Council of Europe
Conseil de l'Europe

European Union
Union européenne

PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

Technical Paper

OPINION ON THE LAW 'ON THE DECLARATION AND AUDIT OF ASSETS, FINANCIAL OBLIGATIONS OF THE ELECTED OFFICIALS AND CERTAIN PUBLIC OFFICIALS' OF THE REPUBLIC OF ALBANIA AND PROPOSED AMENDMENTS

Prepared by:

Gent Ibrahimi, PACA Long Term Advisor
July 2010

ECD/22/ 2010

Table of Contents

For any additional information please contact:

Corruption and Fraud Unit
Economic Crime Division
Directorate of Co-operation - DG-HL
Council of Europe
F-67075 Strasbourg Cedex FRANCE
Tel +33 388 41 29 76/Fax +33 390 21 56 50
Email: lado.lalicic@coe.int
Web: www.coe.int/economiccrime

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union or the Council of Europe

Executive Summary

This opinion provides comments and recommendations on the proposed amendments to the 2003 Law "On the Declaration and Audit of the Assets, Financial Obligations of the Elected Officials and Certain Public Officials" (henceforth the Assets' Declaration Law), as amended till May 2006. The opinion has been formulated as assistance to the High Inspectorate for the Declaration and Audit of Assets (HIDAA), which submitted to PACA a set of proposed amendments to the Law.

Most of the comments contained in this opinion relate to the proposed amendments although, here and there, the expert comments on some aspects of the Law as a whole.

Despite the seemingly low profile (the announced intention of HIDAA, as provided in the explanatory note accompanying the amendments, is apparently to extend legal liability on the family members of the public officials who refuse to declare assets or make fraudelent declarations and the inclusion of "expenditures" in the list of assets that must be declared), the proposed amendments represent an important overhaul of the current regulation as they attempt to revisit all major issues of the assets declaration law such as coverage of the law, the declaration's content, the status of HIDAA as the responsible government agency, the deployment of administrative investigation in declaration processing and punishment for breach.

Although almost none of the aforementioned issues is regulated *ex novo*, the proposed amendments signal an important departure from the current state of affairs.

The main findings/recommendations of this opinion are the following:

- Concerning the coverage of the assets' declaration law (in other words the overall number and categories of public officials under the legal obligation to declare their assets and interests), the proposed amendments do not bring about change in the desired direction, namely the reduction of such numbers and categories. It has been argued extensively in the past that the large list of officials under the obligation to declare assets would very likely dilute the ability of the HIDAA to concentrate its auditing efforts and resources on the higher level officials. Quite on the contrary, the proposed amendments add yet another category of public officials, namely directors of public institutions subordinate to the central institutions on a district level, to the list.

- Again on the coverage side, the long awaited reformation of the lottery system whereby a certain percentage of declarations is randomly selected to undergo full audit has been finally addressed. Whereas in the past HIDAA was not able to differentiate among the different categories of public officials in accordance with the risk level they pose in terms of propensity to corruption, the submitted amendments propose that such differentiation be made following a risk assessment for each group and the taking into account of the population of each group. HIDAA has come up with 2 versions of this arrangement. The expert recommends that the first version be upheld by the legislator for the reasons mentioned below. The old system whereby 4 % of the overall population of declaring officials would undergo a full audit, irrespective of the varying

corruption potential that characterises different categories was clearly formalistic and ultimately waisted HIDAA's resources. The proposed system of differentiation among the various categories of officials should make HIDAA's anti corruption role more effective.

- Concerning the declaration's content (categories of information to be disclosed), the proposed amendments extend the list of declarable items to include expenditures in excess of 300.000 ALL incurred by the obliged officials during the year of declaration. This is justly seen as the only practical way for HIDAA to establish whether the earned income is sufficient to support the life style of the declaring subject. Clearly the declaration of expenditures above the aforementioned threshold would make HIDAA's job to do the arithmetical and logical control of the declarations much easier. On the other hand, it must be noted that the high level of informality that still characterizes the Albanian economy could cripple the implementation of this provision. In order for this provision to be fully implemented, HIDAA should enhance cooperation with the General Directorate for the Prevention of Money Laundering (henceforth FIU). The expert is of the opinion that such cooperation has huge potential given the fact that all public officials that declare their assets to the HIDAA are considered politically exposed persons (PEPs) for the purposes of Anti Money Laundering Law (AML) and therefore also under the scrutiny of FIU. Moreover, most of the suppliers of services and goods with a value exceeding 300.000 ALL are in fact obliged entities under the AML and therefore under the obligation to report to the FIU all transaction involving the PEP's.

