systems by international organisations, principally the OECD, the Council of Europe's Group of States against Corruption (GRECO) and The World Bank. International online resources, as well as legal texts of particular countries, were also examined.

The study has benefited from discussions at two expert seminars: one organised by the OECD and OSCE in Belgrade, Serbia on 15-16 October 2009; and the other by the OECD on 30 March 2010 in Paris, France. The countries and experts who participated in this project also provided written comments on the final draft. Special efforts were made to co-ordinate this study with a study on asset declarations developed by The World Bank in the framework of the StAR initiative.

Unless stated otherwise, the information in this study refers to the national level only; different provisions and practices may apply on various sub-national levels. Wherever possible, references to various sources are complemented with Internet links. Also unless stated otherwise, all of the links in footnotes were functional as of November 2009.

PART I

Policy Principles and Recommendations for Public Official Asset Declaration

"Policy Principles and Recommendations for Public Official Asset Declaration" presents policy recommendations for the design, implementation and reform of asset declaration systems, which can be used throughout the world. These recommendations are based on the analysis of the existing practice in Eastern Europe and Central Asia, and in some OECD member states in Western Europe and North America. They suggest ways in which to increase the effectiveness of asset declaration by promoting transparency and fighting corruption in public administration. These recommendations will be useful for national governments and international organisations engaged in development, reform and assessment of asset declaration systems on a country level.

This study covers a range of countries with diverse cultural and legal traditions, social and economic conditions, and domestic political contexts. While analysis of asset declarations in these countries provides a basis for identifying trends and policy issues, it is not sufficient to develop any uniform recommendations, which would be applicable to all countries. Instead, the study elaborates policy principles and recommendations, and identifies certain aspects of public officials' disclosure systems where countries need to pay special attention when designing their national systems.

Why introduce asset declaration systems?

Each country – its government and civil society – and the international community should identify country-specific problems that they aim to resolve with an asset declaration system. Countries should hold comprehensive and inclusive policy debates before the introduction or major modification of public officials' declarations, in order to define *the purposes they aim to achieve*. The main aims of asset declarations may including the following:

- *to increase transparency and the trust of citizens in public administration*, by disclosing information about assets of politicians and civil servants that shows they have nothing to hide;
- *to help heads of public institutions prevent conflicts of interest among their employees* and to resolve such situations when they arise, in order to promote integrity within their institutions;
- *to monitor wealth variations of individual politicians and civil servants*, in order to dissuade them from misconduct and protect them from false accusations, and to help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence.

It is necessary to consider *preconditions and opportunities*, including supportive actors (responsible managers, honest civil servants, active media), already existing legal frameworks (tax collection system, property registry and other public registers, effective law enforcement), and limitations (shortage of public funds, lack of political will to fight corruption and poor discipline in public administration), and to determine optimal workable framework in terms of legal, financial, personnel and other conditions for the declarations system.

Temper expectations from asset declaration systems. Asset declarations are one among many tools that can help prevent corruption, but they cannot deliver alone, especially in countries where democracies are not yet mature, corruption is widespread, tax systems are dysfunctional and law enforcement is weak. However, a well-designed and operational system of asset declarations can be an important element in the overall anti-corruption and integrity system of a country.

When advocating for the introduction or further strengthening of public officials' declarations systems, international actors should *avoid promoting one-size-fits-all, technical blueprint solutions*, but rather engage domestic players to promote policy goals and to build national demand for reforms, to identify possible solutions in the local context, and to support sustainability of reforms.

Which legal framework should be chosen?

There is no one particular or best legal solution for public officials' declarations. Countries should consider their legal traditions and previous experience, and assess current problems in order to determine which legal approach is more likely to generate support among politicians, public officials and the broader public.

Most countries embed the asset declarations principle in their *primary legislation*, but the choice of the particular legal act should be made considering the national context. Principles of asset disclosure can be embedded in another law, *e.g.* on civil service, conflict of interest rules of the parliament, etc.; or, there can be a special law on asset declarations. It is important to ensure that key principles are established in a primary law because:

- the path leading to adoption of primary legislation may provide for a *public debate* to build consensus and to ensure social acceptance of a *legal requirement* of disclosure;
- primary law can *limit individual privacy rights* of citizens in their capacity as public officials.

Broader legal frameworks, e.g. tax and criminal law, need to be considered when designing asset declaration systems.

One regulation for all officials, or different regulations for various categories?

It remains debatable whether a single declaration system should apply to all branches of power, including legislative, executive and judiciary, and to all levels of officials, from ministers to ordinary civil servants. Recognising that various categories of public officials indeed differ from each other, with different levels of responsibility and power or potential to go into conflicts of interest and corruption, countries should consider *specialising regulations of asset declarations for different categories and branches of public officials*.

- Interests and assets of *elected officials, e.g. MPs*, should be subject to a separate asset declarations that are made available to the wider public; they should take due account of their elected status and the enforceability of sanctions against them. This could be achieved through collective self-control regulation, *e.g.* by a special parliamentary committee.
- *Senior executive officials*, including ministers and other political appointees – as well as the highest levels of the *judiciary and prosecutors* – may also require specialised regulations, also made available to the wider public.

Prevention of conflict of interest among the employees of public institutions is the *responsibility of the managers, e.g.* ministers and heads of agencies. Therefore each public institution can have its internal systems based on common principles, which may or may not include a requirement for *middle- and low-level officials* to declare assets. Even where middle and lower ranks of civil servants do not submit declarations, a control mechanism of some sort should be in place.

Which institution should be responsible?

No particular institutional solution can be recommended as *a priori* better than others. The institutional set-up largely depends on the system model – single for all officials or specialised for various branches – and can vary:

- *Parliamentary standing commissions* to provide for the collective self-control of MPs; however, enforcement will depend on the integrity of MPs and the response of their voters.
- In the same vein, asset declarations of judges can be managed by a *special body within the judiciary*.

- Implementation of the *system by each public institution* for its own public servants, reflecting the responsibility of the manager to prevent conflict of interest in his/her institution.
- A *specialised, sufficiently empowered autonomous body*, especially where managers do not assume a role in preventing conflict of interest.

In countries where the principle of public accountability and related policies are already mainstreamed throughout the public sector, and where managers of public institutions have reached a sufficient degree of professionalism, *each public institution could gather and review its declarations* – particularly due to their knowledge of their field and subordinate officials, and stronger legitimacy in, *e.g.,* application of sanctions.

The capacity of MPs to provide effective self-control is often questioned (*e.g.* by specialised commissions in the parliament). Hence, self-monitoring should be supported by a real transparency of asset declarations together with the long-term democratic practices of fair and free elections.

In countries where public officials' declarations and conflict of interest policies are relatively new, *specialised bodies* have an advantage. Such bodies focus on gathering new expertise in a systematic manner and provide assistance to the rest of the public sector. However, these bodies – often based in the executive branch – may lack legitimacy when enforcing asset declaration requirements for other branches, *e.g.* MPs.

In countries with centralised management for declarations systems, the institutions in charge should enjoy *reasonable protection against political or other undue interference*. In this they should be treated according to standards applicable to any corruption-countering agency or agency with control functions in the public sector.

Tax administration should be involved where wealth monitoring is among the purposes of the declarations system, together with other financial control bodies and public registers.

Who should be obliged to declare assets?

There is no uniform standard regarding what circle of public officials should be *obligated to submit declarations*. Countries should carefully debate and weigh the costs and benefits related to broader (and more burdensome and costly) or narrower coverage. There is no convincing evidence that covering the broadest possible circle necessarily leads to more effective prevention of corruption.

- As said above, due attention should be paid in setting obligations separately in accordance with the level and responsibilities of officials. While the *obligations of MPs and senior officials* should be relatively heavy, those of ordinary, and especially *middle- and low-level officials,* can be light.
- Obligation to disclose assets does not have to be linked formally to the rank of an official, but rather to the extent of *decision-making authority and managerial powers of officials, and the related risks* of conflict of interest and abuses of office. This obligation should also cover private entities and individuals empowered to provide public services through outsourcing.
- It should be recognised that corrupt officials often hide their assets under the names of their relatives, their spouses and other individuals. Therefore, it should be possible to monitor the wealth not only of a public official, but that of *close relatives and household members*. This can be achieved through the public officials' declarations system or through the tax system, or by law enforcement authorities. However, *vis-à-vis* relatives and household members, a respect for the privacy of individuals is required.

The *coverage of declarations systems should not result in a heavy burden on a vast number of persons who are not public officials*, especially if the declared information is subject to public disclosure in light of the growing concerns related to privacy protection.

What information should be declared?

The *scope of information to be declared depends on the purpose of declarations*. Conflict of interest control requires information about interests that have the potential to influence the discharge of official duties, rather than a necessarily all-encompassing picture of *all income, assets, outside business and other activities*. On the other hand, proper wealth monitoring is possible only when the declared information truthfully reflects all of the substantial income and assets, and fluctuations thereof.

How should asset declarations be collected?

Many factors can be taken into consideration in determining the schedule of submission of declarations: the purpose of declarations, available resources, the scope of covered officials, and the date when information required in the statement becomes available, etc. In general, care should be taken to ensure that *declared information is updated as often as reasonably needed* to keep data relevant for the fulfilment of the stated purpose of declaration system.

With due consideration of the resources and spread of Internet use in particular countries, the *submission and processing of declarations should be increasingly carried out electronically*. Among the advantages of doing so is the possibility of using automated systems for processing declared information.

In systems where awareness of the purpose and use of declarations is not spread throughout the state apparatus, a *centralised collection system* is likely to be more favourable for developing a uniform handling of all declarations and professional skills in the use of disclosed data. *Decentralised systems* facilitate monitoring by superior officials/bodies of declaring persons, provided internal control and awareness of managerial duties to prevent corruption are well internalised.

How should asset declarations be verified?

Most asset declaration systems would benefit from some kind of verification procedure, particularly *if the number of officials covered and the level of perceived corruption are high* whereas trust in the government is low and civil society weak.

In particular, some verification is recommended in order *to maintain the integrity* of information in the system (*e.g.* to rule out accumulation of systematically false data) or to address public concerns about the lifestyles of certain public officials *vis-à-vis* what is declared.

Whether the selection of declarations to be verified is *random, risk-based* or made using another method, some balance appears useful between systematic verification according to *rigid criteria* and an *ad hoc* approach acting on particular warning notifications or other signals. The verification of excessively large numbers of declarations should be avoided, because it would invoke the risk of high implementation costs against relatively little relevant findings.

Some countries may choose not to run any verification of declarations for valid reasons, *e.g.* public disclosure *per se* is considered sufficient, civil society is strong, media is independent and elections are fair and free. However, this approach may be insufficient to address public demand for accountability of administration.

Which sanctions are needed to enforce asset declarations regimes?

Legal *sanctions* are not a necessary element of all declarations systems; where public disclosure is ensured, active media and civil society and their reactions can be sufficiently disciplining factors. Meantime, where legal sanctions are actually used, the publicity of the sanction applied in a particular case can itself be considered a dissuasive measure. Information about the application of such sanctions should therefore be publicly disclosed as well.

Sanctions provide an important tool *to promote disciplined* compliance with the requirements of declaration systems, especially when such systems cover a large range of public officials. Sanctions for failing to comply with declaration rules or late or incomplete declarations normally involve various *administrative or disciplinary measures*. Criminal sanctions are not common in relation to asset declaration systems: to be in a conflict of interest is not a crime *per se*, but may lead to crimes; besides, criminal sanctions require stronger evidence than administrative sanctions. However, they can in principle be applicable against provision of false information. *Sanctions for provision of false information* require a reliable verification mechanism but there is no clear standard, as national approaches range from no sanction to criminal sanctions.

Sanctions for officials occupying elected political posts are a particularly sensitive issue because disciplinary actions and (often) other sanctions cannot be used due to constitutional principles and the special status of such officials. However, some effective sanctions should be applicable to elected officials, otherwise they will be perceived to be above the reach of the law. The scope of public disclosure of declared information should be broad enough to assist voters in their electoral decisions.

Which information should be open to the general public and other public institutions?

While there is a global trend towards greater disclosure, striking the right balance between *public disclosure and protection of privacy* remains a subject of debate. There are strong reasons for disclosing, at least partially, data of political officials, such as MPs. Politicians should be prepared to provide explanations regarding the disclosed information, if there are any serious concerns raised in the media or by civil society. Concerning the lower-level public officials, the right degree of public disclosure should be determined on the basis of a careful weighing of various considerations, such as domestic traditions, perceptions of corruption in a given country, possible safety concerns, and other dangers.

In order to increase the positive effects of declarations systems, the *declared data should be available to investigators for detecting cases of possible criminal offences*. Although privacy concerns can constitute grounds for denying all private information to the immediate superiors of public officials, countries should enhance the use of declarations to monitor conflicts of interest and hence allow superiors access to relevant data. In countries where enforcement bodies are set up for wealth or conflict of interest control, access to the relevant databases kept by other state institutions should be ensured.

How should the declarations system be evaluated?

Questions as to what extent public officials' declarations actually contribute to lower levels of corruption or higher levels of public trust will not be answered decisively in the near future. Nevertheless, as far as resources allow, countries should consider carrying out periodic reviews of asset declaration system operations and *developing and employing adequate indicators* to assess their effectiveness. Such indicators can show the level of compliance with requirements to complete and submit declarations; the types and number of legal proceedings, *e.g.* disciplinary actions or criminal investigations in relation to or prompted by information provided in declarations; the number of requests to access declarations by the public, etc.

The efficiency of a declaration system depends not only on the achievement of its stated goals but also on the cost of its operation (efficiency is questionable when the cost becomes too high). Therefore, to the extent possible, countries should consider *continuous tracking of resources (financial, human) spent on operating the system*.

PART II

Analysis of Existing Asset Declaration Practices

"Analysis of Existing Asset Declaration Practices" provides a systematic analysis of the existing practice in the area of asset declaration in Eastern Europe and Central Asia, and in some OECD member states in Western Europe and North America. It examines the key elements of asset declaration systems, such as policy objectives, legal frameworks and the institutional arrangements; the categories of public officials required to submit declarations, and the type of information needed; procedures for verifying declared information, sanctions for violations, and public disclosure. This part of the study also discusses the cost-effectiveness and overall usefulness of declaration systems.

PART II

Chapter 1

Historical Background and International Standards

1.1. The spread of public officials' declarations

Apart from a few earlier cases, systems of public officials' declarations began to evolve into their modern versions after the Second World War (Burdescu *et al*., 2009, Figure 1, p. 29). In the United States, growing government and recurrent corruption scandals created impetus for initiatives to strengthen public integrity. One of the early political statements regarding the need to impose public disclosure of personal finances on certain federal officials was voiced in the message of President Truman to the Congress in 1951: "With all the questions that are being raised today about the probity and honesty of public officials, I think all of us should be prepared to place the facts about our income on the public record."[1]

Various factors prevented introduction of public officials' declarations on the federal level in the 1950s. Only in 1965 did President Lyndon B. Johnson introduce a requirement that federal officials to disclose information about their private finances to the public authorities (Mackenzie and Hafken, 2002, pp. 24-26). It took Watergate and other scandals before the US Congress enacted the Ethics in Government Act in 1978. The Act, still in force today, requires detailed public financial disclosure by government employees above a certain level in all three branches of the federal government.

As early as the 1950s, initiatives for public financial disclosure materialised at the US state level as well. By 1969, 11 states required public disclosure (Anechiarico and Jacobs, 1996, p. 47). The spread of financial disclosure requirements for public officials developed in earnest in the 1970s (Anechiarico and Jacobs, 1996, pp. 47-48). The increasing range of officials covered and scope of information subject to disclosure led to numerous court cases claiming that the disclosure infringed the right to privacy. The United States saw a wave of such litigation in the 1970s. Still, the outcome of these cases was a general recognition of the state's power to compel disclosure (Rohr, 1998, pp. 44-45).

The disclosure of public officials' income, assets and financial interests came to most of Western Europe later. An exception was the United Kingdom – a country that adopted its Prevention of Corruption Act as early as 1889. Historical evidence shows that parliament was generally reluctant to impose strict disclosure rules. A select committee established in 1969 still concluded that there was no need for a register of interests because of trust in the honour and self-restraint of individual MPs. However, in 1974, the House of Commons introduced the Register of Interests. Even after 1974, the question of what exactly a relevant interest was for declaration or registration remained somewhat open-ended and considered by some to be up to the individual MP to determine (Doig, 1996, pp. 42, 44).

Declarations for public officials spread further in Western Europe in the 1980s. In 1982 a law that on declarations was adopted in Spain. That same year Italian members of parliament became obliged to disclose their additional income and property status. In 1983 a law for public control of the wealth of elected officials was adopted in Portugal. The early – and even to a great extent, the current – West European disclosure regimes did not match the US system in terms of complexity, the range of officials or enforcement mechanisms.

The late 1980s and 1990s saw democratisation in much of Central and Eastern Europe and elsewhere. Under socialist rule, public officials generally did not have to declare any income or assets. Along with the growing prominence of the global anti-corruption agenda, new countries kept on introducing declaration systems and extending the scope and scale of the old systems. Many former socialist countries introduced declarations for public officials during the 1990s.

Table 1.1 shows the year of introduction of declarations for public officials in those countries of Central and Eastern Europe and the former Soviet Union that submitted questionnaires for this study. All countries of the region that joined the European Union in 2004 and 2007 had adopted their declaration systems by 2000. This can be explained by conditions for EU accession but the trend continues into the 21st century, when both new aspirants for EU membership and former Soviet Republics with no such ambition developed their disclosure rules.

Table 1.1. **The year of introduction of declarations for public officials in transition and selected other countries**

Year of introduction	Country
1974	United Kingdom
1978	United States
1982	Spain, Italy
1992	Slovenia
1993	Belarus, Ukraine
1994	Latvia
1995	Albania, Estonia
1996	Kazakhstan, Romania
1998	Georgia, Lithuania
2000	Bulgaria
2001	Bosnia and Herzegovina
2002	Macedonia
2003	Croatia
2004	Kyrgyzstan, Montenegro
2005	Azerbaijan, Kosovo
2006	Tajikistan

Note: Where answers in the questionnaire differentiated between adoption of law and the start of implementation, the law adoption year is indicated.

1.2. International standards

The 1990s saw not only the spread of declarations in transition countries but also the emergence of mainly soft/recommending international standards to this end. One of the earlier international documents that foresaw public officials' declarations was the Inter-American Convention Against Corruption (adopted in 1996). The convention sets a requirement for states parties to consider measures to create, maintain and strengthen *inter alia*"systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public".[2] The African Union Convention on Preventing and Combating Corruption (adopted in 2003) commits state parties to "require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service."[3]

The earliest European standard is found in the Recommendation Nr. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials (adopted on 11 May 2000), where Article 14 refers to declarations, *i.e.*,"The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests." Note that the recommendation emphasises only the declaration's purpose of controlling conflict of interest – not that of wealth monitoring, which is also viewed as important in a number of countries.

The conditions that applied to the countries wishing to accede to the European Union generally did not contain an explicit requirement to establish a declaration system for public officials (there is no EU law – or *acquis communautaire* – on declarations). The EU position, stated in broad terms, included the requirement "that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights…".[4] Meantime the candidate countries were expected to fulfil the requirements of relevant international standards and introduce various anti-corruption procedures. Moreover, particular countries received concrete requirements to implement or strengthen measures to control the conflicts of interest and verify assets of public officials as a part of the EU demand to control corruption.

Thus, even though there is no binding legal basis and no conclusive proof of effectiveness, declarations for public officials have become a *de facto* standard of the European Union *vis-à-vis* candidate members. As already noted, all ten Central and Eastern European countries that joined the EU in the 21st century introduced such systems of greater of lesser efficiency well before the actual accession. The functioning of declaration systems continues to be under the scrutiny of the European Commission in current candidate countries.

Nowadays public officials' declarations have become a part of the global standard that is embodied in the United Nations Convention against Corruption (adopted in 2003). Article 8 (Paragraph 5) contains a soft standard, which requires state parties to "endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials."

The Convention returns to the issue of disclosure in the context of asset recovery by requiring that "each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention" (Article 52, Paragraph 5).

The requirements of the UN Convention do not amount to more than the obligation to consider. Still, borrowing language from the Legislative Guide for the Implementation of the UN Convention Against Corruption (UN, 2006, Paragraph 12, p. 4), it is clear that states are urged to consider adopting such declaration systems and to make a genuine effort to determine whether they would be compatible with their legal system.

Further recommendations are provided in the Technical Guide to the UN Convention (UN, 2009, pp. 25-26), and include the following:

- disclosure covers all substantial types of incomes and assets of officials (all or from a certain level of appointment or sector and/or their relatives);
- disclosure forms allow for year-on-year comparisons of officials' financial position;
- disclosure procedures preclude possibilities to conceal officials' assets through other means or, to the extent possible, assets held by those against whom a state party may have no access (*e.g.* held overseas or by a nonresident);
- a reliable system for income and asset control exists for all physical and legal persons – such as within tax administration – to access in relation to persons or legal entities associated with public officials;
- officials have a strong duty to substantiate/prove the sources of their income;
- to the extent possible, officials are precluded from declaring nonexistent assets, which can later be used as justification for otherwise unexplained wealth;
- oversight agencies have sufficient manpower, expertise, technical capacity and legal authority for meaningful controls;
- appropriate deterrent penalties exist for violations of these requirements.

Notes

1. President Harry S. Truman's Message to Congress, 27 September 1951. Here quoted from G.C. Mackenzie and M. Hafken (2002), *Scandal Proof: Do Ethics Laws Make Government Ethical?*, Brookings Institution Press, p. 19.
2. Article III, Paragraph 4 of the Inter-American Convention Against Corruption, *www.oas.org/juridico/english/Treaties/b-58.html*.
3. Paragraph 1, Article 7 of the African Union Convention on Preventing and Combating Corruption, *www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf*.
4. This was part of the so-called Copenhagen criteria; see Presidency Conclusions, Copenhagen European Council, 21-22 June 1993, *www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf*.

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PART II

Chapter 2

Purposes of the Declaration Systems

Conflict of interest control – The United Nations Convention against Corruption makes explicit reference to the possibility of a conflict of interest as a benchmark for what information is to be declared. This reflects the fact that conflict of interest control is the most common purpose for the use of declarations of public officials. One could say that the conflict of interest prevention focuses somewhat narrowly on whether a particular interest can interfere with the discharge of official duties. Meantime there are also broader concerns with public accountability, raising the more general possibility of evaluating the activities of a public official, including what personal motives he/she may have.

Box 2.1. **Conflict of interest**

According to OECD guidelines, a conflict of interest "involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities" (OECD, 2003, p. 24).

The existence of a conflict of interest per se does not imply that the official in question is corrupt. Instead it means that a public official finds him/herself between his/her official duty and private interest, for example, when he/she were to decide on granting a public procurement contract to a company owned by him/herself or his/her close relative. He/she may still decide to uphold the public interest against the private interest but a serious risk remains that the official could surrender to the temptation to the detriment of public interest. Moreover, acting in a conflict-of-interest situation can undermine public trust in official actions.

It is common to distinguish actual conflicts of interest from apparent conflicts of interest where it only "appears that an offical's private interests could improperly influence the performance of his duties but this is not in fact the case", as well as from potential conflicts of interest "where a public official holds a private interest which could constitute a conflict of interest if the relevant circumstances were to change in the future" (OECD, 2003, p. 58).

Article 7 (Paragraph 4) of the United Nations Convention against Corruption requires states, in accordance with the fundamental principles of their domestic law, to endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. However, the concrete design of policies to control conflicts of interest falls within their national competence.

Common approaches to the handling of conflicts of interest include: (a) the definition of a conflict of interest in broad terms and expecting public officials to recognise it and abstain from action in particular situations; (b) the definition of a range of particular situations that are incompatible with the discharge of one's official duties (*e.g.* prohibition of certain outside employment or defining a range of persons *vis-à-vis* who a public official may not make decisions); and (c) disclosing of conflicts of interests to the public and anticipating that the public supervision will force public officials to act in the public interest despite their private interests (the approach used more often with regard to MPs and other political office holders). While particular countries rely more on one or the other of the approaches, many employ elements of all of them.

Transparency and public accountability – Along with the prevention of conflicts of interest, more general concerns for transparency, public accountability, trust and integrity constitute the most commonly stated purposes of the declaration systems. These purposes are in no way contradictory; they reflect the political emphasis associated with one or another system. Historically, the right to petition the government was extended to the broader right to know information held by the government. Where the content of public officials' declarations is available to the public, this tool essentially extends coverage of the right to know (or freedom of information, as it is often referred to) to private data of government officials.

The conflict of interest prevention is probably somewhat more emphasised in, for example, the United Kingdom, with its "reluctance to require the disclosure of personal and family income and assets and the publication of such declarations. The UK has no general requirements to declare income and assets, and the reason for this is to avoid the invasion of privacy that these requirements imply. The British approach is based on the idea that every public office-holder should declare any pecuniary or even non-pecuniary interest that might reasonably be thought by others to influence his or her actions. Transparency and personal accountability are the key issues in the British system" (Villoria-Mendieta, 2005, p. 18).

In the United States, there is probably somewhat greater emphasis on general accountability and integrity. In the Central and Eastern Europe, demands for greater transparency *per se* seem to have been a driving factor (in addition to the EU conditionality) behind the proliferation of public officials' declarations systems.

Box 2.2. **Disclosure practices in the United States – A multi-layered approach**

Disclosure in the United States was originally introduced in 1965 and evolved into a system with introduction of the *Government Sunshine Act* in 1976, *Ethics in Government Act* in 1978 and *Ethics Reform Act* in 1989.

The US disclosure system is one of strictly centralised, compliance-based ethics management,* with the primary purpose of ensuring transparency and prevention of conflict of interest. That purpose is reinforced by the set-up of the system, where functions of declaration compliance and conflict of interest identification are separated from those of verification and crime detection.

The United States provides an interesting example in many respects, and has been covered by multiple studies and publications. This box focuses on two unique features: the *multi-layered approach* of the American system and the *impact of public access to the information* contained in the declarations on the system.

Multi-layered approach

A system of personal financial disclosure requirements ranges in scope from the *federal level* all the way down to *state level* (all states but three have their own asset disclosure systems) and *local-level officials* (*e.g.* in New York City). Moreover, separate systems are in place for the different branches of government, with a focus on the persons occupying high-level positions. Thus in the executive branch, the education and counselling services on the various codes of conduct and the statutory restrictions are provided by the Office of Government Ethics (OGE) and ethics officials from designated agencies. As far as the

* This term is used in the 2000 OECD publication *Trust in Government: Ethics Measures in OECD Countries*.

Box 2.2. **Disclosure practices in the United States – A multi-layered approach** *(cont.)*

legislative branch is concerned, these issues are dealt with by the Committee on Standards of Official Conduct of the US House of Representatives and the Select Committee on Ethics of the US Senate. For the judicial branch, the Committee on Codes of Conduct of the Judicial Conference oversees compliance with ethical standards.

Impact of public access to the information contained in the declarations

The US system oversees both confidential and publicly available asset declarations. At the federal level, candidates for elected office, elected officials and high-level appointed officials are required to submit a *publicly available* personal financial disclosure report. Similar public reporting requirements are imposed on, *inter alia*, elected representatives in the legislative branch as well as federal judges. In the executive branch, there is also a *confidential financial disclosure requirement* for lower-level officials who nonetheless serve in decision-making positions. Over 20 000 public reports are filed annually by executive branch officials and several thousand by officials in the legislative branch. In addition, there are around 280 000 reports of a confidential nature (OECD, 2000).

Public access to asset disclosure information not only contributes to the general transparency of the system but also serves as catalyst for reform of the system. For example, a non-governmental organisation, Center for Public Integrity, has monitored disclosure requirements in state legislatures since 1999, and has developed its own rankings system based on a survey that measures public access to information on legislators' employment, investments, personal finances, property holdings, and other activities outside the legislature. Louisiana's very low ranking by the Center motivated State Governor Bobby Jindal to push through a sweeping ethics reform package soon after entering office in January 2008: he signed the bills on 3 March 2008, and the new laws took effect in January of 2009. They require all lawmakers to report their outside financial interests – the first time such disclosure has ever been required in Louisiana. As a result of Jindal's initiative, Louisiana has rocketed to the top of the Center's rankings, earning the top slot among all 50 states.

Verification of the legitimacy of income and wealth is another purpose, often stated or at least implied. International standards do not explicitly link declarations with the need to monitor the assets of public officials. In contrast with conflict of interest prevention and public accountability, states usually aim to have some control over the income and wealth of all rather than just some of their residents. Nevertheless, in some countries the idea is accepted that declarations of public officials should serve as a special tool of wealth monitoring. The rationale is that public officials should undergo stronger scrutiny than the rest of the population.

Hong Kong was first to use financial disclosure to monitor the wealth of officials (Messick, 2009, p. 13). Although it is not so common, some other countries also place emphasis on monitoring assets. For example, in Albania, the stated purpose of the Law on the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials is "the determination of rules for the declaration and audit of assets, the legitimacy of the sources of their creation, financial obligations for elected persons, public employees, their families and persons related to them."[1]

From the implementation point of view, proper monitoring of the legality of assets and income appears to be technically and legally more challenging than control of conflict of interest. On the other hand, effective control of the conflict of interest is largely contingent on a proper understanding of the issue and the culture among the public sector employees, and its enforcement through hard legal measures alone is next to impossible.

Political considerations and lack of policy goals – A fairly rich volume of analysis shows that the introduction and development of declaration systems (like many other public ethics-related legislation) often occur primarily in order to achieve some political gains – to boost confidence in an incoming government, to save the chances of re-election for a scandal-ridden political party, or to please international donors. For example, it has been analysed in detail how newly elected US presidents have attempted repeatedly to underline their ethical superiority *vis-à-vis* previous administrations by quickly devising new – often burdensome – ethics rules, with little analysis of the expected impact of the proposed change.

In Central and Eastern Europe, the strong motivation of many countries to join the European Union prompted adoption of various anti-corruption laws. Introduction of asset declarations can be an easy way for governments to demonstrate their determination to do something about the problem of corruption. The task of the candidate countries was eased by the fact that the European Commission never possessed any hard evidence of the effectiveness of any particular solutions regarding public officials' declarations. As a result, almost any demonstrated effort – even if largely formal – by countries to strengthen their systems usually counted as progress.

Also in other parts of the world, international organisation and donor pressure (*e.g.* from the Council of Europe, USAID and The World Bank) has helped lead to the introduction of public officials' declarations and other anti-corruption measures. Normally, compliance with international standards or donor requirements will not be among the stated purposes of the declaration systems, but it can constitute a significant or decisive incentive for their adoption.

This is not to say that systems introduced for these and other similar political reasons are necessarily useless or ineffective. Indeed, anti-corruption measures can be important even if their effects are mostly symbolic. However, the stress on the symbolic meaning of the measure and lack of genuine policy goals in a technical sense often result in disregard for the costs and negative side effects as well as carelessness *vis-à-vis* the need to set up a truly effective implementation system. Many countries find it difficult to identify the cost of running the declarations systems, and some experienced massive non-compliance of public officials at least in the first years after their introduction.

All of the above stresses the importance of proper policy debates when introducing and modifying declaration systems. While international actors can play a significant role as catalysts of change, they should engage in proper policy debates with domestic partners, including politicians, government agencies, NGOs and media.

Note

1. Article 1 of the Law on the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials of Albania. It is important to note that conflict of interest control is also an important purpose of the Albanian system as a whole.

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PART II

Chapter 3

Legal Basis and Institutional Arrangements

3.1. Legal basis

Several types of regulations can serve as the legal basis for public officials' declarations. Usually, asset declarations are regulated by a special law or a section in another law that sets forth the purpose, scope and design of the system. These will vary depending on whether declarations are a major part of an overarching anti-corruption legislation, or just one of many procedures in the civil service legal framework. The type of legal basis is likely to differ also, depending on whether declarations are viewed as a general tool for promoting public accountability of the political class, or a more comprehensive anti-corruption tool for the state apparatus as a whole.

