

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

DECLARATION OF INTERESTS, ASSETS AND LIABILITIES: OVERSIGHT MECHANISMS, DISCLOSURE POLICY AND SANCTIONS

QUERY

Is there any international or European Union principle, rule or good practice that asset and interest declarations of public officials be systematically disclosed to the public (on certain websites) and systematically or upon external complaint verified by a relevant independent authority? What are the international or EU legal principles or good practices for sanctioning public officials for established conflicts of interest? What are the types of sanctions imposed in such cases?

CONTENT

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Date

Responded: 12 July 2013

NOTE

Part of this answer is based on a previous U4 Helpdesk answer on asset declaration in selected Asian countries and on a previous Anti-Corruption Helpdesk answer on asset declaration rules for politicians.

SUMMARY

Interest and asset declarations are considered a key instrument to both prevent conflicts of interest and uncover illicit enrichment. There is a broad consensus that these declarations have to be presented to and reviewed by an independent and well-resourced public body. Due to privacy and security issues, the question of public disclosure of such declarations is still debated, though a common position is that countries should make the disclosure of interest and asset declarations mandatory, excluding information that is deemed to violate privacy rights.

The effectiveness of an interest and asset declaration system will depend on a strong enforcement mechanism and on the application of proportionate and dissuasive sanctions for non-compliance with the rules. In the case of conflicts of interest, countries should adopt rules to ensure the adequate management of conflicts of interest, as well as penalties in the case of established conflicts of interest, such as resignation of the public official from office or retroactive cancellation of affected decisions.

1 INTERNATIONAL STANDARDS ON CONFLICT OF INTEREST AND ASSET DECLARATION

Overview

A conflict of interest situation arises when “a public official has a private or other interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties” (Council of Europe 2000). Conflicts of interest do not always translate into corruption or wrongdoing but create the potential for public officials to make decisions that are not in the public interest.

Conflict of interest rules may take a number of forms, including laws, codes of conduct or management guidelines. An important part of these regulations is to ensure that relevant officials disclose their interests, including information not only on financial interests but also on all sources of income and activities, so that potential conflicting decisions can be managed or avoided (OECD 2003).

At the same time, asset declaration rules require public officials to declare information about their assets, liabilities and financial interests. Depending on the country’s legal framework, they may aim primarily at identifying illicit enrichment situations or at preventing conflicts of interest. More comprehensive asset declaration rules may combine both objectives, and the information declared should serve to both prevent conflict of interest and to avoid illicit enrichment. In this case, special attention should be given to ensure that the agency responsible for receiving and verifying the declarations has the capacity to manage conflicts of interest and provide the necessary advisory capacity that is required (Stolen Assets Recovery Initiative 2012).

International standards

Asset declaration and conflict of interest rules have been introduced in many countries as a way to enhance transparency and integrity as well as increase the trust of citizens in the public administration.

International treaties, such as the United Nations Convention against Corruption (UNCAC), have

underscored the necessity of signatory countries to establish rules requiring public officials to declare to appropriate authorities their outside activities, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials (UNCAC Article 8).

The Council of Europe Model Code of Conduct for Public Officials requires that “a 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” (Council of Europe 2000).

However, while there is a broad consensus regarding the need for such rules, there are no agreed upon detailed international standards on what types of information should be disclosed, what type of agency should receive and verify it, and whether this information (or part of it) should be made available to the public.

Nevertheless, studies assessing the existence and effectiveness of asset and conflict of interest disclosure regimes in countries across the world have pointed to a set of core principles that could be considered by governments seeking to adopt such regimes (OECD 2003; OECD 2011; Transparency and Accountability Initiative 2011; Messick 2009). These include rules regarding the (i) coverage of asset declaration and conflict of interest rules; (ii) types of information to be declared; (iii) frequency of filling; (iv) monitoring and enforcement; (v) sanctions; and (vi) availability of information to the public.

A good system which aims at preventing conflict of interests and identifying illicit enrichment should require all branches of government and senior civil servants to regularly, at least once a year, disclose information such as properties, assets, income from all sources, gifts, liabilities and potential conflicts of interest.

More recently, within the framework of the Inter-American Convention against Corruption, the Organization of American States (OAS) created a draft model law on the declaration of interests, income, assets and liabilities of persons performing

public functions, whose provisions can be considered a standard.

