

PART III
Chapter 13

Asset Declaration in Ukraine

Context

The requirement for civil servants to declare assets was first introduced in Ukraine in 1993, through Article 13 of the Law of Ukraine on Civil Service. However, there are no mechanisms in place for its application, through either this law or any other legislative acts. The requirement was further elaborated in the special Enactment of the Cabinet of Ministers and the Law on Combating Corruption in 1995,¹ and only in 1997 were practical aspects of the declaration process addressed. That year the Ministry of Finance endorsed a template asset declaration, which marked the actual launch of the declaration practice for assets in Ukraine. That same system, designed in mid-90s, is – with minor changes – still in place.

The system of declaration of assets by public officials in Ukraine is built upon the concept of financial control and (supposedly) wealth monitoring. Understanding of the purposes for which such an instrument can be utilised has evolved with development of the democratic processes within the country, as well as under the pressure of economic and social transformations and wider exposure to information on the experience of other countries in this respect. Mechanisms of asset declarations (however effective or non-effective) were initially conceived as an anti-corruption measure, and so came under the special anti-corruption law under a section dubbed “Prevention of Corruption”. Issues of accountability, transparency and public administration integrity came into the picture at a later stage, with a rising need for restoration of public trust in state institutions. And in response, provisions on public disclosure of asset declarations information for certain categories of public officials have been introduced, as amendments to the Law on Combating Corruption in 1997.

Currently, Ukraine’s system of asset declarations is undergoing full-fledged reform, with shifts in the priorities and aims for such a tool. Draft legislation proposing changes in the design of the system and its functioning is currently in the parliament awaiting review and adoption.²

Issues of conflict of interest are not directly regulated by Ukrainian legislation. There are various norms within existing laws that can be interpreted as such regulation. For instance, Article 12 of the Law on Civil Service lists among the limitations for entering into the civil service direct supervision of or subordination to family members in the service. Article 5 of the Law on Combating Corruption imposes a set of special limitations onto civil servants and other persons carrying out state functions, to obviate possible corruption and avoid situations where the private and public interests of the person can come into conflict, etc.). Similarly to the situation with financial disclosure by public officials, a question of regulating conflict of interest has recently been put on the policy development agenda. A draft Law on Rules of Professional Ethics in the Public Administration and Prevention of the Conflict of Interest was developed and registered in parliament, and is pending further review and adoption.

Legal basis and institutional arrangements

The legal basis of the asset declaration system in Ukraine is comprised of a number of legal acts regulating general issues (such as the Law on Civil Service, Law on Combating Corruption, Law on Service in Bodies of Local Self-governance, Law on Election of the Peoples' Deputies of Ukraine), with various specific matters regulated by numerous legal and normative acts.³ (Examples include the Enactment of the Cabinet of Ministers of Ukraine No. 641 on Application of Article 13 of the Law on Civil Service of Ukraine; Presidential Decree No. 73/2003 on Measures to Strengthen Control over Declaration of Assets by Persons Carrying out State Functions; and Order of the Ministry of Finances No. 58 on Endorsement of the Form of Declaration of Income, Financial Obligations and Assets for the Civil Servants and Candidates for the Position of the Civil Servants.)

Ukraine does not have a specialised institution dealing with collection, verification, archiving or other forms of processing of asset declarations of public officials. And while the Main Civil Service Department (MCSD) can be nominally singled out as the one with the leading role regarding financial disclosure of civil servants and public officials in local self-government (other public officials are not dealt with by this agency), it covers only some of the functions related to state financial control. In fact, the current system involves a number of institutions in these processes, which control various stages of declaration processing and various types of public officials.

More specifically, each state institution is responsible for the initial collection of asset declarations from their own employees or candidates for the vacant positions opening within their structures (in most cases, human resources/personnel departments carry out this function), as well as storing and archiving of the asset declarations they have collected. The Ministry of Finance is responsible for developing and updating the template for asset declaration forms; it also has advisory guidance functions (i.e. providing civil servants with instructions on how to declare assets, developing other types of guidelines and explanatory notes, etc.). MCSD⁴ provides additional methodological guidelines, training and information support to civil servants and public officials of local self-governance on issues of asset declaration and conflict of interest. The state tax administration of Ukraine, together with law enforcement agencies, conducts verifications of the asset declarations jointly with the MCSD. In addition, MCSD is responsible for compilation of the data on compliance with requirements for financial disclosure from other agencies within one report, which is then submitted to the Cabinet of Ministers of Ukraine.

