

# ANTI-CORRUPTION HELPDESK

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## ASSET DECLARATION RULES FOR POLITICIANS

### QUERY

Do you have any comparative information on asset disclosure rules for politicians in European countries?

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### SUMMARY

Asset declaration regimes have been introduced in many countries as a way to enhance transparency and integrity as well as the trust of citizens in public administration. They aim at preventing conflicts of interest among public officials and members of the government and avoiding illicit enrichment or other illegal activities by monitoring wealth variations of individual politicians and civil servants. In the absence of agreed international standards on asset disclosure requirements, studies point to a set of core principles that should be considered by governments seeking to adopt such regimes: asset

disclosure regimes should cover the leadership of the three government branches; they should be publicly available; and they should cover a wide range of issues (income, gifts, assets, liabilities, conflicts of interest). Experience also shows that “credible asset declaration regimes need to clearly define who should declare what to whom, at which frequency, establish a review mechanism with explicit criteria for verification, provide for public access to these declarations, and applicable sanctions for failure to declare” (Chêne 2011).

The disclosure of private interests by heads of state, ministers or members of cabinet, and upper and lower house legislators is becoming a common practice in many countries. Most regimes require a declaration of assets, income and liabilities, but the content, scope and coverage of assets declaration still vary from country to country. This answer analyses the regimes adopted in European countries, including Spain, France and Sweden. This review suggests that the asset declaration framework in most European countries, particularly with regards to heads of state, does not always cover all key requirements of an effective asset declaration regime. In comparison, the United States is often referred to as a country with one of the most comprehensive regulations.

## 1 GENERAL RECOMMENDATIONS ON ASSET DECLARATION

### General Recommendations on Asset Declaration

Asset declaration regimes have been introduced in many countries as a way to enhance transparency and integrity as well as the trust of citizens in public administration. They aim at preventing conflicts of interest among public officials and members of the government and avoiding illicit enrichment or other illegal activities by monitoring wealth variations of individual politicians and civil servants.

In the specific case of politicians, asset declaration regimes are fundamental as they are exposed to higher risks of conflict of interest and have greater opportunities for illicit gains (Chêne 2008).

In the absence of agreed international standards on asset disclosure requirements, studies assessing the existence and effectiveness of asset disclosure regimes in countries around the world point to a set of core principles that could be considered by governments seeking to adopt such regimes (Messick 2009, OECD, 2011; Transparency and Accountability Initiative 2011).

Based on a study conducted by Djankov et al. (2010), the Transparency and Accountability Initiative recommends the following approach in order to establish a regular and comprehensive asset disclosure system:

1. Asset disclosure requirements should cover the leadership of the three branches of government – Executive, Legislative and Judiciary – as well as the senior career civil service bureaucracy.

Yet, there are discussions on 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, or whether specific provisions should be developed for different categories of public officials. Considering that public officials have different responsibilities and particularly different discretionary powers, countries may consider specialising regulations of asset declarations for different categories and branches of public officials (Chêne 2008)

Asset declaration regimes should also take into account the risk of corrupt officials dissimulating their assets under the names of their relatives, spouses and other individuals. Therefore, data from spouses,

domestic partners, children and other household members should also be disclosed in public officials' declarations (OECD 2011).

2. It should be regular (at least on an annual basis).

While provisions regulating how often financial disclosure statements must be submitted vary across countries, three patterns can be distinguished. Submissions are commonly required to be made periodically, annually, or every two years. Less common are laws that are event driven, requiring public officials to update their submission whenever there is a "significant" change in their holdings. A third pattern requires officials to make a disclosure upon entering government and a second upon leaving (OECD 2011).

3. It should be systematic and cover a wide range of key information, such as:

#### a. Assets

- personal residence
- second homes, vacant land, buildings, farms
- financial investments (for example, stocks, trusts, options, insurance policies, retirement accounts) and business assets (for example, private corporations and partnerships)
- bank accounts and interest-bearing instruments
- vehicles
- other significant movable assets (for example, jewelry, art, furniture, cattle)

#### b. Liabilities

- all debts, obligations, loans, credit cards, mortgages, guarantees and co-signatures.

#### c. Income from all sources

- financial investments (for example, interests, dividends, annuities, pensions, benefits)
- business assets
- private sector employment
- professional services (consulting and other paid contracts from the public or private sector)
- boards and directorships
- other public sector employment
- lotteries, gambling and on-time payments

## d. Gifts

All significant gifts, advantages and other benefits received, including financial sponsorships and sponsored visits.