The level of the regulation (*e.g.* the constitution, law or executive order) can be important if the requirement to disclose assets is challenged by, for example, alleged invasion of privacy. It is rather uncommon to include provisions for public officials' declarations in constitutions, although this would be legally the strongest form of embedding them. In fact neither the United States nor the European and Central Asian countries have constitutional clauses regarding public officials' declarations, although some provisions relating to conflict of interest are found. Colombia presents a rare example of a constitution obliging civil servants to declare the total of their goods and income under oath before occupying their position, upon retirement from it, or when requested to vacate it by a competent authority.[1]

The main options are briefly described and country examples identified below. All of the options are grouped into three larger categories – general legislation based on core public administration legislation; special legislation on declarations, conflict of interest or the fight against corruption; and separate regulations for individual branches of power or institutions.

General legislation:

- *Civil service and administrative procedure laws* – Civil (state) service legislation and administrative procedure laws cover two distinct areas of regulation, but both represent parts of the core legal framework for the state. Therefore, asset declarations are required by one of these core legal frameworks governing public administration rather than by some special anti-corruption project. Depending on the country, civil service laws can cover only public officials who occupy non-political positions in the administration (commonly referred to as civil servants) or, more broadly, judicial and/or politically appointed/elected officials.
- Two principal varieties of legislation are found in this category. One is the duty to submit regular declarations established in the said laws, for example in Belarus and Ukraine. Another variety is the duty to notify superiors about one's outside employment and private interests, but not necessarily in the form of a regular declaration. Examples here are provisions in the Federal Officials Law (*Bundesbeamtengesetz*) in Germany and administrative procedure laws in Germany, Norway and Sweden.

- In the former variety, the civil service law may contain references to additional provisions in some special anti-corruption laws. But especially in the case of the latter variation, the declarations/notifications are not viewed as part of a major anti-corruption effort but rather as one of the mainstream safeguards routinely used in the public service.
- *Codes of ethics and guidelines* – The duty to submit declarations or – more often – notify one's superiors of relevant private interests or outside employment can also be established in codes of conduct/ethics and advisory guidelines that may not even have legal force. Yet they can become a part of the labour contract with a public official. In some countries these arrangements could be viewed rather as expressing the will of the profession, *e.g.* the desire of civil servants to adhere to certain standards and procedures. Examples here are the Ethics Guidelines for the State Service (*Etiske retningslinjer for statstjenesten*) in Norway and the guidance *Good Conduct in the Public Sector* (*God adfærd in det offentlige*), which was adopted in 2007 in Denmark.

Special legislation:

- *Declarations as part of conflict of interest control/anti-corruption laws* – This approach most clearly emphasises the importance of declarations for the prevention of conflicts of interest and corruption. Such laws are more common in countries that underwent transition from socialist rule.[2]
- *Special laws on declarations* – These are dedicated legislative acts that deal solely or primarily with the declarations of public officials. Similarly to the previous category, these laws are viewed as part of anti-corruption legislation. Where the declarations system is complex and relies on extensive and detailed provisions, having a separate law can be a sound option from the point of view of legal technicality. Special laws are less common in Western Europe.[3]

Separate regulations for individual branches of power and institutions:

- *House rules of parliaments and cabinets* – Declarations based on internal rules are common in legislatures and, in some countries, cabinets. In such cases it is the initiative of the legislature (or the cabinet) itself to introduce asset disclosure obligation for its members – often under pressure from the public – in order to enhance public accountability of the political class. Often these are parliamentary rules or procedure, but they can also appear in a different document. For example, in Germany the relevant provisions are found in Annex 1 to the Rules of Procedure of the Bundestag. In Spain, declarations are stipulated in the Standing Orders of the Congress of Deputies. However, there the overall system is more comprehensive and rests on a number of laws.
- *Laws for particular branches of authority/sectors/agencies* – Usually these are situations where a particular system of declarations applies to a single category of public official or to public officials working in a particular sector or body. For example, judges may have a system of declarations separate from other public officials. An example of this approach is found in the Russian Federation (Law on the Status of Judges in the Russian Federation as amended in December 2008).
- *Internal rules* – It is not typical to base the obligation to submit declarations on the internal regulations of executive agencies. However, sometimes rules are established in particular agencies as part of internal control measures (for example, in the tax administration and customs of Kosovo). A possible advantage here is that the declarations are more likely to be used for control purposes by management.

Box 3.1. **Internal declaration systems in Kosovo***

In Kosovo there is a national system of asset declarations regulated by law and applicable to the public sector in general. In addition, the tax administration and customs maintain their own internal asset declaration systems, based on their internal regulations. The latter cover a larger range of officials in these two sectors with high risk of corruption than the national system.

The Professional Standards Unit (PSU) of the tax administration requires all agency staff to declare all property and interests, theirs and their relatives'. The contents of the declarations are registered in a database and the information is verified, although the task is challenging. An alleged difficulty lies in the fact that the law does not authorise the PSU to inquire into the origins of property. Another difficulty is generally insufficient information about citizens and property – a fact that eases possibilities for public officials to hide property by registering it under the names of other individuals. The PSU also reviews conflicts of interest and decides in particular instances whether an extra job is permissible. The tax administration system operates on a voluntary basis.

* Information in this box stems from research carried out for the Horizontal Review of Anti-corruption Systems in Kosovo within the Project FRIDOM (Functional Review and Institutional Design of Ministries). August 2009.

The above categories do not exhaust all possible variations. In some countries special regulations apply to candidates to elected posts. In others, custom can play a role in how the declaration system works.

3.2. Institutional arrangements

Review of international experience reveals a number of institutional options for the collection and processing of public officials' declarations. These can be broken down broadly into two categories – in-house/internal arrangements and outside/centralised arrangements. The latter can be designated for a particular branch of authority or cover the whole state system.

There are two common types of in-house/internal arrangements:

- *Heads of institutions/superiors/officials authorised by them* One of the most typical arrangements is the procedure whereby officials submit their declarations to their superiors (or alternatively, specialised units within institutions). The superiors (units) may or may not have specific powers to verify the statements independently. This approach is most useful where the purpose of the declaration is conflict of interest control, because the superior is likely to have the fullest knowledge about a public official's duties and whether or not a particular private interest can interfere with them.[4] However, it could be less effective in systems where the prevention of the conflict of interest is not internalised in the regular practice of the public administration, where superiors do not properly carry out their managerial duties.
- *In-house arrangements within legislatures and cabinets* These are common when special declarations are required for members of parliament (or parliamentary employees), *e.g.* in the German Bundestag, Irish Dáil and Seanad, Spanish Congress, the House of Commons and the House of Lords in the United Kingdom. This kind of arrangement is based on the principle that the legislature shall conduct its own business independently including control

over and – where called for – sanctioning of its members. In a few countries governments run separate registers for statements filed by ministers with respective in-house arrangements within the Cabinet, for example in Denmark.

There is a greater variety of outside arrangements:

- *Specialised anti-corruption (conflict of interest control) bodies/institutions for managing officials' declarations* The growing number of specialised anti-corruption bodies across different regions are a typical choice for processing public officials' declarations. Many such institutions are declared independent although the actual degree of autonomy varies strongly. Their mandate and powers vary, but that issue is outside the scope of this study. In these systems the declarations are seen as a key anti-corruption tool, and they are often emphatically separate from the mainstream asset monitoring system for individual citizens. *e.g.* Kosovo, Montenegro, Serbia and Slovenia. A more rare option is a separate institution tasked only/primarily with processing and auditing public officials' declarations and their wealth situation *e.g.* Albania and Romania.
- *Tax authorities* It is common to entrust tax authorities with the collection and processing of public officials' declarations where at least one of the purposes is to monitor wealth. The rationale is obvious: the monitoring of all income, not just that of public officials, is generally one of the main tasks of tax authorities. In countries where public officials are but one category of residents required to submit tax declarations, the implementing body is naturally the tax administration, for example, in Armenia and Kazakhstan.
- *Civil (state) service bodies* In countries with special bodies for the whole civil (state) service, these are sometimes entrusted with implementation of the public officials' declarations system. The mandate of some of them is confined to the executive branch; others also cover the legislature and judiciary, at least as far as the management of the declarations system is concerned, *e.g.* Georgia and Kyrgyzstan.
- *Parliamentary bodies* There are cases where parliamentary bodies collect and/or verify declarations submitted not only by MPs and parliamentary employees but also by officials from other branches of authority. For example, in Estonia high officials submit declarations to the parliamentary committee. Various reasons can lead to the choice of such arrangement. Apparently there is an assumption that maximum closeness to the legislature entails a level of visibility and opportunities for oversight by the opposition that would minimise the risk of illegitimate political or other interference. Moreover, members of parliament are subject to popular election and thus are more publicly accountable than any other controlling officials could possibly be.
- *Judicial bodies* There are two main variants of this option. In some systems judges submit declarations to designated bodies that operate within the judicial branch of authority, for example in Denmark. This can be an expression of respect for judicial independence, but in a few systems judicial bodies also collect declarations from officials of other branches of state authority; the Constitutional Court in Portugal is an example. Since judicial officials are everywhere expected to demonstrate a fair degree of political neutrality and independence, this is another way to try to prevent the risk of illegitimate political or other interference. A variation of this approach is found in France, where the Commission for Financial Transparency of Political Life consists in large part of judiciary officials.
- *Other institutions* These can be the supreme audit bodies (Bulgaria and formerly Estonia for some public officials), executive agencies other than tax and general civil (state) service institutions, etc.

A corrigendum has been issued for this page. See: http://www.oecd.org/dataoecd/48/40/48415816.pdf

A number of countries run several of the above arrangements. Thus in Estonia and Lithuania certain categories of officials submit declarations to centralised bodies while others submit to their own respective superiors. Mostly this reflects the recognition that declarations of public officials at different levels warrant processing on correspondingly different institutional levels.

Table 3.1. **Types of institutions responsible for implementing the public officials' declaration system**

Country	Type of institution	Title/s
Albania	• Specialised body for declarations and audit (for all branches of authority)	• The High Inspectorate of Declaration and Audit of Assets
Azerbaijan	• Specialised anti-corruption body • Authorised institution for MPs • Authorities determined by heads of institutions	• Commission on Combating Corruption • For MPs – authority identified by the parliament • Financial (accounting) authority determined by heads of state authorities
Belarus	• Tax authorities and dedicated officials/units within public institutions	• The Ministry of Taxes and Revenue • Personnel departments of state bodies • Heads of superior bodies
Bosnia and Herzegovina	• Election commission (for all branches of authority)	• The Central Election Commission
Bulgaria	• National audit office (for all branches of authority)	• Public Registry Department unit in the National Audit Office.
Croatia	• Specialised (semi-parliamentary) conflict of interest control body • Special arrangements for state attorneys and judges	• Commission for the Prevention of Conflict of Interest (for public officials) • State Attorney's Office and Ministry of Justice for state attorneys • Ministry of Justice for judges
Estonia	• Parliamentary body (for all branches of authority) and dedicated officials/units within public institutions	• Parliamentary Committee • Depositary of declarations is appointed by the head of an agency or authorised body (*e.g.* local government body)
Georgia	• State service body (for all branches of authority)	• Department in the civil service bureau
Kazakhstan	• Tax authorities (for all branches of authority)	• The Tax Committee of the Ministry of Finance
Kosovo	• Specialised anti-corruption body (for all branches of authority)	• Anti-corruption Agency
Kyrgyzstan	• State service body (for all branches of authority)	• Agency for State Service Affairs
Latvia	• Tax authorities and a specialised anti-corruption body (for all branches of authority)	• Department in the State Revenue Service • Corruption Prevention and Combating Bureau
Lithuania	• Tax authorities, specialised ethics institution (for all branches of authority) and dedicated officials/units within public institutions	• The State Tax Inspection • Chief Official Ethics Commission • Specialised public officials or units in each state body
Macedonia	• Specialised anti-corruption body and tax authorities (for all branches of authority)	• State Commission for Prevention of Corruption • Public Revenue Office
Montenegro	• Specialised conflict of interest control body (for all branches of authority)	• Commission for the Prevention of Conflict of Interest
Romania	• Specialised anti-corruption body (for all branches of authority)	• The National Integrity Agency
Slovenia	• Specialised anti-corruption body (for all branches of authority)	• Commission for the Prevention of Corruption
Tajikistan	• State service body and tax authorities (for all branches of authority) • Officials/units within public institutions	• Department in the State Service Board under the president of the Republic • Department in the Tax Committee • Personnel departments of state institutions
Ukraine	• Officials/units within public institutions	• Personnel departments of state institutions

3.3. Overarching *versus* separate systems for branches of state authority

It is a general impression that newer democracies tend to establish common overarching systems covering officials from all three branches of authority – legislative, executive and judicial. In these systems the fact that, for example, judges are subject to the same declaration procedure as executive officials (and are sometimes controlled by executive authorities) is rarely perceived as a problem.

On the other hand, often in older democracies branch-specific arrangements have evolved over time. For example, in Portugal a rather complex system covers legislative and executive officials but not judges (GRECO, 2008, pp. 7-8). In Spain separate systems apply to members of the legislature and government officials. One could suggest that in some older democracies, particular branches of authority have developed their own rules as part of a long evolution.

The division between older and newer democracies is not uniform; some new democracies have specialised systems. Serbia has separate rules for judicial officials (judges and public prosecutors) and other officials. Hungary has individual legal provisions applying to higher government officials, members of parliament and judges (Government of Hungary, 2007). On the other hand, the US Ethics in Government Act provides for an overarching system across all three branches of authority.

Table 3.2. **Separate and joint systems across branches of power**

Different colours indicate different systems

Country	Legislative	Executive	Judiciary
Bosnia and Herzegovina			
Denmark			
France			No declarations
Germany		No declarations	No declarations
Hungary			
Ireland			No data
Norway			No data
Portugal			No data
Russian Federation			
Serbia			
Spain			No declarations
Sweden			No data
United Kingdom*			No data

Albania, Azerbaijan, Belarus, Bulgaria, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Kosovo, Latvia, Lithuania, Macedonia, Montenegro, Romania, Slovenia, Ukraine and the United States have declaration systems that reach across all three branches of authority.

* The dark shading extends into the "Executive" column because UK Cabinet members are by convention also MPs. However, separate arrangements are provided for in the Ministerial Code and rules that apply to civil servants.

One of the main reasons why older democracies opt for specialised systems is the principle of separation of powers. It is considered inappropriate for one branch to have any powers over officials from another branch. Besides, in such cases the enforcement of sanctions is undermined, as for instance an executive officer normally cannot impose sanctions such as dismissal against an MP. As noted by the OECD in a study of specialised anti-corruption bodies, "a central control institution that is responsible for declarations of assets and prevention of conflicts of interest, which collects and inspects information on

all elected and high-level officials, including members of the government, parliament, judges and prosecutors, cannot be situated within the government as this could amount to the breach of the separation of powers" (Klemenčič, Stusek and Gaika, 2007, p. 18).

3.4. Single *versus* multiple declarations

Many countries run a single form of declaration for all categories of public officials. (In some systems differences do exist between declaration forms that are submitted, for example, for the first time and those that are submitted annually thereafter.[5]) However, four principal variants exist where separate declaration forms – sometimes also separate procedures for submission and processing – are used.

- *Separate declarations for interests and assets* – This approach, although not very common, recognises the different nature of such diverse goals as wealth monitoring and control of conflicts of interest. For example, in Portugal political office holders and some other categories of public officials submit both declarations of assets and declarations of interests where the latter are directed at the control of incompatibilities.
- *Tax declarations and declaration of interests* – This is a variant of the above system, a special approach in countries where only particular groups of residents are required to submit tax declarations. Here certain categories of public officials are included explicitly in the circle of persons subject to the obligation to submit assets and/or income declarations to tax authorities. In addition officials have the duty to submit separate declarations of interests. The principal rationale here is that public officials' assets and income are to be monitored in the same way and within the same system that covers other residents. For example, in Lithuania public officials submit declarations of property and income in accordance with the law "On Declaration of Income and Property", and declarations of private interests in accordance with the law "On the Adjustment of Public and Private Interests in the Public Service".
- *Different declarations for different categories of public officials* – All systems where separate procedures exist for different branches of state authorities fall under this category. However, in some countries the differentiation is not between branches of authority but rather between different levels of seniority of officials (or between the political and so-called professional level). The rationale is that officials of higher rank must be subject to stricter requirements. An example of this approach is Ukraine, where declaration forms consist of six parts. All officials fill in Parts 1-3 where income and financial liabilities are declared. Only higher categories of officials fill in Parts 4-6 where data about assets are required. Different declarations for different categories of officials are also used in Ireland. In some systems special forms are used for candidates for official positions, for example in Belarus and Georgia. Some countries (or respective regional or local entities) require separate declarations from regional or local officials but, as said previously, this study covers systems of the national level.
- *Different declarations for public officials and for related persons* – This option is relevant in systems that not only oblige public officials to state data in their declarations about their spouses and other related persons, but also request separate declarations from these related persons. Where such duty is imposed on the related persons and where the declaration is not the same that is used for regular taxpayers, having a different form is usually necessary because the related persons declare data different from those

disclosed by officials themselves. The obligation to submit declarations on the *related* persons can generate special problems pertaining to the protection of privacy and confidential information – for example, details of confidential contracts.

3.5. Protecting the institution responsible for asset declaration systems against undue influence

Some systems provide certain protections for the implementing institutions against undue influence. If implementation of the public officials' declaration system is considered a part of preventive anti-corruption policies, such institutions can be viewed as preventive anti-corruption bodies in accordance with Article 6 of the United Nations Convention against Corruption. Paragraph 2 of this article states: "Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided."

Clearly, preventive anti-corruption bodies do not enjoy independence equivalent to that normally granted to the judiciary or even to specialised anti-corruption police or prosecution units. Some of the parameters desired for the independence of preventive institutions are:

- clarity of mandate, functions, jurisdiction and powers, relationship with other institutions, accountability mechanisms, etc;
- separate institutional placement (rather than inside a larger executive agency) or placement within autonomous bodies (*e.g.* the supreme audit office);
- special institutional arrangements to limit discretion and enhance the relevance of integrity and merit in the appointment and suspension/dismissal of the head of the institution and the rest of the personnel;
- guarantees of sustainable funding;
- effective accountability mechanisms.[6]

This study does not aim to assess protections against undue influence of all of the earlier-mentioned institutions implementing declaration systems. However, certain relevant empirical characteristics will be outlined.

Appointment/dismissal of the head – Where declarations are handled in a centralised manner, these tasks are often entrusted to a body whose head (and sometimes also other members) is appointed directly by the parliament. This is the case of, for example, Albania, Bosnia and Herzegovina, Kosovo, (in part) Latvia,[7] Lithuania, Macedonia and Slovenia.[8] It could be argued that appointment by the parliament involves the visibility and possibilities for public scrutiny in a way that reduces the risk of influence from narrow political interests. This argument may or may not hold in practice but at least some element of public accountability is there.

In some countries a competition is used to strengthen selection and appointment (like, for example, for the members of the State Commission for Prevention of Corruption in Macedonia, the head of the Corruption Prevention and Combating Bureau in Latvia, and the president of the National Integrity Agency in Romania).

Another means of de-monopolising appointment procedures is vesting the right to nominate the candidate in persons/institutions outside the parliament while the latter retains the authority to appoint. Thus in Lithuania the five members of the Chief Official Ethics Commission are proposed by the president of the Republic, the speaker of the Seimas, the prime minister, the president of the Supreme Court and the chairperson of the Association of Local Authorities. In Romania the president of the National Integrity Agency is proposed by the National Integrity Council (a competition takes place prior to the proposal). In Slovenia the president of the Republic shall issue a public invitation for proposals by any interested parties for the candidate to the post of chairman of the Commission for the Prevention of Corruption.[9]

Otherwise the composition of the body can be designed so that no interest is capable of influencing the institution unduly. This is the case in France, where the Commission for Financial Transparency of Political Life is composed of officials from various – predominantly judicial – institutions.

Laws can contain an exhaustive list of situations where the head of the body can be removed.[10] The enumeration of concrete reasons for removal, together with those for guaranteed tenure, is thought to limit discretion and prevent the possibility of removal at will.

Accountability – Where the head of a body is appointed by the parliament, a matching mechanism of reporting back to the legislature is usually present (sometimes also back to the presidency and government). For example, in Slovenia a commission of the National Assembly is responsible for supervision of the Commission for the Prevention of Corruption. In some systems even more specific accountability mechanisms *vis-à-vis* parliament exist. For example, in Albania the Inspector General and the high Inspectors of the High Inspectorate of Declaration and Audit of Assets submit their declarations of private interest to the Assembly, and the latter audits them. The Inspector General may also ask the Assembly for a hearing on issues considered important by him/her.

Some countries establish special councils for the oversight of anti-corruption institutions, which also deal with public officials' declarations. Examples of this sort are the oversight council for the Kosovo Anti-corruption Agency and the National Integrity Council for the National Integrity Agency in Romania. Moreover, the law subjects the Romanian agency to the evaluation of the Agency's quality of management on a yearly basis by an external independent audit. Relations between the anti-corruption bodies and parliaments or councils overseeing them are by no means always smooth, and show that the necessary combination of due autonomy and accountability requires a fine and difficult-to-find balance.

In a few cases countries have chosen to go even further in attaching relevant bodies to the parliament. For example, in Estonia and Croatia, commissions that handle declarations are closely affiliated with the respective legislatures. In Croatia the Commission for the Prevention of Conflict of Interest elects its president from among distinguished public persons who cannot be members of any political party – but four out of seven members of the Commission are representatives of the parliament. In Estonia the head of the parliamentary committee in charge of declarations of high-level public officials is an MP.

Usually, in countries with decentralised systems (declarations collected and handled in whatever institution the official works), no special protections against undue influence are present. The same is true in countries where the tax administration has competency with regard to public officials' declarations (for example, in Kazakhstan, Belarus, Latvia, Macedonia or Tajikistan).

3.6. Engagement of the tax administration for wealth monitoring

In many countries, declaration systems for public officials function separately from the tax administration. At the same time it is important to take into account that, to the extent public officials' declarations serve the purpose of wealth monitoring, the function of such systems overlaps with those of the tax administration. In fact the tax administration should be the most competent body to monitor income and prevent enrichment from illicit, hence untaxed, sources. Below are listed the main models of how the design, submission procedures and processing of public officials' declarations can be linked to tax return and administration systems:

- *Public officials required to submit tax declarations* – A few systems where the duty to submit tax declarations is confined only to certain specific categories of persons (*i.e.* there is no universal duty to declare income and wealth for taxation purposes), public officials are required to submit whatever tax declaration is used in the country. In principle it is possible to monitor wealth in this way although success will depend on the effectiveness of the tax administration overall. This approach would hardly satisfy the need to control conflict of interest.
- *Tax declarations of public officials are subject to disclosure* – This is a variant of the above approach: the public accountability of officials is furthered through the requirement to provide copies of their tax declaration to some controlling body (other than the tax administration) and in some cases make them subject to public disclosure. For example, in Ireland under the Ethics Acts, both legislators and office holders must present tax clearance certificates nine months after the date on which they were elected or nominated.
- *Data from tax returns to be used to fill public officials' declarations* – In some countries where public officials are required to submit tax returns as a regular taxpayer, they insert their tax data in their officials' declarations. This ensures uniformity of data across the tax and public officials' declaration systems. It moreover reduces the burden on the public official in that he/she does not have to produce the same data in two different formats – one for the tax administration, the other for the officials' declaration. Estonia is an example where the contents of the public officials' declarations is explicitly linked with the income tax return (taxable income and dividend income shall be stated on the basis of an individual citizen's income tax return of the preceding year submitted to the Tax Board).[11]
- *Two declarations – income/assets to the tax administration, interest declaration to another body* – Here, public officials are required to submit two declarations – an income/assets declaration to the tax administration and an interest declaration to another designated body. The income/assets declaration may be the same as tax declarations for other taxpayers, or a declaration designed especially for public officials. The rationale of this system is a strong separation of wealth monitoring and conflict of interest functions.
- *Tax institution in charge of collecting and processing officials' declaration* – In some cases even when special declaration requirements (*e.g.* disclosure of interests not required from regular taxpayers) apply to public officials, declarations are still submitted to and processed by tax authorities (often using a special procedure). At least in part this is the approach in, for example, Latvia and Tajikistan.
- *Tax audit* – Procedures for the verification of officials' declarations can eventually be complemented with a tax audit. Such audits do not always hinge on legal texts relating to wealth monitoring – that is to say, in practice a review of the income and assets of

public officials may not in fact be an explicit control means for those officials. For example, in Lithuania the law provides the State Tax Inspectorate with the right to check the data given in the declaration;[12] in Latvia the State Revenue Service practices tax audits of public officials often based on requests by the Corruption Prevention and Combating Bureau.

In some countries, legal acts do not refer to any link between the public officials' declaration and taxation systems. However, this does not rule out co-operation between the two. In particular, tax administration data can be requested to verify public officials' declarations. Some systems suffer from ineffectiveness in the monitoring of public officials' wealth either because verification is too detached from the tax administration or because the tax administration is too weak.

3.7. Volatility and sustainability of new systems

Introducing a declaration system is a complex task – especially where the system is expected to achieve ambitious and multiple goals, such as maximum control of the conflict of interest and at the same time thorough monitoring of public officials' wealth. Experience reveals that the initial period of implementing declaration systems tends to be fraught with difficulties. This is all the more true in countries with weak administrative capacity and flaws in the functioning of the rule of law.

First versions of declaration systems often fail to achieve stated goals and numerous deficiencies are soon identified. The latter can include insufficient information to be declared (or asked in a wrong form), weak implementing bodies, insufficient/missing sanctions for non-compliance, cumbersome procedures for sanctioning non-compliance, etc.[13] It is little wonder then that a typical feature of transition countries that introduced complex declaration systems in the 1990s and later is a high number of (often extensive) subsequent amendments.

What follows are but a few examples. The *Bulgarian Public Disclosure of Senior Public Officials Financial Interests Act* was adopted in 2000 and amended every year in the period between 2002 and 2008. In Lithuania the system of declarations was introduced in 1998 and since then the rules were amended in 2000, 2004, 2005, and 2008.[14]

Kosovo introduced its declaration system in the law "On Suppression of Corruption" in 2005. The declarations were collected first in 2007, and that same year drafting of a separate law on the declaration and control of assets of high officials began. The reasons stated for the need of a new law are "to expand the scope of the law by increasing the number of the officials who are obliged to declare their assets, regulating the procedures for declaration of assets, providing the possibility to the [Anti-corruption] Agency to conduct the control of origin of assets and not by just controlling the way the declaration is filled in, as well as by defining clear sanctions in cases where declaration is not conducted".[15]

The Estonian system was being changed at the time of this study (September 2009), and a respective draft law was in the parliament in Estonia. The country questionnaire cited the ineffectiveness of the system (broad range of officials submitting declarations, formal[16] data, formal control, etc.) as the main reason behind changes. This serves partly as an indication that the initially designed systems prove in many ways deficient when their implementation commences.

Box 3.2. **Reform of an asset declarations regime – The example of Estonia**

Estonia has become an exemplary country in many respects when it comes to issues of integrity and anti-corruption policies. This extends to approaches adopted in designing and reforming of the asset declaration system, which can be held as examples of both self-critical evaluation and striving for improvement based on such evaluation.

The asset declaration system of Estonia, set up in 1995, has been undergoing constant transformation ever since its creation. The legislative framework for the system was defined by Anti-Corruption Act of Estonia and Public Service Act of Estonia. According to the Anti-Corruption Act, members of the Riigikogu, the chief justice of the Supreme Court, the prime minister, the president of the Republic, the president of the Bank of Estonia and the auditor general submit declarations of economic interests to the Special Committee on Anti-Corruption activities. (The other categories of officials listed in the Anti-Corruption Act are subject to another regime, declarations being collected by an official or a body specially appointed for that purpose.) The Committee is responsible for checking the correctness of these declarations. It is also responsible for supervising the activities of MPs, especially in relation to restrictions on their employment.

The information gathered by the Committee concerning the implementation of the Anti-corruption Act was passed to the Parliament as well as to the public. A first report ("An Overview of the Application of the Anti-Corruption Act") was prepared and presented early 2000. Besides numerical data, and recalling the necessity of implementing preventive measures as a priority, the document also underlined problems that emerged in the application of the Act. The processing of declarations of economic interests was first assessed in Summer 2000 by the State Audit Office. The latter was rather critical with this mechanism, and came to the conclusion that the system for controlling the declarations was not working properly.

In GRECO's second evaluation round conducted in 2003, one of the recommendations for Estonia dealt directly with the issue of asset declarations, urging Estonia "*ix. to review the system of public officials' declarations of assets and interests, in particular in respect of the access to data necessary for the control of such declarations (paragraph 54)*". In 2005, a study was conducted to gauge effectiveness of the asset declaration system. The study outlined particular flaws in the system, including too high a number of civil servants submitting declarations for the actual monitoring capacity; inaccuracy of asset declaration forms considering that civil servants have been reporting only those assets and incomes directly linked to them and in their personal ownership, rather than those at their disposal and utilised by them; a burdensome system of hardcopy filing as opposed to IT solutions, etc. All of these challenges are encountered in most of the asset declaration systems in world. Based on the results of this study and in response to the recommendation of GRECO, reform of the existing system was set in motion and a new draft law was prepared by the Ministry of Justice of Estonia; it was pending approval in parliament in 2009.

This new legislation aims at improving a number of points, including *inter alia* limiting the number of declaring officials to a manageable number for monitoring; clarification so as to include in the categories of assets and obligations of public officials those they actually use; introduction of an electronic database with pre-filled forms (like those introduced in Danish and Swedish tax reporting systems), where data are utilised from various sources and the civil servant simply verifies and adds missing information; introducing higher accountability standards and broader instruments for checks for both the Committee and heads of the relevant agencies from which declarations are originated, etc.

Notes

1. Article 122 of the Constitution of Colombia (1991), *http://confinder.richmond.edu/admin/docs/colombia_const2.pdf*.
2. Examples of such laws are found in: Azerbaijan (Law on Combating Corruption, a special law stipulating applicable procedures); Estonia (Anti-Corruption Law); Kazakhstan (Law on Anti-Corruption Efforts); Latvia (Law on Prevention of Conflict of Interest in the Activities of Public Officials); Lithuania (Law on the Adjustment of Public and Private Interests in the Public Service); Montenegro (Law on Preventing Conflict of Interest in Exercising Public Functions); Serbia; Spain (Law on Incompatibilities of Members of the Government and High Ranking Officials of the State's Administration); Tajikistan (Anti-Corruption Law).
3. Examples of such laws are found in: Albania (Law on the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials); Armenia (Law on Declaration of Assets and Incomes); Bulgaria (Law for Publicity of the Property of Persons Occupying High State Positions); and Portugal (Law on Public Control on the Wealth of Elective Officials).
4. In Lithuania, public officials file the declaration with the head or an authorised representative of the head of the central or local administration institution in which the person is employed, or with a structural unit (except for a category of public officials who file their declaration with the Chief Official Ethics Commission). In Estonia, for officials other than specified high officials, a depositary of declarations is an official appointed by the head of an agency or a duly authorised body (in certain cases provided for in the law, a committee or specially designated supervisory board). In the Russian Federation, civil servants by default submit their declarations to the employer (the Federal Law "On the State Civil Service of the Russian Federation" [*Федеральный закон о государственной гражданской службе российской федерации*], Section 20, Clause 1).
5. For example, in Albania four types of declarations are used: *before starting work*, *annual/periodic*, *after leaving function*, and *upon request*. Source: questionnaire submitted by Albania.
6. This enumeration is based in part on G. Klemenčič, J. Stusek and I. Gaika (2007), *Specialised Anti-Corruption Institutions: Review of Models*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, pp. 18-19, *www.oecd.org/dataoecd/7/4/39971975.pdf*.
7. This applies only to the body that controls conflicts of interest. Routine management of the declaration system is a task of the State Revenue Service, which does not enjoy any special safeguards.
8. In some systems, management of asset declarations is entrusted to institutions whose leadership is appointed by the president of the state; such is the case in Georgia. The institutions then report back to the president.
9. The president then selects two candidates from the names proposed and submits them to the National Assembly for confirmation. The National Assembly votes on the appointment of the chairman.
10. For example, in the case of Kosovo, the director of the Anti-corruption Agency can be removed:
    a) at his/her request;
    b) if he/she is incarcerated for criminal acts;
    c) if he/she fails performing work or performs functions that are not compatible with the position of director;
    d) as a result of permanent or partial loss of the ability to perform his/her job;
    e) if he/she breaches applicable law in the course of his/her duties. *Source:* questionnaire submitted by Kosovo.
11. Anti-Corruption Law, Section 9, Clause 1, Points 8 and 9.
12. Law "On the Adjustment of Public and Private Interests in the Public Service", Article 9.
13. For more on this topic see Section 9.2.
14. *Source:* questionnaire submitted by Lithuania.
15. Questionnaire submitted by Kosovo.
16. *Formal* meaning such as satisfies formal requirements but fails to support the substantial goals.

