

# Non-Authentic Property Declaring as a Qualifying Feature of a Corruption Offense: The Experience of Eu Countries

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**Abstract:** Declaring property is a method of fighting and preventing corruption. Making it mandatory to provide information about the property causes a number of problems that are related to the inaccuracy of the declaration information. European Union (EU) countries have different approaches to providing information and property information. Significant differences in the requirements for declaring income and assets were revealed. It was done on the basis of the data analysis. The systems of declaration and verification of information on the property of Central and Eastern European (CEE) countries were studied in this work. The difference in the procedures of verification of authenticity and establishment of responsibility in case of detection of violation is determined. It is determined that smaller sanctions have been imposed in the countries of Central and Eastern Europe with a higher level of corruption. Sanctions mainly relate to the imposition of fines. In Greece, penalties for administrative fines vary considerably in the number of fines and, in some cases, it might be imprisonment for up to 10 years. The system of verification of declarations also varies significantly within Central and Eastern Europe: from verification of declarations, in particular randomly or automatically, the usage of risk assessment methodology for inaccurate information of the declarant to the notification of unjustified amount of property. It is determined that the inspection takes place as a result of bringing a person to justice in 6 countries.

**Keywords:** Declaration of property, declarant, non-authentic information, corruption offences, anti-corruption method.

## INTRODUCTION

Transparency and Anti-Corruption (TAC) policies are spreading dynamically around the world and are accompanied by the development of legislation in the field of security, freedom of information, disclosure of information about property and assets, formation of anti-corruption agencies and bureaus, partnerships with open e-government. Global pressure from international organizations and developed countries plays an important role in spreading these trends. International civil society organizations and institutions (eg, Transparency International) are supporters of the TAC (McCoy and Heckel 2001, Wang and Rosenau 2001). International regimes have also spread in recent decades, requiring governments to disclose information (Roberts 2003) or to take various anti-corruption measures. The last important trend is good governance and the fight against corruption, which have become important issues on the agenda of powerful bilateral and multilateral agreements (Marquette 2001, McCoy and Heckel 2001, Bukovansky 2006).

Transparency and anti-corruption policies create an obvious paradox. Unlike other government measures, such as the provision of services or the regulation of economic activity, the main goal of TAC policy is to limit the decision-makers themselves (Brun 2011). They are expected to promote better governance by exposing government wrongdoing and allowing citizens to hold government officials accountable. If the policy is effective, the significant costs of its implementation will be borne by society and those who implement and make decisions in this area – managers, government officials and public sector employees. These costs can be particularly high in countries with high systemic corruption (Schnell 2015).

Declaring property is a method of fighting and preventing corruption. 150 countries have introduced disclosure requirements for public authorities according to the World Bank (2016). Research shows that there is a feedback loop between citizens' access to information and the level of corruption. 70% of the EU countries and countries of Central Asia have mandatory public disclosure requirements in their asset declarations. These requirements are set in 97% of high-income Organisation for Economic Co-operation and Development countries (OECD 2011). Making it mandatory to provide information about property

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causes a number of problems that are related to the inaccuracy of the declaration information.

EU countries have different approaches to providing information and information about property: some countries require the publication of all information (except for date of birth, identification number), in others several categories of information are hidden, in some – disclosure of information about the property of high officials (Hoppe and Kalnins 2014). The number of countries that need to disclose property information is constantly increasing. There are significant differences between countries in the requirements for declaring income and assets, verifying their authenticity and establishing liability in the situation of a violation. At the same time, there are no thorough studies of the systems of verification of declared assets, income and expenses in the scientific literature. The purpose of the article is to compare the systems of reporting information about property in the EU and to identify differences in the classification of violations.

## LITERATURE REVIEW

Mechanisms for declaring property differ significantly within the EU countries through different systems of regulatory authorities, requirements for declaring property, the level of responsibility for violating the declaration (Starodub 2016). An effective Asset Disclosure and Registration Law system can be an anti-corruption method, which is one of the challenges of democracy building today (Tulu 2020). Quite often the regulation of income and property declarations is not a problem to solve corruption violations through inefficient institutions, legislation and political regime in developing countries (Duri 2016, Ayinde 2019).

