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Asset declarations – an effective corruption prevention instrument in Southeast Europe or paper tiger?

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In Southeast Europe countries (SEE) asset declarations are a strong, yet currently under-utilised instrument for preventing corruption and illicit financing among civil servants, and in particular among politically exposed persons (PEP). The media and civil society, along with international organisations, continuously investigate and report on the evident gaps between the living standards of politicians and their families on the one side and what they officially declare to the public as assets and income on the other. All SEE countries have in place a legal framework regulating asset declarations as part of their anti-corruption toolboxes. However, these regulations are rarely enforced in a consistent manner, and instead mostly result in short-lived annual scandals or

occasional repression campaigns against political opponents. The aim of the present Note is to raise awareness of the public and decision makers about the loopholes in the procedures for verifying asset declarations and penalising irregularities in them and offer solutions for more efficient verifications in order to increase the liability of institutions and enhance the rule of law.

In order for asset declarations to be considered an effective instrument against state capture and corruption in SEE countries, the present Note establishes the legal and institutional framework of asset declarations and gives recommendations for more efficient verifications. The recommendations are an outcome of the project Implementing shared anti-corruption and good governance solutions in Southeast Europe: innovative practices and public-private partnerships.[1] Legal loopholes allowing asset disclosure avoidance are prevalent across SEE countries. Below we first present the analysis results for all SEE countries together, followed by Croatia-specific features.[2]

Shortcomings in the asset declaration verification procedures in SEE countries

Persons obliged to submit asset declarations. Some PEPs, as well as numerous other categories of civil servants, are not obliged to

[1] The present Note is based on the report Rolling Back State Capture in Southeast Europe: Implementing Effective Instruments for Asset Declaration and Politically Exposed Companies drafted within the project mentioned above. We would like to thank the Conflict of Interest Commission and its President at the time, Ms Nataša Novaković, for their cooperation.

[2] The analysis included Bulgaria, Croatia, Hungary, Romania, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro and Serbia.

declare their assets, which means that their wealth can often remain hidden from state institutions and the general public. This problem is most pronounced with regard to senior managers, directors, and board members of state-owned companies. For instance, in Bosnia and Herzegovina these categories of civil servants and officials are not obliged to submit asset declarations, while in Serbia they are obliged to do so only if they have been appointed by the government.

Assets can easily be hidden, and there is no specific and in-depth legal definition of the receipt of gifts. The information that individuals are obliged to declare regarding their assets is rarely all-encompassing, which hinders proper prevention and verification. For instance, loans from private individuals do not always have to be declared in Hungary, while presents to close family members are not made public at all. In Hungary and North Macedonia, PEPs are required to declare ownership of shares in companies but not the assets held by these companies. Thus, personal assets can be written off as corporate property. Common forms of hiding assets from disclosure include PEPs transferring them to family members or close relatives, and/or facilitating the "generation" of illicit wealth by ensuring preferential treatment or another form of competitive advantage for the extended family. However, only assets owned by spouses, cohabitants, and sometimes children need to be declared. In Romania, children of PEPs are not included in asset declarations after reaching adulthood, making it harder to identify conflicts of interest or potential hidden asset ownership, whereas parents of PEPs are only checked in about half of the SEE countries.

Discrepancy between the assets' real market value and declared value. A common type of violation in the domain of asset

declarations concerns the discrepancy between a property's real market value and their acquisition price, as recorded in the official purchase/ownership documents.[3] Checking, comparing, and proving a discrepancy between market and book values of assets is a complicated procedure, for which the authorities rarely possess adequate knowledge and capacity. Highly experienced investigative journalists and civil society thus remain crucial for uncovering and warning against such irregularities. Most SEE states have in place procedures for timely submission of asset declarations and for performing initial basic checks. However, the authorities typically do not investigate how someone obtained their property before taking public office, and none of the nine analysed SEE countries cultivate a system of comprehensive lifestyle audits, i.e. cross-checking information in various databases.

Lack of staff. The scarcity of such audits is largely due to the lack of sufficient human resources who would be able to perform in-depth checks, including cross-checking in multiple registers both at the national level and abroad, where illicit wealth is often parked. This issue is exacerbated by the large number of persons obliged to submit declarations in some SEE countries- e.g., about 300,000 in Romania as of 2022.

