

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.

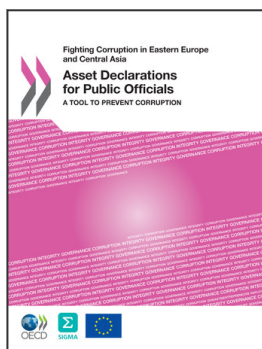
The senior official has ten days to submit responses to the allegations, evidence, or any other document. The Conflict of Interest Office proposes a resolution describing the allegations, the proved allegations and the legal qualification of the conduct. The senior official has 15 days to submit new 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.



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