Subjects of declaration systems

All civil servants and candidates applying for positions within the civil service are required to declare their assets in one form or another. Asset declarations are similarly submitted by public officials of local self-government and candidates for such positions, as well as certified employees of the state tax administration and state customs service of Ukraine.⁵ The total number of those who have submitted declarations in 2008 are 367 016 civil servants, certified employees of the state tax administration and state customs service of Ukraine,⁶ as well as 100 582 officials of the local self-governance.⁷ A total of 765 civil servants failed to submit their declaration forms, which constitutes 0.21% of all civil servants who are obliged to declare. Comparatively the percentage has been somewhat lower in previous years, amounting to 0.08% in 2007 and to 0.05% in 2006. It is impossible to estimate figures for the total number of candidates for vacant positions who

have applied and submitted their declaration forms, as well as members of their families, due to the fact that such data are collected by multiple individual agencies and their regional departments, and is not being centralised.

In Ukraine, differentiation between political and professional officials (civil servants), as well as between high- and low-level officials, is ensured through differentiation in the scope of the declarations and their availability to the public. Such special requirements are imposed on Categories⁸ 1-2 of civil servants (high-level officials) in terms of scope, and an additional requirement for public disclosure is being imposed on the president of Ukraine, speaker of the parliament and his deputies, heads and deputy heads of the permanent parliament commissions, members of parliament, the prime minister, members of the cabinet of ministers, the head of the Constitutional Court and its members, the head of the Supreme Court and its members, the head of the High Specialised Court of Ukraine and its members, and the prosecutor general of Ukraine and his deputies.

Ukrainian legislation requires all above-mentioned categories of public officials to declare financial information of their adult family members (husband/wife, parents and unmarried children) who live with them, including household partners.

Scope and content of the declarations

As was mentioned before, Ukraine exercises a tiered/differentiated approach with regard to the scope and content of the declarations, like many other countries in the region and outside. Thus, the higher the level of public official, the wider the scope and content of the declarations will be. High-level public officials, namely those in Category 1-2, have to provide information on real estate and valuable movable assets, bank deposits and securities that belong to them and members of their family, in addition to the generally required information on personal and family members' income and financial obligations inside and outside Ukraine. It is also mandatory for all civil servants to inform the state tax administration in writing about opening a bank account in a foreign bank, indicating the account number and bank location, within ten days of that account opening.

All public officials use the same template form,⁹ the difference residing in the sections that they have to fill in. In practice, it works the following way: all civil servants are required to fill in Sections I-III, while Sections IV-VI are filled out by high-level public officials only. Candidates for positions within the civil service are covered by the requirements applicable to the category under which their applied position falls.

There are six parts to the declaration form:

- Section I: general information (personal data of the official and his/her family, professional information on the official).
- Section II: information on incomes obtained in Ukraine and outside (general income, dividends, royalties, interests, financial aid, insurance returns, profits received from scientific, teaching and creative activities [honoraria, fees, etc.], income from other work, profits from securities, corporate rights and actual salary).
- Section III: data on financial obligations in Ukraine and outside (financial obligations in regard to payment of the instalments under insurance agreements, contributions into private retirement funds, payments on credits, lease payments, utility bills).
- Section IV: information regarding real estate assets (must include the square footage of the property).

- Section V: information on vehicles (declared with indications of their brand, model and engine size).
- Section VI: information regarding bank deposits, securities and other financial assets (the general value of all securities and financial assets is to be declared; all contributions into various funds, ventures, associations are reflected; and finally, the total amount on the bank accounts is to be included here).

Processing of the declarations

Ukrainian legislation requires all civil servants to declare their assets; the general trend is for declarations to be submitted on entering the civil service; unlike many other countries, “exit” declaration forms are nonexistent in Ukraine.

When a person applies for the position, he/she is required to submit financial information on personal incomes and financial obligations, as well as those of his/her family. Asset declarations are similarly submitted by public officials of local self-government, and candidates for such positions. Declarations collected in this manner are kept in the personal files of each of the declaring public officials. Initial submission of declarations is followed up by the requirement to annually declare assets; declarations are to be submitted no later than 15 April.

Official methodological guidelines on filling out the asset declarations have been adopted by the Ministry of Finance in 2001 to address numerous mistakes and challenges faced by civil servants. Complementary guidelines and advisory memos have been drafted by MCSD, as well as other institutions. The declarations are filled out in paper format and stored by the human resources departments; no electronic asset declaration forms are used in Ukraine at the moment.