## e. Potential conflict of interest

- unpaid contracts and employment
- unpaid boards and directorships
- participation in associations, non-profit organisations and trade unions
- post-tenure position and employment

## 4. Information should be precise and avoid ranges

There are a number of ways in which information can be declared. The strictest approach is to require exact amounts of all income and identification of concrete sources. Such a requirement can be softened through stipulating a threshold above which income must be declared (for example, for members of the German Bundestag); asking to indicate the amount of income within pre-defined ranges rather than exact sums (for example, United States senior officials are allowed to merely indicate a range of values); limiting the disclosure of the origin of income to the type rather than the exact identity of a source; or asking the source of income but not its amount (OECD 2011).

## 5. Information should be efficiently archived, easily searchable and publicly available

Disclosure can be either confidential or public. A confidential disclosure is made to an anti-corruption agency or other government entity. In order to be effective this agency must be independent and should enjoy trust from the public. Public disclosure laws require the agency to publish the declared information (through the media or online) or to make it available upon request. The importance of public disclosure relates to the fact that civil society and media are then empowered to help enforce the rules (Messick 2009).

## 6. Ensure effective monitoring and enforcement.

The administration of an asset disclosure program requires the responsible agency, or agencies, to perform a variety of tasks, such as: receipt and review of submissions and notification of non-filers; training on compliance; review with the employee for conflict of interest; verification of submission; and investigation and prosecution.

The majority of countries split those tasks among two agencies. One agency is usually responsible for the

compliance and a second body is responsible for the law enforcement.

## Legal and Implementation Challenges in Practice

In spite of their potential in building public sector integrity, shortcomings of the regulatory framework can threaten the effectiveness of asset disclosure in practice as a tool against corruption, including (Chêne 2011):

- The lack of clarity about what assets, liabilities and interests members of the government are to disclose.
- The non-existence of a legal requirement for the verification of asset declarations.
- The lack of effective sanctions and clarity over the prosecution of offences.
- The lack of public access to officials' asset declarations.

At the implementation stage, their impact can be hampered in practice by the lack of resources (manpower, technical and financial) allocated to implement the schemes, especially with regard to the verification of the declarations (Chêne 2011).

## 2 COUNTRY EXAMPLES ON ASSET DECLARATION RULES

According to a recent study conducted by the OECD (Transparency in Governance 2011) the disclosure of private interests by top decision makers, namely, president, prime minister, ministers or members of cabinet, and upper and lower house legislators is becoming a common practice among member countries.

While the majority of disclosures are required by law, some top decision makers provide disclosures voluntarily. Nevertheless, in 86 per cent of OECD countries, top decision makers within the executive and legislature are required to disclose their private assets. The acceptance of gifts is prohibited altogether in less than a quarter of member countries, while around half of the countries call for disclosure.

In this context, considering that the scope, coverage, and contents of assets declaration vary from country to country, this answer analyses the cases of Spain, France, Sweden and the US, which although not a European country, is often referred to as a country with some of the most comprehensive regulations.

## Spain

In Spain, the legislation requiring asset declaration for members of the government aims at ensuring the independence and impartiality of the public sector, as well as preventing situations that could generate conflicts of interest.

Members of the government are among an extensive list of persons who have to disclose interests and activities to the Spanish Conflict of Interest Office (CIO). They also have to submit a declaration of assets to a specific registry within the Department of Governance. Those declarations are mandatory for senior public officials and voluntary for their spouses and relatives.

The declaration of goods and assets must be submitted directly to the CIO, which also has the duty of making them public. They are archived for a period of three years, or five years in the case of incompatible activities (for example, post-employment).

The CIO, besides the above mentioned duty of making such declarations public, is also responsible for managing and controlling both the declaration of activities and the declaration of goods and assets, meaning that the CIO should, among other things, collect the declarations, archive them, ensure public access to the information, as well as verify the content (omissions, errors or ambiguities) and note differences with previous declarations. If there is any evidence of criminal offence, the CIO has to refer to the State Prosecutor's Office (OECD 2011).

## France

France's asset disclosure regime is regulated by several laws.<sup>1</sup> Presidential candidates, ministers and cabinet members, members of parliament (MPs) and civil servants are required to submit asset declarations. The rules in place do not cover spouses and children who are not required to report any information. The primary filers are also not required to include information relating to their spouse and children in their own declaration.

<sup>1</sup> Law No. 62-1292 (1962) requires asset disclosure of the President. Law No. 88-226 (1988) and Law 88-227(1988) stipulate that Ministers must comply with asset disclosure provisions, and also specify filing frequencies and locations for various public officials. The Electoral Code (1964) covers MPs, while Decree 96-762 (1996) refers to the asset disclosure requirements of specific civil servants.