Declaration of assets and property by civil servants in the case of entering the civil service determines the basic level of assets in their possession (Habershon and Trapnell 2012). Once the information is provided, a civil servant is more likely to be held liable if he or she participates in corrupt schemes that result in significant changes in ownership. This is possible provided that there is an effective declaration regime that allows the competent authorities to compare assets in different reporting periods declared by civil servants.

Information for different reporting periods is compared in order to identify differences in assets and property that cannot be legally attributed to income, received gifts or loans. “Any unjustified increase in

wealth or income earned during the period may be evidence of illicit enrichment through bribery, fraud or illicit gifts” (Habershon and Trapnell 2012). Differences in assets and property are an opportunity to identify, investigate and prosecute civil servants to punish illicit enrichment. Declaration of assets plays a crucial role in preventing and disclosing embezzlement by civil servants (Kotlyar and Pop 2019). Although the declared information about the assets of civil servants does not serve as a basis for the return of illegally obtained assets, an effective system of declaration and verification can play an important role in identifying and returning to legal ownership of state assets. Corrupt civil servants are more likely to make mistakes in declaring property for trying to conceal illegally obtained property.

In countries where assets are laundered, litigation for misrepresentation of declared property may result in the ‘freezing’, confiscation and return of those assets. Prosecution on charges of misrepresentation of declared property and confiscation of undeclared assets by a court may be the basis for a request for mutual legal assistance to the country where the assets are located (Aigbokhan 2014). However, this can only happen in a country where inaccurate information about property is provided and at the same time it is subject to criminal liability and is a criminal offense. Verification is the process of confirming the veracity, accuracy of information about property declared by civil servants (Rossi, Pop and Berger 2017). A potential property declaration as an anti-corruption measure depends on the likelihood that any civil servant who misrepresents property will be identified.

## MATERIALS AND METHODS

Declaration of property by civil servants is regulated by the legislation on corruption (Ukraine, Kazakhstan, Azerbaijan, Russia), as well as the operation of special laws on declaration (also Moldova, Belarus, Kyrgyzstan). However, according to experts, political will is extremely important in declaring it an anti-corruption measure, as officials are obliged to accept recognition of responsibility and punishment for violations in filing in a declaration, including the submission of knowingly inaccurate information. This explains why anti-corruption laws change very slowly and do not allow for changes in the removal of barriers to their application (Starodub 2016).

In the academic literature there are almost no studies of theoretical and practical aspects of declaring

property in terms of inaccuracy of information and the establishment of responsibility. This study used data analysis of property verification and declaration systems in Central and Eastern Europe. The following indicators of systems for verifying the accuracy of information about the property of officials were selected for comparison:

- Categories of information typically found in declaration forms (153 countries) as of 2016.
- Thresholds for declaring certain assets held by a public official or his family member (in USD).
- Sanctions for non-declaration and incorrect information.
- Verification and control of asset information.

The analysis of property declaration in CEE countries confirms significant differences in the inaccuracy of information on declared property as a sign of a corruption offense.

## RESULTS AND DISCUSSION

World practice shows the existence of two-level control over the declaration of property: the competent authorities and civil society institutions. Competent authorities are a more formalized institution of verification in the performance of supervisory functions. Civil Society Organizations can exercise independent control by analyzing and verifying declarations published on official government websites or the media. The availability of declarations of civil servants for free viewing in a format that can be freely processed, the possibility of identified access to property registers determine the effectiveness of public control. Equally important is the protection of those who report corruption to the competent authorities. Since it is not possible to verify each declaration officially, a combination of civil and state control is a very reasonable way of anti-corruption activities (Starodub 2016).

