

Asset declarations

<https://oswiadczeniamajatkowe.cba.gov.pl/ome/legal-status-of-asset-declarat/legal-basis/1153,Legal-and-practical-aspects-of-the-application-of-the-system-and-control-of-asse.html>
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Legal and practical aspects of the application of the system and control of asset declarations in Poland

The concept of declaration of assets appeared for the first time in Polish legislation in the provisions of the Act of 5 June 1992 on restrictions on conducting business activities by persons performing public functions (Journal of Laws of the Republic of Poland No 53, item 274, as amended), known as the Anti-Corruption Act. Article 6 of this Act initially imposed an obligation to submit an asset declaration on members of parliament, senators, persons holding managerial-level state appointments, members of municipal bodies, and employees of state offices and local government institutions. A further legislative provision regulating the issue of asset and interest declarations – the Act of 21 August 1997 on restrictions on conducting business activities by persons performing public functions (Journal of Laws of the Republic of Poland of 2017, item 1393) – was intended to combat corruption at the highest levels of government, preventing mutual "interpenetration" of spheres of public authority and the economy^[1]. At the same time, it expanded the list of persons obliged to submit declarations and to this day forms the regulation that most broadly addresses the matter of asset declarations in Poland.

Legal basis for filing declarations of financial status

The current legal regulations requiring persons performing public functions to submit asset declarations are contained in many legal acts. Individual provisions differentiate the scope of information to be included in declarations by individual professional groups, indicate the deadlines for submitting declarations and specify restrictions on conducting business activity by persons performing public functions, along with sanctions for false declarations. As many as seventeen (!) varying templates of forms of declarations of financial status currently exist.

The following provides a summary of legal acts concerning the requirement for persons performing public functions to submit declarations on their financial status,

along with an indication of the form applicable
in each case:

1. Act of 16 September 1982 on Employees of State Offices (Journal of Laws of 2023, item 1917)
 - a template of the declaration form contained in the Anti-Corruption Act;
2. Act of 8 March 1990 on Municipal Self-Government (Journal of Laws of 2024, item 1465, as amended) - templates for the forms of declarations on financial status are specified in the annexes to the Regulation of the Prime Minister of 26 February 2003 on the determination of the format for the property declarations of municipal councillors, municipal leaders, deputy municipal leaders, municipal secretaries, municipal treasurers, heads of municipal organisational units, managers and members of management boards of municipal arm's-length bodies and persons issuing administrative decisions on behalf of the leader of the municipality. (Journal of Laws of 2017, item 2020), i.e.: Appendix No. 1
 - template for the financial declaration for the municipal councillor; Appendix No. 2 - template for the financial declaration of municipal leaders, deputy municipal leaders, municipal secretaries, municipal treasurers, heads of municipal organisational units, managers and members of management boards of municipal arm's-length bodies and persons issuing administrative decisions on behalf of the leader of the municipality;
3. Act of 6 April 1990 on the Police (Journal of Laws of 2024, item 1473, as amended) - the template for the declaration of financial status is specified in the appendix to the Regulation of the Minister of Internal Affairs and Administration of 17 July 2007 on the procedure for declarations on the financial status of police officers and the procedure for publishing declarations on the financial status of persons performing the functions of Police authorities (Journal of Laws, item 974);
4. Act of 12 October 1990 on the Border Guard (Journal of Laws of 2024, item 1473, as amended)
 - the template for the declaration of financial status is specified in the appendix to the Regulation of the Minister of Internal Affairs and Administration of 30 December 2015 on declarations on the financial status of officers and employees of the Border Guard (Journal of Laws of 2023, item 2555);
5. Act of 24 August 1991 on the State Fire Service (Journal of Laws of 2024, item 1443, as amended)
 - the template for the declaration of financial status is specified in the appendix to the Regulation of the Minister of Internal Affairs and Administration of 29 September 2021 on declarations on the financial status of firefighters of the State Fire Service

(Journal of Laws item 1794, as amended. amended);