Two types of verification are conducted in Ukraine – obligatory and *ad hoc* verification. Obligatory special verification is conducted for all declarations submitted by the candidates for positions when appointment or approval of the appointment is made by the president of Ukraine or cabinet of ministers of Ukraine. This verification is conducted by the Main Civil Service Department, Ministry of Interior, Ministry of Education and Science, state tax administration and security service of Ukraine – it is a joint exercise that involves a wide range of verifications of all data provided by the candidates (besides financial disclosure information, information on former employment, education, criminal records, etc. is provided). Verification of the information contained under the financial disclosure section is carried out by the state tax administration. Results of these verifications show that approximately 60% of the discrepancies have to do with declarations of assets.¹⁰

Ad hoc verification is conducted by the state tax administration and law enforcement agencies, acting jointly with the Main Civil Service Department as part of the complex inspections on compliance with the Law on Combating Corruption, Law on Civil Service, and other norms and regulations on anti-corruption in civil service and bodies of local self-governance. This type of verification is conducted on the random selection basis, with the focus on those positions considered to be most susceptible to corruption risks¹¹ and in accordance with the Strategic Action Plan of the Main Civil Service Department of Ukraine.¹²

Verification of asset declarations is also possible upon receipt of a complaint (anonymous complaints are not accepted), or in the course of the ongoing investigation when such need occurs. Unfortunately, no statistical data on such types of verifications were made available for the purposes of this report.

Sanctions

Disciplinary and administrative sanctions are established for violation of the requirements on financial disclosure (Article 9 of the Law on Combating Corruption, Article 30 of the Law on Civil Service of Ukraine and Article 20 of the Law on Service in Bodies of the Local Self-governance).

When a person fails to submit an asset declaration in a timely manner, an official notice reflecting this fact (along with explanations received from the person who violated financial control provisions) is drawn up and his/her supervisor is to make a decision regarding dismissal of this person from the civil service. A note on the grounds for dismissal is made in the employment records¹³ of the person. Such a sanction was applied to one person in the year 2008.

Incorrect, false or incomplete information contained in the submitted form results in administrative liability in the form of a fine, and can be a basis for refusal of promotion or limitation of the right to be elected for positions within state bodies.

Public disclosure

Information contained in asset declarations of civil servants is confidential and cannot be disclosed for the use of the general public. Only information on incomes, bonds, real estate property and movable assets, and bank deposits that belong to the persons listed in Article 9 of the Law on Civil Service¹⁴ and their family members is to be published annually in the official media outlets of these state bodies. Unfortunately, in practice only few institutions make such information available to the general public; updates on such data is not regular, and depends on the volition of the persons in question to publish such information.

Evaluation of the declaration system

The Ukrainian system of asset declarations faces many sorts of challenges: from institutional and legislative gaps to practical problems that impact many civil servants (i.e. any possibility of reasonable grounds for failure to submit a declaration in timely manner is absent; situations where members of the family refuse to provide information is unregulated; contradictions in terms within the asset declaration form and methodological guidelines lead to administrative protocols on violations being drawn up simply because of the differences in interpretation of such terms, etc.). The purpose of the asset declaration system in Ukraine is dubiously served by existing mechanisms, and current asset declaration instruments can hardly be used as effective anti-corruption tools. The system requires in-depth reform in the opinion of almost all key institutions involved in the process.

Nevertheless, Ukrainian authorities have been indeed active in the area of developing new legislation to address these challenges, and have been openly critical of the existing system – a good first step toward establishing a successfully functioning asset declaration regime.

Registered by the Ministry of Justice of Ukraine
March 31 1997 N 104/1908

Adopted by the Order of the Ministry
of Finances of Ukraine from March 6 1997 # 58

DECLARATION

of income, financial obligations and assets of the civil servant and of the person who applies
for the position of the civil servant in regards to him/herself and members of his family¹

Section I. General information	
1.	_____ (last name, first name and patronymic)
2.	Place of residence: _____ (postal code, oblast, region, city, street, house, # apartment) _____ _____
3.	Occupied position and civil servant's category _____ _____ _____
4.	Position and civil servant's category for which the person filing declaration is applying _____ _____
5.	Family members: ² _____ _____ _____ _____ (last name, initials and family connection)

1. Sections I, II, III are filled out by the civil servants of all categories, and sections IV, V, VI are to be filled out by the civil servants of the first and second category.
2. For the purposes of this Declaration the members of the family include a spouse, parents and children who live with them and are not married.

Section II. Income received (accrued) from the sources originating in Ukraine and abroad for the year 200_			
No.	List of incomes	Income amount (UAH)	
		Civil servant	Family members
1	2	3	4
1.	Grand total of the total incomes, including:		
1.1.	Dividends, interests, royalties		
1.2.	Material assistance		
1.3.	Insurance reimbursements		
1.4.	Income from scientific, teaching, creative work, authorship royalties (honorarium)		
1.5.	Income from entrepreneurial and independent professional activities		
1.6.	Income from disposal of securities and corporate rights		
1.7.	Salary		