The authorized bodies control the declarations on the timely submission, correctness and accuracy of filling, carry out arithmetic control on the submitted information in the countries of Central and Eastern Europe. Other means of control, in particular full verification or monitoring of lifestyle (compliance of income and expenses) or other types of inspections, are not always defined by law (Starodub 2016). Table 1 provides information on the categories of property

information that needs to be disclosed in different countries. Some countries use thresholds for declaring certain types of assets. Table 2 compares the legislation of Ukraine with the norms of other countries in the region.

As a rule, sanctions in case of violations provide for the application of administrative or disciplinary measures, while criminal liability is rarely applied. Sanctions for the submission of knowingly false data require a reliable verification mechanism, but there are no clear standards in the EU. It all depends on the sanctions – from their absence to criminal liability. EU declaration verification systems provide for procedures to verify the accuracy of property information. In particular, the system may contain partial reliability checks to avoid the presence of knowingly false data in the declaration.

## Experience of Eastern European Countries

CEE countries have systems for verifying the accuracy and credibility of property information. Regular verification of information using asset declaration systems makes it impossible to ensure the certainty and reliability of data. This trend is particularly evident in countries with high levels of corruption and distrust of officials. Verification of information is a way to identify any inaccurate information about property, including potentially criminal ones. Verification is a method that helps to maintain the integrity of the asset declaration system. In the countries of Central and Eastern Europe, the verification takes place at random on the basis of a risk assessment of public information about the property or a complete verification of all declarations. The last approach is extremely costly, the cost of verification far exceeds the relative benefits of detecting violations (Bolleyer *et al.* 2020).

In most Central and Eastern European countries, property information is regularly reviewed either in accordance with a risk assessment methodology or in response to a request for an unjustified value of the property. Latvia has a system for verifying information about property, in which influential people are given the greatest level of attention in verifying the accuracy of the information provided. The Corruption Prevention and Combating Bureau selects 120 officials to verify risk-based declarations to identify potential conflicts of interest. The State Revenue verifies the accuracy of information in property declarations only after receiving information about a potential corruption violation.

**Table 1: Categories of Information Typically Found in Declaration Forms (153 Countries) as of 2016**

Information	Global	Asia	Europe and Central Asia	Latin America and North Africa	OECD High-Income	Sub-Sahara Africa
Immovable assets	88%	100%	90%	100%	78%	80%
Sources of income	77%	73%	95%	96%	100%	48%
Stocks and securities	86%	100%	95%	100%	87%	70%
Bank accounts	80%	86%	86%	100%	72%	–
Cash	29%	45%	38%	37%	16%	20%
Values of income	67%	73%	90%	93%	63%	48%
Movable assets	80%	86%	90%	100%	56%	75%
Liabilities	72%	82%	71%	100%	56%	68%
Pre-tenure activities	58%	45%	71%	85%	75%	33%
High-level positions	41%	45%	38%	33%	84%	15%
Gifts	39%	59%	57%	33%	53%	18%
Other	30%	32%	19%	19%	69%	10%
Unpaid activities	29%	18%	38%	22%	69%	10%
Expenditures	18%	18%	38%	22%	25%	3%
Sponsored travel	14%	14%	5%	4%	41%	8%
Post-tenure activities	14%	0%	29%	7%	34%	8%

Source: (World Bank 2016).

**Table 2: Thresholds for Declaring Certain Assets Held by a Public Official or his Family Member (in USD)**

Country	Movable property (except for vehicles)	Cash (not in bank account)	Gift	Expenditure
Albania	5000	No threshold	80	4000
Georgia	4320	1730	217	650
Latvia	No requirement to disclosure	8270	No threshold	8270
Lithuania	1600	No requirement to disclosure	160	3200
Moldova	2332 or 3500, or 4665 (depends on the type of asset)	3500	No threshold	No requirement to disclosure
Romania	5580 – the threshold applies cumulatively	No requirement to disclosure	558 (overall for all gifts received during reporting period)	No requirement to disclosure
Ukraine	4685	2340	234	2340

Source: (World Bank 2016).