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PART II

Chapter 4

Subjects of Declaration Systems

4.1. Categories of public officials covered

Countries differ widely as to what categories of public officials are covered within the declaration system, what categories of public sector employees are considered public officials, and whether any individuals other than public officials should be covered.

Members of parliaments only/MPs and government members – The narrowest scope of coverage internationally is application of the declaration system to members of parliament. There are a number of reasons for this choice, *e.g.* the need to foster informed voting in elections and strengthen political accountability. It is characteristic of some Western European countries to limit coverage of the declarations to this category of officials (plus, in some places, members of the Cabinet). Notable examples are Germany (for members of the Bundestag), and the Scandinavian countries of Denmark, Sweden, and Norway. None of the former socialist countries reviewed defines the scope of covered officials so narrowly.

Senior/political officials – Probably the most widespread approach is to define a circle of senior public officials, which includes both members of parliament and ministers as well as certain other categories of officials who exercise political authority or occupy senior executive positions. In part, this is due to the recognition that not only elected politicians but also the senior ranks of ministries' officials, as well as heads of particular agencies, play a significant role in policy development. While the latter categories of officials are not politically accountable in the same way as their elected superiors, there are legitimate reasons for the necessity to disclose their business links with third persons, additional income, interests, etc. Among the main benefits of this system is expanded transparency and hence accountability principles. Meanwhile the scope of officials burdened with the duty of declaration remains limited – and so is the administrative burden associated with the processing of declarations.

Along with the previous approach, this is one of the two major models found in Western Europe. In these systems the main emphasis is still placed on obliging political officials – members of the legislature, ministers, the prime minister – to submit their declarations. However, here the implicit rationale is to place the spotlight not only on officials who make political decisions, but also on those who otherwise play a significant role in shaping actual policies.

Persons exercising political and high administrative authority roughly serves to describe the officials covered in Portugal and Spain. For example, on the national level in Portugal, the duty to declare covers the president of the Republic, president of the Assembly, the prime minister and members of government, members of parliament, representatives to the regions, members of European Parliament, justices of the Constitutional Court, all other holders of constitutional office and independent public entities (Media Regulator, National Elections Commission, Data Protection Commission among others). Moreover, certain categories of high officials of public administration and public enterprises are also covered (members of boards of public enterprises or appointed to enterprises by public entities, directors-general and deputy directors-general, members

of boards of public institutes). France adheres to a similar model where those covered include most elected officials and some civil servants (Dufour, 2008). In terms of coverage, a rather more expansive example is Ireland and its Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts); the scope of covered officials in the civil service is rather broad. In fact Ireland can be considered a border case between this model and the next, where most public officials are covered.

While (as mentioned above) none of the former socialist countries reviewed limit their declaration systems to members of parliament and ministers, a few run systems covering a defined circle of senior public officials. This is the approach of, for example, Armenia, Bulgaria and Kosovo.

Most/all public officials – In some countries the obligation applies to most or all officials of the executive, or even most or all officials at large (including the judiciary). However, the definition of what is a public official varies. Several reasons can motivate that expanded scope. Public officials on all levels – not just those on or close to the political level – can be influenced by private interests in the discharge of their functions. Moreover, declarations can serve as a source of information not only for the broader public but also for managers on all levels. On the other hand, experts tend to be sceptical about overly wide application of the duty to declare assets, noting that "more often than not, policymakers tend to overreach, requiring far too many lower level personnel to disclose" (Messick, 2009, p. 11). Typical negative consequences include the high cost of administration if the system is to be run effectively, or lack of effectiveness if the resources needed are not provided. Lower-level public officials can in fact present stronger arguments for the inadmissibility of the invasion of their privacy.

"All or most public officials" is not necessarily equivalent to all or most employees in the public sector. Again, definitions vary depending on the country. One of the approaches found in conflict of interest laws is to provide a list of positions of public officials, complemented by an open-ended definition. In the Latvian law "On Prevention of Conflict of Interest in the Activities of Public Officials", the definition is: "persons who in the performance of the duties of office in the state or local government authorities, in accordance with regulatory enactments, have the right to issue administrative acts, as well as to perform supervision, control, inquiry or punitive functions in relation to persons who are not under their direct or indirect control, or to deal with the property of the state or local government, including financial resources, shall also be considered to be public officials". Overall definitions of public official tend to cover a large proportion of public service employees.

Yet public officials are often not equivalent to civil servants. An example is found in Estonia, where a public official means a higher official with decision-making power. That is to say, they adopt decisions binding on other persons, they perform acts, they participate in making decisions concerning privatisation, and they transfer or grant the use of municipal property.[1] Most such officials in Estonia have an obligation to submit declarations. On the other hand, civil servants are persons working in public organisations (defined in the Public Service Act). Not all civil servants are automatically public officials (rather, only those who carry out the above-mentioned tasks).

Overall, in terms of coverage by declarations systems, such a broad scope of officials is more characteristic of the Central and Eastern Europe. According to one study, which covered a sample of six of the "old" EU member states (France, Germany, Italy, Portugal,

Spain, United Kingdom) and three of the "new" ones (Hungary, Latvia, Poland), in none of these "old" countries were civil servants required to declare assets. In the three "new" countries they were obliged to do so (only senior executives in Hungary) (Mendieta, 2008, p. 92). Belarus represents a somewhat extreme example: there, the duty to submit income and assets declarations is defined explicitly to cover broad categories of individuals who are not public officials, such as heads of non-governmental agricultural organisations, etc.

Box 4.1. **The Nordic countries' approach to asset declaration regimes**

The Scandinavian countries, including Iceland, enjoy one of the lowest levels of perceived/reported corruption according to a number of surveys and studies.[1] The levels of transparency and public trust in the civil service and public administration are high, and the asset declaration systems rely on established values and culture.

Some form of disclosure is required of all top civil service and elected officials in all these countries (*Iceland* being the last one to introduce such requirements for ministers and MPs in spring of 2009) (OECD, 2009a), who have to submit declarations when joining public service and upon change of circumstances. The main emphasis is placed on accountability of elected officials within legislature and appointed officials, which reflects recent concerns raised in these countries over political ethics. *Sweden* is the exception, where senior public executives are under stricter rules than those applied to the legislature; it also stands out from most of the Western European states in introducing financial disclosure requirements for the judiciary (OECD, 2009b).

The contents of statements disclosing personal financial interests are similar in all four countries and include information on assets and liabilities, loans, sources and levels of income, with some countries (namely *Iceland*, *Norway* and *Sweden*) expanding this list to include additional employment, gifts and employment history. The asset disclosure information of the elected officials and senior public servants is made publicly available most commonly via Internet. Information gathered through the disclosure policies in selected institutions, identified as most susceptible to corruption, is used internally and is not publicly available.

Asset disclosure of public administration and civil service is ensured through general tax systems, with some additional instruments for verifying the wealth of public officials. In addition, the Scandinavian countries (including Iceland) pay special attention to corruption risk sectors, such as tax and customs administrations, and financial and procurement services; they ensure stricter control through enhanced internal inspections and audits, and equip such institutions with supplementary guidelines and instructions. In some cases selected institutions have separate rules on financial disclosure – good examples are the *Danish Financial Supervisory Authority*, where employees provide access to personal accounts and other information on various financial obligations, and *Norwegian Tax and Public Procurement offices*, which require their employees to disclose personal assets and financial interests.

All four states require identification and reporting of conflict of interest in one manner or another to managers within the structure of each agency. The *Danish Public Administration Act* and *Local Government Act* set forth grounds for disqualification from the decision-making process of any person within the public administration, and his/her duty to report to the immediate supervisor the existence of such a conflict.[2] The *Norwegian Public Administration Act* stipulates almost identical grounds for disqualification,[3] and similar requirements are introduced by the *Administrative Procedure Act of Sweden*.[4] In some cases there are other institutions involved in the process; for instance, the *Ministry of Government and Labor Administration of Norway* plays a supplementary role in assisting managers of all levels in this, and in *Denmark* such assistance is provided by the representatives of the trade unions.

Box 4.1. **The Nordic countries' approach to asset declaration regimes** *(cont.)*

Inspections to check the accuracy of declarations of interests are made but not regularly, and while mostly disciplinary sanctions for violation of provisions related to the conflict of interest/disqualification and asset disclosure formally exist, there they are rarely applied and it is considered to be the personal responsibility of each civil servant to prevent such situations.

The approach taken by these Scandinavian countries represents an integrity-based ethics management system, which relies on encouragement of the integral behaviour rather than its enforcement through punitive measures and strict control. Such an approach can work only in countries with an established integrity culture, a history of free access to information and a high level of confidence and trust in the public service.

1. One of these countries has ranked lower than 14th place since the inception of the Corruption Perception Index in 1995; they have almost exclusively held the first three places over the past 15 years.
2. Danish Public Administration Act No. 571, 19 December 1985, Ministry of Justice, Copenhagen, 1987/Chapter 2 (Sections 3-6) – Disqualifications and references to such provisions under the Local Government Act within the First Evaluation Round report on Denmark, adopted by GRECO in July 2002.
3. Act of 10 February 1967 related to procedure in cases concerning the public administration as subsequently amended by Act of 1 August 2003 # 86 (short title: Public Administration Act)/Chapter 2 (Sections 6-10) – Concerning disqualifications.
4. Administrative Procedure Act of Sweden, 1986/Disqualification (Section 11-12).

Judges – A special group of public officials is judicial officers, including judges and in some cases public prosecutors, who can form part of the judiciary. In many countries where declaration systems cover a broad range of officials, judges are covered just like others. However, the peculiar characteristic of a number of – mainly West – European countries is that judges even at the supreme court level are exempt from the duty to declare. According to a recent study, which covered 21 Member States of the European Union, 11 states did not have a register of interests for judges of the supreme court (Austria, Belgium, Bulgaria,[2] Czech Republic, Denmark,[3] France, Germany, Ireland, Luxembourg, Portugal and Spain) (Demmke *et al.*, 2007, p. 75). Note: there could still be a duty to submit a declaration even if no register exists. Perhaps the special respect for judicial independence and *a priori* trust in the integrity of judges, together with the fact that judges of European countries are not subject to popular elections, are among the factors explaining why declaration systems do not always cover them.

Other special categories of officials – It is worth mentioning that there are special categories of persons who could be regarded neither as typical officials occupying political posts nor as ordinary public servants. These are, for example, advisors to political officials and other persons who are appointed personally by a political office holder. They are covered, for example, in Bosnia and Herzegovina, Ireland (under the term "special adviser"[4]), and Latvia (advisors to the president, other advisors, consultants and assistants, as well as heads of the offices of the prime minister, deputy prime ministers, ministers, ministers for special assignments and state ministers).[5] The UK Parliament runs the Register of Interests of Members' Secretaries and Research Assistants' Interests, and the Register of Interests of Lords Members' Staff.

Another category of this type refers to persons who occupy posts in publicly owned enterprises. Latvian law uses elaborate definitions and covers 1) members of councils of capital companies who represent the interests of the state or local governments and members of executive boards in a capital company in which the state or local government share of the equity capital, separately or in aggregate, exceeds 50%; 2) members of councils

or executive boards of state or local government capital companies; 3) representatives of the holder of the state or local government share of capital and their authorised persons.[6] Members of boards of public enterprises or persons appointed to enterprises by public entities are covered in Portugal as well. A similar category of persons is covered in Lithuania.

Discretionary scope – There is a sub-variation of the above model: systems where a discretionary element is allowed in determining the exact scope of officials who shall submit declarations. This feature recognises that managers of public agencies are well placed to determine which officials are subject to risks that mandate filing a declaration.

Thus in Albania and Estonia, in addition to a fixed list of officials, heads of institutions may determine which officials shall submit the declarations. Similarly in Ireland – in addition to a pre-defined list – persons covered are those who occupy or occupied designated positions of employment in a public body, as prescribed by regulations made by the minister for finance and/or a person who holds, held, occupies or occupied such other office or position as may be prescribed by the Minister for Finance.

Although in principle it is officials in risk-prone positions that should be subject to the declaration duty, it was not possible to identify any country example where the scope of officials covered is determined according to explicit risk criteria. Although some countries – for example, Germany – do employ systems for the monitoring for warning signs in the behaviour of public officials and identifying risk-prone positions, the results of such monitoring do not appear to determine the circle of officials subject to the duty of declaration.

It is thus clear that countries differ widely in terms of the share of officials obliged to submit declarations and the share of public sector employees who are regarded as public officials. Given the differences in the size of populations and number of public officials, the sheer absolute numbers of those covered are not revealing of any peculiarities of particular systems. Suffice it to say here that the share can vary from 2-4% of officials in countries such as Kosovo and Albania to some 80% or more of all persons working in the public administration in Romania and presumably also Latvia.

4.2. Other persons

Some of the declaration systems cover not only public officials but also certain persons related to them. Usually such related persons are not required to file declarations themselves; rather, public officials are required to provide certain data about them. The scope of this information is usually narrower than that relating to the public official him-/herself. One of the reasons for requesting this information is to prevent public officials from hiding their income and assets under the names of other people. Another is the realisation that the private interest of a person in some way related to the public official often has the same potential to interfere with the discharge of public functions as a private interest held by the public official directly.

Below are the most common categories of persons whose data are to be disclosed in public officials' declarations. These categories reflect the same underlying principle, *i.e.* to cover information about the persons who form the closest circle in the private life of an official. The sequence of the categories listed progresses from the narrowest to the broadest circle:

- spouses/domestic partners only;[7]
- children, other family members/relatives;[8]
- household members – this criterion can apply to persons who share a household with a public official and are not necessarily his/her relatives/spouses.

In a few countries – for example Albania, Belarus, and Kazakhstan – not only is information about spouses/relatives requested in the declaration submitted by the public official, but these persons must themselves also submit their declarations.

Related persons covered on demand – Some systems ask for data about related persons when notice of a possible violation is received or a probe is initiated. For example, in Slovenia, if the comparison of the data submitted with the actual situation provides reasonable grounds for an assumption that the functionary is transferring his/her property or income to family members for the purpose of evading supervision, the Commission of the National Assembly may, at the proposal of the Commission for the Prevention of Corruption, also request the functionary to submit data for his/her family members.[9] In Albania it is possible to ask any natural or legal person to submit a declaration when, from a performed verification, it transpires that they are persons related to the subjects that have the obligation to present a declaration.[10]

It is rare that persons other than public officials are required to submit declarations (other than regular tax declarations). The study identified the following examples:

- Officials of political parties (chairmen of political parties and their deputies in Lithuania,[11] members of national and regional (autonomous) executive organs of political parties in Portugal).
- Candidates for elections/appointment – this duty can cover candidates for the president of the state (for example Portugal), parliament, regional or local elected bodies, and other elected/appointed posts. In some systems where candidates are covered, they are required to submit a form that differs from the one submitted by other officials. Of the former socialist countries that submitted questionnaires, Belarus, Bosnia and Herzegovina, Georgia, Kazakhstan, Latvia, Lithuania, Romania and Tajikistan require declarations from candidates for election/appointment. In the Western Europe Portugal represents an example where candidates for the president of the Republic are to submit declarations of assets.
- Journalists (in the UK House of Commons, holders of photo-identity passes as lobby journalists accredited to the Parliamentary Press Gallery or for parliamentary broadcasting are required to register certain interests).[12]
- Officials of non-governmental organisations – the study did not identify any examples where all of such officials were covered. However, in 2001 Lithuania introduced a requirement to submit declarations for officials in non-governmental bodies (NGOs) who receive financing from the Lithuanian state or local government budget or foundations and have been assigned administrative powers, as well as other persons who have been assigned powers in the area of public administration. In Latvia, representatives of NGOs can be required to submit declarations under certain circumstances, *e.g.* when they perform certain functions delegated to them by the state or local government. In 2009 and 2010 a proposal was debated in Latvia to require declarations from officials of such NGOs that are entrusted with handling public budget funds.
- Some form of statement of interests could be requested from persons who are members of public procurement commissions or serve as experts in relation to public procurement procedures, even if otherwise they are not public officials.

4.3. Differentiation between political and professional officials

The differentiation between the treatment of political and professional officials deserves special attention. As seen above, several countries – particularly in the Western Europe – confine the duty to submit public officials' declarations to a circle of what could be called political officials (MPs and Cabinet members, political appointees, *i.e.* officials appointed on the basis of a political decision). Although the border between the political and professional officials is not always clear-cut and varies from system to system, these countries do not extend duty to submit declarations to ordinary civil servants.

There are particular arguments in favour of disclosure for political public officials. Regarding members of parliament, in 2007 such arguments were formulated eloquently by the Federal Constitutional Court of Germany, in a case where several members of the Bundestag challenged the duty to publicly disclose information about their side activities and income:

The act of voting in elections requires not only freedom from coercion and undue pressure but also that voters have access to information that may be of importance for their decision. […] Parliamentary democracy is based on the confidence of the people; trust without transparency, which allows one to follow what is happening in politics, is not possible. […] The voter must know whom he chooses. […]

Interest linkages and economic dependencies of the members are obviously of considerable interest for the public. Such knowledge is important not only for the voting decision. It also ensures the ability of the German Parliament and its members, regardless of covert influence by paying interests, represent the people as a whole, and the confidence of citizens in this ability and, ultimately, in parliamentary democracy. […]

The members of parliament also have a legitimate interest to know which interests link their colleagues in order to assess where their arguments require particularly vigilant examination.[13]

Meantime many systems do not contain any differentiation between political and professional officials or higher-level and lower-level officials – all of them are obliged to submit declarations. As seen above, many transition countries actually run uniform declaration systems across all of the branches of state authority and cover in a uniform manner all or most levels of public officials.

A somewhat rare middle way between the two approaches is to use two different declarations – one (usually more extensive) for political/senior officials and another (usually simpler) for professional/lower-level officials.[14]

There are several reasons why a declaration system should be confined to political/senior public officials, or should require more information and impose a higher level of public disclosure from this category of officials:

- *Higher risk of conflict of interest* – Influential private parties are more interested in engaging political/senior rather than mid-/lower-level officials in their activities, hence there is a higher probability of a conflict of interest (Gaugler, 2006, p. 108).
- *Higher risk of corruption* – Related to the above, political/senior offices usually open greater opportunities for illicit gains, hence greater risk of corruption.

- *Evaluation of political decisions and candidates* – The character of political decisions differs from that of administrative decisions and actions, in that the former have usually a much broader scope of potential beneficiaries (or those whose interests suffer) and discretion. Hence their proper evaluation can be performed if all the important interests of a political decision maker are known. Moreover, for offices subject to popular election, it is important that voters have the broadest possible information about candidates.
- *Less relative weight of the requirement to protect privacy* – It is often recognised that the public interest weighs more than the right to privacy of political/senior office holders compared to mid-/lower-level officials.
- *Economy of resources* – The confinement of the circle of persons covered to political officials reduces the administrative burden of running the system due to the smaller number of such officials.

Meantime, there are also valid reasons for running a comprehensive system. The possibility of damaging conflicts of interest and risks of corruption also exist far down the hierarchy. Moreover, if the aim of the system is to ensure wealth monitoring, the level of seniority or the sector of employment of the official is irrelevant. Besides, management of a single system with a single form of statements should produce economies of scale and allow for the optimisation of costs.

It would appear that the case for confining officials' declarations to political officials only is stronger in countries with effective wealth monitoring systems for all taxpayers. At least in principle, most tax regimes assume that the state should be capable of monitoring the income of all residents.

As for the control of conflict of interest, even where middle and lower ranks of civil servants do not submit the same declarations as political officials, some control mechanism should be in place. This can be some form of notification and authorisation system where civil servants are required to notify their superiors about potential/actual conflicts of interest upon commencement of duties and/or on an *ad hoc* basis. Then the execution of particular official tasks or maintaining of some outside paid or voluntary position is subject to the authorisation by the superior official.

Variations of this type are found for example in Germany, Denmark, Norway and Sweden. In Germany, according to the Administrative Procedure Law, if grounds exist to substantiate mistrust against the impartiality of a representative of the authority or such grounds are claimed by one of the parties, the representative of the authority should inform the director of that authority (or an authorised person) and abstain from participation in the matter.[15] As far as outside occupations are concerned, apart from specific exceptions, they are allowed subject to authorisation of the superiors. The official shall provide information necessary for the decision to provide authorisation – particularly about the type and extent of the occupation and remuneration and monetary value benefits.[16]

Similarly in Sweden, according to Administrative Procedure Law it is first of all the responsibility of the concerned civil servant to recognise and disclose that he/she has a conflict of interest. Such disclosure would normally be directed to one's superior; the official shall not tackle the matter. The agency shall review the situation if a question about a conflict of interest has been raised and no other official has taken up the matter.[17]

The approach in Norway and Denmark appears somewhat more flexible. In Norway a civil servant him-/herself decides on whether he/she is disqualified. If a party of an administrative case so requires and this can be done without substantial loss of time, or if the civil servant him-/herself finds such grounds, he/she shall place the issue with his/her closest superior for resolution.[18] Concerning additional employment, the rule of applicable guidelines requires openness when it can be of relevance for the execution of service. The employer may not generally require all employees to give information about additional employment. However, there are cases where employees must give information about additional employment without request. These are cases where doubts exist whether the additional employment is compatible with the legitimate interests of the employer. An individual labour contract may envisage an obligation for an employee to give information about additional employment.[19]

In Denmark the guidance *Good Conduct in the Public Sector* states that an employee has an obligation to inform a superior when he-/she finds him/herself in a conflict of interest *vis-à-vis* a concrete case. A superior is also to be informed when an employee is in doubt about his/her being in a conflict of interest, so that the question can be resolved.[20]

The implementation of notification and authorisation systems does seem to be contingent on a reasonably well-internalised sense of public sector ethics throughout the public administration. Such decentralised systems that rely on a strong culture of ethics in the civil service and responsible managers of public institutions are not common in transition economies, where the focus is given to centralised control over public administration, often through attempts to establish exemplary agencies (sometimes called i*slands of integrity*).

Notes

1. Anti-Corruption Law, Section 3, Clause 2.
2. Yet according to the Bulgarian Public Disclosure of Senior Public Officials' Financial Interests Act, the persons subject to declaration of their property, income and expenses in the country and abroad shall be the chairmen and the judges of the Supreme Court of Cassation and the Supreme Administrative Court (Section 2, Clause 5).
3. Yet in Denmark there is a requirement for judges to report outside employment annually by 1 February.
4. "Special adviser" has the meaning assigned to it by Section 19 (1) of the Ethics in Public Office Act 1995, namely a person who:
   - occupies or occupied a position to which Section 7(1)(e) of the Public Service Management (Recruitment and Appointments) Act 2004 relates, having been selected for appointment to that position by an office holder personally other than by means of a competitive procedure; or
   - is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally other than by means of a competitive procedure;
   - and whose function or principal function as such a person is or was to provide advice or other assistance to or for the office holder.

   Guidelines for Public Servants (7th edition), Part 8: Definitions, *www.sipo.gov.ie/en/Guidelines/EthicsActs/PublicServants/Text/Name,2222,en.htm*.
5. Law "On Prevention of Conflict of Interest in the Activities of Public Officials", Section 4, Clause 1, Point 5.
6. Law "On Prevention of Conflict of Interest in the Activities of Public Officials", Section 4, Clause 1, Points 18, 19, 20.

7. Government ministers in Denmark, for example, are required to provide information about their spouses/domestic partners. See: *Ministrenes personlige økonomiske interesser mv*, *www.stm.dk/Index/mainstart.asp/_a_1628.html*.

8. Though it is not very common to require information about spouses/domestic partners and relatives in declarations submitted by public officials in Western European countries, examples of this kind can be found. For example, in Ireland certain information must be provided about spouses, children, or children of a spouse, or "connected persons" where "any question whether a person is connected with another shall be determined in accordance with the following provisions (any provision that one person is connected with another person being taken to mean also that that other person is connected with the first-mentioned person):
   i) a person is connected with an individual if that person is a relative of the individual;
   ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust;
   iii) a person is connected with any person with whom he or she is in partnership;
   iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it;
   v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company."

   Guidelines for Office Holders. Appendix 1: Definitions, *www.sipo.gov.ie/en/Guidelines/EthicsActs/OfficeHolders/Text/Name,2198,en.htm*

9. *Source:* Questionnaire of Slovenia.

10. *Source:* Questionnaire of Albania.

11. Law "On the Adjustment of Public and Private Interests in the Public Service", Article 4, Clause 1.

12. *Register of Journalists' Interests*, House of Commons, *www.publications.parliament.uk/pa/cm/cmjournl/journl/memi01.htm*.

13. BVerfG, 2 be 1/06 vom 4.7.2007, Absatz-Nr. 271, 274, 278, *www.bundesverfassungsgericht.de/entscheidungen/es20070704_2bve000106.html*.

14. Яременко, С. "Декларирование доходов публичными служащими в Украине", presentation at the seminar "Asset Declarations for Public Officials as a Tool against Corruption" in Belgrade, Serbia, 15-16 October 2009.

15. Administrative Procedure Law (*Verwaltungsverfahrensgesetz*), Section 21, Clause 1.

16. Federal Officials Law (*Bundesbeamtengesetz*), Section 99, Clauses 1, 5.

17. The Administrative Procedure Law (*Förvaltningslag*), Section 11, Clause 12.

18. The Administrative Procedure Law [*Lov om behandlingsmåten i forvaltningssaker (forvaltningsloven)*], Section 8.

19. Ethics Guidelines for the State Service (*Etiske retningslinjer for statstjenesten*), Part 4.2, *www.sph.dep.no/templates/PersonalMelding.aspx?id=989*.

20. *God adfærd in det offentlige* (Good Conduct in the Public Sector), p. 24, *http://cms.ku.dk//upload/application/pdf/355e7e20/God_adfaerd.pdf*.

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PART II

Chapter 5

Scope and Content of the Declarations

Despite the often-used shorthand designation "assets declarations", public officials' declarations usually require other types of information, and in fact many systems do not require data about assets at all.

5.1. Income

Income is one of the most common kinds of data required in public officials' declarations. The rationale for the requirement is at least twofold. First, information about a public official's income reveals his/her interests connected to particular third parties (hence the source and type of income – *e.g.* salary or capital gain – is usually indicated) and the strength of such interests (hence the amount of income is usually indicated). Second, the relative proportion of official income vs. side income allows for some judgement as to whether the official position represents a due priority for the individual in question. This aspect is usually more relevant for elected officials, *e.g.* MPs whose official duties are determined primarily by constitutional principles rather than detailed legal rules. Besides, in the course of an eventual investigation or audit, data on income is necessary in order to determine whether the wealth of a person can be explained by legitimate sources. However, this latter aspect may not be of particular relevance in systems where public officials' legitimate income is placed under the state scrutiny in any case – usually for taxation purposes.

There are a number of ways in which income is declared. The strictest approach is to require exact amounts of all income (salaries, fees, interest, dividends, revenue from sale or lease of property, insurance compensations, won lotteries, inheritance, pecuniary gifts, etc.) and identification of concrete sources. This is a typical standard in many former socialist countries. Such a requirement can be softened through stipulating a threshold above which income must be declared (*e.g.* for members of the German Bundestag); asking to indicate the amount of income within pre-defined categories rather than exact sums; limiting the disclosure of the origin of income to the type rather than exact identity of a source; or asking the source of income but not its amount. Examples of the last kind are the system in Ireland, where "it is not necessary to specify the amount or monetary value of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement" (Standards in Public Office Commission, n.d.), and in the UK Register of Lords' Interests, *e.g.* for remunerated directorships and regular remunerated employment.

For the members of the German Bundestag the amount of income associated with a side engagement or contract must be indicated when the gross revenue from a single engagement exceeds EUR 1 000 per month or EUR 10 000 per year.[1] In the United Kingdom, members of the House of Commons must provide the precise amount of each individual payment no matter what the size, except when he/she provided services in their capacity as a member of parliament [then annual remuneration should be provided in bands of GPB 5 000 (*e.g.* up to GBP 5 000, GBP 5 001 – 10 000)], or income is generated from land and property (to be declared if greater than 10% of the current parliamentary salary) (United Kingdom Government, 2009).

Some systems require explicit information about benefits that the public official has received from third parties and that would not always qualify as income in the strict sense. These are, for example, favours such as travel paid for by third parties (rather than the official him-/herself or his/her agency), various hospitalities, etc. Usually these are subject to disclosure only when extended and received in relation to the official capacity of the person (such requirements can be found in different systems, as varied as those in Bulgaria and the United Kingdom). A threshold of value normally applies.

5.2. Assets

In a great many countries public officials have to declare not only income but also assets. A wide variety of assets can be subject to declaration – real estate, various types of movable property [vehicles, vessels, valuable antiques and works of art, animals (for example, in Croatia), even construction materials (for example in Belarus), etc.], shares and other securities, extended loans, and savings in bank deposits and in cash.

Similar to information about public officials' income, data about assets reveal some of their interests. For instance, knowledge that an MP owns an estate in a particular place can help in judging the stance of the MP on an issue that somehow concerns the status of that place; likewise, awareness about securities belonging to an MP allows for a critical assessment of his/her initiatives concerning this or that sector of economy. However, at least in some systems a more significant reason behind requiring the declaration of assets is wealth monitoring. In particular, data relating to assets and income can be compared to try to assess whether changes in the wealth of an official can be accounted for by the declared legitimate income. In such cases it is important that statements cover all possible forms of asset accumulation.

As with income, assets can be declared in a variety of forms. Among the principal options is whether to indicate the value of the assets declared. (Values are more important for wealth-monitoring purposes).[2] A sub-variant regarding value is the declaration of certain types of assets only when in excess of a defined value threshold.

Another option to be considered is owned assets vs. assets that are in permanent use (lease, trust, etc.), *e.g.* a villa provided by a third party for the permanent residence of a public official. (Those owned are easier to police, while those used can require more comprehensive monitoring for conflict of interest.) Latvia is an example of a country where officials are required to report about property they own and use on permanent basis. A less frequently used option is the requirement to indicate the sources of financial means used to acquire larger assets. For example, Albanian law stipulates the obligation to declare assets and "the sources of their creation".[3]

Some systems require data about a few types of assets only. While this approach will provide insufficient information for the purpose of comprehensive wealth monitoring, it can be used to control certain potential sources of conflicts of interest. Thus the members of the German Bundestag must declare only participation in enterprises and then only when such participation gives rise to substantial business influence.[4] Meantime members of the UK House of Commons must register far more types of assets, such as:

- Any land or property that has substantial value (unless used for the personal residential purposes of the MP or the MP's spouse or partner), or from which a substantial income is derived.
- Interests in the form of shareholdings held by the MP – either personally, or with or on behalf of the member's spouse or partner or dependent children – in any public or private

company or other body that are greater than 15% of the issued share capital of the company or body; or that are 15% or less of the issued share capital, but greater in value than the current parliamentary salary (United Kingdom Government, 2009).

