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Second Specialized three-day Training for R2G4P members

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The role of the International Treaty on Exchange of Data for the Verification of Asset Declaration in rebuilding integrity

Legal ground- embracing the administrative and civil exchange

UNCAC (Article 43, para1,) “Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption and developing an effective financial disclosure systems for appropriate public officials”

Supported by Resolution 6/4 of the sixth Conference of the States Parties to the UNCAC from 2015

Why is the Treaty necessary?

- many corrupt public officials spend their actual wealth abroad: they buy real estate, own businesses, or deposit money on foreign bank accounts
- integrity bodies in charge for verifying the veracity of asset declarations need access to information held by foreign authorities
- social and political background “crisis in public sector integrity”
- to promote the effectiveness and efficiency of the national AD systems

Based on 5 fundamental principles

- direct formal exchange in civil and administrative matters between the focal points (designated authorities)
- administrative exchange of data being limited to purposes of verification of asset declarations
- voluntary cooperation
- applicability to a diverse range of disclosure systems
- data exchange being confined to the legal limits of both parties
- data protection and confidentiality

Categories of information exchanged

Includes, but is not limited to information:

- taken from usual public and private databases (taxes, bank accounts, financial securities, businesses, companies, trusts and foundations and similar legal arrangements and entities, real estate, vehicles and other movable equipment, and intellectual property rights)
- consider establishing online databases with an access through an English surface in addition to the official language
- spontaneous exchange of information- based on media reports (bilateral agreements optional)
- mechanisms of automatic exchange of data

Confidentiality/ disclosure of information

- protected in the same manner as information obtained under the domestic law and to extent needed to ensure the necessary level of protection of personal data, in accordance with the international data protection standards in public civil or administrative court proceedings and in court decisions relating to asset declarations.
- separate procedure on mutual legal assistance in criminal matters

ECHR Wypych v. Poland, Application no. 2428/05

The Court decided, that the online publication of asset declarations in question was justified:

“The general public has a legitimate interest in ascertaining that local politics are transparent and Internet access to the declarations makes access to such information effective and easy and with objective of giving the public a reasonably exhaustive picture of councilors’ financial positions.” . For public officials, the level of privacy protection is even lower.

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Implementation steps/SEE - Together Against Corruption (SEE-TAC)

Entry into force the Treaty will result in establishing :

- A regional mechanism on data exchange in asset disclosure is introduced into national practice
- A regional network of focal points for asset disclosure is established
- Ratification process in the first three signatories is pending, they are invited to promote the value of and to encourage other states to accede the Treaty (integrity leaders)

Implementation steps/SEE - Together Against Corruption (SEE-TAC)

Expansion of the Treaty and its full embodiment in the national systems and practice requires a multidimensional approach:

- political commitment
- advocacy and communication policy
- collective action including the CSO, Academia, private sector, media and public
- promoting coordinated action towards resolution the corruption and development of engagement strategies for the states' ownership

Common findings in the SEE/similarities

- have established an asset declaration system for elected and appointed officials, in line with their national legal systems including judges and prosecutors;
- the bodies in charge with the process of receiving and processing/ verification of AD are the AB in combination with the oversight bodies
- lack of clear and coherent provisions that does not hamper implementation and open a room for different interpretation, lack of knowledge and practice on CPL
- lack of tailored trainings and a methodology based on qualitative indicators and high level corruption risks
- lack of guidance and advising

Common findings/ differences

- assignment with a variety of preventive and repressive competences against corruption and in the verification powers
- level of the efficiency and effectiveness of the verification systems
- adequate resources
- standardized procedures to document each step disregarding any fluctuation of staff
- regularity of reporting, and of the verification, content and coverage, online submission and online publication of the AD
- level of development of the national interoperability system, existence and maintenance of open data sources and their connectivity

Remedy strategies

- targeted legislative amendments for a credible and rigorous system of verification of asset declarations
- IT (software) for various phases of the asset declaration system, including risk analysis based on predetermined risk factors
- participatory role of the civil society may advocate new approaches in the verification of declarations and by involvement in the external monitoring and evaluation of the system
- methodology to avoid selective verification

Options

Connecting two databases can cause several problems: may take time as it would require mapping data categories in each database, agreeing on the format and content of data requests sent by the database of declarations and respective responses from the external data source; lack of a common identifier (such as a unique personal identification number) or the use of several identifiers; use of secure communication channels and secure methods of data transfer, which may require additional investment of resources.

Another option for data integration is using a government-wide interoperability platform that connects different government databases and offers standardized secure data exchange. Such an infrastructure will significantly facilitate introduction of the automated risk analysis of asset and interest declarations (operational in a few countries).

Automated risk or “red flag” analysis

- helps to filter declarations and prioritize verification.
- increases the capacity of the agency tasked with verifying assets and interests of officials by focusing the agency’s limited resources on the verification of high-risk declarations
- removes discretion, minimizes manual processes, and makes the whole system more impartial and credible.

“Automated Risk Analysis of Asset and Interest Declarations of Public Officials A Technical Guide Dmytro Kotlyar Laura Pop”

Partnership with the UNODC Anti-corruption and Illicit Finance Roadmap Project (2021-2024)

The specific goals/outcomes of the project are:

- Goal 1: Preventing and countering corruption in public procurement, including in times of crises
- Goal 2: Further strengthening conflict of interest and asset declaration systems
- Goal 3: Enhancing criminal justice responses to corruption and economic crime through the creation of a regional network of specialized prosecutors, law enforcement and financial intelligence units in the Western Balkans jurisdictions

Advocacy and promotion activities

RAI continued the dialogue with the authorities from the respective institutions to pursue with the Treaty ratification process but as well to enhance their role as promoters of the Treaty as the first signatories.

Dialogue is ongoing with Albania and Moldova to join the Treaty as new signatories and BiH.

Promotion at all relevant online and in person anti-corruption events at national , regional and international level- COSP 9 GRECO Plenary, OSCE regional conference, 6th RCC Jumbo Security Conference, OECD General Assembly Meeting, NCPA Plenary, RACVIAC ect.

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Thanks for watching!



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