



## Western Balkan Recommendation on Disclosure of Finances and Interests by Public Officials

The Members of the Ethics and Integrity Network of the Regional School of Public Administration,

Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society,

Considering that promoting the adoption of common standards can contribute to protecting society against corruption,

Bearing in mind the Council of Europe Criminal Law Convention on Corruption (CETS No. 173), the United Nations Convention Against Corruption (UNCAC), and, in particular, the evolving practice of the Group of States against Corruption (GRECO),

Recognising the fact that transparency in public governance is one of the main tools in fighting corruption and increasing public confidence in politics,

Recognising and valuing the work done in the area of financial disclosure inter alia by the Council of Europe, the Organisation for Economic Co-operation and Development (OECD), the World Bank, and by civil society organisations such as Transparency International,

Taking note of the general “High-Level Principles on asset disclosure by public officials” by the Group of Twenty Finance Ministers and Central Bank Governors (G20)<sup>1</sup> and of the “Model law on the declaration of interests, income, assets and liabilities of persons performing public functions” by the Organisation of American States (OAS),<sup>2</sup>

Recommend that governments of member States establish and implement a coherent and comprehensive framework for income and asset declarations, in accordance with the following principles:

### **A. Purpose**

Declarations on finances and interests serve as a tool for preventing and detecting conflicts of interests and illicit enrichment among public officials.

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<sup>1</sup> [www.g20russia.ru/load/781360541](http://www.g20russia.ru/load/781360541).

<sup>2</sup> Of 22 March 2013, SG/MESICIC/doc.344/12 rev. 2, [www.oas.org/juridico/PDFs/model\\_law\\_declaration.pdf](http://www.oas.org/juridico/PDFs/model_law_declaration.pdf).



## **B. Coverage**

B.1 Public officials in the sense of this principle are understood in line with the Council of Europe Criminal Law Convention on Corruption as well as the United Nations Convention against Corruption.

B.2 Depending on the level and the sectors of state where corruption occurs, or where it is perceived to be a risk, a wide range of relevant public officials from all three branches of power should be included into the obligation to declare.

B.3 Information on household and other family members is important to prevent and detect conflicts of interests of the public official related to close persons, and to prevent illicit enrichment being hidden behind family members.

## **C. Declaration content**

C.1 As for conflicts of interest, declarations need to disclose all financial and non-financial interests relevant to a public official's function.

C.2 As for illicit enrichment, income and asset declarations need to show the fullest picture possible of incoming and outgoing cash and asset flows during the time in office (monitoring period). On the incoming side, this includes in particular salary and fees, royalties, gifts, loans, and other incoming cash-flows such as inheritances. On the outgoing side, this includes in particular real estate, vehicles, precious movables, securities, shares, intellectual property, other expenses, loans given. All assets coming into the monitoring period and all assets going out of the monitoring period, including savings, have to be taken into account. The financial declaration content will to a large extent serve both functions, detecting conflicts of interests as well as illicit enrichment.

C.3 Declarations need to show not only numerical data, but also need to contain descriptive information to allow relating it to concrete conflicts of interest as well as to concrete assets. Declarations should show as expressively as possible how any declared private item might conflict with the official's public duty.

## **D. Submission of declarations**

D.1 Public officials need to declare their income and assets when entering and when leaving office. In between, they need to declare either on a regular basis, or, alternatively, whenever there is a substantial change in their income and assets. Additional declaration obligations are possible, such as upon request.

D.2 In order to allow for automated processing and verification, and thus reducing the administrative burden, declarations should be submitted online in machine readable form. In this case, declarations shall be submitted in printed form only when the technological means are not available in the workplace or at home of the public official concerned. Ideally, online declarations



are already prefilled with existing data from state databases such as salaries, vehicles, real estate, and other information, in order to facilitate the filling out of declarations.

## **E. Oversight**

E.1 Declarations need to be subject to control by an oversight mechanism. This includes compliance with declaration obligations, the accuracy of submitted information, and the possibility of conflicts of interest or undeclared cash-flows.

### *Oversight body*

E.2 An oversight body needs to be in place with sufficient resources to control declarations. This includes staff with competency on conflicts of interest as well as financial expertise on detecting hidden cash-flows. The oversight body also needs up to date information technology to support online submission, processing, and publishing of the data.

E.3 For reasons of efficiency, existing financial expertise such as in the tax administration can be used for financial audits. For a similar reason, the financial audits should not be subject of different fragmented entities, such as various human resource departments: this would require a multiple set-up of financial expertise in different bodies. Furthermore, the sectorised approach regularly entails the risk of the oversight body being too close to peers and thus lacking independent oversight. In this context there is also no need to subject judges and parliamentarians to specific oversight by self-administrative bodies: They are all subject to oversight by one tax administration, so similar is possible for financial oversight on asset declarations.