Few European Union countries require civil servants to declare assets. According to a recent study, in the "old" EU countries like France, Germany, Italy, Portugal, Spain and the United Kingdom, civil servants do not have to declare assets, but in "new" EU members like Hungary, Latvia, and Poland they are obliged to do so (senior executives only in Hungary) (Mendieta, 2008, p. 92). Overall, assets are a typical item in the declarations of many categories of public officials in numerous countries outside the European Union.

5.3. Gifts

Gifts can be considered a particular type of income. Their characteristics are often their informal (not backed by contracts, often not subject to tax) and irregular nature. Concerns that they be declared almost always have to do with controlling possible conflict of interest rather than with wealth monitoring. However, in some regions with strong traditions of gift-giving they can represent also a significant source of wealth.

As earlier research has shown, requirements regarding declaration of gifts vary among the European countries. Declaration in Latvia is mandatory for all public officials (including elected officials and members of parliament). In Poland this applies only to locally elected officials and political appointees, and in Hungary only to members of parliament. In Germany, Spain and the United Kingdom, it is compulsory for political appointees and government. Members of parliament in the United Kingdom must declare any gift worth more than 1% of their salary. German members of parliament must disclose this information when the gift is worth more than EUR 5 000. In France, members of parliament must declare any gift, whatever the value (Mendieta, 2008, p. 92).

The rules for accepting gifts usually (though not always) apply to those gifts that are given and accepted in direct or indirect relation to the discharge of public office; mostly they are the ones that must be declared. However, in some systems, gifts accepted in the public official's private capacity are also to be divulged (*e.g.* Latvian officials must declare any pecuniary gifts, and Lithuanian officials gifts received from close persons if their value exceeds 50 *basic social* expenses (or minimum living standard, which is approximately EUR 38) and those received from other persons if the value exceeds 5 *basic social* expenses). Since gifts are often (although not necessarily) of minor pecuniary value, the duty to declare them usually foresees some threshold (in fact the lack of such threshold may indicate the ineffectiveness of the system). Because gift-giving traditions vary widely in different regions, any requirements for the disclosure of gifts must take into account cultural peculiarities, *e.g.* where giving smaller ritual gifts is an accepted social norm in usual contacts with civil servants, declaration should probably cover unusual gifts only, *e.g.* recreational trips or cars.

5.4. Expenses

The expenses of a public official are not usually items in declarations, although in principle data about expenses could be used for wealth monitoring (OECD, 2008, p. 67). At least theoretically, a public official could make use of illegitimate income by spending it in ways that do not result in a considerable increase of his or her assets, and therefore cannot be detected in the declaration of assets, but could be noted in a declaration of expenses.

The monitoring of expenses can become particularly important in cases where public officials have considerable liabilities and their down payments hardly appear commensurate with their official income.

The Latvian and Lithuanian systems represent less common examples where some expenses are to be declared through the requirement to state transactions performed by the official. At least in Latvia this information is used mainly for conflict of interest control, as public officials are prohibited from carrying out official duties that relate to their business partners.

5.5. Pecuniary and non-pecuniary interests

A major type of pecuniary interest is remunerated employment, occupation, board function, etc. other than the official position (during and sometimes also before and even after tenure in the official position). In most systems where public officials must disclose income, the source and hence also outside employment is also declared. Sometimes outside employment is actually viewed as the principal item to be declared by public officials (*e.g.* declaration systems for judges in Denmark and Norway).

Pecuniary interests other than factual income, assets and outside employment are debts, assumed guarantees, formal and informal agreements that promise future income, insurance arrangements, pension schemes, etc. When such interests are of considerable financial value, they do represent a high risk of conflict of interest or even corruption.

It is also possible that public officials are required to declare certain income and assets only when such income or assets represent an interest that can, or can be perceived to, influence the discharge of official functions (*e.g.* certain interests are to be registered in the UK Register of Lords' Interests "depending on their significance") (United Kingdom Government, 2010). However, this is more characteristic of arrangements where public officials are required to disclose their conflicts of interest on case-by-case basis rather than in the format of a regular statement only.

Non-pecuniary interests are by definition those not associated with financial gains for the official or persons that are closely related to him/her. Typical interests of this kind are memberships or non-remunerated positions, *e.g.* board functions in political parties, other organisations, foundations, etc. These could also be voluntary work or non-remunerated authorisations to act on behalf of certain persons.

Some systems have a catch-all requirement for public officials to disclose all private interests that can somehow affect the discharge of official duties. For example, in Lithuania, public officials are required to disclose "other circumstances which, may give rise to a conflict of interest". It is possible for some misunderstanding to occur when judging whether a particular interest can indeed affect the duties. Ultimately, such questions can hardly be resolved in detailed prescriptions; rather, they require guidance from the management and should take into account the culture of public life in the particular country.

5.6. Identification of spouses, relatives and other related persons

Some of the systems that do not require public officials to disclose information about the income and assets of their spouses, relatives or other related persons, still require that such persons be identified. The primary rationale of this requirement is to enable control of conflict of interest by informing the superiors and/or control bodies of the circle of

individuals *vis-à-vis* whom the official may have some interest. In reality it is always a formally undefined circle of persons who are in fact related to a public official that can create grounds for a conflict of interest. Apparently that is the reason why Lithuanian officials are required to identify any "close persons or other persons he/she knows who may be the cause of a conflict of interest in the opinion of the person concerned".

Notes

1. Geschäftsordnung, Anlage 1, §1, *www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html*.
2. Richard Messick makes the strong point that the requirement to declare values should be backed by legal sanctions: "When the law requires that the value of assets be divulged, understating the value of land, buildings, shares and other assets the employee owns must be made a crime. As noted above, falsifying a disclosure is a much easier crime to prove than the underlying corruption, particularly when bribery is involved." In: R. Messick (2009), "Income and Assets Declarations: Issues to Consider in Developing a Disclosure Regime", *U4 Issue*, 2009:6, pp. 13-14.
3. Law "On the Declaration and Audit of Assets, Financial Obligations of Elected Persons and Certain Public Officials", Article 4.
4. Geschäftsordnung, Anlage 1, §1, *www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/anlage1.html*.

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PART II

Chapter 6

Processing of the Declarations

A number of functions are associated with the administration of public officials' declarations. The following is a non-exhaustive list:

- elaborating guidelines for public officials on how to fill in declaration forms;
- collection of declarations;
- control of the submission of declarations;
- storage of declarations;
- ensuring public access to declarations;
- verification of the contents of declarations;
- investigation of suspected violations, *e.g.* conflict of interest or criminal activity based on evidence in declarations;
- application of sanctions.

These functions could be broken down into more specific categories and additional functions could be identified. Meantime, not all of the systems are designed to ensure all of the above-listed functions, *e.g.* some do not ensure public access or do not verify contents (at least not proactively).

6.1. When forms are submitted

The most common time schedule for the submission of declarations is upon taking up duties (shortly before or shortly after, in some systems upon registration for candidacy), then annually, and finally upon leaving duties. Such a schedule allows one to follow the interests of a public official from the time they take up the position and the see this information updated at regular intervals. Also, for reasons of wealth monitoring, this schedule is the most expedient one for registering changes in assets.

Many countries have tailored versions of this schedule. What follows is a typical example, from the United States:

- First declaration within 30 days of assuming the position or within 5 days of the transmittal by the President to the Senate of the nomination of an individual.
- Annual filing on or before 15 May of the year following.
- On or before the thirtieth day after the termination of employment.[1]

In some systems declarations are also requested at a certain time after leaving the official duty. In such cases declarations serve as a tool to control the observance of post-employment rules.

Another time of submitting declarations can be during the office tenure when a major change in assets (or other previously declared information) or a new private interest occurs (for example, in the UK House of Commons and the House of Lords, Croatia, Estonia, Lithuania, Macedonia). The rationale here is that changes in important private interests can be relevant for the prevention of a conflict of interest immediately, and delayed disclosure would then be inadequate. Implementation of the requirement to submit a declaration upon a certain change can be difficult, however; for example, an increase in the value of an asset, *e.g.* an object of real estate, is often not unequivocally clear and fixed. Where the scope of

interests to be declared is determined in relation to the duties of a particular office – *i.e.* only those interests that can affect the discharge of that particular function – a new declaration/notification can be required when a public official changes positions.

It is unusual for declarations to be required at all of the above times. A very rare exception is Montenegro, where public officials are required to submit declarations (reports):

- within 15 days upon taking the public office;
- in the course of exercising the public function;
- once a year;
- in case of any change in data contained in the report in terms of the increase in property exceeding EUR 5 000, within 15 days from the day of such change;
- upon expiry of the term of office, within 15 days upon termination of the public function;
- one year from termination of the term of office.[2]

Other systems require less frequent submission. For example, in France members of parliament, ministers and civil servants submit declarations upon taking and leaving office, and then have the *option* to communicate any change in assets if they consider it relevant (The World Bank, 2010).

Some systems require a public statement of any interest that is relevant in the course of voting or any other official business. The rules of the UK House of Commons provide for two procedures – the registration of members' financial interests and declaration of members' interests. The registration is a duty to complete and submit a form covering a certain scope of registrable interests. This must be done within one month of election to the House, and then it is the responsibility of members to notify changes in their registrable interests within four weeks of each change occurring. The declaration is a requirement for any member to disclose "any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have" in debates, proceedings, transactions or communications (United Kingdom Government, 2009). The declaration is presented in oral or written form depending on the situation and at the time of the debate or other business in question. The scope of interests to be declared is broader than the scope of interests to be entered in the Register of Members' Financial Interests.

The members of the Irish House of Commons also have a duty to disclose a material interest in proceedings of the House in addition to annual statements of registrable interests. Other office holders and public servants face a similar requirement, *i.e.* to produce a statement of a material interest in a function to be performed (Standards in Public Office Commission, 2002, 2010). This is a well-grounded procedure for the control of conflicts of interest, particularly because it is never possible to rule out a situation where a new task or function is affected by a private interest, which is not covered by any of the generic categories of interests in standardised forms at the time of their submission.

Finally, some systems have a provision whereby controlling institutions can request a declaration when necessary, *e.g.* when there is a probe. Such provisions are in place, for example, in Albania.

6.2. Forms

An increasing number of countries allow or even require public officials to file electronic forms, although paper forms are still used in many systems. A major advantage of an electronic submission is that if the system is properly designed, information can be entered directly into a database (or if not directly, then information from submitted forms

A corrigendum has been issued for this page. See: http://www.oecd.org/dataoecd/48/40/48415816.pdf

can be automatically transferred to such a database by those who process the forms). However, in some countries the electronic submission amounts to nothing more than sending in a file in a word-processing or spreadsheet format with no possibility to transfer its contents to a database directly. Among the obstacles to introducing electronic submissions is the lack of, or legal non-recognition of, the electronic signature.

The table below provides an overview from countries' questionnaires about whether officials are to submit declarations in a paper or electronic format. In none of these countries is electronic submission the only available option. Note that in some countries forms are available in an electronic format but they must be printed and filled in on paper. In this table, the column "Submit a form electronically" covers both a possibility to enter data into a database directly and a simple submission of a file.

Table 6.1. **Paper and electronic submission**

	Submit a paper form	Submit a form electronically	Form available electronically
Albania	X		X
Azerbaijan	X		
Belarus	X		
Bosnia and Herzegovina	X	X	X
Bulgaria	X	X	X
Croatia	X		X
Estonia	X	X	X
Georgia	X		X
Kazakhstan	X	X	X
Kosovo	X		X
Kyrgyzstan	X		
Latvia	X	X	X
Lithuania	X	X	X
Macedonia	X		X
Montenegro	X	X	X
Romania	X		X
Slovenia	X		X
Tajikistan	X		
Ukraine	X		

Varied as these systems are, the use of information technologies is said to have a significant impact on the processing of declarations. Argentina has been mentioned as an example where the introduction of electronic public financial disclosure forms produced significant impacts (see Table 6.2).

Table 6.2. **The impact of new technology in processing financial disclosure forms (FDF): Argentina**

	1999	2000
Level of compliance	67%	98%
Estimated cost per FDF	USD 70	USD 8
Total number of FDF requested in public scrutiny	66	823
Number of FDFs requested in paper format/through internet	66/–	263/560
Profile of users: press/citizens	43/23	612/211
Conflict of interest files opened for examination	40	331

Source: Raigorodsky, N. (2002), "Can New Technologies Be A Solution? Conflicts of Interest Cases in Argentina", OECD. (Here reproduced from "Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences", OECD, 2003, p. 89.)

6.3. Collection

The collection of declarations is particularly important if the declarations system is to serve its purposes. A variety of arrangements exists for the collection of declarations. Many systems have a principal procedure of collection for ordinary public officials along with some special arrangements for specific categories of officials, *e.g.* heads of the agencies that are themselves responsible for the collection and verification of declarations, officials of security services, etc. In what follows, the main focus is on what could be called the default procedures. Thus, saying that in a Country X public officials submit declarations to a centralised anti-corruption agency does not exclude the possibility that there is a special procedure for the head of this agency, *e.g.* he/she can be requested to submit his/her statement to a parliamentary committee.

There are two principal methods for collection, which could be designated as the centralised and decentralised approaches. Some systems combine both – either different categories of officials are subject to separate systems, or the same declarations are collected at two points simultaneously, or declarations from decentralised points of collection are forwarded to a central body (through an intermediary). With the centralised approach, there is a single body that collects declarations from officials of several institutions or all covered public officials. With the decentralised system, public officials submit their declarations to the body where they work or the directly superior body.

There are pros and cons associated with each of the systems. While it is impossible to establish conclusively which system will produce what results, potential effects can be suggested. It is likely that a centralised system will favour development of a uniform handling of all declarations and possibly more professional skills in the use of disclosed data in order to carry out controls. This could be of particular importance in systems where awareness of the purpose and use of declarations does not extend throughout the state apparatus. Decentralised systems facilitate the use of declarations for the purposes of control by superior officials/bodies of declaring persons. However, in systems where internal control and awareness of managerial duties to prevent corruption are not well internalised, this positive effect might be lost.

With due caution, it is possible to suggest that decentralised systems are potentially more effective for the purpose of conflict of interest control, because direct superiors are better aware of an official's duties and how their private interests could interfere with such duties. On the other hand, centralised systems could be more effective for the purpose of wealth monitoring because, to that end, the audit of an individual's situation can be performed along the same lines regardless of the institution in which the official works. Moreover, wealth monitoring (audits, etc.) is a task that requires highly specific skills.

6.4. Verification

Another, equally important function is verification of the completeness and accuracy of statements. The primary reason for this function is not so much achievement of the purposes of the system *per se* (particularly if conflict of interest control rather than wealth monitoring is considered) but instead the maintenance of the declarations system's integrity. If public officials know that the data stated in the declarations will most likely never be verified, there is a risk that the system will accumulate a large amount of useless "information" with little connection to reality.

Selection for verification – Most systems of public officials' declarations cover so large a number of individuals that verification of all statements becomes an unrealistic aim. Therefore, if verification is undertaken at all, there must be some selection. As far as the criteria for selection are concerned, several options are available:

- *Ex officio verification, i.e.* verification of all statements submitted by officials occupying certain defined positions. Often these are the officials of the highest rank and their number is relatively small. A clear advantage is the special focus on the most senior officials, although this approach can miss risks connected to officials, who are formally considered lower-level, but can conduct high risk duties. Countries reporting the use of this option were Albania,[3] Bosnia and Herzegovina, Croatia, Estonia, Kosovo, Lithuania, Montenegro and Slovenia.[4]
- *Verification upon random selection* – Usually a pre-defined percentage or absolute number of statements are verified. This approach disperses the probability of verification evenly among covered officials and in principle could have a dissuasive effect unless the odds of being chosen for verification are too low. Meantime it is clear that randomness is insensitive to risks associated with particular officials. Countries reporting the use of this option were Albania, Belarus, Estonia, Latvia and Slovenia.[5]
- *Verification based on risk assessment* is a selection principle where the statements to be inspected are determined through risk analysis rather than, for example, automatically ex officio. The number of statements to be verified can vary according to circumstances or be firmly set as a pre-defined proportion or absolute number. If the risk assessment is adequate, the system can be very well targeted, although one must take into account that proper assessment represents a considerable administrative burden. Perhaps that is the reason why this approach is not common.
- *Verification based on risks identified in the disclosed information*, *e.g.* indications of major increases in wealth, significant differences between the declared assets and the legal sources of income, or major interests related to outside-office activities. This approach is similar to the previous one except that the risks are inferred solely from the contents of the declarations. This can be a way of running a risk-based verification system without overburdening it with comprehensive risk assessment of each official position. Countries reporting the use of this option were Albania, Belarus, Kazakhstan, Kosovo, Latvia, Lithuania, Macedonia, Slovenia and Tajikistan.[6]
- *Verifications based on indications about suspected violations/unexplained wealth, e.g.* upon the notice/request of an authorised public body. Here the declarations fulfil the role of "sleeping evidence" for situations where irregularities such as unexplained lavish lifestyles have been detected through other means. Use of this criterion can be well justified, but unless the declarations are then also otherwise verified, there is a risk of collecting piles of statements with unusable information. Officials could tend to think that filling the statement does not involve any responsibility in practice as long as they are not otherwise caught in any particular violation. In the questionnaires the following countries indicated use of this option: Albania, Belarus, Kosovo, Kyrgyzstan, Latvia, Montenegro and Tajikistan. In this category where verifications are based on indications about suspected violations fall also Bosnia and Herzegovina, Estonia, Kazakhstan, Macedonia, Lithuania, Romania, and Slovenia, which marked *inter alia* the option *due to late submission or non-submission of the statement* in the multiple-choice type of question.[9]
- *Verification upon receipt of a complaint by citizens* – this approach is similar to the previous one. Systems that allow for the verification procedure to be initiated based on a complaint can

differ regarding the standard of how well grounded the complaint must be, if the violation must be identified in the complaint, and the kind of violation requiring action. For example, in Romania such notifications shall indicate the evidence and information that it is based on as well as the sources where such can be requested. Plus the notifications must be dated and signed – *i.e.* apparently it cannot be anonymous (notifications that do not meet the said requirements are to be dismissed) (National Integrity Agency, 2009). The following countries reported applying this option: Bosnia and Herzegovina, Croatia, Estonia, Kazakhstan, Kosovo, Latvia, Lithuania, Macedonia, Montenegro, Romania, Slovenia, Tajikistan and Ukraine.[10]

Methods of verification – Verification of statements can involve varying scope and depth. The scope defines which of the items in declarations shall be verified. The depth relates to the level of verification, *e.g.* the *prima facie* correspondence of data to the actual situation vs. verification of the truthfulness beyond doubt:

- A *basis check* looks into whether the statement appears properly completed – if there are manifest mistakes, *i.e.* obviously incorrect entries or missing information.
- *Simple verification,* sometimes called arithmetic and logical checking – Verification is usually confined to the contents of the statement itself. The focus can be on whether the declared assets appear sufficiently accounted for by declared/legal sources of income or whether declared data appear to indicate a conflict of interest. It can also be checked as to whether the values of assets (if such are to be declared) appear stated adequately.
- *Audit* is used here as a general term covering verification that involves a recourse to data other than that in the statement. This primarily involves comparison of the stated data with other sources such as public registries and banks. An audit can also involve comparisons with the actual circumstances of the official, *e.g.* actual place of residence, lifestyle, etc. Along the way the auditor can request explanations from the official and gather oral testimony from other persons.

Albania is an example where stages of verification are clearly distinguished. See the overview below (Republic of Albania, 2009).

Box 6.1. **Overview of possible types of audit of declarations in Albania**[*]

- Preliminary processing:
  - ❖ Material mistakes.
  - ❖ Incorrect completion.
  - ❖ Mistaken responses.
- Arithmetic and logical checking:
  - ❖ Accuracy of the evaluation of the assets declared.
  - ❖ Accuracy of the financial sources declared.
  - ❖ Sufficiency of the coverage of assets with the declared sources.
  - ❖ Existence of conflicts of interest.
- Full audit:
  - ❖ Verification of the accuracy of the data included in the declaration form.
  - ❖ Justification of the declared assets with the source of their creation.
  - ❖ Identification and solution of conflicts of interest cases.

[*] Information is taken from a presentation by High Inspectorate of Declaration and Audit of Assets of Albania.

It appears that in practice one of the most common ways to verify declarations in former socialist countries is to compare the stated data with information held by various public registers and other public agencies. Such comparisons are useful for the identification of manifest discrepancies and ensuring congruence between official sources and declarations. A major limitation is the likely ineffectiveness against corrupt officials who would take serious care to make sure their formally registered data are coherent. The importance of the comparison of data from various official sources is shown clearly in the following description by Bulgaria:

> Checks based on Section 7 of the Public Disclosure of Senior Public Officials' Financial Interests Act are supported by "Register Verification" and direct access to the electronic data bases of the Ministry of Interior, the Ministry of Agriculture and Food, the Ministry of Transport, Property Register, Trade Register, Cadastre Agency and ID data base. The mechanism for checking the declarations on the property, income and expenses of senior public officials involves a comparison of the submitted information [with that], which is subject to declaration, disclosure or certification before state and municipal bodies, judicial authorities and other institutions. For carrying out of the verification, the President of the Bulgarian National Audit Office requests information from the state and municipal bodies, judicial authorities and other institutions, before which the declared information is subject to entry, announcement or certification. The bodies and institutions are obliged within two months after the acceptance of the request to submit to the Bulgarian National Audit Office the required information. The examination is carried out by matching the declared information with the received information. The examination ends up with an assessment of conformity when no difference between them has been found out […]. In the remaining cases the examination ends up with an assessment of inconformity
>
> […] the President of the Bulgarian National Audit Office releases on the Internet site of the Audit Office the assessment and a list of bodies and institutions failing to fulfill their obligation. In cases of non-filing of declarations by the persons and also when an assessment of inconformity has been issued, the President of the Bulgarian National Audit Office notifies the Executive Director of the National Revenues Office […] and the President of the State Agency for National Security. Within 14 days after the accomplishment of the examination or inspection, the Executive Director of the National Revenues Office sends the results to the President of the Bulgarian National Audit Office. Within 7 days from acceptance of the results from the National Revenues Agency, the President of the Bulgarian National Audit Office releases them on the Internet site of the Audit Office.

Some systems provide a possibility for submitters of declarations to rectify information in the statements. Such rectification may or may not be subject to a statutory deadline, for example, for formal deficiencies it is one month in Spain and 15 days in Catalonia (Oficina antifrau de Catalunya, 2009). An opportunity to rectify data is a way of making declaration systems user-friendlier for declarants and avoiding the application of sanctions for insignificant errors or omissions. Still, an overly liberal approach can compromise the effectiveness of declarations, because dishonest public officials can decide to present false data knowing that in case of suspicion they can always add corrections with impunity. This has been a problem in Latvia, where some time ago a number of officials declared major savings in cash. When suspicions were raised about the

actual existence of such savings and concerns voiced that the declared information is meant to construct a fake explanation for later enrichment, the public officials submitted corrections diminishing their alleged savings and the implementing agency – the State Revenue Service – generally accepted the corrections.

Box 6.2. **The Albanian private interest disclosure system**

The High Inspectorate of Declaration and Audit of Assets (HIDAA) is an independent institution, under parliamentary control, in charge of implementing the law on the prevention of conflicts of interest in the exercise of public functions in Albania. HIDAA became operational in 2003 and each year receives approximately 4 200 private interest declarations from elected officials and certain public officials (this number amounts to approximately 4% of the total number of people employed in the public sector). Apart from this yearly declaration, the Inspector General of HIDAA may require any natural or private person to submit "a declaration upon request" if it is needed for an ongoing investigation. Declarations are also submitted before the beginning and after the end of the mandate.

With approximately 45 people employed and a yearly budget of ALL 92 million, HIDAA is responsible for verifying the statements, for offering advice for filling the statements in properly, and for general preventive work. Guidelines on how to fill in statements are available online and the emphasis on the advisory role of HIDAA increases between January and March, when the statements are normally submitted.

Among others, the following categories of officials submit declaration of private interest: the president, members of parliament, the prime minister and his/her deputy, ministers and deputy ministers, civil servants at the high and middle management level, prosecutors, judges and bailiffs, as well as tax and customs officers that deal directly with the collection of the revenues. The statements also cover the spouse or partner of the public official. During verification, the adult children living in the same household with the public official may be requested to submit a declaration of private interest. The statements cover: immovable property, movable property registered in public registers, assets valuing more than USD 5 000, the value of shares, securities, and other capital participation, the value of liquidities, the amount in cash, in revolving accounts, in deposits, treasury bonds and loans, in national or foreign currency, debts to natural or legal persons, in national or foreign currency, personal yearly income from salary or participation on boards, commissions, or any other activity, incomes from licences and patents, and any other private interests. The statements are available to the public, though not online, with the exception of the two last pages, which contain confidential information that is only for the use of HIDAA.

Investigations may start:

1. upon receiving a complaint;
2. randomly;
3. due to important differences between the declared assets and the legal sources of income;
4. due to differences between the statement and the reality (lifestyle);
5. due to a full audit that is performed periodically for certain public positions.

For the purpose of the investigation, HIDAA has access to the following:

1. tax registers;
2. land register;
3. *Database of the Financial Intelligence Unit* (FIU);

Box 6.2. **The Albanian private interest disclosure system** *(cont.)*

4. motor vehicle register;
5. real estate register;
6. bank registers;
7. registers of the National Center for Business Registration;
8. registers of the National Center of Licences and Patents.

The following mechanisms are used by HIDAA to verify the statements:

1. Preliminary processing: possible mistakes, wrong answers and incorrect filling in of the statements are identified.
2. Arithmetic and logical checking with the purpose of verifying:
   - the accuracy of the evaluation of declared assets;
   - the accuracy of the financial sources declared;
   - the extent to which the declared sources of income may explain how assets were obtained;
   - the existence of conflicts of interest.
3. Full audit aims to:
   - verify the overall accuracy of data included in the declaration;
   - verify the extent to which assets were legally obtained;
   - identify and solve conflict of interest situations.

For 2008, the following data reflects the activity of HIDAA:

- approximately 4 200 declarations were submitted;
- 11 officials did not submit declarations;
- 11 officials were sanctioned for non-submission, 70 for late submission and 2 for false statements. In 66 cases, conflicts of interest or other violations of the law were identified.

Implementation of the above approaches to verification is contingent on the adequacy of the powers of the controlling agency. Among such important powers are the rights to:

- Access documents/records from other public authorities – tax, land/real estate, motor vehicle and other registers, FIU and personal ID databases, etc. However, the range of available access varies from country to country. Slovenia represents an example where the controlling body – the Commission for the Prevention of Corruption – has even concluded agreements with other public bodies – *e.g.* the General Tax Directorate of the Ministry of Finance, according to which information about public officials is to be submitted to the commission in a swift manner.[11] Although the inability to access data from various public registers is not a very often-mentioned problem for agencies implementing declaration systems, such establishment of co-operation can be viewed as an example of good practice.
- Access data from banks (see Table 6.3) and other commercial entities. As seen from the table, in a number of former socialist countries, controlling institutions have direct access to bank information regarding public officials, but at the same time many systems do not provide such access or provide it upon court order only. Varied as the systems are, for verification purposes, data about financial means in the bank accounts of public officials are clearly at least as important as data from, for example, tax registers.

- Request explanations from the declaring public official or other persons.
- Request that verification be carried out by other institutions, *e.g.* the tax administration (for example, see the above quote from Bulgaria).
- Request an expert's opinion.[12]

Table 6.3. **Access to bank information (selected countries)**

Country	Upon direct request	Upon court order	No access
Albania	X		
Belarus			X
Bulgaria			X
Estonia	X		
Georgia		X	
Kyrgyzstan			X
Latvia		X	
Lithuania	X		
Macedonia	X		
Romania	X		
Ukraine	X		

6.5. Archiving

In virtually all systems submitted statements are stored for some period. It is usual to define the number of years that each statement is to be kept.[13] Among the countries examined in this report, there are wide variations in the archiving period – from four years in Bosnia and Herzegovina to 99 years for a portion of declarations in Lithuania, with 10- or 15-year periods also being common. In some systems the period of time is related to considerations such as the statute of limitations for certain offences (for example, in Kazakhstan declarations are kept for five years, which is the statute of limitation foreseen in the Tax Code). Another approach is to define the period of record keeping in relation to the public official's tenure, *e.g.* for a period after the resignation of the official. (For example, in Catalonia the personal data of senior officials are cancelled three months after they have left their posts.) It can also be that the term of storage is not yet determined, for example, in Croatia.

The end of the storage period can mean that the statements are destroyed or they can be transferred from the site of deposit to some archive. Estonia represents an example where the archiving practice varies according to the category of public official. Declarations of political/senior officials are deposited for five years and then archived. Declarations of other officials are also deposited for five years but then can be either destroyed or granted archival value.

Notes

1. The Ethics in Government Act, Section 101(a), 101(b)(1), 101(d), 101(e).
2. The Law on Preventing Conflict of Interest in Exercising Public Functions, 2008, Article 19.
3. Answer to the questionnaire: *Another way to start the full audit is because of function, which means that all the public officials, depending on their function/public duty they exercise, have to undergo the full audit every two, three or four years. For instance, members of the parliament undergo the audit every 4 years, judges and prosecutors every 3 years.*
4. The relevant multiple choice answer was: *Ex-officio (all statements or a part of them should be verified)*.

5. The relevant multiple choice answer was: *Randomly*.
6. The relevant multiple choice answers were:
7. *Due to important differences between the declared assets and the legal sources of income;*
8. *Due to other risk factors such as major fluctuations in wealth, major private business activity.*
9. The relevant multiple choice answers were:
   - *Due to differences between the statement and the reality (lifestyle)*.
   - *Due to late submission or non-submission of the statement.*
10. The relevant multiple choice answer was: *Upon receiving a complaint*.
11. Addendum to the Compliance Report on Slovenia adopted by GRECO at its 38th Plenary Meeting (Strasbourg, 9-13 June 2008), p. 6, *www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2006)1_Add_Slovenia_EN.pdf*.
12. For example, in Romania an expert's opinion can be requested on whether the stated value of an asset is realistic, although in such a case the consent of the verified person is required. Source: National Integrity Agency (2009), "Verification of Asset Declarations and Imposing Sanctions", presentation at the seminar "Asset Declarations for Public Officials as a Tool against Corruption" in Belgrade, Serbia, 15-16 October.
13. According to questionnaires, records are kept for four years in Bosnia and Herzegovina, five years in Kazakhstan, six years in Kyrgyzstan, ten years in Albania, Bulgaria, Macedonia, and Montenegro, 15 years in Kosovo and Slovenia, 50 years in Latvia, 75 years in Belarus and Georgia and, depending on which institution collects declarations, 10 or 99 years in Lithuania.

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PART II

Chapter 7

Liability and Sanctions

7.1. Defined violations

A failure to fulfil duties related to declarations can fall within either of two broad categories. One concerns the duty to submit a declaration; the other concerns what information is provided in the declaration:

- Violations related to the duty to submit declarations:
  - ❖ failure to submit a declaration;
  - ❖ late submission of a declaration.
- Violations related to the information provided:
  - ❖ incomplete statement of required information;
  - ❖ inadvertently false statement;
  - ❖ intentionally false statement.