  The implementation of the provisions on gifts and preferential treament should be even more difficult. The HIDAA will need to resort to administrative investigation in these cases in particular.

- Concerning the status of the responsible agency, certain important and long awaited changes are proposed. The proposed amendmets advocate 3 (three) important changes to the status of HIDAA's Inspector General. Namely, it is proposed that that Inspector General term in office become renewable, that the Inspector General be entitled to retake the position or function he/she had before assuming the post of the Inspector General and that he/she be recognised the immunity equivalent to that awarded to the Judges of the High Court. The expert is of the opinion that the first two proposals should be upheld by the Albanian legislator and the third one be rejected for the reasons mentioned below.

- Concerning auditing and declaration processing, in addition to providing extensive regulation on the issue of full audit (the expert has chosen to consider the issue of full audit as a question of coverage) the proposed amendments spell out the possibility that HIDAA engage in administrative investigation with a view to effectively audit assets' declarations. In this regard, the expert is of the opinion that mere reference to the Code of Administrative Procedures is not a satisfactory solution. Based, on the general principles provided by the Code of Administrative Procedures, the assets' declaration law should provide a tailored process of administrative investigation which serves HIDAA's needs and guarantees the procedural rights of the public officials.

- Concerning the announced intention to extend legal liability for refusal to declare or fraudelent declaration to the family members of public officials, it must be noted that such a provision will produce no results as long as article 257/a of the Criminal Code (which for the moment envisages criminal liability for the officials only) is not amended to allow for criminal liabilty of family members and linked persons.

- Concerning punishment for breach, in addition to stiffening some of the sanctions, the proposed amendments solve the thus far uneasy Siamese relationship between the 2 HIDAA laws (assets declaration and conflict of interest). With the advent of the 2005 law on the prevention of conflict of interest (CoI), the provision of the 2003 law on assets' declaration that regulated sanctions was repealed. Trom that moment on, the users of the assets' declaration law had to refer to the CoI law in order to spot the relevant regulation on administrative sanctions. With the proposed amendments the assets' declaration law becomes self sufficient from that point of view.

1 GENERAL COMMENTS ON THE MAIN ISSUES TACKLED BY THE AMENDMENTS

The expert has the following general comments and recommendations on the main issues tackled by the amendments.

1.1 Coverage of the Assets' Declaration Law

The proposed amendments are seen as the result of seven years of experience accumulated by HIDAA in the process of implementing the 2003 law "On the Declaration of Assets, Financial Obligations of the Elected Officials and Certain Public Officials".

For the purposes of this paper, the notion of "coverage" shall mean both the actual categories of public officials that bear the obligation to declare assets under the law and the ability of the responsible agency to effectively audit their declarations (the full audits or substantive coverage).

As far as the first meaning of the notion of coverage is concerned, it must be noted that typically, assets' declaration laws cover 2 – 3 categories of public officials. Namely, elected officials, top officials appointed by the political branches of the government (parliament, cabinet, individual ministers), including judges and prosecutors, and certain levels of civil servants (directors of joint stock companies with a certain level of participation of the state are also an option). The 2003 Albanian law on assets declaration has taken an all embracing approach by including all of the aforementioned categories.

Throughout this period of time since the entry into force of the law, many local and international commentators have argued that the incisiveness of the assets declaration regulation could have been much more significant if the approach taken by the legislator

would have been such as to confine the implementation of the law only to elected officials, officials in top levels appointed by the politicians and a limited number of civil servants which, by the nature of their functions and powers, are more exposed to corruption. The law could have also given the Inspector General the discretion to supplement the list of officials under the obligation to declare assets by adding certain categories of public officials, other than those stipulated in the main regulation, through the application of a risk assessment. Extending the operation of the law, as it is now, to all high and middle managing level of the civil servants, directors and commanders of the Armed Forces and the State Information Service without a proper assessment of the risk level posed by these populous categories of public officials must have strained HIDAA's scarce resources which could have been concentrated otherwise on those elected and appointed officials (as well as the "spicy" category of officials involved in procurement, privatization, restitution, tax and customs administrations, police etc) that bear real decision making and lobbying power as well as deal with public money.