### *Submission compliance*

E.4 For compliance with declaration obligations, the oversight body needs to maintain and update a roster of all public officials and of all family or household members concerned. The oversight body should be able to verify from independent sources the completeness of family or household members included in the declaration.

### *Initiation*

E.5 The oversight body should initiate verifications at least on a substantial sample of all declarations. The sample of public officials should be based on a random choice, as well as on risk-criteria. The following should normally give cause to a full audit: red flags in declarations (such as unusual cash-flows), open and anonymous complaints, media reports, notifications by other authorities, and any other substantial irregularity.

### *Accuracy of information*

E.6 For the accuracy of submitted information, the oversight body needs to cross-check the data with a wide range of state databases. The oversight body should also have access to publicly or voluntarily available private data, and should have the option of (outside) inspections of assets in individual cases.

E.7 Banking secrecy should not be an obstacle to using banking data for verification purposes.



E.8 Corrections of inaccurate data in declaration forms should be visible to the public in the published declaration form.

*Undeclared cash-flows*

E.9 For the identification of undeclared cash-flows, the oversight body needs to balance the incoming and outgoing cash-flows, calculating also a lump sum for daily expenses because not all expenditures are and can be included in a declaration. The verification should not limit itself to comparing data, but should aim at detecting undeclared cash-flows and their possible illicit origin.

E.10 The calculation algorithm for monitoring the plausibility of the declaration is as follows:

Period	Incoming side	Outgoing side
Beginning	Existing assets	
During	All coming in	All going out
End		Existing assets
Total incoming must = total outgoing		

*International cash-flows*

E.11 As for verifying data on international cash-flows, oversight bodies should conclude bilateral or multilateral agreements on data exchange, in light of Article 48 UNCAC and making use of financial intelligence units' existing data exchange structures (Article 14 par. 1 b, Article 52 par. 2 of UNCAC), or respective data exchange possibilities under international double taxation agreements.

*Conflicts of interest and incompatibilities*

E.12 The supervision of conflicts of interest should be the obligation of a supervisor of the public official: conflicts of interest are relative to the job duties and a central oversight body cannot monitor conflicts arising in the course of daily work. The supervisor needs to have access to declarations in order to know about possible conflicts of interest. Any central body in charge with verifying income and asset declarations can complement the disciplinary supervisor by identifying incompatibilities which are not depending on the job duties but are visible from the declarations.

**F. Cooperation with other authorities**

F.1 Depending on the allocation of competencies, the oversight body cooperates with tax police and other police units, the prosecution services, and with financial intelligence units, so that these units can further trace down hidden cash-flows, possibly with compulsory measures.

F.2 Oversight bodies should also be obliged to notify other state bodies on any suspicion of a criminal, administrative, or disciplinary offence. For undeclared income, the two most frequent offences are tax evasion and money laundering.



F.3 Other state bodies should provide feedback to the oversight body on the outcome of further action taken and on the outcome of the case. This will allow the oversight body to notify the disciplinary body of the official in case any wrongdoing has been found, even if law enforcement authorities decide not to prosecute the case. It will also allow the oversight body to feed the data into its internal learning processes and into its public relation work.

## **G. Sanctions**

Each Member state shall provide effective, proportionate and dissuasive criminal or non-criminal sanctions and measures, including penalties involving deprivation of liberty and monetary sanctions, in respect of the following offences: late filing, non-filing, incomplete declaration, false information, and illicit enrichment.

## **H. Public access and participation**

H.1 As monitoring by the public at large is one of the most effective tools, income and asset declarations should be available online. Ideally, declarations submitted online are published in real time. A useful public database of declarations requires in particular electronic and free access, and data in searchable, machine-readable format.

H.2 The oversight body should also publish regular reports containing inter alia case statistics and an analysis of trends.

H.3 The internal procedures of the oversight body should be as transparent as possible to the public. Representatives of the public should have the opportunity to participate in, consult on, and monitor the work of the oversight body.

## **I. Data protection and archiving**

I.1 As asset and income declarations concern personal data, all processing needs to be in line with international standards, such as the Council of Europe's "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data" (ETS 108), the European Union's "Directive on protection of individuals with regard to the processing of personal data and on the free movement of such data" (95/46/EC), and the OECD's "Recommendations of the Council Concerning Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data".

I.2 Personal information may be excluded from publication in order to protect the privacy and security of the public official. This concerns in particular the location of properties, number plates of vehicles, identification numbers of current accounts, savings accounts, safety deposit boxes or credit cards.

I.3 Published data may not be used for commercial purposes, such as determining or establishing the credit rating of any individual, and adequate sanctions need to be in place to



prevent abuses. However, members of the public such as non-governmental organisations may process the data for their analytical work.

I.4 Declarations need to be archived for a sufficient period of time after the obligated person has concluded his or her functions in order to allow for post-employment reviews and investigations within statute of limitations of relevant offences.

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(drafted by Dr. Tilman Hoppe, LL.M., with input provided by Valts Kalniņš)