Most countries with reasonably developed declaration systems that are backed by legal sanctions (indeed, not all systems are) define offences in a way that covers all of the above. According to a study by The World Bank and the United Nations Office of Drugs and Crime, "60-90% of [74 sample] countries specify some form of sanction for filing violations. A sanction for failure to file is present in over 80% of countries with asset declarations, while false declarations are penalized in approximately 65-75% of systems" (Burdescu *et al.*, 2009, p. 38).

Eleven out of 20 countries examined in this report indicated that there were sanctions foreseen for all violations, including non-submission, late submission, incomplete statement and false statement. These are Albania, Azerbaijan, Belarus, Croatia, Estonia, Georgia, Kazakhstan, Latvia, Macedonia, Montenegro and Ukraine.

Where countries do differ is whether the above-mentioned offences are defined separately and relate specifically to asset declarations, or whether some of them are merged – *e.g.* in some systems there may be no differentiation between incomplete and false statements or inadvertently and intentionally false statements generally applicable to public officials.

A few countries, for example Bulgaria, impose sanctions for non-submission or late submission only. Bosnia and Herzegovina is a rare case in that its system, which is governed by the Law on Conflict of Interest in Government Institutions, does not provide for sanctions (there is another system governed by the Election Law and applying to elected officials). Nor are sanctions provided for in some other systems where the submission of declarations is voluntary, as for members of parliament and government ministers in Norway (The World Bank, 2010).

Definitions of failures regarding the administration of declarations are rare. Most countries would define as a violation unauthorised disclosure of confidential data. This is relevant in systems where all or a part of the information provided in declarations is confidential. On the other hand, a failure to disclose information that the public has the right to access can be defined as a violation. However, such violations would normally concern the handling of information in general rather than actions of public officials.

7.2. Character of sanctions

Different legal systems may provide varying types of legal responsibility. Therefore the classification below (criminal, administrative, disciplinary and civil) that is used in this chapter can only be seen as generally applying with qualifications, *e.g.* in some countries there may be no obvious differentiation between civil and administrative liability.

Criminal sanctions – Declarations of public officials are mostly perceived as a means to prevent individuals from engaging in corrupt or otherwise illegal activity. This is probably a reason why offences related to the filling in and submission of declarations are in themselves often not punishable under criminal law.

The United States is rather exceptional in that the law explicitly foresees a fine, imprisonment for not more than one year, or both for a person who knowingly and wilfully falsifies any information that that person is required to report, according to the Ethics in Government Act (a fine only is foreseen for a person who knowingly and wilfully fails to file or report any such information).[1]

However, according to an earlier study, criminal liability for violations related to the officials' declarations is also provided for in a few European countries. In Italy members of government can be criminally liable for non-submission of a declaration of interests and for providing false information. In Poland and the United Kingdom as well, criminal sanctions can be applied to some categories of public officials.[2]

Based on the findings of this study, it appears that the countries of Central and Eastern Europe and the former Soviet Union usually do not criminalise specific offences related to duties to fill in and submit public officials' declarations. However, a few countries such as Georgia stated that there is criminal liability for incomplete or false statements. Some other countries criminalise the intentional provision of any false information to the authorities, and technically such an offence would also cover submission of a public official's declaration. Closer scrutiny would be needed to see if such provisions are used against officials who submit false statements.

Administrative sanctions – This type of sanction is probably the most common. Sanctions can be included in the laws governing the declarations, or alternatively, administrative offences can be codified in a single piece of legislation. The most common administrative sanction is a fine.

Disciplinary sanctions – Disciplinary sanctions are typical for public officials who serve in the civil service (this would normally not include elected/political officials). Disciplinary violations are often codified in a single legislative act, *e.g.* a law on civil service. Of course, these may or may not cover infringements of duties related to declarations. Available sanctions can include a reprimand, reduction in pay, dismissal, etc. In case a centralised agency controls declarations, it can be authorised to propose disciplinary sanctions to be applied by the superior of the public official in question.

Civil liability – Civil liability is not common where the violation is the failure to submit a declaration or provision of incorrect data. In most cases, when a public official has failed to fulfil his/her duties regarding the filling in and/or submission of a declaration, it is not clear that such damage has been done to the public interest as to warrant compensation. In Latvia, civil procedure for damages can be initiated if a public official earns income in a way that is incompatible with their official position. However, the substance of the violation in such a case is not a breach of declaration requirements.

In the United States, the Attorney General may bring a civil action against an individual who knowingly and wilfully falsifies or who knowingly and wilfully fails to file or report any information that such individual is required to report pursuant to Section 102 of the Ethics in Government Act. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed USD 50 000.

Dismissal/suspension, wage reduction, etc. – This category covers situations where the sanction is not a penalty imposed through any criminal or disciplinary procedure but rather operates as a direct consequence of a violation. Non-submission of a declaration is the most common breach that carries this kind of consequence. For example in France, in the event of non-submission of the personal declaration of assets, the elected official become ineligible to exercise duties for one year and the appointment of the civil servant is rendered void (Dufour, 2008). Dismissal is also among the available sanctions in the Russian Federation.[3]

Where there is a centralised controlling official/body, at least two implementation options are possible in principle. It could automatically suspend or dismiss an official who has failed to submit a declaration by a certain deadline (usually an extension following a warning). Often, however, the controlling official/body would order or propose the superior official/body of the person in question to suspend or dismiss him/her. An example of the latter mechanism is in Albania: there, suspension from duty for non-compliance is carried out by the institution where the public official holds his/her position. The High Inspectorate of Declaration and Audit only proposes the measure. A similar procedure is found in Kosovo. Such a mechanism is *prima facie* more prone to ineffectiveness in systems where the authority of the controlling official/body is questioned or the rule of law is weak.

It is impossible to review here all of the possible varieties of sanctions found in particular countries. In addition to those typical of many systems, some more rare kinds of provisions also exist. To mention but one example, in Lithuania public officials who have been found in violation of the provisions of the law "On the Adjustment of Public and Private Interests in the Public Service" cannot receive bonuses or be appointed to a higher position in a year's time from detection of the violation. If they have left the public service, they cannot join it again for three years from detection of the violation. Kosovo and Slovenia apply wage reduction as a direct consequence of non-compliance (rather than as just one of the range of available administrative or disciplinary sanctions).

Other/soft measures – In a few countries, there are no legal sanctions and no strictly defined legal consequences for violations, but rather soft measures to achieve compliance. Often this approach is used regarding elected officials in political posts where the use of other types of sanctions can be constitutionally impossible. Just as inspection of declarations is sometimes portrayed as the task of third parties such as the media and NGOs, so the sanction can be limited to whatever the public reaction is to knowledge about a violation. An example of such a sanction is a warning, public announcement, publication of the facts of violation, or apology from a wrongdoer.

For example, in Sweden it is announced at the plenary meeting (*kammarsammanträde*) if a member of parliament has failed to submit information to the register.[4] In the UK House of Commons, if the duty to declare interests has not been fulfilled, an apology to the House by means of a point of order is required (United Kingdom Government, 2009). In case of breach of the Rules of Conduct, a member of the German Bundestag can face a warning (in case of minor violation or negligence, *e.g.* a missed deadline for disclosure), publication of a notice about the violation, or an administrative fine.[5] Soft sanctions were mentioned as an option by Bulgaria, Croatia, Kosovo, Montenegro and Lithuania.

7.3. Practice of application

During the early stages of introduction of declarations for public officials, some countries experience widespread non-compliance with the duty to fill in and submit declarations and a great proportion of incorrectly filled forms. A couple of telling although by no means exclusive examples are Latvia and Kosovo. In 1997 when Latvian public officials' declarations were verified properly for the first time, it was found that 19 out of 100 members of parliament had omissions or errors in their declaration.[6] In Kosovo 2007 was the first year that senior public officials declared their assets. The implementation of declarations commenced with difficulty, because only 67.07% of senior public officials submitted them by the legally established deadline. Then a new deadline was set, by which 94.4% submitted. In 2007 the proportion of incorrectly filled forms was 49%;[7] in 2008 this figure decreased to 37.4%.

Over time, most countries achieve reasonably high rates of compliance. Of the countries examined in this report, none had an overall non-submission rate of 10% or more, and for most the rate was considerably lower.[8] Thus massive ignorance of the duty to submit declarations can be considered a phenomenon characteristic of the first years of running a declarations system.

Even then a further concern is how strictly public officials adhere to deadlines for submission and how accurate the submitted information is. Here a useful indicator is the proportion of covered officials who are subject to formal sanctions. To be sure, this indicator reflects not only the level of compliance and accuracy of submissions but also the activity of controlling institutions and availability of sanctions in the law. Thus the fact that very few sanctions are applied in a country does not necessarily mean that officials observe the rules strictly – instead it can be a sign of poor enforcement.

In some countries, the running of public officials' declaration systems is accompanied by a vast application of sanctions. Of the countries examined in this report, Estonia stands out in this regard. In 2007, 30 245 Estonian public officials submitted declarations. In the same period, 454 persons were sanctioned for non-submission, 1 209 for late submission, and 1 022 for other violations of declaration requirements.

Table 7.1. **Sanction dependency of declaration systems**

Year 2008 unless stated otherwise, selected countries

Country	How many should fill in the statement?	Sanctioned for non-submission	Sanctioned for late submission	Sanctioned for false statement	Sanctioned for other violations	Percentage sanctioned *vis-à-vis* all covered
Albania	App. 4 200	11	70	2	66	3.5
Bosnia and Herzegovina	App. 3 300[1]	32				0.97
Bulgaria	7 073	55				0.8
Estonia (2007)	App. 30 000	454	1 209	Missing data	1 022	9.0
Georgia (2007)	2 000	121[2]				6.0
Kazakhstan	App. 470 000	295				0.06
Kosovo (2009)	800	14[3]				1.75
Kyrgyzstan	App. 1 400	12[4]				0.9
Latvia	70 800		224	33	21	0.39
Macedonia	App. 3 000	33				1.1

1. Only within the system for elected officials governed by the Election Law.
2. This figure refers to non-submission, not sanctions applied.
3. This figure refers to non-submission, not sanctions applied.
4. This figure refers to non-submission; no sanctions were applied.

A high proportion of sanctioned officials indirectly indicates that the running of the system may involve very high costs. The table below summarises available data about the number of persons sanctioned for particular types of violations, expressed in absolute numbers and as a percentage of all officials who should fill in the statements (only countries where data were comparable and sufficient are listed). It is apparent that the sanction dependency of various systems varies widely.

Notes

1. The Ethics in Government Act, Section 104(a)(2).
2. "In Poland, local public officials can be sanctioned with up to three years in prison for false declaration of interests. In the UK, criminal sanctions are attached to non-disclosure of interest by members of the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly. Such sanctions continue to apply for a transitional period to non-disclosure of pecuniary interests by members of local authorities and for failure to withdraw from the local authority's deliberations." – M.V. Mendieta (2008), "Conflict of Interest Policies and Practices in Nine EU Member States", *Corruption and Democracy*, Council of Europe Publishing, pp. 98-99.
3. The Federal Law "On Counteraction to Corruption" (Федеральный закон О противодействии коррупции), Section 8, Clause 8.
4. The Law on the Registration of the Undertakings and Economic Interests of the Members of Riksdag [*Lag (1996:810) om registrering av riksdagsledamöters åtaganden och ekonomiska intressen*].
5. Rules of Conduct for Members of the German Bundestag (*Verhaltensregeln für Mitglieder des Deutchen Bundestages*). Article 8.
6. The Public Prosecutor General's Office – A. Ivanovskis, public prosecutor of the Department for the Protection of the State and Individuals' Rights: Report on verification results about the correspondence of the activities of the members of the 6th Saeima of the Republic of Latvia with the requirements of the Corruption Prevention Law. (*LR Ģenerālprokuratūra. Ivanovskis, A., Personu un valsts tiesību aizsardzības departamenta prokurors. Pārskats par pārbaudes rezultātiem par LR 6. Saeimas deputātu rīcības atbilstību Korupcijas novērðanas likuma prasībām.*)
7. Annual Report of the Kosovo Anti-corruption Agency, 1 January-31 December 2007, pp. 15-16.
8. A few questionnaires were not sufficiently clear on this point.

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PART II

Chapter 8

Public Disclosure

In this study, the term "public disclosure" is used when information is provided to regular citizens, whereas simple "disclosure" applies to cases where information is provided to competent authorities only. The issue of the admissibility of public disclosure is highly contested; however, there is a growing trend towards greater public disclosure of information about public officials. It is not the intention here to explore all of the legal concerns related to the making of information about a person's income and assets available to the public. Suffice it to say that both among the Western European and former socialist countries there is a great variety of approaches to that issue.

Pointing to an example, an earlier SIGMA paper mentioned the serious weight given to privacy concerns in the United Kingdom, where – according to a text already quoted earlier – there is "the reluctance to require the disclosure of personal and family income and assets and the publication of such declarations. The UK has no general requirements to declare income and assets, and the reason for this is to avoid the invasion of privacy that these requirements imply" (OECD/SIGMA, 2007). Such reluctance is by no means peculiar to that country alone.

On the other hand there are examples of extremely broad public disclosure, as in Norway where the general income and property level of all taxpayers rather than just public officials is available and searchable on the Internet.[1]

8.1. Scale of disclosure

Full public disclosure means that all information provided in declarations is made available for open public scrutiny. This is more often characteristic of declarations/registers that cover a relatively limited scope of information and a smaller circle of higher officials. An example is the case of registration of employment and economic interests of members of parliament and ministers in Denmark.[2] Full information also appears to be publicly disclosed in countries such as Bosnia and Herzegovina for elected officials,[3] Montenegro[4] and Romania. Also in the UK parliament, the Register of Members' Financial Interests (as well as that of Interests of Members' Secretaries and Research Assistants) and the Register of Lords' Interests (as well as that of Interests of Lords Members' Staff) are available to the public.

Limited disclosure – There are major debates in a number of countries over how public disclosure of income and assets affects the right to privacy. In most cases the issue is finding the right balance between public disclosure and protection of privacy; in Germany the controversy ended up in the hands of the Federal Constitutional Court. No international standard contains an obligation to ensure public disclosure of declared information, and probably there never will be a universal standard prescribing the exact balance between disclosure and privacy. Thus legal and social traditions of particular countries remain a key factor in determining the most appropriate policy.

In countries where extensive data are required, disclosure to the public is often limited – *i.e.* certain categories of data are exempt from disclosure. This is for example the case in Latvia and Estonia, where data is published without any personal identification code, address or data concerning close relatives and close relatives by marriage (see questionnaire). Similar restrictions apply in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kyrgyzstan, Lithuania and Macedonia. In many of these cases personal data protection laws determine the limits of public disclosure.

Examples of this kind are also found in Western Europe. For example, information submitted by members of the German Bundestag about their income is published in a simplified form only (one of three pre-defined levels of income is indicated rather than exact amounts). In Portugal the public have free access to asset declarations, but that access may become limited to those with a relevant motive (*e.g.* rights and interests of third parties) pending a decision of the Court.[5]

Another way of limiting public disclosure is to define certain categories of public officials whose information shall not be available to the public, as is the case for officials of security services in Latvia and civil servants in Macedonia. Exempt categories of officials are also defined in the United States.[6] Alternatively, certain categories of public officials can be defined whose declarations are published, which is the case with certain senior officials in Estonia, Lithuania and Ukraine. Regarding other officials in Lithuania, their data can be published upon the motivated decision of the Chief Official Ethics Commission. In countries examined in this report, it appears that the public disclosure of personal data of individuals related to public officials (relatives, etc.) is required rarely if at all.[7]

Access to verification results – A little-discussed detail concerns public disclosure of verification/audit results about the income and wealth of public officials. At first glance, it appears only logical that such results be publicly disclosed if the initial declaration (which is then being verified) containing such data was already submitted for public scrutiny. Nevertheless, the Latvian example shows that that is not necessarily the case. Although income and property data from public officials' declarations are freely available online, in cases of doubt their audit has been carried out according to procedures established for any physical person/taxpayer. According to the tax legislation, the results of such audits are confidential and the public can be left with the deficient information provided in the public official's declaration. No data are available as to whether such problems have been encountered in other countries as well. However, this remains a relevant detail to be checked when assessing the transparency of any public officials' declaration system.

Restricted data – Some countries still adhere to the principle of confidentiality. For example, the status of restricted access is applied to information declared in Belarus, Kazakhstan and Kosovo. In Slovenia as well, the law declares that data obtained during supervision of the financial situation of functionaries and other data determined by the Commission for the Prevention of Corruption must be treated as confidential. Examples of restricted approach are also found in Western Europe. In France, the declarations of ministers, members of parliament and civil servants are not publicly disclosed (The World Bank, 2010).

8.2. Conditions of disclosure

Proactive publication – In many cases where declared information is disclosed to the public, it is published either in paper format, *e.g.* an official bulletin, or – increasingly – on the Internet. Accordingly, no conditions are imposed on access to this information (an overview of the forms of disclosure based on questionnaires is provided in Table 8.1).

Table 8.1. **Form of public disclosure**

	Paper publication	Electronic publication	Access to individual files upon request
Albania			X
Azerbaijan		No public disclosure	
Belarus		No public disclosure (except for election candidates)	
Bosnia and Herzegovina	X*		X*
Bulgaria		X	
Croatia		Missing data	
Estonia		X (Certain senior officials)	
Georgia		X	
Kazakhstan		No public disclosure (information about senior officials and election candidates can be disclosed under certain conditions)	
Kosovo		No public disclosure	
Kyrgyzstan		X	
Latvia		X	
Lithuania	X (Certain senior officials and politicians)	X (Certain senior officials and politicians)	
Macedonia		X (Except civil servants)	
Montenegro		X	
Romania		X	X
Slovenia		No public disclosure	
Tajikistan		No public disclosure	
Ukraine	X (Certain senior officials)		

* Bosnia and Herzegovina runs two systems of declarations, each with a different form of public disclosure.
Public disclosure on the Internet is also used in a number of Western European countries – Denmark, Germany, the United Kingdom, etc.

On demand from citizens/media – In some countries such information is available on demand only. Access upon demand may be unconditional or bound to specific conditions. Some conditions may govern the procedure of access, *e.g.* the requirement to identify the requester so it is clear who had an interest in obtaining the data, and the duty to pay a fee in order to recover administrative costs. Others are meant to limit certain uses of the information, *e.g.* the requirement to publish the data obtained in full only or the prohibition to use the information, for example, for commercial purposes (the United States) or in order to introduce it as evidence in court (Albania). Most conditions of this kind are imposed in order to protect certain legitimate interests of the declarant. However, it appears that overall systems, which provide for public disclosure of officials' declarations, tend to refrain from the imposition of conditions.

In the United States the public accessibility of public officials' declarations (reports) is bound with following rules/conditions:

- inspection of reports is permitted or copies furnished to any person requesting;
- a reasonable fee may be required to be paid to recover the cost of reproduction or mailing;

- a report may not be made available to any person except upon written application by such person, stating:
  - ❖ their name, occupation and address;
  - ❖ the name and address of any other person or organisation on whose behalf the inspection or copy is requested;
  - ❖ that the person is aware of the prohibitions on the obtaining or use of the report.
- Any application shall be made available to the public throughout the period during which the report is made available to the public.[8]

Further conditions apply to the use of reports – *i.e.* they shall not be used for any unlawful purpose; for any commercial purpose, other than by news and communications media for dissemination to the general public; for determining or establishing the credit rating of any individual; or for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.[9]

Another example of a conditional approach is mass media access to information declared by judges in the Russian Federation. All-Russian mass media can request information about judges' income and property. Such information shall be released only if the application indicates the purpose of publishing the data as well as acknowledging the obligation to publish the information in full and in the following issue of the publication (or no later than in seven days). Moreover, if it is found that the publication can exert pressure on the judge in relation to a concrete case, or can lead to an infringement on the judge's independence, the application shall be turned down.[10]

8.3. Form of public disclosure

Public disclosure of declarations can take different forms. They can be published in electronic format (paper format appears to be increasingly rare). In some countries only the declarations of a certain circle of senior officials are published online. Moreover, access can be provided to the actual declaration files, be they paper or electronic. The summary of country systems based on questionnaire results is provided below.

8.4. Provision of information to other officials and public agencies

In systems where the declared information is publicly disclosed (in full or large part), access for other public agencies usually does not represent an issue of concern. However, in such cases it can be important for these other agencies to access information from parts of statements that are not disclosed.

As far as restricted information is concerned, access can be granted to a narrower or broader circle of authorities. These can be law enforcement agencies, public prosecutor's offices, courts, tax authorities, etc. More rarely, such access is also provided for supreme political officials such as the prime minister in Latvia.

Access can be subject to further conditions – for example, it can be granted in order to investigate tax violations only, as is the case in Kazakhstan regarding requests from law enforcement agencies and courts.[11] It can also be granted to law enforcement agencies on condition that a criminal case has been opened (for example in Kyrgyzstan). Otherwise it can be required that requesters simply provide grounds for their request (for example in Latvia).

Where declarations or parts of the declared information are confidential, the superiors of public officials are not usually included among the persons who can access the information (save for systems where the superiors themselves collect and store the data). While this is certainly a way to limit infringement of the privacy of declaring officials, some of the usefulness of declarations to monitor conflicts of interest is lost. Otherwise it appears that there are few real barriers when it comes to investigating bodies accessing any and all data contained in public officials' declarations.

8.5. Protection of information on public officials

While the general trend worldwide seems to be increasing public disclosure of public officials' declarations, some countries maintain arrangements whereby the privacy and/or security of public officials are protected. This study does not enter into detailed analysis of how privacy considerations are to be weighed against the public's right to access information. However, privacy and security concerns related to public disclosure of information about officials or their property represent two major arguments against public disclosure. Therefore, even some countries that allow for public disclosure have protection of some sort for officials. Apart from the restricted scope of information subject to disclosure (described above), two main kinds of protection are found:

- *The consent of the public official in question* – At least formally, this is a strong protection because the information cannot be released to the public against the will of the official. However, in some countries while the law may say that disclosure to the general public is voluntary upon consent of the official, the culture of openness may so strong that the disclosure is *de facto* mandatory or else the official would face social indignation.[12] In Estonia this principle is embedded in the provision that public officials are allowed to disclose the contents of their declarations publicly if they wish to do so (this concerns only those officials whose declaration are not ex officio publicly disclosed).
- *Requirement to identify the requester* – This much weaker protection, mentioned above in Section 8.2, aims to gather information about the person(s) requesting the data (for example in the United States). In principle this should prevent people from abusing the data thus obtained.
- *Ad hoc assessment* – It is not common to provide a procedure for *ad hoc* assessment of security concerns related to particular officials. An example here is the US Ethics in Government Act, which does not require the immediate and unconditional availability of reports filed by judicial employees or judicial officers if a finding is made by the Judicial Conference, in consultation with the US Marshals Service, that release of personal and sensitive information could endanger that individual or a family member of that individual.[13] Apparently, due to the potentially complicated and ambiguous task of such assessment, such provisions are found in few countries. A somewhat similar rule regarding judges is found in the Russian Federation (see Section 8.2).

Notes

1. Tax Lists 2008 (*Skattelister 2008*), *http://skattelister.aftenposten.no/skattelister/start.htm*.
2. Regulations on the Voluntary Registration of the Engagements and Economic Interests of the Members of Folketing (*Regler om frivillig registrering af folketingsmedlemmernes hverv og øko-nomiske interesser*), *www.ft.dk/Folketinget/Medlemmer/findMedlem/6Hverv.aspx*.
3. Declarations governed by the Election Law.

4. The Law on Preventing Conflict of Interest in Exercising Public Functions, Article 21.
5. "Key Aspects of Asset Declarations in Portugal", presentation at the seminar "Asset Declarations for Public Officials as a Tool against Corruption" in Belgrade, Serbia, 15-16 October 2009. Note that there are also declarations of interest in Portugal, for which different rules apply.
6. The Ethics in Government Act, Section 105(a).
7. The situation seems to be different on the global scale. According to a study by The World Bank and the United Nations Office of Drugs and Crime that covered 74 countries selected from most parts of the world, the declarations of spouses and children are publicly available in 40% of countries with a declaration framework; those of civil servants in 51% of such countries; those of MPs in 51%; those of ministers in 56%; and those of heads of state in 63%. See Burdescu *et al.*, 2009, p. 43.
8. The Ethics in Government Act, Section 105(b).
9. The Ethics in Government Act, Section 105(c).
10. The Federal Law "On Amending Particular Legislative Acts of the Russian Federation due to the Adoption of the Federal Law 'On Counteraction to Corruption'" (Федеральный закон "О внесении изменений в отдельные законодательные акты Российской Федерации в связи с принятием Федерального закона 'О противодействии коррупции'"), 25 December 2008, Section 1, Clause 12.
11. Kazakhstan's answer to the questionnaire: Declarations are available only upon request by the following bodies:
    1. law enforcement bodies within their competence regarding the fulfillment of tax obligations by persons who committed tax-related violations and crimes in order to investigate their actions;
    2. courts in the review of cases about the determination of the tax duty of a taxpayer or liability for tax-related violations and crimes;
    3. court bailiffs within their legally-established competence when enforcing executive orders with court approval and executive orders issued based on court decisions that are in force – without court approval;
    4. the authorized state body for financial monitoring;
    5. tax or law-enforcement bodies of other countries, international organisations in accordance with international treaties (agreements) about mutual co-operation between tax and law-enforcement bodies where the Republic of Kazakhstan is a party as well as agreements that the Republic of Kazakhstan has concluded with international organisations.
12. Only relatively recently in Macedonia, the law allowed the State Anti-Corruption Commission to publish the asset declarations without a letter signed by the person concerned authorising the Commission to do so. See: The Former Yugoslav Republic of Macedonia 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2008-2009 {COM(2008)674}, *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2695:FIN:EN:PDF*.
13. Section 105(b)(3)(A).

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PART II

Chapter 9

Evaluation of the Declaration Systems

A corrigendum has been issued for this page. See: http://www.oecd.org/dataoecd/48/40/48415816.pdf

9.1. Cost

It is axiomatic that running a public officials' declaration system represents an administrative burden and involves costs. While these costs are typically mentioned among the disadvantages of the system (Messick, 2009, p. 7), more seldom is it said just *how* costly the system is. The questionnaire data show that few countries know the cost of implementing the declaration system – that of completing and submitting the statements, or those incurred by the controlling institutions. This is true especially often in those cases where the implementing unit in charge of declarations is a part of a larger agency, *e.g.* the tax administration. The situation seems to confirm the perception that public officials' declarations have been introduced mostly as a reaction to various political concerns, rather than based on cost/benefit considerations.

The table below shows information about countries that provided data about resources at the disposal of units/institutions occupied exclusively or largely with management of the declarations system. Due to the varying size of the population, public sector and circle of covered officials, as well as different levels of economic development, direct comparisons of expenses are of limited value. Therefore the financial data are presented as a share of the overall budget expenditure. They are approximate only because in several countries these resources are used by the respective institutions for other functions as well.

Table 9.1. **Financial resources of the implementing unit/institution (selected countries)**

Country (approx. number of officials to fill in the statement)	Resources of the implementing unit/institution	Budget expenditure (2008 est.)	Resources as share of budget expenditure (%)
Albania (4 200)	ALL 92 million (approx. USD 1 156 563)	USD 4 175 000 000	0.028
Estonia (330)[1]	EUR 41 903 (2008) (approx. USD 61 378, for high officials only)	USD 9 488 000 000	0.0006
Georgia (2 000)	GEL 359 000 (2008) (approx. USD 244 217)	USD 5 345 000 000	0.004
Latvia (70 800)	LVL 641 672 (approx. USD 1 364 969)	USD 13 410 000 000	0.01
Lithuania (approx. 11 000)[2]	LTL 1 399 000 (total budget of the Chief Official Ethics Commission is approx. USD 601 694; it deals with declarations of selected categories of officials and co-ordinates the collection of an additional 150 000 declarations)	USD 16 660 000 000	0.004
Romania (300 000)	EUR 2 600 000 (total budget of the National Integrity Agency is approx. USD 3 808 407)	USD 74 990 000 000	0.005

1. High officials only.
2. Only those who submit their declarations to the Chief Official Ethics Commission.

Source: For budget expenditure: CIA Factbook. Exchange rates from the CIA Factbook for the year 2008: ALL per USD – 79.546, EUR per USD – 0.6827, GEL per USD – 1.47, LVL per USD – 0.4701, LTL per USD – 2.3251.

A corrigendum has been issued for this page. See: http://www.oecd.org/dataoecd/48/40/48415816.pdf

It is not surprising that the costs vary greatly. The annual budget of the Albanian High Inspectorate of Declaration and Audit of Assets is approximately ALL 92 million (approx. USD 1 156 563 in 2008), apparently one of the most expensive systems given the country's overall estimated budget expenditure of USD 4.175 billion in 2008.[1] The budget of the Inspectorate thus constitutes about 0.028% of the total budget expenditure. The cost is also rather high in Latvia (about 0.01% of the total budget expenditure), which can be explained partly by the vast scope of the Latvian system in terms of the officials covered.

Another measure that gives an idea of the administrative burden imposed by the declaration system is the number of staff employed for related tasks. Again, due to the different size of countries and number of covered officials, direct comparisons of the employed staff numbers represent little value. The table below represents data from questionnaires regarding the number of public officials who should file statements and the number of persons responsible for verification of declarations. Not all countries indicated clearly the latter numbers. Therefore one should view these figures with caution, realising that not all of the staff may be occupied exclusively with the declarations, and in some systems additional staff time from other institutions is involved. In order to allow for a meaningful cross-national comparison, the data are summarised as a ratio of responsible persons per 1 000 covered officials.

Table 9.2. **Number of covered officials and staff responsible for verification (selected countries)**

Country	Number of public officials who should file statements	Number of persons responsible for verification of declarations	No. of responsible persons per 1 000 covered officials
Albania	Approx. 4 200	20	2.4
Bosnia and Herzegovina	Approx. 6 000	3	0.5
Bulgaria	7 073	9	1.2
Croatia	1 850	5 (whole staff of the Commission for the Prevention of Conflict of Interest)	2.7
Estonia	Approx. 330 (high officials only)	2 (only for high officials)	6
Georgia	2 000	3	1.5
Kazakhstan	470 000	261	0.55
Kosovo	800	4	5
Kyrgyzstan	1 389	4	2.9
Latvia	70 800	66	1.07
Macedonia	Approx. 3 000	2 (exclusive of the Public Revenue Office)	0.7
Montenegro	2 775	10 (total employees of the service of the Commission for the Prevention of Conflict of Interest)	3.6
Romania	Approx. 300 000	57 (integrity inspectors of the National Integrity Agency)	0.19
Slovenia	5 264	2	0.4

Systems where the number of officials covered is small tend to have a higher number of responsible persons per 1 000 covered officials. This is most obvious in the cases of Kosovo and Estonia (in Estonia the number of covered officials in general is rather high, but here only the part of the system dealing with high-ranking officials is considered), and is easily explained by the lack of the economy of scale.

Systems that cover a larger number of public officials differ strongly regarding the human resources devoted to the management of declarations. Kyrgyzstan and Albania stand relatively high by dedicating, respectively, 2.9 and 2.4 persons per 1 000 covered officials. So

it appears for Croatia, but it is unclear what share of the whole workload of the Commission for the Prevention of Conflict of Interest declaration-related activities constitute. Some countries, like Bosnia and Herzegovina and Slovenia, do not devote considerable human resources to the verification of declarations (the ratio is low also for Macedonia, but also involved there is the Public Revenue Office, about which data are missing).

The data of this study do not offer insight into whether a higher number of involved officials is associated with increased effectiveness of the system. The issue of system costs – of which there is indeed a variety – deserves further attention. Information about such costs would be a significant input in discussions to determine the most appropriate scale and design for declarations systems for public officials.

9.2. Effectiveness

Credibility – Verification of the truthfulness of statements is essential. However, it is important mainly for maintenance of system integrity, which is to say avoidance – in extreme cases – of the accumulation of masses of false and hence unusable data.