As far as the second meaning of coverage (effective auditing or substantive coverage) is concerned it is crucial that in addition to the arithmetic and logical controls, the assets' declarations of the officials be subjected to full auditing periodically. In general, it must be noted that usually the ability of the responsible agency (HIDAA in the case of Albania) to do proper auditing of the declarations is boosted if the coverage in term of obliged categories of officials is limited. In other words, the more numerous are the officials under the obligation to declare assets the less effective the audit of the declarations will be. As mentioned above, Albania has opted for an extended list of officials. Despite this extended (and therefore tenuous) approach taken by the Albanian Legislator, the coverage (in terms of effectiveness) may nevertheless be acceptable if the legislation makes proper differentiation in the treatment/audit of the declarations of public officials in accordance with their assessed propensity to corruption. In other words, despite the large numbers of officials that declare their assets, the responsible agency may still do a good auditing if it manages to focus controls and resources where they are most needed (namely onto those officials that are more exposed to corruption).

In general there are 3 methods to achieve differentiated treatment/control (and therefore a good coverage) of the assets' declarations of public officials in accordance with the assessed corruption risk. Those methods are the varied frequency of full audits, the lottery whereby a certain percentage of the obliged officials' declarations, randomly selected, undergo full audit, and the discretionary power of the responsible authority to impose a full audit on particular officials.

The varied frequency of full audits - The assets declaration law may envisage different frequencies for the effectuation of full audits on different categories of public officials in accordance with the assessed risk posed by each category. For example, a minister, who manages public power and money directly and, to a certain degree singlehandedly, may be subjected to a full audit every 2 years. On the other hand, a parliamentarian, who manages lobbying power, every 4 years and so on. This method allows the responsible agency to concentrate its "fire power" where the biggest potential for corruption is assessed to be despite the obligation to scan a large number of other officials.

The lottery – The assets declaration law may also envisage the holding of a lottery whereby a certain percentage of the officials is randomly selected for a full audit. Of

course it would make much more sense if the percentage was varied in accordance with the population and the corruption risk of each category of public officials. For example, in terms of physical coverage, 4% of the civil servants would merely scratch the surface but 4% of cabinet ministers would be regarded a reasonable control of this category. On the other hand, in terms of substantive coverage (concentrating control where it is most needed), auditing only 4% of the cabinet ministers would not ammount to good coverage because the corruption potential for this category is supposedly high. This delicate balance needs to be drawn by a good lottery system;

The discretionary full audit - Finally, the law may give the responsible authority the discretion to pick and chose any declaration and submit it to a full audit if there are grounded suspicions that the declaration is inaccurate of fraudulent.

Each of the aforementioned approaches/methods features strengths and weaknesses. Namely, the *varied frequency approach* has the advantage of being automatic and fair but if the phasing of audits provided for in the law is not intelligent (say the law envisages that the MPs be audited more often than cabinet ministers) it may become a bit formalistic as certain categories that pose greater risk will be treated just like the other categories of public officials that do not pose the same degree of risk. It may also preclude the responsible agency from concentrating on particular categories of officials that may deserve a closer scrutiny at a particular time.

The *lottery approach*, while being fair in that everybody stands an equal chance of undergoing a full audit, may end up weighing more on one category diminishing the oversight on other categories (admittedly this deficiency could be solved if the percentages were tailored in accordance with the population and corruption risk of each category rather than select a percentage of the entire population of public officials under the obligation to declare theirs assets).

The *discretionary approach* has the advantage of putting the focus where it's most needed but may expose the responsible agency to political and other sorts of attacks as well as legal action.

