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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