The Commission on Financial Transparency in Politics elaborated a standardised filing form, which includes guidance notes, to be used by presidential candidates, ministers, MPs and civil servants. The coverage requirements are the following:

1. Assets (real estate; movable assets – arts, jewellery, furniture; cash)
2. Liabilities (which are not explicitly defined)
3. Income (earned income as well as securities and investments)

The frequency of disclosure is also determined by law. The president has to submit asset declaration before the election and upon leaving office. Ministers and MPs have to submit their declarations upon taking and leaving office, and they may communicate any change in assets if they find it relevant.

With regards to monitoring and oversight, presidential candidates must deposit their asset declaration to the Constitutional Court, but there is no sanction in place in case of non-compliance. Ministers and MPs have to submit it to the Commission for Transparency in Politics. In the latter case, an administrative sanction is in place in case of non-compliance. Thus, if a MP does not file a declaration of assets he or she will be ineligible to hold office for a period of one year.

In addition, while the president's asset declaration is available for free in the Official Journal of the French Republic, ministers and MPs' declarations are not publicly available.

More information on France's asset disclosure regime is available [here](#):

An example of the form is available (in French) [here](#)

## Sweden

In Sweden, asset declaration requirements put emphasis on senior public executives. The content of statements disclosing personal financial interest includes information on assets and liabilities, loans, sources and levels of income, additional employment, gifts, and employment history. The reports filled by elected officials and senior public servants are available online.

There are no legal sanctions and no strictly defined legal consequences for violations of the requirements but rather soft measures to achieve compliance. In this sense, if a member of parliament, for example, fails to submit information to the register, this compliance failure is announced at the plenary meeting (OECD 2011).

## The United States

The US disclosure system aims at ensuring transparency and preventing conflicts of interest. A separate system for persons occupying high-level positions is in place. In the Executive branch, the Office of Government Ethics (OGE) is responsible for the various Codes of Conduct and statutory restrictions.

At the federal level, the Ethics in Government Act requires that candidates for elected offices, elected officials and high-level appointed officials submit a publicly available personal financial report (OECD 2011). The act establishes three types of reports: new entrant/nominee: due within 30 days after assuming office; incumbent: due annually, no later than 15 May following the covered calendar year; termination: due on or before the 30th day after leaving a covered position.

The reports must contain the following information:

- Sources and amounts of income.
- Assets and their values reported by categories of amount.
- Liabilities: the president, ministers and MPs must disclose liabilities exceeding US\$10,000, excluding the mortgage on a primary residence or a loan secured for automobiles, furniture or appliances. Liabilities owed to immediate family members (spouse, parent, sibling, child) are also not included.
- Gifts and reimbursements accepted during government service with their values or amounts.
- Fiduciary and employment positions held outside the government within the dates the positions have been held.
- Agreements and arrangements regarding future employment, leaves of absence, continuing payments from or participation in a benefits plan of a former employer, with dates and details.
- Names of major clients (persons or organisations for whom personal services were performed for compensation in excess of a specified threshold amount – for first reports only).

The filer must also report assets, income, liabilities and gifts of the spouse and dependent children.

The reports are first reviewed by the agency where the official holds, or previously held, a post and the OGE (Office for Government Ethics) acts as a secondary review agency for presidential appointees. In case of an actual or potential conflict of interest, or a clear illegality on the declaration, the case goes to the Office of Inspector General, FBI or Public

Integrity Section of the Department of Justice, where criminal, civil and/or administrative sanctions can be applied. Sanctions may also involve a filing fee of US\$200 if a financial disclosure report is more than 30 days late, and a civil monetary penalty of up to US\$11,000 if false information is submitted.

Therefore, compliance personnel and enforcement staff are separated. The OGE is responsible for compliance; it receives the forms and ensures that they are properly completed. Personnel from the office also counsel filers on possible conflict of interest situations and how they can be managed. On the other hand, enforcement is left to the public prosecutor for criminal offenses and to administrative agencies for lesser transgressions.

In this system, there is no requirement to audit a report to determine whether disclosures are accurate. Reviewers should take disclosures at “face value” as correct, but additional information on a report can be requested before referring it to the Prosecutor’s office. Nevertheless, civil society can also help monitoring the declarations, since public access to financial disclosures is available upon request.

More information on the US public financial disclosure can be found [here](#).

## 3 CONCLUDING REMARKS

Experience has shown that while the scope, coverage, and content of asset declaration vary from country to country depending on the country’s social, historical and political environment, as well as resources for enforcing the law, a set of core principles still emerge. In this sense, “credible asset declaration regimes need to clearly define who should declare what to whom, at which frequency, establish a review mechanism with explicit criteria for verification, provide for public access to these declarations, and applicable sanctions for failure to declare” (Chêne 2011).

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