This answer provides an overview of good practices regarding the monitoring and oversight of conflicts of interest and asset declarations, sanctions for non-compliance with the rules, measures taken when conflicts of interest are identified, and policies regarding the disclosure of these declarations to the public.

For more information regarding the coverage of asset declarations, types of information to be declared, frequency of filling as well as country examples please refer to previous Anti-Corruption Helpdesk answers¹.

2 OVERSIGHT MECHANISMS

Responsible Agency

An effective interest and asset declaration regime will require an independent agency to receive, review and enforce asset declaration rules. The agency must enjoy the necessary institutional capacity (adequate budget, qualified personnel, proper facilities and access to technology) to perform its tasks (OAS 2013).

The literature does not identify a model that can be universally considered as best practice with regard to the institutional arrangement adopted to receive and verify declarations. Countries around the world have adopted different systems depending on their political and institutional environment. Some countries have opted for establishing a single and specialised agency to receive and review all asset declarations; other countries have established in-house, or internal, arrangements where officials submit their declarations to their respective superior or unit (OECD 2011).

Overall, a broad range of government bodies may be tasked with the responsibility of receiving and/or

enforcing asset declaration rules, including tax authorities, anti-corruption agencies, election bodies and parliamentary bodies, among others (OECD 2011; Stolen Assets Recovery Initiative 2009).

Irrespective of the institutional set-up, it is fundamental that the law spells out which agency is responsible and the type of tasks that should be performed – otherwise there is the risk that the system will not be effectively implemented (Stolen Assets Recovery Initiative 2012).

As previously mentioned with regard to public officials' declaration of interests, due to its preventive nature, the establishment of a separate unit or department that would dedicate time to advise officials as well as monitor and enforce conflict of interest rules, should be considered (Stolen Assets Recovery Initiative 2012).

Verification mechanisms

In order to identify possible conflicts of interest and to detect illicit enrichment, the responsible agency should not only ensure that officials are returning their declarations but also verify that the content declared is accurate and consistent with other records.

Within this framework, interest and asset declaration regimes should include rules on when and how agencies can and should conduct content examination and checks on the information disclosed, as well as the methodology used for such checks. For instance, verification mechanisms may include checks against public or private sector records (land, auto and property registries, for example) against previous disclosures by the same official or against the official's lifestyle (Stolen Assets Recovery Initiative 2012).

With regard to conflicts of interest, the verification process should confirm whether the interests declared by the public official are compatible with the exercise of his or her functions, taking into account, for example, the rules governing conflict of interest, incompatibilities and disqualifications.

In order to effectively conduct these tasks, government bodies responsible for enforcing asset declaration rules should enjoy investigative powers

¹ Martini, M., 2011. *Asset declaration rules for politicians*. Anti-Corruption Helpdesk, Transparency International. Available at: http://www.transparency.org/whatwedo/answer/asset_declaration_rules_for_politicians; Martini, M., 2013. *Asset declaration rules in selected Asian countries*. U4 Expert Answer. Available at request.

and be able to request information from other government agencies (OECD 2011). Within this framework, the OAS draft law includes an article that states: “the competent authority may request reports, documents, background and any other element it deems necessary from any public agency [national, provincial or municipal] and from any natural or legal person, public or private, all of which are obliged to provide such elements within the time limit established by the competent authority, under penalty of law.”

In addition, mechanisms to decide when to conduct content verification or to prioritise the verification should be in place. This should include, for example, establishing an avenue for receiving complaints from the general public (OAS 2013; OECD 2005) and/or prioritising verifications of public officials from certain agencies where the risk of corruption is considered higher, among others (Burdescu et al. 2010).

3 PUBLIC DISCLOSURE POLICY

Interest and asset declarations may be confidential, meaning that declarations made by public officials are only seen by the responsible agency or unit, or they may be made available to the public. A public disclosure law requires that the responsible oversight agency publish the declaration through the media or the internet, or otherwise allow the public to see it (Messick 2009; OECD 2005). In opting for public disclosure policies, governments can still decide on whether or not to make the whole content of the declaration available to the public or only part of it (Stolen Assets Recovery Initiative 2012).