At first reading it seems the assets declaration law misses any such differentiation. This is not accurate however. In reality the Albanian law uses all 3 approaches mentioned above. The differentiation among the public officials is made in the context of the regulation of the issue of full audits. The problem is that in order to spot the relevant regulation on this issue, reference to article 17 of the law "On the Prevention of Conflict of Interest in the Exercise of Public Functions" (CoI) is needed[1]. Article 17 of the CoI law regulates the frequency and method whereby the declared assets of the officials are audited in depth (the so called full auditing as distinct from the mere arithmetical and logical audits). The ability of the HIDAA to aim its control where it most matters is seen as a compensation for the current thin and spread coverage of the law. In other words, despite the legal obligation to collect and review the declarations of thousands of public

[1] The proposed amendments to the Assets' Declaration Law are also intended to clarify the numerous and confusing references to the Conflict of Interest Law by "importing" the relevant regulations into the assets' declaration law thus making it self sufficient and legible without the need to refer continuously to the other law.

officials, if HIDAA were able to "take seriously" only the declarations of those in real positions of power, the issue of the coverage of the law, in the view of the expert, could have been deemed satisfactorily solved. In fact, article 17 of the CoI law does make this differentiation as it states that full audits are effectuated on the various categories of the public officials with the following frequency:

- every 2 years for the members of the cabinet and deputy ministers, members of the regulatory bodies and the top officials such as the President of the Republic, the members of the High and Constitutional Courts etc;
- every 3 years for the mayors and the high level civil servants, high police officers and high tax and customs' officers, prefects judges and prosecutors;
- every 4 years for the MPs and heads of central and local government bodies and the their collective bodies.

Additionally, the aforementioned categories, and all other officials (not included in categories above) who bear the obligation to declare their assets, are subjected to a full audit following a lottery procedure which randomly picks 4% of the total number of the declarations.

Additionally, the Inspector General may order a full audit on each subject he/she deems appropriate.

The proposed amendments, in addition to importing all this regulation into the assets' declaration law, which is per se a positive development as the law may now be read clearly without those disturbing references to the CoI law, consist of 2 versions.

Whereas the first version may be regarded as a mere sharpening of the current triple approach whereby all 3 systems (varied frequency of full audits, the lottery and the discretionary audits) are used[2], the second version marks a move towards a more discretionary handling of the function in that the varied frequency report is abandoned altogether.

Before expressing the expert's preference on the 2 options presented by the proposed amendments, a brief explanation on the proposed novelties is due here.

The sharpening of the current triple approach system (the first option) consists of the following proposed changes:

- the frequencies for the effectuation of the full audits are generally tightened. For example, if the amendments are adopted the MPs will undergo a full audit every 3 years rather than the 4 years envisaged by the current law;
- In addition to the overall percentage of declarations that undergo full audit at the end of the lottery procedure, the amendments propose that varied percentages

[2] However, It is important to note here that the said "sharpening" could bring about real positive change as the proposed amendments make the frequencies more stringent, and more importantly introduce the ability of the Inspector General to decide on different percentages within each category of public officials in accordance with the risk assessment and the categories' population

be decided by the Inspector General for each category of public officials based on the risk assessment and the population of each category;
- The discretionary power of the Inspector General to wage full audits is preserved.

The changes proposed under the second option consist of the following:

- the varied frequency whereby the full audits for different categories of public officials are effectuated is abandoned;
- the size of the randomly selected declarations to undergo full audits is increased from 4% to 10%;
- in addition to the overall 10% of declarations that undergo full audit each year, tailored percentages per each category of public officials shall be decided by the Inspector General based on the risk assessment and the population of each category;
- The discretionary power of the Inspector General to wage full audits is preserved.

In view of the above explanations on the strengths and weaknesses of the 3 methods/approaches to secure a good coverage of the assets' declaration regulation (in terms of audit effectiveness) bearing in mind the relatively short lifetime of the HIDAA and the overall picture of the imperfect Albanian democracy and legal system, the expert concludes the opting for the first version of the proposed amendments to the current article 25 of the law (the so called sharpening of the triple approach) seems the most desirable route of action for the Albanian legislator. Only the combined strengths of the 3 methods could make a difference in curbing corruption. Indeed preserving the varied frequency of full audits for the different categories of public officials is a minimum guarantee that the most important government officials' declarations will undergo full auditing at least once every several years. There is no such guarantee in the second version of the proposed amendments which merely empower the Inspector General to decide a list of officials that will undergo full audit every year. Clearly, the second version would make the position of the inspector general more vulnerable thus imperilling this entire anti corruption function.