6. Act of 9 May 1996 on the Exercise of the Mandate of a Member of Parliament and a Senator (Journal of Laws of 2024, item 907, as amended) – the template for the declaration of financial status is specified in the appendix to the Act;
7. Act of 21 August 1997 on Restriction of Business Activity by Persons Performing Public Functions (Journal of Laws of 2023, item 1090) – the template for the declaration is specified in the Regulation of the President of the Republic of Poland of 14 June 2017 on the determination of the forms of declarations on conducting business activity and on financial status (Journal of Laws of 2020, item 1825);
8. Act of 21 August 1997, Law on the Organisation of Military Courts (Journal of Laws of 2022, item 2250, as amended) – the template for the declaration of financial status is specified in the appendix to the Regulation of the Minister of Justice of 18 December 2017 on the declaration of financial status of judges, court directors and deputy court directors (Journal of Laws, item 2437);
9. Act of 28 August 1997 on the Organisation and Operation of Pension Funds (Journal of Laws of 2024, item 1113, as amended) – the template for the declaration of financial status is specified in the appendix to the Regulation of the Minister of Finance of 18 November 2003 on the determination of a template of the declaration of financial status submitted by members of the management board of a general pension fund company (Journal of Laws No. 206, item 1999);
10. Act of 5 June 1998 on Regional (voivodeship) Self-Government (Journal of Laws of 2024, item 566)
 - the templates for declarations on the financial status are specified in the annexes to the Regulation of the Prime Minister of 9 April 2009 on the determination of the forms of the forms of the declarations of the assets of voivodeship councillors , members of voivodeship management boards, voivodeship treasurers, voivodeship secretaries , heads of regional self-government organisational units, managers and members of management boards of arm's length bodies and persons issuing administrative decisions on behalf of the voivodeship marshal (Journal of Laws of 2017, item 2015), i.e.: Appendix
 - No. 1 – template of the financial declaration for the voivodeship councillor;
 - Appendix No. 2 – template of the financial declaration for members of voivodeship management boards, voivodeship treasurers, voivodeship secretaries , heads of regional self-government organisational units, managers and members of management boards of arm's length bodies and persons issuing administrative decisions on behalf of the voivodeship

marshal;

11. Act of 5 June 1998 on County (Poviat) Self-Government (Journal of Laws of 2024, item 107) – specimen forms for declarations on financial status are specified in the appendices to the Regulation of the Prime Minister of 26 February 2003 on the determination of specimen forms for financial declarations
of county councillors, members of county boards, county secretaries, county treasurers, heads
of organisational units of the county, managers person and members of management boards
of a county arm's length bodies and persons issuing administrative decisions on behalf of the leader
of the council (starosta) (Journal of Laws of 2017, item 2019), i.e.: Appendix No. 1 – template of the financial declaration for district councillors; Appendix No. 2 – template of the financial declaration
of members of county boards, county secretaries, county treasurers, heads of organisational units
of the county, managers person and members of management boards of a county arm's length bodies and persons issuing administrative decisions on behalf of the leader of the council (starosta)
12. Act of 27 July 2001 on the System of Common Courts (Journal of Laws of 2024, item 334, as amended) and other "judicial" acts referring to the above-mentioned Act – the template for the declaration
of financial status is specified in the appendix to the Regulation of the Minister of Justice of 18 December 2017 on the declaration of financial status of judges, the court director and the deputy court director (Journal of Laws of 2017, item 2437);
13. Act of 24 May 2002 on the Internal Security Agency and the Foreign Intelligence Agency
(Journal of Laws of 2024, item 812, as amended) – template of the declaration form as in the Anti-Corruption Act;
14. Act of 30 July 2004 on the remuneration of Members of the European Parliament elected in the Republic of Poland (Journal of Laws of 2004, item 1925, as amended) – the template for the declaration
of financial status is specified in the appendix to the Act;
15. Act of 9 June 2006 on the Central Anti-Corruption Bureau (Journal of Laws of 2024, item 184,
as amended) – template for the declaration as in the Anti-Corruption Act;
16. Act of 9 June 2006 on the Military Counterintelligence Service and the Military Intelligence Service (Journal of Laws of 2024, item 1405, as amended) –
template for the declaration form as in the

Anti-Corruption Act;

