

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."<sup>1</sup>

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".<sup>2</sup> 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."<sup>3</sup>

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...”<sup>4</sup> 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 or 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:

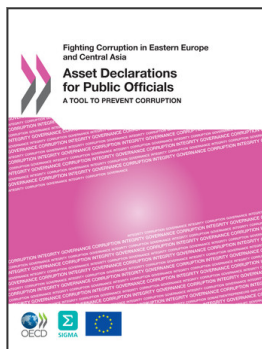
- disclosure covers all substantial types of incomes and assets of officials (all or from a certain level of appointment or sector and/or their relatives);
- disclosure forms allow for year-on-year comparisons of officials' financial position;
- disclosure procedures preclude possibilities to conceal 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](http://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](http://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](http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf).

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