In Hungary, Macedonia, Croatia, Turkey and Slovakia, declarations are checked in the event of prosecution of officials. Kosovo has a mixed inspection system, where 20% of officials are inspected selectively. These people file property declarations in the current period. Additionally, the authenticity of the declaration is checked on the basis of inquiries received from law enforcement agencies regarding the unjustified amount of property. Another example of

verification can be the Czech Republic, Bosnia and Herzegovina. These countries do not verify the information of the declared property at all. Only a few Central and Eastern European countries publish inspection reports, including Kosovo, Serbia, Slovakia, Slovenia and Albania.

The next step after the inspection is the application of legal sanctions to the identified offenses. They

perform a deterrent function. Possible sanctions include disciplinary and administrative measures, in some cases criminal liability. Inspection systems provide for financial penalties and criminal prosecution in case of providing inaccurate information about property (Table 3). Turkey is an exception to the imposition of financial sanctions. In Kosovo, refusing to disclose information about property by officials entails criminal liability. Moldova applies sanctions such as administrative fines for late submission of declarations, removal from office for non-submission and criminal liability for submitting inaccurate information. Sanctions for inaccurate information about property include a fine of up to 1,400 euros or imprisonment for up to 1 year. In both cases, they are accompanied by deprivation of the right to hold certain positions or engage in certain activities for up to 5 years.

Criminal liability for false information in anti-corruption declarations is provided by criminal law in Ukraine and Moldova. Sanction of the Criminal Code of Moldova, No 985-XV (2002) provides for imposition of

a fine of 600 dollars, imprisonment up to one year and deprivation of the right to engage in certain activities for up to 5 years. Sanction of the Criminal Code of Ukraine, No 2341-III (2001) provides for stricter fines from 1700 dollars, correctional labor for up to 240 hours, or imprisonment up to 2 years, with deprivation of the right to engage in certain activities for up to 3 years.

In contrast, Ukraine provides mainly administrative liability for inaccuracy of information about property in the amount of 100 to 250 subsistence minimums, criminal liability for the subject of declaring knowingly inaccurate information about property in the amount of 250 subsistence minimums for able-bodied persons. The subjects of the inspection are “officials” who hold a responsible and especially responsible position; declaring entities holding positions associated with a high level of corruption risks. Ukrainian jurisprudence shows that the most common type of punishment is deprivation of the right to hold office, which means dismissal. The most common form of punishment is

**Table 3: Sanctions for Non-Declaration and Incorrect Information**

Country	Financial fines	Disciplinary measures	Criminal prosecution	Loss of mandate or public office
Albania	+	-	+	-
Azerbaijan	-	-	-	-
Bosnia and Herzegovina	+	-	-	-
Croatia	+	-	-	-
Czech Republic	+	-	-	-
Georgia	+	+	+	+
Hungary	-	-	-	+
Kosovo	+	-	+	-
Latvia	+	-	+	-
Macedonia	+	-	-	-
Moldova	+	+	+	+
Poland	-	-	+	-
Romania	-	-	+	-
Russia	-	+	-	+
Serbia	+	-	-	-
Slovakia	+	-	-	+
Slovenia	+	-	+	-
Turkey	-	-	-	-
Ukraine	+	+	+	It can be as a secondary result. For example, if there is a court decision on criminal case such person can lose his/her mandate.

Source: (Asset Declarations in CEE Countries 2017).

**Table 4: Verification and Control of Asset Information**

Country	Asset declarations verified	Random/Ad hoc verification	Verification based on published risk assessment methodology	Verification based on notifications about unjustified wealth	Verification in case of prosecution of the given person	Regular publication of reports including verification results
Albania	+	+	-	-	-	+
Azerbaijan	Unknown	-	-	-	-	-
Bosnia and Herzegovina	-	-	-	-	-	-
Croatia	+	-	-	+	+	-
Czech Republic	-	-	-	-	-	-
Georgia	+	+	-	+	-	+
Hungary	+	-	-	+	+	-
Kosovo	+	+	+	+	-	+
Latvia	+	-	+	+	-	-
Macedonia	+	-	-	-	+	-
Moldova	+	+	-	+	-	-
Poland	+	+	-	+	-	-
Romania	Unknown	-	-	-	-	-
Russia	+	-	-	+	+	-
Serbia	+	+	-	-	-	+
Slovakia	+	-	-	+	+	+
Slovenia	+	-	+	+	-	+
Turkey	+	-	-	+	+	-
Ukraine	+	-	+	Citizens can appeal to National Agency on Preventing Corruption (NAPC). NAPC	-	Are published on web-site in the section "Decisions of the NAPC".