Declarations usually represent a handy tool for determining whether a public official observes applicable incompatibility rules. In many countries they are viewed as a routine or even primary source of information about conflicts of interest of public officials. The effectiveness of conflict of interest control varies strongly from country to country, but hardly anyone doubts the usefulness of some sort of officials' declarations for this task.

In most systems, questions remain open as to the extent to which the disclosed information is an accurate representation of the wealth and income of public officials. In the questionnaires gathered for the study, some countries are rather confident in this regard, *e.g.* the assessment submitted by Bulgaria states: "Implementation of the *Public Disclosure of Senior Public Official's Financial Interests Act* ensures maximum publicity for their property." Elsewhere, public officials' declarations have proved a useable tool for detecting untaxed income – even if that has not been among the primary purposes of the system. An example of this kind is provided by Latvia, where the public officials' declarations system has helped reveal numerous cases of unpaid taxes.

Meantime, a typical difficulty is public officials registering their assets under the names of other persons – usually relatives. Some countries address this issue by extending the coverage of declarations to these related people as well. However, it is often impossible to cover a sufficiently broad circle of people with sufficient rigour to effectively exclude such a possibility. Calls for the introduction of income/wealth declarations for whole populations have therefore been voiced in some countries that do not yet have such systems.

A related concern is to establish not only that the statement contains accurate data, but also that the wealth of the official can be reasonably accounted for by legal sources of income. Many systems – particularly those of transition countries – face the problem of unverifiable claims, *i.e.* situations where officials claim that their property has been acquired by long-ago-obtained means from undocumented sources, *e.g.* sales of farm produce or flowers in the market, unverifiable inheritance, gifts or business revenue in countries where – often due to past turmoil – such income cannot be checked retroactively. Against this background, it is quite understandable why, for example, Belarus indicated in its questionnaire as a weakness the absence of a legal principle stating that explanations about the sources of income must be reasonable.

There have been attempts to remedy this problem by criminalising illicit or unexplained enrichment. However, this analysis will not cover the various aspects of that approach. Suffice it to say that systems do vary in terms of the explanations that can be sought from public officials.[2]

According to the information provided by the countries examined in this study, there is little evidence that data from declarations have helped in crime detection. Many countries do have legal provisions mandating referral to law enforcement bodies of information that contains evidence of an offence, or referral when the law enforcement bodies so request. Moreover, there is usually no legal barrier to the use of declarations as evidence in court. However, few declarations have successfully served as evidence of criminal offences. The exception relates to systems where avoidance of the duty to declare and provision of false information are *per se* criminalised in both law and practice. Examples here are Latvia (where criminal proceedings have been initiated against 12 public officials) and Romania (where since April 2008, 99 files have been forwarded to public prosecutor's offices for false statements).

Not much systematic evaluation has been performed on public officials' declaration systems. Measurements of both corruption and occurrences of conflicts of interest are fraught with various limitations of validity and reliability. And even where changes can be measured with a certain degree of confidence, it would be difficult to isolate and assess the contributing factor of public officials' declarations – especially given that government usually employs a host of tools to prevent corruption and to control conflicts of interest. However, the dominant view is that the requirement for public officials to disclose their wealth does diminish corruption, or at least some forms of it.

Among the relatively few research works on this topic is a comparative analysis by Ranjana Mukherjee and Omer Gokcekus. In that analysis, the authors found that countries with a longer tradition of officials' asset declaration laws had significantly lower corruption than countries with newer laws; that perceived corruption was lower in countries whose declaration laws also permitted the government or anti-corruption body to prosecute the offending official; that countries that verified officials' statements had significantly lower corruption than countries that did not verify declaration content; and finally, that countries that allowed public access to officials' asset declarations had significantly lower corruption. Moreover, the combination of content verification and public access to the declarations had a still greater association with lower levels of corruption (Mukherjee, 2006, pp. 326-327). Other research also stresses the importance of effective monitoring and sanctions for non-compliance (Demmke *et al.*, 2007, p. 68).

On a more operational level, it appears that a number of conditions should be met if declarations are to deliver desired outcomes. One of them is having motivated managers, because declarations can be viewed as a tool for precisely their use. As Richard Messick described one of the advantages of declarations, "If periodic disclosures show an unusual increase in assets or extravagant expenditures, the employee can be asked for an explanation. In addition, when managers know what assets an employee owns – interests in firms, real estate, and so forth – they can determine when the employee's participation in a decision may be colored by personal interests, and thus when he or she should be excluded from the decision-making process" (Messick, 2009, p. 7). If this advantage is to be reaped, there must be a manager willing to "ask for an explanation", etc. A conclusion in place is that, apart from when the broader public scrutinises the content of declarations, the effectiveness of this tool is fully contingent upon at least some degree of already existing integrity in the administration.

This is in line with the common recognition that there are (often strict) limits as to what public officials' declarations can achieve. Richard Messick (2009, p. 7) delineated the boundaries of likely effects of financial disclosure, which "cannot stop those determined to accept bribes, award themselves public contracts, or otherwise loot the public purse. What it can do is deter the less determined, those tempted to steal from the public but fearful their wrongdoing might later be revealed. It can also help honest employees by reminding them and their managers when they should abstain from participating in a decision because it could affect their interests. Finally, it can bolster confidence in government by reassuring citizens that conflicts of interest are being policed and public employees' finances scrutinized."

Overall the conclusions of Richard Messick are corroborated by answers to questionnaires submitted for this study. Returning to the previously mentioned issue of crime detection, only two countries out of 14 affirmed that the declarations served as evidence of a criminal offence (or at least served as grounds for filing a crime notice). Several pointed out that information was missing, but that is also indicative of uncertainty as to whether the declarations are useable for purposes of crime detection. Declarations are better suited to detection of conflicts of interest, and this is reflected in questionnaire results. Far more countries indicated that the declarations did serve as evidence of a conflict of interest.

Meantime it is also very common to find highly critical opinions of declaration systems, as in the following quote about the system in Hungary: "In practice, however, the problem of real power of oversight and investigation in relation to asset declarations is glaring and unsolved. Indeed, the system is regarded as so deficient as to be almost entirely unable to prevent corruption."[3] Answers to the questionnaire of this study by one of the countries described its current system as inefficient, and used key phrases such as *broad range of officials submitting declarations, formal data* (here "formal" means "formalistic", in accordance with regulations of little substantial value), *formal control*, etc.

Obstacles for implementation – Apart from general concerns about the effectiveness of public officials' declarations, it is possible to identify a number of concrete impediments to the implementation of declaration systems. These impediments are grouped into six categories:

- *Flaws in the legal framework* – These are flaws that can be present in both laws and secondary legislation, or even in some subordinate formal procedures. Various flawed parameters of the formal design of declarations can lead to a failure to achieve intended goals. The scope of information to be declared can fail to cover data necessary in order to control conflicts of interest or achieve other goals. The form of the data can differ from that used in other public registries, making it difficult or even impossible to check whether various sources corroborate each other. Even items in the declaration forms can be defined so ambiguously that various officials interpret them differently.
  - ❖ The World Bank and the United Nations Office for Drugs and Crime study notes that "whereas nearly 60% of countries [out of a sample of 74 countries] identify an agency tasked with verification or review of declarations, no more than 30% of countries specify explicit criteria in the legislation for this responsibility" (Burdescu *et al.*, 2009, p. 41). A list of possible flaws in declaration systems could be continued, but suffice it to say that, particularly at early stages of development, these are typical stumbling blocks.
  - ❖ Moreover, too broad a circle of covered officials (and correspondingly insufficient implementing capacity) is also mentioned as a problem from time to time. For example, the broad range of officials submitting declarations was cited as a reason for the ineffectiveness of the system in the questionnaire submitted by Estonia.

- ❖ Finally, as far as the legal framework is concerned, lack of adequate provisions for sanctions is a serious limitation. To offer the example of Bosnia and Herzegovina, here is GRECO's concern "about the lack of sanctions in existing legislation for cases of incorrect/false reporting, as this almost certainly hampers the effective deterrence of the system in practice, all the more since a material check of the financial declarations submitted (including cross-checks of information between the Election Commission and other authorities) is not systematically carried out."[4]

- *Flaws of implementing bodies* – It can be that implementing bodies do not have adequate powers to carry out their tasks in relation to collecting and verifying declarations. For example, in 2008 the European Commission noted that in Serbia "the Board for Resolution of Conflict of Interest [...] does not have the powers to assess the validity of the information provided in the declarations."[5] A similar assessment was made about Montenegro, where the powers of the Commission on conflicts of interest were deemed too limited to ensure proper analysis of the declarations made.[6] (The new Law on Prevention of Conflicts of Interest in Performing Public Functions was adopted in December 2008, but the European Commission still noted the lack of "strong and independent supervisory authorities to evaluate asset declarations".[7]) The impermissibility of random checks has been mentioned as a limitation in Hungary (Transparency International Hungary, 2007, p. 48).
  - ❖ Insufficient resources of the implementing bodies comprise another typical stumbling block. Limited funds are one issue. It is also common to observe systems where the number of submitted declarations surge over time while the number of staff available for processing them remains steady or the increase is inadequate. For example, in 2008 the European Commission's report stated that in Bulgaria, due to insufficient personnel, "it is virtually impossible to conduct substantive audits on assets declarations".[8] In 2008 the European Commission noted insufficient staff as an obstacle to effective use of declarations in Serbia.
  - ❖ The absence of due autonomy of implementing bodies can make them vulnerable to illegitimate pressure, particularly where verification of declarations can potentially hurt high-level public officials. While countries seldom reported insufficient autonomy as an obstacle to effective implementation of declaration systems, the intention of the Slovenian government to abolish the implementing institution in the period 2004-08 was reported as the main difficulty.

- Flawed verification – In many countries, insufficient verification of the declarations raises concerns. This is particularly so in systems based on the idea that a designated public body shall see to the proper fulfilment of declarations by the relevant officials rather than so-called third party enforcement (by media, civil society). In 2008 the European Commission noted deficiencies in the implementation of declaration systems in a number of the monitored countries – Croatia ("There is insufficient supervision and control with regard to the implementation of asset declarations"[9]), Macedonia, Montenegro and Serbia. While there can be various kinds of deficiencies, flaws in verification are often of central importance.
  - ❖ Many Central and Eastern European countries launched their declaration systems without issuing them with adequate implementation mechanisms. Although in the 1990s rather rich international experience had already been accumulated, countries usually went through a lengthy learning-by-doing process. A remark that

exemplifies this trend was provided by Romania: "The early beginning [since 1996] was hesitating because the verification mechanisms were implemented without efficiency, the control of potential conflicts of interest had never been done on a systematic basis and the declaration submitted were not available to the public until 2003 when this problem was solved."

- ❖ Extreme cases can result in a state where no one – neither government bodies nor the broader public – does anything with the declarations. An earlier OECD report summarised concisely the problem with regard to transition economies: "While formal systems for declaration of assets by public officials have been established, they suffer from multiple deficiencies. The main problem is a lack of control of the information provided: asset declarations by public officials are not verified (even randomly) by any public institution, and the information is not fully open to allow public scrutiny" (OECD, 2008, p. 66).

- *Underdeveloped institutional context* – In some countries anti-corruption agencies tend to turn into lone fighters with no support, and can even encounter widespread animosity on the part of other agencies. Where such an institution is in charge of declarations, the situation may result in insufficient co-operation between state bodies and hence limited effectiveness of the system.
  - ❖ Even where no opposition is encountered, limited access to various public databases can be an obstacle. Although in most cases officials in charge of verification of declarations can access public registries (tax, land register, etc.), in some cases there are legal or technical barriers (incompatible software, limited capacity of databases). The impossibility of interconnecting databases sometimes generates a serious drag on verification activities.
  - ❖ Finally, in countries where the taxation system is ineffective and private individuals can easily hide income from taxation, it is hard to ensure wealth monitoring of public officials. Assets are often hidden behind the names of private individuals and their sources cannot be verified. In the questionnaires, some countries – Belarus and Latvia are examples – admit there is a problem when officials explain their wealth by citing unverifiable sources, and it is unclear how to defeat unreasonable explanations. Latvia's questionnaire cites the lack of income declarations for the whole population as a key aspect of a system that needs to be remedied.
- *Lack of support and/or awareness among officials* – Especially in the early stages of implementing declaration systems, a major difficulty is making public officials aware of new requirements[10] and achieving due respect for the need to meet them properly. Part of this problem can be a lack of or insufficient training and guidance.
  - ❖ Serious as this problem can be, it is further aggravated in decentralised systems where responsibility for the control of declarations is scattered across the public administration. Where the control role is assigned not only to centralised institutions but also or even solely to institutions where the declaring officials work or to which they are subordinate, implementation can suffer where this task is not sufficiently prioritised or the conflict of interest control function in general is not understood or viewed as important. For example, the Belarus questionnaire mentioned as a weakness the fact that personnel departments of state bodies did not verify declarations properly.

- *Lack of interest and/or support by the broader public*: If the broader public has little interest in the disclosed information about public officials' income, assets and interests, the potential of declarations to enhance the public accountability of officials remains underexploited.
  - ❖ A study in the United States revealed that "the overwhelming public response to the financial disclosures of senior federal officials is massive indifference. Most public disclosure forms in [1995-2000] (99.3 percent) were never requested by anyone. They sat in file cabinets, undisturbed until six years passed and they were destroyed" (Mackenzie and Hafken, 2002, p. 91). The authors of the study did not advocate the abolition of public officials' declarations altogether, but rather doubted strongly the usefulness of their public disclosure (as well as a number of other elements in the current system in the United States).

9.3. Trends in reforms

As noted above, comprehensive comparative assessments of the operation of public officials' declaration systems are rather uncommon. Therefore, although declaration systems keep changing in many countries, it is often difficult to discern whether the observable trends are a product of strategic policy choices or rather *ad hoc* and incremental adjustments. It is rare that governments produce evaluations like that carried out by the US Office of Government Ethics where it was proposed to raise some of the thresholds above which data must be declared, streamline the way values are indicated, reduce required descriptive details, etc.[11] Even then, however, there is no evaluation of how well the system meets its goals.

It is clear that in 2009 more countries introduced declaration systems, requiring the disclosing of a greater scope of information than in 2000.[12] So the 21st century has seen an overall continuing expansion of public officials' declarations, which have doubtless become a mainstream anti-corruption tool. Also, the European Union has been focusing *inter alia* on the operation of these systems in its candidate countries. Thus, while such declarations are no part of the *acquis communautaire*, they have become a permanent element in the conditions relating to the control of corruption.

Recently created systems often aspire to achieving complex goals, aiming at both control of conflict of interest and wealth monitoring. Such a development seems well-grounded because both purposes are legitimate and relevant. Meantime, the plain catch-all approach can be taken as a sign of little pragmatic assessment of what declarations can or cannot accomplish. As in the past, decisions to introduce declarations for public officials are grounded in symbolic considerations at least as much as in technical reasoning.

Meantime, many literature sources are sceptical about the effectiveness of the use of public officials' declarations for the purposes of wealth monitoring. Although governmental anti-corruption policy papers and legal acts often ignore such reservations, thoughtful accounts by a number of implementing officials corroborate the conclusions of many researchers. This has prompted some countries in Central and Eastern Europe as well as in the former Soviet Union to consider introducing a universal duty for the entire population to declare income and assets. This, in turn, signals the recognition that tax legislation and administration actually represent the most appropriate system for wealth monitoring. While many countries are still in the process of building up their tax administrations, public officials' declarations are sometimes expected to compensate as a wealth monitoring tool at least for this part of the population.

Box 9.1. **Setting up asset disclosure systems in Central Asia**

Countries in transition face rapid changes in political, social and economic environments, and notions of public service change along with societal values. This makes it more difficult to have stable institutions and legislative frameworks, and often leads to a rising level of uncertainty and distrust of the public for the existing institutions. The low prestige of civil service work and low salaries in the public sector contribute to the challenges in building of integrity in public administration. Such problems are faced by many countries, but they become especially pressing for transition economies, including in Central Asia.

Central Asian systems of asset disclosure in the three countries are currently undergoing establishment and transition processes. The ***Kyrgyzstan*** system is slightly ahead of the others (the first round of collection and review of asset declarations was carried out in 2005). In contrast, both ***Kazakhstan*** and ***Tajikistan*** have yet to fully launch their asset declarations review mechanisms*.

In all three countries, the asset disclosure requirement is stipulated in law. Specifically, the Civil Service Law of Kazakhstan (Article 13), Law on Civil Service of Kyrgyz Republic (Chapter V), and Constitutional Law on Government of Tajikistan (Article 11), Law on Civil Service of Tajikistan (Article 18, 31) all stipulate requirements for asset declarations for public officials. These requirements are additionally reinforced by special instruments – the Law on Declaring Information on Income and Assets, Liabilities and Property of Political and Other Special State Appointees and Their Immediate Family Members of Kyrgyz Republic; and the Law on Anti-Corruption Activities of Kazakhstan (Article 9). The legislative framework of the Kyrgyz Republic is the widest in scope, covering officials of all three branches of government equally, whereas Kazakhstan requires only candidates for parliament to declare their incomes to the Central Election Commission (Law on Elections of Kazakhstan, Chapter 12) and members of the judiciary, following the general public servant scheme. Tajikistan does not require representatives of the legislative or judicial branch to declare their incomes and assets. In all three states the declarations must be submitted initially on entering the civil service, with regular annual updates. Additionally, Kyrgyz legislation requires submission of declarations on completion of civil service and in some cases after a set time has elapsed following departure from the civil service. Information on corresponding legislation in the other two countries was not available.

Asset declarations are administered and reviewed (in the case of Kyrgyzstan) by Agency of the Kyrgyz Republic on issues of civil service, which does not inspect the contents of the declarations *per se* and refers irregularities to law enforcement agencies. The formal functions of inspecting the financial content are delegated to the tax administrations in both Kazakhstan and Tajikistan, while declarations themselves are kept decentralised within each individual civil service agency. Even though there seem to be different institutional set-ups for asset declarations processing in Central Asian countries, declarations in all three here are merely reviewed but do not undergo full financial audits and checks, as there is no practice of such inspections; actions in this regard are limited to the realm of criminal proceedings.

Contents of the declarations are kept confidential in Kazakhstan and Tajikistan, with at least the theoretical possibility of access to such information regarding members of the government via freedom of information statutes in the latter. In Kyrgyzstan, information on asset declarations of the high-level officials is available online and published in prescribed mass-media outlets, while information on other categories of civil servants can be obtained upon request and is being released with certain limitations relating to personal data (address, telephone numbers, etc.).

Box 9.1. **Setting up asset disclosure systems in Central Asia** *(cont.)*

Sanctions range from disciplinary reprimand to dismissal in the cases of Tajikistan and Kazakhstan. Alternative means of punishment include publication of the names of those who violated requirements on asset declarations in mass media outlets, along with filing notices on the failures of such persons to declare to the president, prime-minister and the head of the parliament, head of the constitutional and Supreme Courts in Kyrgyzstan.

As it appears currently, many elements are yet to be established in all three systems; time will show what changes and improvements are required to make them effective instruments. It is clear that more practical steps need to be undertaken in transferring *de jure* instruments into those that will function *de facto* and ultimately contribute to public integrity in these countries.

* No regular review or checks of the asset declarations have been performed in Tajikistan up to 2007 according to Global Integrity Report – Tajikistan 2007. Similarly, in Kazakhstan the holistic approach in gathering and checking of asset declarations of civil servants and employees of the state-owned companies is planned to be launched in 2011, according to the statement of the Prime-Minister in 2009 (News Agency "Interfax – Kazakhstan" from 22 January 2010).

Since the inception of the very first declaration systems, the principle of public disclosure has been opposed on various occasions due to aforementioned concerns about the privacy and/or security of public officials. There now seems to be an overwhelming international trend to open up declarations for public scrutiny. Still, disputes on these matters continue. Some countries do not disclose the information contained in the declarations to the public and the evolution is not always toward greater transparency. For example, India has seen several years of debates on whether information about judges' assets should be disclosed to the public. In 2009 the Indian government proposed a bill that would guarantee confidentiality for the assets of Supreme Court and High Court judges (except when the chief justice of India decides otherwise) (Sharma and Chauhan, 2009).

Another development is the strong and growing reliance on bureaucratised mechanisms for the processing of declarations. Historically the idea behind publicly accessible declarations of income, assets and interests appeared to involve a strong reliance on monitoring and where necessary shaming by third parties such as the media and civil society. While wider public disclosure is an international trend, both analytic literature and the declaration systems themselves recommend relying and do rely on bureaucratic controls.

Notes

1. *Source: CIA Factbook*, *https://www.cia.gov/library/publications/the-world-factbook/geos/al.html*.
2. In Spain for example, senior officials have to explain and justify differences between declarations they have submitted. See Oficina antifrau de Catalunya (2009), "Asset Declaration: A Part of the Fight against Corruption and Management of the Conflict of Interests", presentation at the seminar "Asset Declarations for Public Officials as a Tool against Corruption" in Belgrade, Serbia, 15-16 October.
3. Quote containing a reference to the Péterfalvi Attila press review, here taken from: Transparency International Hungary (2007), "Corruption risks in Hungary. Part One: National Integrity System Country Study", p. 20, *www.transparency.hu/files/p/en/489/5603216722.pdf*.
4. Compliance Report on Bosnia and Herzegovina, adopted by GRECO at its 41st Plenary Meeting (Strasbourg, 16-19 February 2009), p. 8, *www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf*

5. Serbia 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2008-2009 {COM(2008)674}, p. 13, *http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/serbia_progress_report_en.pdf*.
6. Montenegro 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council, {COM(2008) 674}, p. 12, *http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/montenegro_progress_report_en.pdf*
7. Montenegro 2009 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council, {COM(2009) 533}, p. 12, *http://ec.europa.eu/enlargement/pdf/key_documents/2009/mn_rapport_2009_en.pdf*.
8. Supporting Document Accompanying the Report from the Commission to the European Parliament and the Council On Progress in Bulgaria under the Co-operation and Verification Mechanism, Brussels, 23 July 2008, p. 16, *http://ec.europa.eu/bulgaria/documents/news/230708-sec_2350.pdf*.
9. Croatia 2008 Progress Report accompanying the Communication from the Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2008-2009 {COM(2008)674}, p. 54, *http://ec.europa.eu/enlargement/pdf/press_corner/key-documents/reports_nov_2008/croatia_progress_report_en.pdf*
10. As stated in the questionnaire of Croatia: *The main difficulty was familiarising public officials with basic obligations of the Act, especially with proper filling in of asset declarations*.
11. An example of such an evaluation is: US Office of Government Ethics (2005), "Report to Congress Evaluating the Financial Disclosure Process for Employees of the Executive Branch, and Recommending Improvements to It", Washington DC, *www.usoge.gov/ethics_docs/publications/reports_plans/rpogc_fin_dis_03_05.html*.
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PART III

Asset Declaration Case Studies

"Asset Declaration Case Studies" includes four case studies covering Lithuania, Romania, Spain and Ukraine, in addition to the many country examples and references provided in Part II. The case studies provide structured descriptions of asset declaration in these four countries based on the analytical framework established in Part II, and covers issues such as policy objectives for the establishment of asset declaration systems, legal frameworks and the institutional arrangements; the categories of public officials required to submit declarations, and types of information needed; procedures for verifying declared information, sanctions for violations, and public disclosure. Case studies also discuss efforts to assess the cost-effectiveness and usefulness of these systems.

PART III

Chapter 10

Asset Declaration in Lithuania

Context

Lithuania has one of the broadest asset disclosure systems in terms of purpose. It covers issues from general transparency to combating corruption, monitoring of wealth and illicit enrichment, as well as overall prevention of conflict of interest. The country has a twofold mechanism in place ensuring the integrity and transparency of its public administration:

- declaration of assets and incomes of individuals;
- declaration of private interests.

Asset and income declarations of individuals were introduced in 1993 and transferred to electronic format in 2004. There have been a number of revisions since then. In the year 2007 the system was converted to partially pre-filled declarations, which already contain all information received from various competent institutions – such as banks, credit institutions, insurance companies, pension funds, educational and scientific institutions, etc. – regarding the assets and incomes of each individual. The person is required to review the information contained and fill out missing parts. This instrument is intended to provide for financial control and wealth monitoring of the public officials.

Declarations of private interests, on the other hand, were introduced to prevent conflicts between public and private interests of those entrusted with public functions, and to ensure that private interests are always superseded by those of the public. Private declarations were created first and foremost to provide an effective instrument in the fight against corruption, and were initially launched in 1996. The system has undergone numerous changes since its inception; these were introduced into the corresponding laws in 1998, 2000, 2001, 2003, 2004, 2005 and finally 2008, a year in which the changes were major. The actual declaration forms, as well as rules for declaring, have been revised four times between 2000 and 2008.

Legal basis and institutional arrangements

The legal basis for the asset declaration and conflict of interest system in Lithuania is comprised of the following legislative acts: main laws regulating the set-up and essence of the system – *Law on Declaration of the Property and Income of Residents, Law on the Adjustment of the Public and Private Interests in the Public Service, Law on the Chief Official Ethics Commission (VTEK)*; and selected provisions from more general overarching laws or special laws, such as *Law on Public Service, Law on Lobbying, Law on Elections to the Seimas, Law on Elections to the European Parliament, Law on Presidential Elections, Law on Prevention of Corruption, Law on the Accounting for the Lawful Acquisition of Personal Property and for the Origin of Income* and others, which regulate individual elements of the system or general principles of its functioning.

The corresponding institutional framework for two types of declaring is decentralised, and relies on shared responsibility among various institutions. More specifically, each state institution is responsible for the initial collection of declarations from its own employees

(apart from some selected categories of high-level officials), as well as initial review, storing and archiving of the income, assets and private interests declarations they have collected. These duties lay within the scope of responsibilities of the heads of such agencies, or are specially designated for such persons.

The State Tax Inspectorate under the Ministry of Finance is responsible for handling income and assets declarations (this goes beyond functions mentioned above covering the whole public service). On the other hand, the Chief Official Ethics Commission is responsible for further handling of the declarations of interests, and the overall processing of such declarations from a selected category of officials (that responsibility includes collection, storing and archiving). Additionally, the Chief Official Ethics Commission is responsible for development of recommendations for improving and implementing legal requirements on official ethics and the conduct of persons in the civil service. It has the authority to take decisions and resolutions on these issues. It is also in charge of development of methodological guidelines. Finally, it is responsible for verification of the contents and investigation of suspected violations. The Chief Official Ethics Commission is the only specialised authority whose prime responsibility is controlling declarations of private interests; in other institutions this function is one of many. The Commission is comprised of five members. The president of the Republic, the speaker of the parliament and the prime minister each appoint one person with an impeccable reputation extending over ten years of professional service as member of the Commission, for a term of five years; the two others are appointed by the head of the Supreme Court and chair of the association of local self-government. The five persons serve no more than two terms in succession. The Seimus appoints a Commission chairman from among the Commission members. The total number of Commission employees is currently 16.

Similarly, the Central Election Commission handles declarations submitted by the candidates for political offices (seats in the Seimas, presidential office, offices of the members of government, local self-government and seats in the European Parliament), covering all types of information (property, income and private interests).

In addition, there are special units or officials assigned to handle declarations in the legislative and judicial branches of power, for example the Seimas Commission on Ethics and Procedure.

Subjects of Declaration Systems

Again, when identifying the subjects of declaration systems, in the case of Lithuania it is appropriate to talk about two types of declarations, and accordingly about two groups of persons subject to declaration regimes.

Declarations of private interests

Persons who are required to declare private interests include state politicians, government officials, civil servants, judges, military professionals, military servicemen, persons working in state enterprises and enterprises owned by self-government authorities, persons working in the budgetary establishments and public institutions that are vested with administrative powers, persons working in enterprises receiving funds from the state or local budgets, other individuals with competences in the field of public administration, and chairmen of political parties and their deputies. This requirement also applies to the managers of the joint stock companies in which the state of municipality has

more than 50% of the share capital (shares) and their deputies and candidates for the members of Seimas, for presidency, for members of central and local self-government, and for the European Parliament.

Declarations must be submitted by a person employed in public service, within one month from the date of election, acceptance of position or appointment, to the head of the public authority or government body in which he/she is resuming work, or to the authorised representative of such an institution. These declarations are filled out by the public officials in question, as well as their spouses. The person who fills out the declaration may omit the data related to his spouse if the couple is not living together or sharing the household.

In case of any changes occurring in the declared data after the filling out of the declaration, the person in central or local public service must declare the changes no later than two weeks from the day the changes in the data occurred. The latter declarations are appended to the annual declarations and become their supplement.

Declarations of assets and incomes

These are required of public political appointees and their family members, candidates for state political offices and their family members, civil servants and their family members, bailiffs and their family members, notaries and their family members, judges and their family members, prosecutors and their family members, military training military service members and their families, heads of state higher education institutions and their family members, and other officials and their family members, as well as Cabinet members, members of local government councils and measures, members of the European Parliament and members of their families.

For the purposes of these declarations, family members include spouses and children (including adopted children) under 18 years of age living together with the declaring parties; they must declare their property only if they are permanently residing in Lithuania.

Declarations of assets and incomes must be submitted annually no later than on 1 May of each year. The total number of public officials covered by the declaration system is nearing a total of 150 000.

Scope and content of the declarations

Currently, the declaration of private interests are submitted in paper form and then entered into an electronic database by the Chief Official Ethics Commission, which is developing a template form.

The following information should be contained in the declarations and should cover both the declaring official and his/her spouse (household partner/cohabitee):

- personal information (full name, identification code, state social security number, place/s of work and position);
- information on legal entities (other organisations and establishments) of which the official and/or his/her spouse are owners, co-owners or co-founders;
- information on individual activities or individual activities of the spouse (household partner/cohabitee), as defined in the Act on Personal Income Tax;
- memberships, responsibilities and ties to entities, establishments, associations, funds and societies, except political party membership;

- gifts received within the last 12 months if their costs exceed LTL 100;
- services received for free or paid for by other physical and legal persons within the last 12 months if their costs exceed LTL 1 000;
- agreements/contracts signed by the declaring party or his/her spouse in the last 12 months;
- close relations and members of the family and other persons who are known to the person filing the declaration who can create a conflict of interest.

Declarations of assets and income also have a unified approach with regard to the scope and content of the declarations, with the form of the declaration and the procedure for completing and filing it established by the Central Tax Administration. Thus, all those required to submit asset and income declarations* must provide the following data:

- immovable property, including unfinished structures;
- movable property, where such type of property is subject to legal registration under the legal acts of the Republic of Lithuania;
- monetary funds kept in banks and other credit institutions or anywhere else besides, where the total amount of the monetary funds exceeds LTL 2 000;
- monetary funds that have been borrowed and have not been repaid, where the total amount exceeds LTL 2 000;
- monetary funds that have been lent and have not been recovered, where the total amount exceeds LTL 2 000;
- works of art, precious stones, jewellery and precious metals, where the value of one such item exceeds LTL 2 000;
- securities, where the total amount of such securities exceeds LTL 2 000.

Property specified as subject to declaration must include the property held in both the Republic of Lithuania and abroad. However, property provided to a person who participated in the undercover operation in cooperation with the law-enforcement authorities should not be declared.

Processing of the declarations

As mentioned before, declarations of private interests are filed with the heads of the agencies where public officials are employed or with the Chief Official Ethics Commission, depending on categories of officials. Control over processing and verification of the submitted declarations is exercised by the following persons/institutions in separate individual cases:

- Chief Official Ethics Commission.
- State Tax Inspectorate.
- The head or authorised representatives of the head of the institution in which the public official is employed.
- Law enforcement agencies.

* With the sole exception of civil servants and officials of state institutions having the rights of entities of operational activities of the Republic of Lithuania, whose activities are regulated by the Law on Operational Activities. They and their family members shall declare their property in accordance with a separate procedure and within the time limits established by the government or an institution authorised by it.