17. Act of 21 November 2008 on local government employees (Journal of Laws of 2024, item 1135)
 - the template of the declaration of financial status form is specified in the appendix to the Regulation of the Prime Minister of 26 February 2003 on the determination of the templates of the forms of financial declarations of local government councillors, leaders, deputy leaders, secretaries, treasurers, heads of organisational units, managers and members of management boards of arm's length bodies and persons issuing administrative decisions on behalf of the leader of the authority. (Journal of Laws of 2017, item 2020);
18. Act of 9 April 2010 on the Prison Service (Journal of Laws of 2023, item 1860, as amended) - template for the declaration form as in the Anti-Corruption Act;
19. Act of 18 March 2011 on the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products (Journal of Laws of 2023, item 1223, as amended) - template for the declaration form as in the Anti-Corruption Act;
20. Act of 28 January 2016 Law on the Public Prosecutor's Office (Journal of Laws of 2024, item 390)
 - the template for the declaration of financial status is specified in the appendix to the Regulation of the Minister of Justice of 1 September 2017 on the declaration of the financial status of the prosecutor (Journal of Laws, item 1707);
21. Act of 22 June 2016 on the National Media Council (Journal of Laws of 2021, item 692) - template for the declaration as in the Anti-Corruption Act;
22. Act of 16 November 2016 on the National Tax Administration (Journal of Laws of 2023, item 615, as amended) - template for the declaration as in the Anti-Corruption Act;
23. Act of 20 July 2017 Water Law (Journal of Laws of 2024, item 1087, as amended) - template of the declaration form as in the Anti-Corruption Act;
24. Act of 8 December 2017 on the State Protection Service (Journal of Laws of 2024, item 325, as amended) - the template for the declaration of financial status is specified in the appendix to the Regulation of the Minister of Internal Affairs and Administration of 22 March 2018 on declarations on the financial status of officers of the State Protection Service (Journal of Laws, item 606, as amended);

25. Act of 22 March 2018 on Court Bailiffs (Journal of Laws of 2024, item 1458) – the template for the declaration form submitted by court bailiffs is specified in the Regulation of the Minister of Justice of 18 December 2018 (Journal of Laws, item 2444);
26. Act of 11 September 2019, the Public Procurement Law (Journal of Laws of 2024, item 1320)
– the template for the declaration form as in the Anti-Corruption Act;
27. Act of 17 December 2020 on strategic reserves (Journal of Laws of 2023, item 294, as amended) – template for the declaration form as in the Anti-Corruption Act;
28. Act of 11 March 2022 on the Defence of the Homeland (Journal of Laws of 2024, item 248, as amended) – a template for the declaration form as in the Anti-Corruption Act.

Importantly, in the current legal situation, the forms of asset declarations are mostly found in regulations, not in statutes, which causes a number of problems when filling in the declarations, as well as their subsequent analysis and control, since the regulations are often inconsistent with the statutory provisions. Consequently the provisions on the submission of declarations on the financial status and the forms are currently ambiguous, imprecise and leave many possibilities for interpretation.

For example, questions of interpretation have arisen in interpreting:

- insurance policies of a capital nature;
- units in investment funds;
- spouses' funds;
- funds held in children's names;
- earned income earned (including that of spouses);
- EU subsidies obtained for agricultural enterprises;
- elements of property included in the business activity or activities conducted by spouses;
- contractual benefits,
- trusts or other agreements concluded with third parties,
- property acquired by tender from the state, state legal entities, local government units, their associates or a municipal arm's length body in the context of the period to be taken into account when submitting the declaration;
- commercial assets.

In order to carry out reliable analysis or control of the financial status of a person performing a public function, the data to be disclosed in the financial declaration should be disclosed in such a way that as a result of its verification, it is possible to assess their authenticity and correctness unambiguously, leaving no questions of interpretation.

An important consideration is the lack of official instructions for completing asset declarations, which - in the situation of ambiguity of the regulations and the forms themselves - would help those required to submit declarations reliably to indicate the state of their assets, while eliminating circumstances in which assets are omitted from the return through oversight.

There is no doubt that in order to improve the effectiveness of asset declarations appropriate legislative changes are needed.

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1. A. Rzetecka-Gil, Act on restricting business activity by persons performing public functions. Comment, Wolters Kluwer Polska sp. z o. o., Warsaw 2009.