

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 include 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?

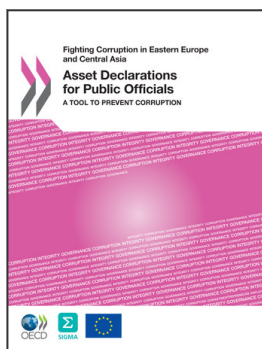
While there is a global trend towards greater disclosure, striking the right balance between *public disclosure and protection of privacy* remains a subject of debate. There are strong reasons for disclosing, at least partially, data of political officials, such as MPs. Politicians should be prepared 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*.



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