1.2 The Assets' Declaration's Content

Concerning the declaration's content, the proposed amendments extend the list of declarable items to include expenditures incurred by the obligated officials as the only practical way for the HIDAA to establish whether the earned income is sufficient to support the life style of the declaring subjects. This would make the Inspectorate's job to do the arithmetical and logical control of the declarations much easier.

On the other hand, it must be noted that the high level of informality that still characterizes the Albanian economy could cripple the implementation of this provision. The officials can effectively conceal any expenditure incurred when buying goods or services if the supplier fails to register the transaction. Even though this matter is far to detailed to be regulated in the law it deserves HIDAA's attention at an yearly stage. One solution could be for HIDAA to intensify its current level of cooperation with the FIU,

given the fact that all public officials that declare their assets are considered politically exposed persons (PEPs) for the purposes of Anti Money Laundering Law (AML) and that most of the suppliers of services and goods with a value exceeding 300.000 ALL are in fact obliged entities under the AML and therefore under the obligation to report to the FIU all transaction involving the PEP's.

Clearly this cooperation should come on top of the overall and long term effort to formalize the Albanian economy.

1.3 The Status of the Responsible Agency

There is no question that the HIDAA, given the nature of its powers, was always meant to be a independent regulatory agency. Since the 1998 Constitution, the Albanian constitutional doctrine has accommodated (although not literally) the notion of independent agencies which do not fit into any of the classical government branches, namely the legislature, the executive or the judiciary. They (the independent agencies) make up the so-called "fourth branch" of government. A doctrine of delegation of authority from the legislature to the agencies stays at the fundaments of the system of independent agencies. Clearly the delegations doctrine raises fundamental questions concerning the constitutional distribution of authority in the system of government. The Albanian constitution, just like most constitutions, is based on the principle of separation of powers with law-making power assigned to the legislature, law-enforcing power to the executive and adjudication in individual cases to the judiciary. Such distribution scheme is believed to be able generate a system of checks and balances between the powers. The rise of independent administrative agencies as a "fourth branch of government", *prima facie*, seems to collide with the classical constitutional doctrine.

Three features characterise the independent agencies drawing a clear demarcation line between them and the administrative departments under the executive branch:

1. Independent agencies are established by law;
2. Independent agencies enjoy managerial and budgetary autonomy;
3. Independent agencies exert regulatory competencies within the sphere of their jurisdiction.

Clearly, all these solutions are at work in the case of HIDAA. The agency was established by law, it is managed independently by the Inspector General and exerts regulatory powers in the form of guidelines. Further technical solutions incorporated in the 2003 assets' declaration law illustrate the intention of the legislator to set up an independent agency. It suffices to look at the modalities for the election of the Inspector General, the ambition to entrench him/her in the position, the recognition of regulatory powers to HIDAA etc, to maintain with certainty that for all purposes, HIDAA is an independent, regulatory agency.

Indeed, the arguments supporting the necessity to make the declaration of assets the domain of an independent authority, meeting all the criteria mentioned above, are obvious. The proposed amendments draw on that achievement and seek to provide extra guarantees so that HIDAA could perform its function undeterred.

The proposed amendments spell out certain important changes regarding the status of HIDAA's Inspector General. In it original version, the 2003 assets' declaration law awarded the Inspector General a salary and benefits equivalent to those of the High Court Judge. That provision was repealed in the 2006 amendments to the assets' declaration law. The current proposed amendments introduce 3 (three) important changes to the status of the Inspector General.

Firstly, it is proposed that the Inspector General may be re-elected upon the lapse of his/her term. The right to be re-elected is not confined to a given number of terms. Solutions abound in constitutional theory and practice concerning the best way to shield independent agencies from improper influence at the hands of political branches of government. Clearly, fixed office terms, the modalities for the election (and re-election), guaranteed tenure in office, the recognition of managerial autonomy and sufficient budgets for the agency stay at the core of such quest. There is no question that the Inspector General is one such agency that needs to be shielded properly. Undoubtly, the powers vested with the Inspector General may expose him/her to the wrath of those corrupt politicians who may look forward to the Inspector's departure from the position. The fixed 5 years term in office for the Inspector General is the first guarantee against such danger. It may be argued that the chance to be re-elected is a source of pressure on the public official who may tend to become more malleable and accommodating towards the desires of the "almighty" politicians in order to win re-election. In this line of thought, the right to re-election in fact erodes the independence of regulatory agencies rather than reinforces it.