Irrespective of the system adopted, it is essential that the criteria for disclosure of information to the public, the location where the information can be accessed, the timeline for the publication, as well as the costs to access the information are clear and spelt out in the law (Burdescu et al. 2009)

Experience has shown that the effectiveness of asset declaration regimes depends to a great extent on the public’s ability to easily access disclosed information (OECD 2011; Stolen Assets Recovery 2012; Transparency and Accountability Initiative 2011), particularly in those countries where the responsible oversight agencies has limited powers with regard to the content verification of the declarations (Burdescu

et al. 2010). Only if public officials’ declarations are made available to the public in a timely and user-friendly manner, can the media, civil society and interested citizens be able to scrutinise such declarations and identify potential wrongdoings.

However, in many countries security and privacy laws may offer challenges for granting public access to declarations (Stolen Assets Recovery Initiative 2012). In order to balance privacy rights and the right to public information, experts have suggested making a distinction between different categories of information contained in the declaration, allowing public access only to a subset of information which does not compromise privacy rights or personal security (Burdescu et al. 2010).

For instance, the OAS model law states that the competent authority should create a public registry of declarations of interests, income, assets and liabilities that allows unrestricted access for any person to a set of pre-determined information, including the income, asset and liability declaration forms presented on each occasion, within 15 days of their presentation, with the exception of the confidential annexes containing information, for example, on the number of bank accounts and locations of properties declared. The information should be made available online or on hard-copy.

To ensure transparency in the enforcement of the rules, the model law also prescribes that the name of the public official and information regarding whether or not they have fulfilled their reporting obligations on time should be made accessible online. Moreover, a list of those subjected to disciplinary, administrative or criminal penalties, as well as those where measures to avoid or terminate conflicts of interest have been adopted, should also be published (OAS 2013).

4 SANCTIONS FOR NON-COMPLIANCE AND MANAGEMENT OF CONFLICTS OF INTEREST

Sanctions for non-compliance with interest and asset declaration rules

The type of sanctions adopted will vary according to the country’s legal traditions, but it can include

summons, fines, temporary suspension of salary, suspension from the performance of public functions for a certain period, dismissal, imprisonment, as well as reputational sanctions such as the publication of the names of non-filers in the agency's website (OAS 2013; Stolen Assets Recovery Initiative 2012). Countries should thus seek to establish criminal penalties and/or administrative sanctions for late submission, non-submission and submission of false information on a required disclosure report (Stolen Asset Recovery Initiative 2012).

Penalties for corrupt behaviour or wrongdoing detected through declarations, including conflicts of interest, usually are not regulated by asset declaration regimes but by specific laws.

Managing conflicts of interest

Besides the above-mentioned sanctions related to the failure of disclosing interest or disclosing false information, due to its preventive nature, countries should also ensure that conflicts of interest are properly identified and resolved or managed in an appropriate manner (OECD 2003). If the conflict is already established, measures should be in place to ensure that it is effectively dealt with. There are no international standards specifying the type of sanctions or measures that should be applied, and countries have opted for different management and enforcement mechanisms.

According to the OAS model law on interest and income declaration, "when the review of the declarations of interests, income, assets and liabilities provides indications of a potential or actual conflict of interest, or of actual or potential violations of the rules governing incompatibilities, disqualifications, or other legal or regulatory duties established for the fulfillment of public functions, the competent authority shall notify the obligated person and the agency in which that person performs his or her functions, advising them of its opinion and the steps to be taken in accordance with the respective legislation in order to prevent a potential conflict or to terminate an actual conflict."

The OECD (2003) underscores some measures to be taken to effectively manage conflicts of interest, including the:

- divestment or liquidation of the interest by the public official
- recusal of the public official from involvement in an affected decision-making process
- restriction of access by the affected public official to particular information
- transfer of the public official to duty in a non-conflicting function
- re-arrangement of the public official's duties and responsibilities
- assignment of the conflicting interest in a genuinely "blind trust" arrangement
- resignation of the public official from the conflicting private-capacity function

However, where a serious conflict of interest cannot be resolved in any other way, the public official should be required to resign from his/her position.

In cases of breaches of conflict of interest rules, sanctions may include the retroactive cancellation of affected decisions and spoiled contracts, and the exclusion of the beneficiaries (corporations, individuals or associations) from contracting or working with the public administration for a certain period of time (OECD 2003).

Moreover, the failure to effectively manage conflicts of interest and address established conflicts in a timely manner can lead to criminal sanctions for abuse of office or prosecution for corruption, for example. Penalties may include imprisonment and fines (OECD 2007).

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