Section III. Financial obligations, including those originating from abroad for the year 200_					
No.	List of obligations regarding making of contributions (payments)	Civil servant		Family members	
		Total paid (UAH)	Including paid abroad (UAH)	Total paid (UAH)	Including paid abroad (UAH)
1	2	3	4	5	6
1.	According to the agreements for the volunteer insurance				
2.	According to the agreements on supplementary retirement				
3.	According to credit agreements				
4.	According to lease (sublet) agreements				
5.	Maintenance of assets declared in Sections IV, V				

Section IV. Information on assets which are in private ownership			
No.	List of incomes	Civil servant	Family members
		Total size (square meters)	Total size (square meters)
1	2	3	4
1.	Land lots		
2.	House		
3.	Apartment		
4.	Country house		
5.	Garage		

Section V. Information on vehicles which are in private ownership					
No.	List of objects	Civil servant		Family members	
		Brand/model	Engine size (cubical centimetres)	Brand/model	Engine size (cubical centimetres)
1	2	3	4	5	6
1.	Passenger vehicles				
2.	Truck/lorry, special vehicles and buses				
3.	Motorcycles				
4.	Tractors				
5.	Water means of transportation				

Section VI. Information on bank deposits, securities and other assets					
No.	List of objects	Civil servant		Family members	
		Total (UAH)	Including abroad (UAH)	Total (UAH)	Including abroad (UAH)
1	2	3	4	5	6
1.	Nominal value of the purchased securities				
2.	Contributions (shares) in the authorized capitals (stakeholders funds) of the enterprises, institutions, organisations				
3.	Amount of monetary means on bank accounts and in other financial credit institutions				

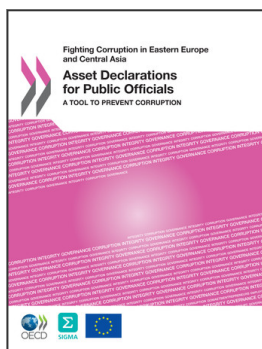
Acknowledge awareness of liability for filling of insufficient or incorrect data regarding income and financial obligations (Article 9 of the Law of Ukraine On Combating Corruption and Article 30, paragraph 7 of the Law of Ukraine On Civil Service)

Signature

Date

Notes

1. This case study was developed on the basis that the Law of Ukraine on Combating Corruption was still in force. Although a new Law on Basic Principles for Prevention of and Combating Corruption called to replace it has been adopted, it is still pending enforcement on 1 January 2011.
2. Draft Law No. 4472 on Measures of the State Financial Control over Public Administration, from 14 May 2009.
3. There are currently over 50 pieces of legislation that fall under this category.
4. The Control Revision Department is one of the eight departments within the structure of the MCS D; its primary responsibility is to deal with all anti-corruption matters, including those related to financial disclosure functions of the agency. The head of the Control Revision Department is appointed by the head of MCS D, and the department acts in accordance with the action plans approved by the deputy head of the MCS D.
5. Requirements to declare assets for these persons are stipulated in Article 13, Law on Civil Service; Article 6, Law on Combating Corruption; and Article 13, Law on Service in Bodies of Local Self-governance.
6. Data provided in the Questionnaire by Ukrainian authorities.
7. Official data taken from the State Committee of Statistics of Ukraine from 31 December 2008.
8. Ukraine's civil service has seven general categories of civil servants, the division criteria being stipulated in the Law on Civil Service, Article 25; seniority goes from the 1st category (the highest) down to 7th (the lowest).
9. A unified template asset declaration form was developed and endorsed by the Ministry of Finance of Ukraine on 6 March 1997, and used for the first time that same year.
10. Official data of the Main Civil Service Department are provided as an example from 2007.
11. A list of such positions is compiled by the Main Civil Service Department with identification of sectors/institutions, as well as types of positions, and can be found online at www.guds.gov.ua/control/uk/publish/article?art_id=66556&cat_id=57862.
12. Strategic Action Plan for year 2010 foresees complex inspections in the Ministry of Regional Development and Construction, Ministry of Justice, state committee on state material reserves and in three *oblast* administrations (ad hoc verifications), as well as around 450 obligatory special verifications in the course of the year.
13. A standard document reflecting the employment history of the person is in place in Ukraine, and is usually presented to the employer on application for a vacancy.
14. President of Ukraine, speaker of the parliament and his deputies, heads and deputy heads of the permanent parliament commissions, members of parliament, prime minister, members of the cabinet of ministers, head of the Constitutional Court and its members, head of the Supreme Court and its members, head of the High Specialized Court of Ukraine and its members, the prosecutor general of Ukraine and his deputies.



From:
Asset Declarations for Public Officials
A Tool to Prevent Corruption

Access the complete publication at:
<https://doi.org/10.1787/9789264095281-en>

Please cite this chapter as:

OECD (2011), "Asset Declaration in Ukraine", in *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264095281-18-en>

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