Inconsistent treatment of anonymous tips. Ideally, checks should also be triggered by anonymous tips regarding illicit enrichment raised by third parties (whistle-blowers, civil society organizations,

[3] There were cases of two-storey villas being declared as "wine cellars" in Hungary. In Bulgaria, what became widely known as the "Apartment-Gate" scandal brought down a number of senior political and government figures who had declared the acquisition of assets at strongly deflated values.

media articles, etc.). However, in practice this is rarely the case. According to national laws of Bulgaria, North Macedonia and Romania, anonymous tips are not accepted. In BiH, such checks are expected by law, but are not always performed in practice. In Hungary, only tips backed by strong evidence are inspected. Oversight authorities do not have a fixed annual target on the number or share of audited declarations, and a detailed verification procedure is launched only in case a suspicion is raised.

Other issues of concern are in what form asset declarations are made public and how long they remain public. In North Macedonia, asset declarations are removed from the public eye immediately after a PEP leaves office, which further restricts public memory and could hamper the investigative work of media and civil society. The laws often fail to define quality requirements of the submitted asset declarations (they can be submitted in format that is not machine readable or searchable; handwritten copies are also allowed). Independent checks are also hampered by the lack of machine-readable and downloadable in bulk public databases of asset declarations.

Fines for non-compliance are poorly defined, and prosecution is inconsistent. Authorities directly responsible for collecting asset declarations submit information regarding any identified irregularities to other relevant authorities (e.g. tax and revenue), and to state prosecution. However, the size and severity of sanctions, especially the ones imposed by the checking institution, are low in all SEE countries and do not deter PEPs from violating the rules. The fine for late or non-submission of asset declarations usually ranges between EUR 200 and 1,000. There is also no escalation in sanctions (stricter sanctions for consecutive violations). Some PEPs prefer to

pay the fine and still not submit a declaration. Another issue of concern is the arbitrary approach for determining who to investigate and prosecute. The more potent sanctions are imposed by the courts (e.g., imprisonment) and, in some cases, by tax authorities, when the process of asset declaration checks uncovers tax violations. However, in many cases criminal charges against public officials are dismissed or are replaced with looser (administrative) penalties. Information about imposed sanctions is made public in most SEE countries, except in Albania and Hungary. In BiH, the information about imposed sanctions is stated within the Central Election Commission's report, yet only as the number of sanctioned officials without disclosing their identity.

The analysis determined four methods most often observed in SEE countries for avoiding punishment or at least reducing its severity:

- omitting to declare assets, or under-valuating the declared assets;
- exerting political pressure on the public authorities to drop the investigation/prosecution and/or to replace a more severe penalty (e.g. imprisonment) with a looser sanction (e.g. a fine);
- retroactively changing asset declaration texts to remove irregularities and
- changing the legislation so that certain categories of public officials (or their relatives) are left out of the circle of officials obliged to declare assets, company ownership or family relations.

Shortcomings in the asset declarations verification procedures in Croatia

The 2021 analysis for Croatia highlighted several key shortcomings in the verification procedure of asset declarations, some of which are shared with surrounding countries, such as:

- the Conflict of Interest Commission, as the competent authority, is working with limited human resources for performing checks. The Commission employs 19 people, which is the lowest number in all SEE countries under analysis, only four of which are directly responsible for checking asset declarations;
- 12% of officials obliged to submit asset declarations did so after the prescribed deadline, i.e. following a repeated call;
- the Committee conducted a secondary/detailed audit on only 1.19% of submitted declarations;[4]
- one Commission employee is able to conduct detailed checks on six persons;
- asset declarations omit the identity of spouses and cohabitants of the officials, and there is a possibility that they do not notify their partners of the assets they own;
- information from private enterprises is collected only in exceptional cases, such as secondary/detailed audit;
- the relatively small fines do not have an incentive effect on the officials to declare their assets. The fine for non-

[4] The Committee's regular check includes cross-checking information with the Ministry of Finance and Tax Administration, while in case of prosecution State Prosecution Office and Tax Administration are notified.

submission or inaccurate submission is 1,062 EUR, which can be covered from the public official's salary in eight monthly instalments. In some cases fines were not imposed as the offenders left public office in the meantime; and

- asset declarations are removed from public registers one year after the relevant PEP's term in office ends.

However, the analysis also highlighted some examples of good practice in Croatia:

- As a result of the new Act on the Prevention of Conflict of Interest, the number of persons obliged to declare their assets increased by around 1,250. The total number of people obliged to submit asset declarations in 2022 was 3,350.[5]
- Systematic creation of educational and information materials substantially raised public awareness on the dangers of ignoring the issue of conflict of interest.
- Asset declarations are available in XML, JSON and PDF formats and are searchable by various features of the PEPs.
- Any property not listed in the declaration is cross-checked in other public registries such as court registries, company register, real estate registry, Tax Administration's databases, etc.