Source: (Asset Declarations in CEE Countries 2017).

community service, and courts are much less likely to impose fines and imprisonment. In the case of a sentence of imprisonment, release from probation (or so-called "probation") is usually applied.

In most Central and Eastern European countries, declarations are verified (Table 4), only in 6 countries it is verified randomly. In 4 countries the verification is based on risk assessment methodologies. In 11 countries of Central and Eastern Europe the verification of declarations takes place through a report of an unjustified amount of property, in 6 countries the verification takes place as a result of bringing a person to justice.

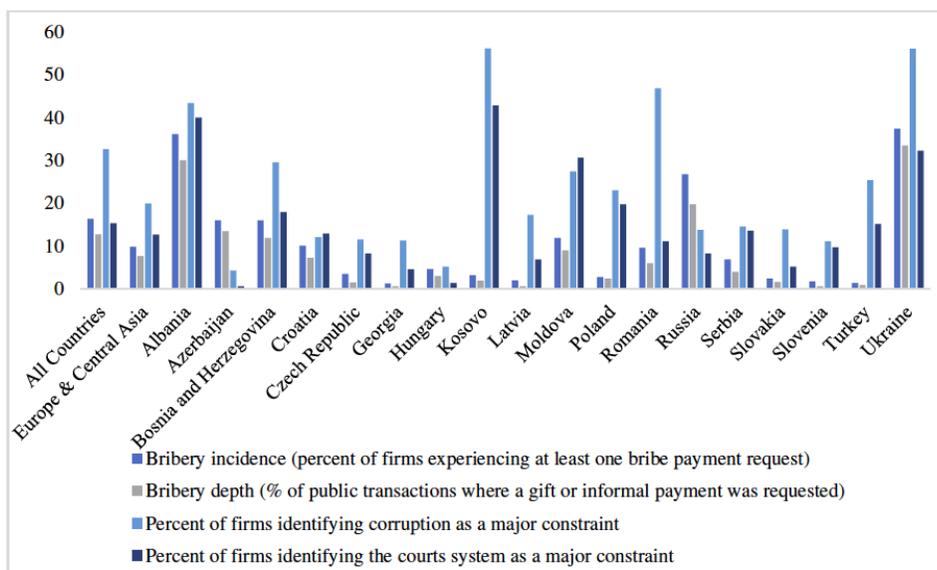
The time period for verifying the accuracy of property information is a key element of verification. In Central and Eastern Europe, the verification period lasts from an unlimited to several years. Records of declarations are kept indefinitely in Georgia, Albania, Kosovo, Turkey and Romania. In Latvia – 30 years, while in Slovenia and Poland – 10 years. In Serbia, data are deleted after 3 years from the date of termination of office. Ukraine deletes records 5 years

after leaving office, except for the last declaration, which is kept indefinitely (Asset declarations in CEE Countries 2017).

#### **Comparison of Property Declaration in the EU: The Experience of Greece**

Verification Steps Law 3213/2003 provides for the verification of the following elements (Greece Legislation 2003):

- Timeliness of submission: Does the period of submission of information by the declarant meet the deadlines?
- Accuracy and completeness of information about the property (formal control): Did the declarant fill in the minimum required information in the correct form?
- Logical, arithmetic control (verification of authenticity and plausibility): Does the declaration reflect information on the acquisition of new assets to the declared income?



**Figure 1:** The prevalence of different types of bribery in CEE countries in 2019.

Source: (The World Bank 2020).