On the other side, the certainty that there will be no re-election may lead to a diminished sense of responsibility by the end of the term and may also lead to the same malleability due to the approaching need to get another important job after the term expires.

The Albanian constitutional doctrine and practice also send mixed signals as to the re-election theme. Whereas the fixed term is practically ubiquitous (the only remaining exception was the unlimited term of the General Prosecutor that was remedied by the last constitutional amendments in 2008), the re-election formula may be found in some independent agencies such as the People's Advocate and the High State Audit President, and is not present in the case of other agencies such as Central Election Commission. Since the practicality and wisdom of the formula (single term or multiple terms) will ultimately depend on a variety of non legal factors such as the personality of the Inspector General, his/her age, the political climate etc, the expert is supportive of the idea presented in the proposed amendments to recognise the right of the Inspector General to be re-elected. On the *pro* side, the expert believes that this solution would mark a positive development regarding the stability of staff and expertise at HIDAA, as

well as generally contribute to enhanced professionalism in the agency.

Secondly, it is proposed that the Inspector General be recognised the right to get back the position he/she had before assuming the position of the Inspector General. Admittedly this is not very common for the heads of the other independent agencies. For example, no such guarantee is given to the People's Advocate or the President of the High State Audit. The proposed formula, whereby after the exhaustion of the office term the Inspector General would get back his/her former position, was experimented under the Law on the Ministry of Justice to enable the latter attract magistrates to the administrative posts at the ministry. Despite the practical difficulty the former magistrates have been faced with when they tried to avail themselves of such an entitlement (the High Council of Justice which was supposed to appoint them has dragged its feet on this), the formula seems justified given the precarious position commonly faced by the former inspectors once they quite office. Therefore the experts is supportive of the idea that the Inspector General of HIDAA be legally entitled to regain his/her position after the exhaustion of the office term.

On a technical level it must be noted that the Inspector General may not necessarily come from the ranks of public officials. He/she could also come from the civil society or the business world. Therefore the language of the proposed amendment should be changed to reflect that possibility.

Thirdly, it is proposed in the amendments to award the Inspector General the immunity currently enjoyed by a High Court Judge. As mentioned above, the nature of HIDAA's powers is such that it may provoke retaliation of different kinds on the person of the Inspector General. It is fair for the law to explore all opportunities at hand in order to effectively shield the institution and the person that runs it. In the section on tenure above, a short description of such instruments is provided. Whereas, the aforementioned guarantees could be largely characterised as guarantees shielding the institution, the proposed immunity would be regarded as a personal guarantee. In Albanian law, the immunity is a special protection regime enjoyed by the high officials with regard to criminal prosecution. In the case of the high court judges (whose kind and degree of immunity is proposed to be extended the HIDAA's Inspector General), the protection consists of a system of preliminary consent by the Parliament before the prosecution performs investigative measures and raises charges.
It must be noted here that many international and domestic commentators have repeatedly stated that the current regime of immunities enjoyed by the high officials in Albania is very stringent and possibly suffocating in relation to the prosecution of corruption offences. It is true that institutions of equal or similar status to that of the HIDAA do enjoy immunity. This is the case with the People's Advocate, the President of the High State Audit, the members of the Central Election Commission etc. The fact that an institution is regulated for by the Constitution or a law doesn't seem to make a difference in this regard as it is illustrated clearly by the case of the Central Election Commission whose members used to enjoy immunity when the CEC was regulated by the Constitution and keep enjoying that despite the CEC was "degraded" from constitutional status with the 2008 constitutional amendments. Therefore, by way

of analogy it seems plausible for the Inspector General to also enjoy the same privilege. However, Albania's current regime of immunities has been under intense international and domestic criticism for some time now. It is a long standing recommendation by GRECO that Albania consider the reduction of the list of officials enjoying immunity and also trim the degree of such protection. This being said, the expert is of the opinion that despite the reasonability of the proposal to award the Inspector General the immunity recognised to High Court Judges and the apparent fairness to provide the HIDAA with the same guarantees as other institutions, similar in legal status and necessity of independence, at this time, Albania should try its utmost to reduce the numbers of protected officials and the degree of protection they enjoy rather than do the opposite.