[5] This increase pertains primarily to directors and board members of companies in which the Republic of Croatia is the majority shareholder, as well as those founded by a company in which Croatia is the majority shareholder, as well as directors and board members of companies in which municipalities, cities and counties are majority shareholders and those founded by companies in which municipalities, cities and counties are majority shareholders.

- Identities of sanctioned PEPs are revealed in the Commission's decisions and published on its website.
- Political immunity cannot prevent investigation and prosecution, and the immunity of any responsible person can be stripped off.

Key recommendations for more efficient verifications of asset declarations in SEE countries

The following key policy recommendations could provide the backbone for the immediate next steps which have the potential to close existing governance loopholes and roll back state capture practices in SEE countries:

Coherent verification procedure of asset declarations. The relevant authority should check if the asset declarations are submitted on time. The anti-corruption authorities should set up a dedicated body or department fully focused on performing detailed checks ("lifestyle audits") of asset declarations and verifying whether there are hidden or undeclared assets.[6] Strong cooperation among all relevant bodies (anti-corruption, tax, finance, money laundering, prosecution authorities, etc.) should be established. Information listed in the asset declarations should be cross-checked with the data from other public registers and, if relevant – with private sources as well (e.g., social media). Multiple bodies or stakeholders should have the possibility to submit the issue to prosecution or to

[6] This body should utilize a risk assessment and checking procedure based on big data and a set of red flags. The body should perform three types of checks: a random sample undergoing detailed check/audit, checks of priority/risk groups, as well as checks triggered by anonymous tips from third parties.

other relevant judicial authorities, and to initiate administrative, criminal (and, if relevant, civil) procedures. The investigations should not ignore the issue of how someone has obtained property before taking office.

Improving the legal base in terms of asset disclosure. The legal obligation to submit asset declarations should be extended to police and customs officials, senior managers, directors and board members of state-owned enterprises, military personnel and members of political parties (e.g., the ones outside of parliament but receiving state subsidies). The legal specifications regarding post-employment restrictions for PEPs, the receipt of gifts, as well as the allowed types of additional income for public servants, should be clarified in detail. The legal base could also be improved by obliging PEPs to disclose not only their majority shares in a company, but also the assets held by that company.

Inter-connecting public registers. A core prerequisite for the efficient use of big data is for each SEE country to first digitalise and inter-connect all of its public registers. This is a two-step process - first, the primary (basic) registers should be connected with each other: physical persons register (including civil status and family members), business (legal entities) register, and the property register. Second, all remaining registries should be joined one by one.[7]

[7] Tax registry, social security register, land register, motor vehicles register, stocks and securities register, patents and licenses registry, customs registry, court registries, party finance database, etc.

Increasing transparency and digitalization of asset declarations and related registers. SEE countries should only allow asset declarations to be submitted in electronic, machine-readable formats. All asset declarations should be collected in a single database and/or accessible through a single, unified website. The relevant bodies should not be allowed to retroactively change asset declarations, so that a detected irregularity no longer exists. In case of changes, both the original and the corrected declaration should be available for review. There is also a need to establish machine-readable public procurement and corporate databases, as well as databases of sanctioned legal and physical persons, which can be downloaded in bulk. It is also recommended that all countries establish procedures for tracing transactions involving crypto currencies and harmonise their approaches towards the taxation of crypto assets, as suggested by the European Parliament.

Efficient punishment. One of the most worrying issues, frequently highlighted by the civil society, EU-level and international bodies, is the matter of sanctions. Thus, it is important for policy-makers to ensure that the size and severity of penalties is high enough (dismissal, seizure of assets, imprisonment), that prosecution is more efficient, and that final penalty decisions are published online. All SEE countries should further set up a mechanism for lifting immunities, especially in cases of criminal proceedings.

Introducing data-driven analysis of asset declarations.[8] Use of big data for early warning and risk analysis should be developed and

[8] The term big data pertains to the collection and processing of large complex datasets from various sources by using modern technologies, such as artificial intelligence and machine learning.

extensively used. This data should be updated by the relevant public bodies, jointly with the civil society, international bodies and investigative media. It is especially important that information on politically connected companies is available, due to high corruption risk.[9]

Both the shortcomings and examples of good practice as well as recommendations for more efficient verifications of asset declarations presented herein should be regarded as guidelines for all stakeholders. Their application would increase the liability of officials and competent authorities, while asset declarations would become an even more relevant instrument for tackling corruption and illicit financing.

[9] The report Rolling Back State Capture in Southeast Europe: Implementing Effective Instruments for Asset Declaration and Politically Exposed Companies includes an analysis of politically connected companies and public procurement integrity for Croatia and other SEE countries.