- Full audit: Is the declared information correct, reliable and complete?

Stages 1, 2 and 4 are used during the verification of two declarations of assets and financial interests. The third stage involves checking only the declarations of assets. The implementation of these stages is in line with international practice and standards. In Stage 3 regulators need guidance on analyzing the data reflected in the declaration, how to combine it into a formula that provides a balance of costs and revenues. Nowadays in Greece there are no similar instructions for data validation.

Declarations in Greece at the time of writing are mainly checked on the basis of reports (citizens, media, prosecutorial orders, etc.). The “Independent Committee of Article 3A” (OECD 2003) is the only body that verifies all declarations by law and can practically implement it (a total of about 935 declarations for 2015, 939 for 2016). For the other four supervisors, the high volume of notifications currently leaves almost no time to prioritize declarations based on other criteria. Law 3231/2003 provides that regulators prioritize declarations to be audited (stage 4) by analyzing the risks supported by IT (Article 3(3)) (Greece Legislation 2003). Most supervisors do not have a list of red flags and risk criteria that determine the need for an audit (for example, suspicious lotteries or casino winnings, private loans, etc.). One exception is the Inspector General of Public Administration (GIPA). Red flags and risk criteria used to determine priority include:

- discrepancies between income and the bank account;
- money transfer abroad;
- changes in bank deposits;
- inconsistencies in bank deposits due to capital consumption;
- acquisition and transfer of assets during the same year;
- staying in the civil service in the same place as the partner;
- profession of spouses and relatives of the first rank: accountant.

International standards also establish the following risk criteria: loans to individuals made in an unusual way, a surprise (lottery, casino winnings, cash gifts, etc.), asset agreements with family members, unusual income from asset transactions, assets acquired at market conditions, etc. Table 5 sets out the sanctions of Law 3213/2003 in Greece that apply to the submission of inaccurate property information.

The list of sanctions is exhaustive and focusing on criminal penalties, including confiscation of property that meets international standards. Severe sanctions in cases involving high-value property, up to ten years in prison, are a special feature of Greece. Effectiveness of this practice depends on the extent to which

**Table 5: Types of Liability for Inaccurate Information on the Declaration of Property in Greece**

Act	Administrative	Criminal
Non submission of declaration, inaccurate or incomplete declaration	–	Imprisonment, fine ≤ € 100,000
In case the offender conceals assets acquired through his/her status	–	Imprisonment ≥ 2 years, fine € 10,000-500,000
If the total value of the declarable concealed assets amounts to more than € 300,000 (due to inaccurate, incomplete or non-submission of declaration)	–	Imprisonment ≤ 10 years, fine € 20,000-1,000,000
Negligent omission to submit the declaration	–	Fine is optional
Third person knowingly involved in non-submission or an inaccurate declaration	–	Imprisonment, fine
Third person refusing to provide information or obstructing the verification	–	Imprisonment ≥ 6 months

Source: (OECD 2003).

oversight bodies detect, inspect and confirm cases and investigative prosecutors and courts use the capacity of sentences. Supervisors have identified several cases of misstatements regarding significant amounts. Cases are still pending in court.

## CONCLUSION

The study confirms the hypothesis of significant differences in the requirements for declaring income and assets, verifying their authenticity and establishing liability in case of violation. A comparison of property reporting systems in CEE countries and the identification of differences in the qualification of violations shows: the difference in thresholds for declaring certain assets held by a public official or his family member (in USD); differences in penalties and approaches to verifying the accuracy of property declaration information.

Central and Eastern European countries with higher levels of corruption have lower sanctions than Greece, mainly it is about fines. In Greece, penalties for administrative fines vary considerably in the number of fines and, in some cases, imprisonment for up to 10 years. The system of verification of declarations also varies significantly within CEE: from verification of declarations, in particular randomly or automatically, the use of the methodology for assessing the risks of inaccuracy of the declarant's information to the notification of the unjustified amount of property. In 6 countries the verification is made due to the prosecution of a person.

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