1.4 Administrative Investigation in Declaration Processing

Concerning the declaration processing the proposed amendments bring about certain changes concerning the way the administrative investigation is conducted and the administrative summoning of the declaring subject to appear in front of HIDAA. The expert is of the opinion that mere reference to the Code of Administrative Procedures is not a satisfactory solution. Based, on the general principles regulated in the Code of Administrative Procedures, the assets' declaration law should provide a tailored process of administrative investigation which serves HIDAA's needs and guarantees the procedural rights of the public officials.

It's worthy recalling here that one of the reasons that have determined the revision of the law and the formulation of the proposed amendments is the curent confusing need to refer in continuity to the law on conflict of interest. Using the same logic, the expert would advocate a solution whereby as much of regulation on administrative investigation as possible is imported from the Code of Administrative Procedures into the Assets' Declaration Law and be tailored to the needs of the agency.

The Code of Administrative Procedures is no higher law than the one On the Declaration of Assets despite the qualified majority it takes to adopt the formes and the simple majoriy needed for the latter. The Assets Declaration Law could therefore also include solutions that are not necessarily identical with those of the Administrative Code which by their very nature are general as they are intended to serve as a model to all administrative agencies.

1.5 Punishment for Breach

Concerning punishment for breach the proposed amendments solve the thus far uneasy Siamese relationship between the 2 HIDAA laws (assets declaration and conflict of interest). With the advent of the 2005 law on the prevention of conflict of interest, the provision of the 2003 assets' declaration law that regulated sanctions was repealed. As a result the users of the assets' declaration law found themselves in the weird situation of having to refer to another law (the CoI) in order to spot the applicable regulation on administrative sanctions in cases if breached of the assets' declaration law. With the

proposed amendments the assets' declaration law becomes "self sufficient" from that point of view.
This comes on top of the stiffening of some of the sanctions which is also a most welcome move.

2 COMMENTS ON PARTICULAR PROVISIONS OF THE PROPOSED AMENDMENTS

The expert has the following comments on some of the proposed amendments not mentioned in the general comments above.

Article 1. Article 1 should spell out the obligation for HIDAA to consider and treat with confidentiallity the declared data concerning the expenditures incurred by the public officials and their family members.

Article 3. In line with the general comment above on the necessity to limit the number and the categories of public officials under the obligation to declare their assets, so that HIDAA would be empowered to concentrate its control where it is most needed, the expert recommends that article 3/c, 3/d and 3/i be deleted.

Additionally, the expert recommends that the members of the collective bodies of independent, regulatory agencies serving on a part time basis (other than the chair persons or deputy chair persons who serve on a full time basis) should only declare their assets upon the request of the Inspector General rather than by default.

The expert also recommends that the family members of the public officials be included in the list of subjects under the obligation to declare since for all practical purposes they are equivalented to the obliged officials.

Article 25/1 Option I. In paragraph 1/a, the phrase "…… officials designated in articles 27, 30 and 33 of this law" is not accurate since the referred to articles are in the Law on the Prevention of Conflict of Interest. The same goes as far as the phrasing of paragraph 1/b which refers to article 29 is concerned.

Article 25/2. The expert recommends that article 25/2 "Administrative Investigation" be elaborated in detail. The general regulation of administrative regulation does not necessarily meet all the needs of the HIDAA. That regulation is supposed to be a general guideline and is primarily concerned with the protection of the rights of the physical and legal person in the context of administrative regulation. Based on the general principles of the Code of Administrative Procedures, the Assets' Declaration Law my detail the procedures whereby the HIDAA does its business.

3 CONCLUSION

This Technical Paper has provided an extensive critique of the proposed amendments to the 2003 Assets' Declaration Law as amended till 2006. In the opinion of the expert, the

proposed amendments generally mark a set of moves in the right direction as illustrated by the 7 years of implementation of the law and the comments/recommendations of numerous domestic and international commentator. Further efforts need to be done by HIDAA with a view to the final integration of the 2 laws on which it bases its activity (assets' declaration and CoI) till their full convergence into one single law.