In view of this function, the heads or authorised representatives of the head of the institutions in which public officials are employed provide their subordinates with recommendations on implementation of the provisions of legislation on declarations. And if there is reasonable ground to believe that the person is not following requirements of this legislation, the head or his/her authorised representative carry out inspection of the activities of the employee in question. Such inquiry can be made on his/her own initiative or following request from the Chief Official Ethics Commission.

In case it is necessary to check the veracity of the data given in the declaration of private interest, the check shall be made: i) by the Tax Inspectorate on the proposal of the head of the institution or of the Chief Official Ethics Commission; or ii) by the head of the institution, his/her authorised representative or the Chief Official Ethics Commission.

The results of such verifications are handed over to the Chief Official Ethics Commission, which may initiate an additional verification procedure or take appropriate measures depending on the satisfaction with the findings. If elements of criminal offence have been uncovered in the course of such verification procedures, the materials are transferred to the prosecution authorities and appropriate law enforcement authorities.

The system of processing declarations of assets and income is set up independently from that of declaration of private interests. The tax administrators verify the accuracy of the data provided in the declarations of assets and income, and collect and store these declarations. The agency for civil service management, on the basis of data from the Register of Civil Servants, must, by 1 February of the calendar year, submit to the central tax administrator a list of names of residents who were employed as civil servants during the calendar year preceding the calendar year in which the list is submitted.

The local tax administrator has the right to issue a mandatory instruction requiring a resident to substantiate the sources of acquisition of declared property. In such a case, the sources of acquisition of declared property must be substantiated by documents certifying the transactions, other legally valid documents, or written confirmations issued by third parties in conformity with the laws. These documents must contain data based establishing the identity of the person who has paid out the funds. Such provisions allow for application of the illicit enrichment mechanisms in wealth monitoring, and very often contribute to successful anti-corruption investigations.

Sanctions

Disciplinary and administrative sanctions are established for violation of the requirements of the declaration of private interests. They range from "soft sanctions", such as public reprimand, to restrictions, limitations and bans – such as restriction on promotion or encouragement for the period of one year – all the way to dismissal from office/position with further ban from being enrolled in the civil service for the period of three years.

Persons subject to declaration of assets and income avoiding submission of declarations, failing to submit them on time or not submitting them at all or providing incorrect data become subject to administrative or criminal liability.

Public disclosure

Annual private interest declarations are published annually at the expense of the state in *Valstybės þinios* (Official Gazette) no later than by 1 May. Such declarations include those of the president of the Republic, members of the Seimas, the prime minister,

ministers, deputy ministers, ministry secretaries, chairmen and justices of the Constitutional Court, chairmen of the Supreme Court, Court of Appeals and county courts, division chairmen and judges, chairmen of the Economic Court and district courts, deputies of court chairmen and judges, the prosecutor general and deputy prosecutor general, heads of structural divisions of the Office of the Prosecutor General, heads of county and district prosecutor's offices, chief officials of the National Audit Office, county governors, deputies of county governors, heads of Government institutions (departments, agencies, services, inspectorates), heads of the departments, services, inspectorates set up at the ministries, heads of other institutions of state administration (general directors, directors, chiefs), deputy chiefs, the Bank of Lithuania board chairman and his deputies, chief officers of the Customs Department at the Ministry of Finance and of territorial customs offices, chief officers of the State Tax Inspectorate at the Ministry of Finance and of territorial tax inspectorates, chief officers of the Economic Crime Investigation Board at the Ministry of the Interior and chief officers of economic crime investigation divisions (subdivisions) of city and district commissariats, the General Commissar of the Police, chief commissars and senior commissars of the police, municipality mayors, vice-mayors, administrators, chairmen of municipality council committees and Seimas Ombudsmen.

Table 10.1. **Data on published declarations of private interests**

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of persons	1 707	2 114	2 114	1 509	3 151	3 284	3 323	3 567	3 631	11 397

Upon presenting a document confirming his or her identity, any person may be granted access, following the procedure laid down by the Chief Official Ethics Commission, to the annual and other private interests' declarations of other persons. Declarations of private interests of other persons in central or local public service may be made public on a justified decision of the Chief Official Ethics Commission.

It should be noted that data on the annual income and assets *cannot be made public* except for candidates for public political offices, the president of the Republic of Lithuania, members of the Seimas, members of the European Parliament, the prime minister, ministers, the chancellor, vice chancellor, director of the office of the prime minister, the prime minister's adviser, deputy ministers, members of municipal councils, chairmen of courts and their deputies, judges, the prosecutor general and his deputies, heads of departments of the general prosecutor's office, the state comptroller and his deputies, state employees National Audit Office, state officials of the Customs Department under the Ministry of Finance, government officials of tax authorities and other government employees and their family members – except employees of operational entities, whose declarations of assets and income *are published annually* before 1 October in the special issue of state newspapers.

Table 10.2. **Data on published assets and income declarations**

Year	2004	2005	2006	2007	2008	2009
Number of persons	45 890	43 091	41 393	42 379	43 695	44 246

The central tax administration publishes the declaration data of these categories of public officials in the special supplement to the official gazette *Valstybės žinios*.

Other civil servants and their family members may publish their declaration data in the special supplement to the official gazette *Valstybės žinios* at the expense of the state. The approved excerpt containing basic data from the declaration, as well as the written consent to make the declaration data public, are being submitted to the editorial office of the official gazette *Valstybės žinios* by these persons themselves.

Evaluation of the declaration system

According to a study conducted by Transparency International Lithuania, "Diagnostic Research – Lithuanian Map of Corruption" in 2008, when respondents were asked which corruption reduction measures are the most effective ones, they ranked "background checks of public officials, monitoring transparency of their family property" at fifth place (31% in 2008, as compared to 29% in 2004); when public officials themselves were asked the same question, 31% selected increasing accountability of public officials and 22% implementing the general principle of income declaration.

PART III

Chapter 11

Asset Declaration in Romania

Context

The topic of declarations of assets and interests was part of a larger anti-corruption policy. The Romanian authorities list among the reasons for designing this regime the following:

- to implement conflict of interest policy;
- to increase public trust and accountability;
- to comply with international requirements;
- as a part of EU co-operation process;
- to ensure transparency in exercising public functions;
- to implement the legal regime of incompatibilities;
- to improve the level of fighting corruption through administrative means.

Asset declarations were first introduced in October 1996 and gradually improved since. At first the declarations were not public; in 2003 they became public, but the content of the form was significantly reduced, while in 2005 the templates were again amended to include all relevant information. The 2005 legislation also clearly states that the statements are public documents. Throughout this period, controversies constantly arose around the issue of assets disclosure, as this topic was extremely sensitive, along with the financing of political parties and disclosure of activities of the intelligence service during communism. The constant pressure from external actors, such as the Council of Europe and the European Union, combined with the increasing demands for transparency from civil society, has put the issue of assets and interests disclosure on the agenda of the Romanian authorities. The most important momentum for significant progress was the period between 2005 and 2007, when Romania was preparing for the accession to the European Union. When the negotiations were concluded in 2004, a Common Position Paper on Justice and Home Affairs was adopted listing areas where further progress was required of Romania. While the EU has noted the existence of declarations of assets and interests, it emphasised the need of an efficient mechanism that would allow for deterrent sanctions to be applied. In addition, GRECO – the "Group of States against Corruption" – recommended in 2005 "to introduce an effective system for supervising declarations of assets and interests".

After the change of government in 2004, the new ruling coalition adopted in 2005 the current form of the declarations of assets and interests, in an attempt to show determination in implementing the agreement reached with the European Union. The adoption process was far from smooth: debates in the parliament were heated, with some of the members of the parliament trying to alter significantly the templates proposed by the government. In the end, the ruling coalition managed to mobilise its representatives in the parliament and the declarations of assets and interests were adopted in the form proposed. Immediately after the adoption of the new templates, work began with regard to setting up an efficient verification mechanism that would cover declarations of assets, declarations of interests and possible incompatibilities. The issue of illicit enrichment (or unexplained wealth) was particularly problematic to cover, as the Romanian Constitution includes a presumption that all assets of a

person are considered to have been acquired legally. In addition, the Constitution stipulates that confiscation may only occur for crimes or misdemeanours. These provisions made administrative verification of assets and application of sanctions extremely difficult. After the accession of Romania to the European Union in 2007, a verification and co-operation mechanism was established in the areas of reform of the judiciary and the fight against corruption. Four benchmarks were set, the second one being built around the issue of assets declarations verification: "Establish as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflict of interest and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken". Consequently, each country report adopted by the European Commission includes an evaluation of the assets disclosure system. Design of the control mechanism was laborious and the parliament adopted the laws for the establishment of the on the National Integrity Agency in May 2007.

The most relevant pieces of legislation in this field were:

- Law No. 115/1996 regarding declarations of assets and controlling the wealth of public officials, magistrates, public servants and persons with leading positions.
- Law No. 78/2000 on preventing, discovering and sanctioning of corruption acts.
- Law No. 161/2003 concerning a number of measures for ensuring transparency in exercising public office, in public functions and in the business environment, and the prevention and punishment of corruption.
- Emergency Government Ordinance No. 14/2005 on modifications of the asset and interest declarations templates.
- Law No. 144/2007 on the establishment, organisation and operation of the National Integrity Agency.
- Emergency Ordinance Government No. 49/2007 on the modification and the completion on Law No. 144/2007.
- Law No. 94/2008 for the approval of Emergency Ordinance Government No. 49/2007 on the modification and the completion on Law No. 144/2007.

Institutional set-up

In May 2007 the law establishing the National Integrity Agency (NIA) was adopted. NIA is an autonomous administrative body with unrestricted competence for the judiciary, the executive and the legislators, and verifies declarations of assets, declarations of interests and compliance with the incompatibilities regime. The parliament reduced the powers of NIA – as proposed by the government – and even in this milder version adoption of the law was very controversial. Extensive debates were held around the competence of NIA, many MPs arguing against the control of unexplained wealth as revealed by the declarations of assets. The reasoning behind this is that criminal and administrative legislation makes confiscation conditional on the provision of evidence that the respective assets were obtained as a result of, or used in connection with, a crime or misdemeanour, while the provisions of the NIA law would allow for confiscation if the public official fails to explain the significant increase of his/her wealth while in office. Finally, the law allows for confiscation of unexplained wealth, but the tools given to NIA inspectors to perform verifications are not as strong as initially envisaged. Another debate – settled by the government before sending the draft to the parliament – concerned the definition of conflict of interest. The initial draft included a wider definition under administrative law, taking into account that the Criminal Code already

includes a crime of conflict of interest[1]. The final decision, however, was to limit the definition of conflict of interest under administrative law to first-degree relatives – which is actually less than the scope of the definition under criminal law – but to also cover non-material benefits. The scope of incompatibilities remains unchanged and is mainly included in Law 161/2003 and in the bylaws adopted for various public officials.

The turmoil generated around adoption of the law continued in the following months, when the Agency had difficulties receiving the due budgetary allocations and a proper space to serve as headquarters. The main difficulties encountered in setting up the Agency were:

- lack of proper working space;
- lack of political will to consolidate the Agency;
- legislative deficiencies;
- the long duration of the public procurement procedures;
- insufficient personnel;
- the low wages for the integrity inspectors;
- the reaction of the government to the economic crisis, which had a negative impact on the hiring of new employees.

The main tasks of NIA are:

- collection of declarations;
- storage of declarations;
- ensuring public access to declarations;
- control of the submission of declarations;
- elaborating guidelines for public officials on how to fill in declaration forms;
- advice upon the request of public officials;
- verification of the contents of declarations;
- submission of the files to courts with a proposal to apply sanctions in cases of lack of compliance with assets disclosure, conflict of interest and incompatibilities regime;
- notification to the criminal investigative bodies of wrongdoings that might amount to a criminal offence;
- elaboration of studies and analyses, and gathering of annual statistics.

The powers of NIA are:

- access to documents/records from public authorities;
- the right to request explanations from the declaring public official or other persons;
- the right to request an expert opinion with the prior approval of the person under verification;
- the right to fine the public official in question.

Table 11.1. **The budget of NIA in Euro**

Year	Total	Personnel	Goods and services	Investment
2007	890 000	580 000	116 000	194 000
2008	2 600 000	1 385 000	852 000	357 000
2009	3 620 000	2 021 000	936 000	661 000

The institution was set up in May 2007 but started functioning late in 2007, when the vice-president was selected (in the competition for the presidential position no candidate was successful). Later on, the vice-president sought and secured the position of president. It followed that the position of vice-president was vacated, and remains so to this date – NIA did not manage to recruit a vice-president due to budgetary constraints and to the low performance of candidates in the competitions organised to fill this position. In 2009 the staff of NIA reached 116 persons, including 57 inspectors (ensuring the operative functions) and 59 administrative and support personnel.

Oversight of NIA is ensured by the National Integrity Council,[2] a board appointed by the Romanian Senate. The Romanian Senate may dismiss the management of NIA, following a proposal of the Integrity Council. The principle of equal representation of all categories of persons that fall under the scope of the Agency's investigations was followed when the composition of the Council was decided. The Council works under parliamentary authority exercised by the Romanian Senate, and has a non-permanent activity.

The president and vice-president of NIA are selected following a public contest organised by the National Integrity Council. They may be removed from office in the following situations:

- resignation;
- managerial failure;
- final conviction for a criminal offence;
- if found to be in breach of the legal provisions on conflict of interest or incompatibilities, or if the confiscation of a portion of the assets or of a specific good was decided;
- failure to meet any of the compulsory requirements for appointment to the position concerned.

NIA has to undergo an early external audit, in addition to the financial control from the Court of Accounts. The audit should include recommendations regarding management of the institution, and is also presented to the Integrity Council by the president of NIA. The findings of the audit may serve as a basis for finding that the management of the institution failed to perform properly its tasks.

In addition to NIA, each public entity must designate one person to be responsible for the collection of declarations submitted by its staff and to be the counterpart of NIA. This individual must answer directly to the head of the public entity, and both are held responsible for the sound functioning of the system.

Among the responsibilities of the designated persons are:

- To receive and register the declarations of assets and the declarations of interests, and to issue to the depositary immediately proof of receipt and to provide consultancy for filling in the templates correctly and in due time.
- To keep a record of the declarations of assets and the declarations of interests in special public registries named "Declarations of assets registry" and "Declarations of interests registry", templates of which shall be established by a government decision, upon the NIA's proposal.
- To ensure the posting of the declarations of assets and declarations of interests on the institution's website, if it exists, or on the information board, at the latest within 30 days from receipt. The declarations of assets and the declarations of interests shall be kept posted on the website at least five years from their publication, and afterwards archived according to the law.

- To send to NIA, no later than ten days from receipt, certified copies of the declarations of assets and of the declarations of interests, which shall be posted by NIA on its own website within 30 days from their reception and shall be kept posted within the period provided by the law.
- To post on the website, if it exists, or on the information board, the name and position of the persons who did not submit the declarations of assets and the declarations of interests within a maximum of 15 days after the legal submission deadline has expired, data that shall be communicated to the Agency.
- To provide consultancy on the content and application of the legal provisions, regarding asset declaration and verification, conflicts of interest and incompatibilities, by drawing up points of view upon the request of the persons who have the legal obligation to submit declarations.

Who declares?

- the president of Romania, as well as presidential and state counsellors;
- members of parliament;
- government members, secretaries of state, under-secretaries of state, as well as positions assimilated to these and the state counsellors within the prime minister's working apparatus;
- members of the Superior Council of Magistracy;
- judges, prosecutors, assistant magistrates, positions assimilated to these, as well as judicial assistants and specialised auxiliary personnel from courts and prosecutors' offices;
- judges of the Constitutional Court;
- members of the Court of Accounts and its personnel;
- the president of the Legislative Council and section presidents, the ombudsman and his/her deputies, the president and vice-president of the National Supervisory Authority for Personal Data Protection;
- the members of the Council of Competition, of the College of the National Council for the Study of Secret Service Archives, of the Council of the National Securities Commission, of the Council of the Commission for Insurances Supervision, of the Council of the Commission for Supervision of the Private Pension System, of the National Council for Fighting against Discrimination, of the National Audio-Video Council, of boards and leading committees of the Romanian Radio and Romanian Television Public Companies;
- the members of the National Integrity Council and the president and vice-president of the National Integrity Agency;
- the general director and board members of the ROMPRESS National Press Agency;
- the director of the Romanian Intelligence Service, of the Foreign Information Service, of the Special Telecommunication Service and of the Protection and Guard Service, as well as their deputies;
- diplomatic and consular personnel;
- local elected representatives;
- persons with leading and control positions, as well as public servants, including those with a special status, who carry out their activity within all the central or local public authorities or, as the case may be, within all public institutions;

- persons with leading and control positions within the public education system and health state units;
- the staff of dignitaries' cabinets as well as staff from prefect's office;
- members of the boards, of the leading councils or of the supervision committees – as well as the persons holding leading positions – within state-owned companies of national or local interest, national companies, or, as the case may be, commercial companies to which the state or a local public government agency is a significant or majority shareholder;
- the governor, first vice-governor, vice-governors, board members and managers of the National Bank of Romania, as well as staff of the banks in which the state is a shareholder;
- the staff of the public institutions involved in the privatisation process;
- persons who are running for the position of president of Romania, deputy, senator, members of the European Parliament, county counsellor, local counsellor or mayor have the duty to disclose their assets and interests.

According to NIA, approximately 300 000 public officials should file the wealth and interests statements yearly, which means approximately 80% of the persons working in the public sector. Declarations of wealth cover the public official, spouse and dependent children. The template used is unique and can be found in the Annex.

What is declared, and how?

The declaration of assets includes movable and immovable goods, including money in bank accounts and in cash, debts and revenues. For a detailed list of issues covered please see the Annex.

The declarations are submitted yearly – no later than 15 June for the previous fiscal year; at the beginning and termination of employment – within 15 days; and when registering candidacy for elected positions – within 15 days from the nomination or election to the public function or from the start of the activity.

The declaration is submitted on paper; it must be sent in the original form and include the signature of the public official. The statements are collected by the designated person in each institution, who does a preliminary check and informs the public official about possible irregularities identified, allowing for resubmission of the declaration. Then the statements are forwarded to NIA and posted on the website of the respective institution (the information should be kept online for five years). The declarations are fully public. The forms are available to public officials both on paper and electronically (downloaded from the Internet). There are guidelines on filling in the templates; these are on the NIA's website. NIA may also provide legal assistance upon request.

In order to be able to control and publish the statements of wealth and of interests, the NIA has put in place an electronic system to administer documents received in paper format. The statements are scanned and introduced into the data management system, which also provides information to the general public on *http://declaratii.integritate.eu/*. The information can be viewed in pdf format and searches can be made using the following criteria: the name of the public official, the public institution, the position of the public official, the year the statement was submitted, and the type of statement (wealth or interests). In addition to the public side, the data management system can be used by the inspectors for verifications; as

with the process of statement scanning, data is extracted and introduced in a separate database for restricted use. A sophisticated data management system is under development to allow effective verifications by the Agency. This tool is essential given the high number of statements submitted in Romania: by January 2010, NIA received 503 000 declarations of assets and interests (185 114 for 2007 and 317 886 for 2008). By mid-2010 approximately 1.6 million statements were received since the set-up of the mechanism.

Verification and sanctions

Verifications of declarations of assets and interests, as well as of possible situations of incompatibility, may be initiated in the following situations:

- Upon receiving a complaint (921 public officials were verified until now following complaints).
- Upon the decision of NIA's president based on information obtained, for example from media reports (3 667 officials were verified until now following the decision of NIA's president). Failure to submit or late submission of the statements launches the verification procedure automatically – in this situation the formal decision to start verification is also taken by the president of NIA.

As can be seen above, the number of verifications begun following complaints is significantly lower than the number of verifications begun following the decision of NIA's president. The reason behind this difference is that, according to Law no. 144/2007 for the setting-up of NIA, persons who file complaints could be held liable under criminal law if the complaint is found ungrounded. This provision, which mirrors the one existing in the Criminal Procedure Code, has a strong deterrent effect on people when considering whether or not to file a complaint.

For verifying declarations of assets and interests, as well as possible situations of incompatibility, the inspectors have access to the following databases:

- tax registers;
- personal ID database;
- land register;
- FIU database;
- motor vehicle register;
- real estate register;
- other property registers.

Other private or public entities should provide data to the inspectors within ten days of receipt of the request. Expert opinions may only be requested and used with the prior approval of the person verified. This is one of the provisions that was watered down by the parliament; in the initial draft of the law, inspectors could ask for expert opinions without the approval of the person investigated, and it is highly unlikely that during the investigations such approvals would ever be granted.

NIA may apply sanctions such as:

- A fine from RON 100 to RON 500 for non-submission or late submission of the statements (in this case the verification procedure is triggered).
- A fine from RON 100 to RON 500 for failure to provide information when so requested by the inspector.

NIA imposed 2 008 fines in 2009 and 2 080 fines in 2008. In 2009, about 300 judges and prosecutors, as well as two ministers, were sanctioned with fines.

If, following verification, the inspector finds a breach of the rules on conflict of interest, incompatibilities or assets disclosure, the file is submitted to court to validate or invalidate the finding. If during verification at NIA no breach is found, the file will be closed by the inspector.

If the court deems the finding of NIA correct, it issues a court decision ascertaining the facts and decides on the sanction to be applied – *e.g.* confiscation of assets. This first decision may be challenged with an appeal to the superior court. On the basis of the final court decision, a disciplinary sanction may also be imposed by the disciplining bodies – the maximum disciplinary sanction is dismissal from office.

Until now, 928 files have been sent to courts (709 in 2008 and 219 in 2009), and 226 files were finally decided: 189 cases have been won by the NIA (80.5%), while 37 cases have been lost (19.5%). Of the 189 cases won:

- in 7 the NIA's decision was fully confirmed;
- in 28 the fines were reduced from 500 RON to 100 RON, and the verification procedure was automatically launched;
- in 154, the NIA's decision was partially confirmed, and the verification procedure was automatically launched.

NIA has to inform the criminal investigation bodies when it finds solid grounds that a criminal offence has been committed. A similar obligation exists to inform the fiscal investigation bodies when there are indications of failure to comply with fiscal requirements. The incorrect or incomplete filling in of the statements may qualify as the criminal offence of false statements and may be prosecuted. NIA has sent files to competent institutions, as follows:

- To courts: 6 files regarding wealth confiscation and 6 regarding conflict of interest. The monetary value of the cases in which NIA requested confiscation amounts to approximately EUR 4.2 million, RON 320 000 and USD 500 000.
- To competent prosecutor offices: 150 files (regarding false statements).
- To discipline committees: 91 (for measures relating to cases of incompatibility).

The main concern when the institution was created was that the oversight system would preclude NIA from investigating high-level public officials. However, apart from low- and medium-level officials, NIA started verifications against members of the parliament, heads of public institutions, mayors and deputy mayors, local and county counsellors and members of the National Integrity Council. Those investigated alleged political influence over the activity of NIA, claiming that they were nothing more than victims of the system. NIA published press releases when cases were sent to courts or prosecutors' offices, showing the results of the verifications and explaining why a particular route was chosen. All press releases include a clear statement regarding the fact that NIA's findings may be challenged in court and that all the people investigated are assumed to be not guilty until a court decides otherwise.

Some of the cases investigated by NIA were referred to NIA by prosecutors who, during investigations in separate criminal files, came across assets held by public officials that were not listed in the declarations of assets. The most frequent situation is that of large amounts of cash kept by public officials either at home or at the office. Some of these cases

have already been sent to courts where the first decision confirmed the findings of NIA. However, until a final decision is reached by the judiciary, the fate of these files remains uncertain.

Because of long court procedures and frequent referrals to the Constitutional Court – which suspend the progress of the cases in the regular courts – it is too early to assess the overall efficiency of NIA. But if assessment is limited to final findings, the results so far have been rather positive – not only that courts confirm NIA's reports, but disciplinary bodies also apply disciplinary sanctions (including dismissal of public officials). Building an effective and credible control system is essential to combating the general perception of impunity of public officials, which is widespread in the Romanian society.

Latest developments

After slightly less than two years of application, several essential chapters of the law on the National Integrity Agency were declared unconstitutional by the Constitutional Court on 14 April 2010. The challenge was brought by a former member of the National Integrity Council – lawyer Alice Draghici – whose mandate ended because she interfered in the verifications conducted by NIA with regard to one of her clients (incidentally, the challenge was raised when the case was brought to court). The Constitutional Court claimed that the NIA has jurisdictional powers, and acts as a parallel justice. The decision is paradoxical because, as in the decision itself, the Court explains that NIA decisions can be challenged in court, and are therefore subject to judicial control. Also, the Court decided that publishing the declarations of assets is a breach of the right to privacy of persons in public office. The Court does not explain how privacy is violated by publishing statements or if the violation is justified or not – both criteria are applied by the ECHR in deciding on such cases.

In response to this decision and to the worried remarks of European Commission representatives, ambassadors and outside voices, the government has drafted a new bill and the president called the parties in for a consultation in an attempt to convince them to follow an emergency procedure for adoption of the new law. The government's draft did not include the component on assets' control, thus leaving NIA without one of its most important tasks.

The draft law was improved in the Chamber of Deputies by reviving the wealth control commissions, consisting of two judges and a prosecutor were established with the Court of Appeal. NIA would do verifications and send the results to these commissions, which would afterwards be competent to notify the court in case of unjustified enrichment. The courts could decide to confiscate the unjustified assets at the end of the trial.

The Senate eliminated most of the important provisions in the draft law, including the set-up of the control commission and the template of the statements, and adopted the draft law on 15 May 2010. The president refused to promulgate the law and returned it to the parliament with several suggestions for improvement:

- candidates for elected positions should be re-included in the list of persons who should submit declarations of assets and interests;
- the maximum duration for verifications was fixed at one year, a deadline considered insufficient for thorough verifications;
- the control commissions should be reintroduced in the text as they are the only mechanism that would still allow for sanctions in the case of unjustified enrichment;

- reintroducing the provision that allows for criminal investigations in case of false statements with regard to declarations of assets and interests;
- reintroducing the information previously eliminated from the templates of declarations of assets and interests;
- allowing for publication of filled-in declarations, with the exception of personal data;
- including a new section in the declaration of interests where information regarding contracts from public money concluded by the public official or his family should be declared.

The Chamber of Deputies made all the corrections requested by the president and has sent law to the Senate. The Senate eliminated all these corrections and readopted the previous text. An outcry of protests from civil society and the international community followed this decision. The president has filed a challenge to the Constitutional Court on procedural grounds on 13 July 2010. The Constitutional Court accepted the challenge and deemed the law unconstitutional on 19 July 2010.

Issued on 20 July 2010, the European Commission report on the verification and co-operation mechanism (which includes a benchmark focusing on the activity of the NIA and the control of assets, interests and incompatibilities) sharply criticised the lack of political will in this field and the undermining of an institution that performed an important role in Romania.

Finally the law was returned to the parliament, which passed it during an extraordinary session held in August. The version adopted includes all the points raised by the president in the first re-examination request. The new law, Law 176, was published on 1 September 2010. It is of course too soon to know if the new law will pass further challenges to the Constitutional Court or if the newly introduced control commission will prove efficient or will act as a filter to the notifications received from NIA.

Notes

1. Article 2531 of the Romanian Criminal Code – Conflict of interest occurs when the public official, as part of their official duties, concludes an act or participates in a decision-making process through which a material advantage was generated for them, their spouse, for their relatives up to the second degree, or to any other person with whom they had labour relationships in the past five years or from whom they obtained or obtain benefits or other services. This provision does not apply in the case of approval or adoption of laws and regulations.
2. The National Integrity Council is composed of: one member representing each parliamentary political group from the Romanian Senate and one representing the national minorities group in the Chamber of Deputies; one representative of the Ministry of Justice; one representative of the Ministry of Economy and Finance; one representative of the National Union of County Councils; one representative of the Association of Municipalities; one representative of the Association of Towns; one representative of the Association of Communes; one representative of the high-level civil servants and one representative of the civil servants chosen by the National Agency for civil servants; one representative chosen by the associations of magistrates; one representative of NGOs active in the human rights, legal or economic and financial fields.

ANNEX 11.A1

Statement of Assets in Romania

STATEMENT OF ASSETS

I, the undersigned ……., am holding the position of ……. at ……., PIN……., having the residence ……., aware of the provisions of Article 292 from the Criminal Code regarding the false statements, I declare that together with my family*) I own the following:

I. Real estate

Land

Note: Please state the land owned in other countries as well.

Address or area	Category[1]	Year of purchase	Area	Percentage	Type of acquisition	Owner[2]

1. The relevant categories are: (1) farming land; (2) forests; (3) land inside localities; (4) water surface; (5) other categories of land outside localities if included in the civil circulation.
2. Please state in "holder" column the owner's name (holder, spouse, child) for owned assets and the co-owners' owned percentage and names for co-owned assets.

Buildings

Address or area	Category[1]	Year of purchase	Area	Percentage	Type of acquisition	Owner[2]

1. The relevant categories are: (1) apartment; (2) house; (3) countryside cottage; (4) commercial/production locations.
2. Please state in "holder" column the owner's name (holder, spouse, child) for owned assets and the co-owners' owned percentage and names for co-owned assets.

* "Family" means husband/wife (spouse) and dependant children.

II. Movable assets

1. Motor vehicles/cars, tractors, farming machinery, boats and yachts and other means of transport that are subject to registration under the law:

Type	Brand	No. of items	Manufacture year	Acquisition type

2. Assets such as precious metals, jewellery, art and religious items, art collections and coins, items of the national or worldwide cultural heritage etc. worth over EUR 5 000

Note: Please indicate all owned assets regardless whether they are located in Romania or not at the time of declaration.

Brief description	Year of acquisition	Estimated value

III. Movable Assets worth over EUR 3 000 and real estate alienated in the past 12 months

Type of the alienated asset	Date of alienation	Person the item was alienated to	Type of alienation	Value

IV. Finacial assets

1. Bank accounts and deposits, investment funds, equivalent savings and investment forms if their total worth exceeds EUR 5 000

Note: Please indicate those in banks and financial institutions abroad as well

Administrating institution and address	Type*	Currency	Opened in year	Updated balance/value

* Categories are: (1) Current or equivalent account (including cards); (2) Bank or equivalent deposit; (3) Investment or equivalent funds, including private pension funds or other savings systems

2. Placements, direct investments or loans given if their total market value exceeds EUR 5 000

Note: Please indicate investments and participations abroad as well.

Security issuer/company the person is a shareholder of/loan beneficiary	Type*	Number of securities/level of participation	Updated total value

* Categories are: (1) Securities (state securities, certificates, bonds); (2) Shares in trading companies; (3) Personal loans given to others

3. Other net income generating assets that exceed a total annual equivalent of EUR 5 000

Note: Please state those abroad as well.

……

……

……

V. Debts

Debts (including outstanding taxes), mortgages, warrantees issued for the benefit of a third party, leasing assets and the like if their total worth exceeds EUR 5 000.

Note: Please state financial liabilities abroad as well.

Lender	Contracted in year	Maturity on	Value

VI. Gifts, services or advantages free of charge or subject to subsidies as compared to the market value received from persons, organisations, companies, autonomous administrations, national companies or Romanian or foreign public institutions, including scholarships, loans, warrantees, expense disbursements or the like of an individual worth of over EUR 300*

Who generated the income	Income source: name, address	Provided service/income-generating item	Collected annual income
Holder			
…			
Spouse			
…			
1.3 Children			
…			

* Please do not state usual gifts or treats received from relatives of first or second degree.

4.1 Holder			
…			
4.2 Spouse			
…			
5. Pension-related income			
5.1 Holder			
…			
5.2 Spouse			
…			
6. Farming-related income			
6.1 Holder			
…			
6.2 Spouse			
7. Income from awards and gambling			
7.1 Holder			
…			
7.2 Spouse			
…			
7.3 Children			
…			
8. Income from other sources			
8.1 Holder			
…			
8.2 Spouse			
…			
8.3 Children			
…			

This declaration is a public document and I shall be held responsible under the criminal law for any inaccuracy or the incomplete nature of the aforementioned information.

Date of filling in _____

Signature _____

ANNEX 11.A2

Declaration of Interests in Romania

NO……. AS OF …….

I, the undersigned, ……., am holding the position of …… at ……., PIN ……., having the residence ……., aware of the provisions of Article 292 from the Criminal Code regarding the false statements, I declare the following:

1. Stockholding in trading companies, national companies, credit institutions, economic groups, as well as membership in associations, foundations or other non-governmental organisations:			
ENTITY NAME AND ADDRESS	POSITION	No. of shares	Total value of shares
1.1			
2. Membership in management, administration and control bodies of trading companies, special state-owned companies, national companies, institutions, economic groups, as well as membership in associations, foundations or other non-governmental organisations:			
ENTITY NAME AND ADDRESS	POSITION	Value of benefits	
2.1			
3. Membership in professional associations and/or unions:			
3.1			
4. Membership in paid or unpaid management, administration and control bodies of political parties, position and name of the political party			
4.1			

This declaration is a public document and I shall be held responsible under the criminal law for any inaccuracy or the incomplete nature of the aforementioned information.

5. Contracts, including legal assistance, consultancy and civil agreements, financed from the state budget, the local budgets or from external funds or from state owned company (either in total or where the state is a majority or a minority share-holder), which were concluded while holding a public office:						
5.1 Contract beneficiary: name, surname, company's name, address	5.2 Contracting institution: institution's name and address	5.3 Awarding procedure	5.4 Type of contract	A	B	C
Holder						
Spouse						
First-degree relatives[1]						
Commercial company/authorized natural person/family association/ lawyers' offices/NGO/Associations and Foundations[2]						

1. First-degree relatives are parents and children.
2. The name, the entity name and the address of the contract beneficiary and the position of the public official or his/her relatives.
   The columns mean:
   A – The date when the contract was signed
   B – The duration of the contract
   C – The total value of the contract

Date of filling in _____

Signature _____

PART III

Chapter 12

Asset Declaration in Spain

Spain – Catalonia

Context

Spain is divided into 17 autonomous communities and two autonomous cities: Ceuta and Melilla. While the state has exclusive competence areas such as nationality, immigration, emigration, right of asylum, international relations, defence and the armed forces, administration of justice and others listed in Section 149 of the Constitution, autonomous communities may develop the certain competences provided for in the Constitution through their statutes of autonomy.

The relevant pieces of legislation at national level are:

- the Spanish Constitution adopted in 1978, which sets forth the principles inherent in the post of public official: integrity, neutrality, impartiality, management transparency, responsiveness, professional accountability and service to the citizen;
- the act on incompatibilities in the public sector from 1982;
- the act on incompatibilities affecting members of the national government and executive officers (senior officers) of general state administration from 1983, as amended in 1991;
- the act on incompatibilities affecting members of the national government and executive officers of general state administration from 1995;
- the Good Governance Code from 2005 (relevant for senior officials);
- Act 5/2006 on conflicts of interest of members of the government and senior officials of the administration and the executive order that develops its provision adopted in 2009;
- the Basic Statute on Public Employment contains the code of conduct from 2007 (it is wider in scope than the act adopted in 1995);

The relevant pieces of legislation for Catalonia:

- The Statute of Autonomy of Catalonia from 1979, amended in 2006.
- The Act on Incompatibilities of Catalonia from 1987.
- The Act Regulating Incompatibilities of Senior Officials of Catalonia from 2005.
- The Act on the Presidency and Government from 2008.

As shown in the lists above, the legislative activity relevant to the issue of assets disclosure took place between 1982 and 2009, having as main promoter the government and as final decision-making body the parliament. Unlike countries where donors were active influencing the public agenda, Spain is a good example of reforms started from within the country. As stated by the authorities, the purpose of the legislation was in the beginning to ensure the independence and impartiality of public sector, pointing towards the possible "collision between public and private interests", while later it shifted towards the need to prevent situations that could generate conflicts of interest.

The principle of "one post – one remuneration" that tried to prevent conflicts of interest was first introduced in 1983, while the Registry of Interests, where breaches of law should be listed, was introduced in 1991. In 2006, the Conflict of Interest Office was set up at national level.

Institutional set-up

The Conflict of Interest Office* (CIO) is a body under the authority of the Ministry of Public Administration, set up in 2006 at national level to manage and control declarations of activities and declarations of goods and assets submitted by public officials. Information on the budgetary allocations and staff of CIO is not available. Its main tasks are:

- to collect the declarations;
- to store them in accordance with the Protection of Data Act;
- to ensure public access to the declaration of activities (but not to the Registry of Goods and Assets, which has reserved access);
- to control the submission of declarations, and verify the contents (omissions, errors, ambiguities) and differences with declarations submitted in the past.

Verifications may begin without a prior complaint upon the decision of CIO. During the course of verifications, CIO may ask for explanations from the respective public official if there is a noticeable error or an inconsistency with the latest tax declaration provided. Sanctions may only be applied by the government.

In Catalonia, the General Inspection of Personal Services manages and verifies the declarations of activities and interests submitted to the government department that also administers the Registry of Activities and Interests, set up in 1992.

Who declares?

Disclosure of interests and activities requirements apply in Spain to: members of the government, state secretaries, sub secretaries, delegates of the government in public entities, heads of diplomatic missions and head of representatives to international organisations, directors general of the general administration, the director general of RTVE, directors general and executive directors appointed by the Council of Ministers, president of the Tribunal of Defence of the competition and its members, president and directors general of the Official Credit Institute, president and executives of major public participation or where the public administration has a dominant position on the board, members of the presidency cabinets and vice-presidents appointed by the Council of Ministers, presidents, directors and managers of public foundations, CNMV, directors of supervision organisms, and holders of a working post in government public administration appointed by the Council of Ministers.

In Catalonia, the senior public officials required to disclose their interests and activities are: members of the government, secretaries general of the departments or assistant secretaries general or assimilated; *commissionaires* appointed by the government of the *Generalitat*; directors general, services directors, territorial delegates of the government or assimilated; directors general of the managing entities of social security and director of the Catalan Health Service; special advisors of the president of the *Generalitat* and members of the government, director general of the Catalan Corporation of

* *www.mpt.es/ministerio/organigrama/secretaria_estado_admon_publica/oficina_conflictos.html*.

Radio and TV; presidents, directors general, executive director, managers and assimilated from the autonomous bodies of administrative character of the *Generalitat*; presidents, director general, executive director, managers and assimilated from the autonomous entities and companies of the *Generalitat* and any other public office appointed by the government to any of the above-mentioned posts.

The members of the government, the secretaries general of the departments and assistant secretaries general must provide, in addition to the declaration of interests and activities, the declaration of assets, which is submitted to a specific registry created in the government department (*Departament de Governació*).

In 2008, 409 senior officials had to submit declarations from a total of 342 346 officials and a total of 617 372 people working in the public service. The declarations cover the officials and, only on a voluntary basis, their spouses or relatives.

What is declared, and how?

Two declarations should be submitted:

1. *The declaration of activities*, which is made publicly available. The request for access to the registry of declarations of activities should include: the name and surnames of the concerned person or its representative and the preferred communication procedure, the facts, reasons for and clear petition of the request, the place and date, the signature or an accreditation of authenticity and the body, centre or administrative unit the request is addressed to. The declarations are available for judicial authorities, the ombudsman and the Anti-Fraud Office of Catalonia if the information is needed in the course of their investigations.
2. *The declaration of goods and assets*, which is private. However, since 15 October 2009, declarations of goods and assets are made public in the Spanish Official Journal (BOE) – and now they are also available online. The name of the senior official, assets and liabilities are made public (the property address and the amount are not).

The *declaration of activities* should include: all professional, corporate and work activity performed two years prior to the first entry. If these activities were performed in the private sector, the declaration has to include the corporate name and purpose, role of the senior official in the company, contracts and name of the other party, relation with companies similar to the new post of the senior official and any other relevant data that could help to determine a conflict of interest with previous activity. The declaration has to include any public and private activities performed by senior public officials, by themselves or through an intermediate or substitute, and which could generate incomes, even if income is not received.

The *declaration of goods and assets* includes information regarding goods, rights and obligations of the public official, the value of negotiable shares, the companies owned in full or in part by companies in which the public official has shares, as well as the corporate purpose of those companies. If shares exceed EUR 100 000, the public official has to contract their management to an authorised company.

In Spain, the following institutions may access the *Registry of Goods and Assets*: the congress and the senate, the parliamentary investigation commissions, the judicial authority for preliminary investigations or resolution of a trial, the Public Prosecutor Office when access to the content of the registry data is needed for its investigations.

In Catalonia, the following institutions may access the *Registry of Goods and Assets*: the parliament, the judicial authority for preliminary investigations or resolution of a trial, the Public Prosecutor Office when accessing the content of the Registry data is needed for its investigations, the Spanish and Catalan ombudsman and the director of the Antifraud Office of Catalonia.

Templates for the declarations were approved by an executive order and are available both electronically and in printed format. Electronic submission of the declaration is acceptable, as the public official can be identified through the new electronic ID cards. The template covers the public official, the spouse or partner, and second-degree relatives.

In Spain the declarations are submitted directly to the Conflict of Interest Office and in Catalonia to the Government Department (*Departament de Governació*), which also administers the Activities and Interests Registry through the General Inspection of the Personnel Service (*Inspecció General de Serveis del Personal*).

In Spain, the declarations are archived for three years, or five years in the case of incompatible activities (cooling off period of two years). In Catalonia, the personal data of senior officials are deleted ex officio three months after the official has left the position.

Verification and sanctions

Verifications may be initiated:

- upon receiving a complaint;
- ex officio;
- due to late submission or non-submission of the statement;
- due to differences between the declared assets and the legal sources of income.

The Conflict of Interest Office has access to the latest income tax copy submitted by the senior official (there is no direct access to the tax register, but the copy submitted to the Internal Revenue Service is also submitted to the Conflict of Interest Office). The Real Estate Registry is public and therefore available to the Conflict of Interest Office. Banking information is not disclosed to the Conflict of Interest Office, but only to judicial authorities and some designated institutions (for example in Catalonia, the Anti-Fraud Office).

The law provides for a mandatory referral to the judicial authorities (State Prosecutor's Office) when there is reasonable evidence/likelihood that a criminal offence has been committed. The Conflict of Interest Office suspends its procedures until the end of the criminal procedure.

In Spain the procedure is carried out by the Conflict of Interest Office, and the official has full access to his/her file during all stages of the procedure. During the procedure, interim measures may be taken. The procedure may be launched, and the sanctions are imposed as follows:

- by the Council of Ministers for members of the government and state secretaries for serious infractions;
- by the minister of public administration for the other members of the government for major infractions;
- by the secretary general for public administration for the minor infractions.

	Serious infraction	Major infraction	Minor infraction
Spain	Declarations with false data or documentation. Absence of contract with the CNMV (National Stock Market Commission) to control the shares when the senior officials supervise or control companies where the share value exceeds EUR 100 000. Non-compliance with the rules of incompatibility laid down by law.	Non-declaration of activities or goods and assets in the Registries despite prior warning. Deliberate omission of data and documents that have to be provided.	Declaration of activities or goods and assets, after the warning given to the senior public official.
Sanctions	Publication in the Spanish Official Journal (BOE), removal from the post, the non-perception of the compensation provided by law. Communication by the administration to the General Public Prosecutor's Office. No re-election for five to ten years.	Declaration of non-compliance with the law in the Spanish Official Journal (BOE).	Warning.
Catalonia		Non-compliance with the incompatibility rules established by law. Omission of data and substantial documents. Non-declaration within 15 days upon the written warning. Two minor infractions in one year. Non-compliance with the obligation to abstain from comment on issues, for which such a legal obligation exists.	Late declaration of activities or goods and interests in the Registries (by 15 days).
Sanctions		Publication in the Catalan Official Journal (DOGC). The law contemplates the opening ex officio of legal proceedings by the legal cabinet of the Catalan government.	Written warning.

The senior official has ten days to submit responses to the allegations, evidence, or any other document. The Conflict of Interest Office proposes a resolution describing the allegations, the proved allegations and the legal qualification of the conduct. The senior official has 15 days to submit new comments regarding the resolution. The resolution has an executive character and may be challenged before the administrative courts. Statistics regarding past and current procedures are not available, while the Ministry of Public Administration stated for the Greco compliance report on Spain (19 October 2007) that no procedures were undertaken until that date.

In Catalonia, the investigation and inspection can only be instructed by the minister of the Catalan government (*Conseller de Governació*) ex officio.

Further areas for development

According to the authorities, the following areas could be further strengthened:

- Verification of the veracity of declarations, a standard criterion for the value of goods, publicity of both registers, more transparent practices. The declaration of assets is a tool to prevent and tackle corruption if the correctness of the data can be verified.
- Transparency should be increased with regard to the Registry of Goods and Assets.
- The efficiency of inter-institutional co-operation, including through data sharing and strategies of effective control.
- A verification and sanctioning regime for conflict of interest.

PART III

Chapter 13

Asset Declaration in Ukraine

Context

The requirement for civil servants to declare assets was first introduced in Ukraine in 1993, through Article 13 of the Law of Ukraine on Civil Service. However, there are no mechanisms in place for its application, through either this law or any other legislative acts. The requirement was further elaborated in the special Enactment of the Cabinet of Ministers and the Law on Combating Corruption in 1995,[1] and only in 1997 were practical aspects of the declaration process addressed. That year the Ministry of Finance endorsed a template asset declaration, which marked the actual launch of the declaration practice for assets in Ukraine. That same system, designed in mid-90s, is – with minor changes – still in place.

The system of declaration of assets by public officials in Ukraine is built upon the concept of financial control and (supposedly) wealth monitoring. Understanding of the purposes for which such an instrument can be utilised has evolved with development of the democratic processes within the country, as well as under the pressure of economic and social transformations and wider exposure to information on the experience of other countries in this respect. Mechanisms of asset declarations (however effective or non-effective) were initially conceived as an anti-corruption measure, and so came under the special anti-corruption law under a section dubbed "Prevention of Corruption". Issues of accountability, transparency and public administration integrity came into the picture at a later stage, with a rising need for restoration of public trust in state institutions. And in response, provisions on public disclosure of asset declarations information for certain categories of public officials have been introduced, as amendments to the Law on Combating Corruption in 1997.

Currently, Ukraine's system of asset declarations is undergoing full-fledged reform, with shifts in the priorities and aims for such a tool. Draft legislation proposing changes in the design of the system and its functioning is currently in the parliament awaiting review and adoption.[2]

Issues of conflict of interest are not directly regulated by Ukrainian legislation. There are various norms within existing laws that can be interpreted as such regulation. For instance, Article 12 of the Law on Civil Service lists among the limitations for entering into the civil service direct supervision of or subordination to family members in the service. Article 5 of the Law on Combating Corruption imposes a set of special limitations onto \civil servants and other persons carrying out state functions, to obviate possible corruption and avoid situations where the private and public interests of the person can come into conflict, etc.). Similarly to the situation with financial disclosure by public officials, a question of regulating conflict of interest has recently been put on the policy development agenda. A draft Law on Rules of Professional Ethics in the Public Administration and Prevention of the Conflict of Interest was developed and registered in parliament, and is pending further review and adoption.

Legal basis and institutional arrangements

The legal basis of the asset declaration system in Ukraine is comprised of a number of legal acts regulating general issues (such as the Law on Civil Service, Law on Combating Corruption, Law on Service in Bodies of Local Self-governance, Law on Election of the Peoples' Deputies of Ukraine), with various specific matters regulated by numerous legal and normative acts.[3] (Examples include the Enactment of the Cabinet of Ministers of Ukraine No. 641 on Application of Article 13 of the Law on Civil Service of Ukraine; Presidential Decree No. 73/2003 on Measures to Strengthen Control over Declaration of Assets by Persons Carrying out State Functions; and Order of the Ministry of Finances No. 58 on Endorsement of the Form of Declaration of Income, Financial Obligations and Assets for the Civil Servants and Candidates for the Position of the Civil Servants.)

Ukraine does not have a specialised institution dealing with collection, verification, archiving or other forms of processing of asset declarations of public officials. And while the Main Civil Service Department (MCSD) can be nominally singled out as the one with the leading role regarding financial disclosure of civil servants and public officials in local self-government (other public officials are not dealt with by this agency), it covers only some of the functions related to state financial control. In fact, the current system involves a number of institutions in these processes, which control various stages of declaration processing and various types of public officials.

More specifically, each state institution is responsible for the initial collection of asset declarations from their own employees or candidates for the vacant positions opening within their structures (in most cases, human resources/personnel departments carry out this function), as well as storing and archiving of the asset declarations they have collected. The Ministry of Finance is responsible for developing and updating the template for asset declaration forms; it also has advisory guidance functions (*i.e.* providing civil servants with instructions on how to declare assets, developing other types of guidelines and explanatory notes, etc.). MCSD[4] provides additional methodological guidelines, training and information support to civil servants and public officials of local self-governance on issues of asset declaration and conflict of interest. The state tax administration of Ukraine, together with law enforcement agencies, conducts verifications of the asset declarations jointly with the MCSD. In addition, MCSD is responsible for compilation of the data on compliance with requirements for financial disclosure from other agencies within one report, which is then submitted to the Cabinet of Ministers of Ukraine.

Subjects of declaration systems

All civil servants and candidates applying for positions within the civil service are required to declare their assets in one form or another. Asset declarations are similarly submitted by public officials of local self-government and candidates for such positions, as well as certified employees of the state tax administration and state customs service of Ukraine.[5] The total number of those who have submitted declarations in 2008 are 367 016 civil servants, certified employees of the state tax administration and state customs service of Ukraine,[6] as well as 100 582 officials of the local self-governance.[7] A total of 765 civil servants failed to submit their declaration forms, which constitutes 0.21% of all civil servants who are obliged to declare. Comparatively the percentage has been somewhat lower in previous years, amounting to 0.08% in 2007 and to 0.05% in 2006. It is impossible to estimate figures for the total number of candidates for vacant positions who

have applied and submitted their declaration forms, as well as members of their families, due to the fact that such data are collected by multiple individual agencies and their regional departments, and is not being centralised.

In Ukraine, differentiation between political and professional officials (civil servants), as well as between high- and low-level officials, is ensured through differentiation in the scope of the declarations and their availability to the public. Such special requirements are imposed on Categories[8] 1-2 of civil servants (high-level officials) in terms of scope, and an additional requirement for public disclosure is being imposed on the president of Ukraine, speaker of the parliament and his deputies, heads and deputy heads of the permanent parliament commissions, members of parliament, the prime minister, members of the cabinet of ministers, the head of the Constitutional Court and its members, the head of the Supreme Court and its members, the head of the High Specialised Court of Ukraine and its members, and the prosecutor general of Ukraine and his deputies.

Ukrainian legislation requires all above-mentioned categories of public officials to declare financial information of their adult family members (husband/wife, parents and unmarried children) who live with them, including household partners.

Scope and content of the declarations

As was mentioned before, Ukraine exercises a tiered/differentiated approach with regard to the scope and content of the declarations, like many other countries in the region and outside. Thus, the higher the level of public official, the wider the scope and content of the declarations will be. High-level public officials, namely those in Category 1-2, have to provide information on real estate and valuable movable assets, bank deposits and securities that belong to them and members of their family, in addition to the generally required information on personal and family members' income and financial obligations inside and outside Ukraine. It is also mandatory for all civil servants to inform the state tax administration in writing about opening a bank account in a foreign bank, indicating the account number and bank location, within ten days of that account opening.

All public officials use the same template form,[9] the difference residing in the sections that they have to fill in. In practice, it works the following way: all civil servants are required to fill in Sections I-III, while Sections IV-VI are filled out by high-level public officials only. Candidates for positions within the civil service are covered by the requirements applicable to the category under which their applied position falls.

There are six parts to the declaration form:

- Section I: general information (personal data of the official and his/her family, professional information on the official).
- Section II: information on incomes obtained in Ukraine and outside (general income, dividends, royalties, interests, financial aid, insurance returns, profits received from scientific, teaching and creative activities [honoraria, fees, etc.], income from other work, profits from securities, corporate rights and actual salary).
- Section III: data on financial obligations in Ukraine and outside (financial obligations in regard to payment of the instalments under insurance agreements, contributions into private retirement funds, payments on credits, lease payments, utility bills).
- Section IV: information regarding real estate assets (must include the square footage of the property).

- Section V: information on vehicles (declared with indications of their brand, model and engine size).
- Section VI: information regarding bank deposits, securities and other financial assets (the general value of all securities and financial assets is to be declared; all contributions into various funds, ventures, associations are reflected; and finally, the total amount on the bank accounts is to be included here).

Processing of the declarations

Ukrainian legislation requires all civil servants to declare their assets; the general trend is for declarations to be submitted on entering the civil service; unlike many other countries, "exit" declaration forms are nonexistent in Ukraine.

When a person applies for the position, he/she is required to submit financial information on personal incomes and financial obligations, as well as those of his/her family. Asset declarations are similarly submitted by public officials of local self-government, and candidates for such positions. Declarations collected in this manner are kept in the personal files of each of the declaring public officials. Initial submission of declarations is followed up by the requirement to annually declare assets; declarations are to be submitted no later than 15 April.

Official methodological guidelines on filling out the asset declarations have been adopted by the Ministry of Finance in 2001 to address numerous mistakes and challenges faced by civil servants. Complementary guidelines and advisory memos have been drafted by MCSD, as well as other institutions. The declarations are filled out in paper format and stored by the human resources departments; no electronic asset declaration forms are used in Ukraine at the moment.

Two types of verification are conducted in Ukraine – obligatory and *ad hoc* verification. Obligatory special verification is conducted for all declarations submitted by the candidates for positions when appointment or approval of the appointment is made by the president of Ukraine or cabinet of ministers of Ukraine. This verification is conducted by the Main Civil Service Department, Ministry of Interior, Ministry of Education and Science, state tax administration and security service of Ukraine – it is a joint exercise that involves a wide range of verifications of all data provided by the candidates (besides financial disclosure information, information on former employment, education, criminal records, etc. is provided). Verification of the information contained under the financial disclosure section is carried out by the state tax administration. Results of these verifications show that approximately 60% of the discrepancies have to do with declarations of assets.[10]

Ad hoc verification is conducted by the state tax administration and law enforcement agencies, acting jointly with the Main Civil Service Department as part of the complex inspections on compliance with the Law on Combating Corruption, Law on Civil Service, and other norms and regulations on anti-corruption in civil service and bodies of local self-governance. This type of verification is conducted on the random selection basis, with the focus on those positions considered to be most susceptible to corruption risks[11] and in accordance with the Strategic Action Plan of the Main Civil Service Department of Ukraine.[12]

Verification of asset declarations is also possible upon receipt of a complaint (anonymous complaints are not accepted), or in the course of the ongoing investigation when such need occurs. Unfortunately, no statistical data on such types of verifications were made available for the purposes of this report.

Sanctions

Disciplinary and administrative sanctions are established for violation of the requirements on financial disclosure (Article 9 of the Law on Combating Corruption, Article 30 of the Law on Civil Service of Ukraine and Article 20 of the Law on Service in Bodies of the Local Self-governance).

When a person fails to submit an asset declaration in a timely manner, an official notice reflecting this fact (along with explanations received from the person who violated financial control provisions) is drawn up and his/her supervisor is to make a decision regarding dismissal of this person from the civil service. A note on the grounds for dismissal is made in the employment records[13]of the person. Such a sanction was applied to one person in the year 2008.

Incorrect, false or incomplete information contained in the submitted form results in administrative liability in the form of a fine, and can be a basis for refusal of promotion or limitation of the right to be elected for positions within state bodies.

Public disclosure

Information contained in asset declarations of civil servants is confidential and cannot be disclosed for the use of the general public. Only information on incomes, bonds, real estate property and movable assets, and bank deposits that belong to the persons listed in Article 9 of the Law on Civil Service[14] and their family members is to be published annually in the official media outlets of these state bodies. Unfortunately, in practice only few institutions make such information available to the general public; updates on such data is not regular, and depends on the volition of the persons in question to publish such information.

Evaluation of the declaration system

The Ukrainian system of asset declarations faces many sorts of challenges: from institutional and legislative gaps to practical problems that impact many civil servants (*i.e.* any possibility of reasonable grounds for failure to submit a declaration in timely manner is absent; situations where members of the family refuse to provide information is unregulated; contradictions in terms within the asset declaration form and methodological guidelines lead to administrative protocols on violations being drawn up simply because of the differences in interpretation of such terms, etc.). The purpose of the asset declaration system in Ukraine is dubiously served by existing mechanisms, and current asset declaration instruments can hardly be used as effective anti-corruption tools. The system requires in-depth reform in the opinion of almost all key institutions involved in the process.

Nevertheless, Ukrainian authorities have been indeed active in the area of developing new legislation to address these challenges, and have been openly critical of the existing system – a good first step toward establishing a successfully functioning asset declaration regime.

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March 31 1997 N 104/1908

Adopted by the Order of the Ministry
of Finances of Ukraine from March 6 1997 # 58

DECLARATION

of income, financial obligations and assets of the civil servant and of the person who applies for the position of the civil servant in regards to him/herself and members of his family[1]

Section I. General information

1. _____
(last name, first name and patronymic)

2. Place of residence: _____
(postal code, oblast, region, city, street, house, # apartment)
_____
_____

3. Occupied position and civil servant's category _____
_____
_____

4. Position and civil servant's category for which the person filing declaration is applying
_____
_____

5. Family members:[2] _____
_____
_____
_____
_____
(last name, initials and family connection)

1. Sections I, II, III are filled out by the civil servants of all categories, and sections IV, V, VI are to be filled out by the civil servants of the first and second category.
2. For the purposes of this Declaration the members of the family include a spouse, parents and children who live with them and are not married.

Section II. Income received (accrued) from the sources originating in Ukraine and abroad for the year 200_

No.	List of incomes	Income amount (UAH)	
		Civil servant	Family members
1	2	3	4
1.	Grand total of the total incomes, including:		
1.1.	Dividends, interests, royalties		
1.2.	Material assistance		
1.3.	Insurance reimbursements		
1.4.	Income from scientific, teaching, creative work, authorship royalties (honorarium)		
1.5.	Income from entrepreneurial and independent professional activities		
1.6.	Income from disposal of securities and corporate rights		
1.7.	Salary		

Section III. Financial obligations, including those originating from abroad for the year 200_					
No.	List of obligations regarding making of contributions (payments)	Civil servant		Family members	
		Total paid (UAH)	Including paid abroad (UAH)	Total paid (UAH)	Including paid abroad (UAH)
1	2	3	4	5	6
1.	According to the agreements for the volunteer insurance				
2.	According to the agreements on supplementary retirement				
3.	According to credit agreements				
4.	According to lease (sublet) agreements				
5.	Maintenance of assets declared in Sections IV, V				

Section IV. Information on assets which are in private ownership			
No.	List of incomes	Civil servant	Family members
		Total size (square meters)	Total size (square meters)
1	2	3	4
1.	Land lots		
2.	House		
3.	Apartment		
4.	Country house		
5.	Garage		

Section V. Information on vehicles which are in private ownership					
No.	List of objects	Civil servant		Family members	
		Brand/model	Engine size (cubical centimetres)	Brand/model	Engine size (cubical centimetres)
1	2	3	4	5	6
1.	Passenger vehicles				
2.	Truck/lorry, special vehicles and buses				
3.	Motorcycles				
4.	Tractors				
5.	Water means of transportation				

Section VI. Information on bank deposits, securities and other assets					
No.	List of objects	Civil servant		Family members	
		Total (UAH)	Including abroad (UAH)	Total (UAH)	Including abroad (UAH)
1	2	3	4	5	6
1.	Nominal value of the purchased securities				
2.	Contributions (shares) in the authorized capitals (stakeholders funds) of the enterprises, institutions, organisations				
3.	Amount of monetary means on bank accounts and in other financial credit institutions				

Acknowledge awareness of liability for filling of insufficient or incorrect data regarding income and financial obligations (Article 9 of the Law of Ukraine On Combating Corruption and Article 30, paragraph 7 of the Law of Ukraine On Civil Service)

_____ _____

Signature Date

Notes

1. This case study was developed on the basis that the Law of Ukraine on Combating Corruption was still in force. Although a new Law on Basic Principles for Prevention of and Combating Corruption called to replace it has been adopted, it is still pending enforcement on 1 January 2011.
2. Draft Law No. 4472 on Measures of the State Financial Control over Public Administration, from 14 May 2009.
3. There are currently over 50 pieces of legislation that fall under this category.
4. The Control Revision Department is one of the eight departments within the structure of the MCSD; its primary responsibility is to deal with all anti-corruption matters, including those related to financial disclosure functions of the agency. The head of the Control Revision Department is appointed by the head of MCSD, and the department acts in accordance with the action plans approved by the deputy head of the MSCD.
5. Requirements to declare assets for these persons are stipulated in Article 13, Law on Civil Service; Article 6, Law on Combating Corruption; and Article 13, Law on Service in Bodies of Local Self-governance.
6. Data provided in the Questionnaire by Ukrainian authorities.
7. Official data taken from the State Committee of Statistics of Ukraine from 31 December 2008.
8. Ukraine's civil service has seven general categories of civil servants, the division criteria being stipulated in the Law on Civil Service, Article 25; seniority goes from the 1st category (the highest) down to 7th (the lowest).
9. A unified template asset declaration form was developed and endorsed by the Ministry of Finance of Ukraine on 6 March 1997, and used for the first time that same year.
10. Official data of the Main Civil Service Department are provided as an example from 2007.
11. A list of such positions is compiled by the Main Civil Service Department with identification of sectors/institutions, as well as types of positions, and can be found online at *www.guds.gov.ua/control/uk/publish/article?art_id=66556&cat_id=57862*.
12. Strategic Action Plan for year 2010 foresees complex inspections in the Ministry of Regional Development and Construction, Ministry of Justice, state committee on state material reserves and in three *oblast* administrations (ad hoc verifications), as well as around 450 obligatory special verifications in the course of the year.
13. A standard document reflecting the employment history of the person is in place in Ukraine, and is usually presented to the employer on application for a vacancy.
14. President of Ukraine, speaker of the parliament and his deputies, heads and deputy heads of the permanent parliament commissions, members of parliament, prime minister, members of the cabinet of ministers, head of the Constitutional Court and its members, head of the Supreme Court and its members, head of the High Specialized Court of Ukraine and its members, the prosecutor general of Ukraine and his deputies.

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Fighting Corruption in Eastern Europe and Central Asia

Asset Declarations for Public Officials

A TOOL TO PREVENT CORRUPTION

Many countries have introduced systems of asset declarations for public officials in order to prevent corruption. These systems vary greatly from country to country and their impact on mitigating corruption is not well known.

This study provides a systematic analysis of existing practices in asset declaration in Eastern Europe and Central Asia and in some OECD countries in Western Europe and North America. It examines 1) the key elements of asset declaration systems, such as policy objectives, legal frameworks and institutional arrangements; 2) the categories of public officials who are required to submit declarations, and the types of information required; and 3) procedures for verifying information declared, sanctions for violations, and public disclosure. The study also discusses the cost-effectiveness and overall usefulness of declaration systems. It includes case studies of Lithuania, Romania, Spain and Ukraine, and a large number of additional country examples and references.

The study presents policy recommendations on the key elements of asset declaration systems. These recommendations will be useful for national governments and international organisations engaged in development, reform and assessment of asset declarations systems at country level.

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