



# Rules and experiences on integrity issues

February 2012

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A comparative study of rules, experiences and  
good practices on integrity issues

– focused mainly on conflict of interest prevention  
and assets declaration areas –

for the Integrity Experts Network (IEN) member institutions



REGIONAL  
ANTI-CORRUPTION  
INITIATIVE - SECRETARIAT

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**T**he Regional Anti-corruption Initiative (RAI) has dedicated its efforts since its establishment in 2000 to the anti-corruption agenda of its member countries from South-Eastern European region. Acknowledging that corruption is highly detrimental to the stability of democratic institutions and considerably undermines the business climate, discourages foreign direct investments and hampers economic growth, RAI member countries, without prejudice to existing international commitments, enhanced progressively the leadership and ownership of the Initiative by building on high political support and focusing their efforts on a multidisciplinary approach on the basis of a long-term cooperation.

One of the main strategic priorities of RAI Secretariat according to RAI Work Plan for 2010-2011 has been to focus its efforts on integrity standards promotion, covering mainly conflict of interest prevention and assets declaration issues.

In parallel, assessment of needs from relevant institutions of member countries and any other interested party in order to promote and support regional networks of practitioners in areas related to the fight against corruption, has been adopted as one of the objectives that will address the set-up process of working practical partnerships between counterpart institutions.

In this regard, the establishment of the Integrity Experts Network (IEN) in May 2010, as an independent and informal European network, has been an important step to provide a platform for more enhanced regional inter-agency cooperation and periodical exchange of experience and good practices between integrity institutions responsible for conflict of interest prevention and assets declaration, including RAI member and observer countries as well as the other European counterpart institutions.



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In respective countries involved in the IEN “integrity reforms” in areas of conflict of interest prevention and assets declaration of public officials have been developed and realized taking into account the international standards in the area (OECD, Council of Europe, UN, EU, etc.). Such reforms are expected to be pivotal in fighting corruption and maintaining transparency and accountability.

The current publication is a result of a study undertaken with the cooperation of IEN member institutions and coordinated by RAI Secretariat in 2011 that presents the current status of rules and experiences in this area. It is expected that this initial effort will assist to enhance knowledge and to foster better sharing of experience and inter-agency proactive cooperation.

We look forward to working with the IEN member institutions, their experts and practitioners, our partners and interested donors and all stakeholders sharing the same interest to further explore these issues and to assist in improvements of current *acquis* and systems already established or planned, as well as to address future needs and challenges in the area under focus.



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This publication is a product of the staff of RAI Secretariat for South Eastern Europe and it has been produced based on answers provided by participating IEN member institutions to a questionnaire that has been developed by RAI Secretariat.

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# EXECUTIVE SUMMARY

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**T**he question of establishing integrity standards within the domestic legislative, executive and judiciary context has emerged in IEN member countries since around 10 to 15 years ago. In particular, among the others, countries covered by the study have been engaged in pushing “integrity reforms” in areas of conflict of interest prevention and assets declaration of public officials. Such reforms are expected to be pivotal in fighting corruption, maintaining transparency and accountability and building a culture of integrity in public service as well as building the trust of citizens in their public institutions.

Taking into account the international standards in this area (Council of Europe, OECD, UN, etc.), IEN countries have paid a lot of efforts and made notable progress during the last decade in the area under focus. In all countries covered by the study, legislations related to conflict of interest prevention and assets declaration of public officials have been introduced and are currently in place. Independent institutions entrusted to cover these areas by relevant legislation are also in place, still excepting one case to some extent. A capacity building process has been developed to establish and enable integrity institutions/agencies to fulfill their responsibilities and enhance their capacities through international assistance.

However, despite considerable progress, the current situation is still challenging. In some cases, institutions/agencies are very recently established or under process of being established; in other cases, national systems still present several loopholes and weaknesses.

Although there have been several studies or publications dedicated to assets declaration or conflict of interest systems (covering them separately or in a combined way) in different countries or specific geographical areas, there is still not in place a comprehensive and up-to-date feedback resulting



from monitoring processes covering in detail both systems in countries covered by the present study.<sup>1</sup>

The main objective of this study is to provide the current status of rules, experiences and practices related to assets declaration and conflict of interest systems in countries represented by respective relevant institutions in the Integrity Experts Network (IEN). The immediate benefit would be to serve for a better knowledge among IEN members and to help to the respective integrity institutions represented in it. It is also expected that it will be helpful for respective governments and useful to international organizations and interested stakeholders involved in development, reforms, assessment and technical assistance for both systems on a country level.

The chapters in this study provide detailed information on legal framework covering integrity issues (focused mainly on asset declaration and conflict of interests systems), main rules and experiences covering important aspects related to asset declaration system, conflict of interest regime, as well as institutional solutions, experiences and practices.

*Chapter I* highlights the general background with regard to the Regional Anti-corruption Initiative, the Integrity Experts Network and the background information about this publication.

*Chapter II* describes relevant international standards in the integrity area and technical guidance, related key aspects covering asset declaration and conflict of interest systems, as well as other related issues.

*Chapter III* gives a general presentation of legal framework related to asset declaration and conflict of interest issues.

<sup>1</sup> See, among others: OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing. <http://dx.doi.org/10.1787/9789264095281-en>; Burdescu, R., G.J. Reid, S. Gilman and S. Trapnell (2009), *Stolen Asset Recovery – Income and Asset Declarations: Tools and Trade-offs*, The World Bank, United Nations Office of Drugs and Crime.

There are however, as mentioned in Chapter II of this study, evaluation findings done by GRECO covering to a certain extent conflict of interest and other related issues in the public administration (see footnote no 9). On the other hand, SIGMA provides periodical assessments at the request of the European Commission covering in general integrity issues (see footnote 12).

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*Chapter IV* analyses the declaration system of assets and/or private interests: the scope of the subjects obliged to declare their assets/private interests, obligations covering related persons to public officials, the type of information which is required to be disclosed, types of declarations already in place, the depository bodies for declarations, the number of officials who declare assets/private interests, the level of declarations that are subject to full audit, transparency process (extent of information that is disclosed/published or made available), statistical data resulting from recent experience, sanctions applied, monitoring compliance information and archiving requirements.

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*Chapter V* focuses on conflict of interest's prevention regime: conflict of interest's forms in place, scope of private interests' concept, conflict of interest most frequent factors as resulting from experience, management of conflict of interests' situations on case-by-case basis, register(s) in place, categories of prohibitions/limitations of private interests, legal standards regarding incompatibilities of public officials, measures in place aiming to address, manage and resolve conflict of interest situations, legal consequences related to the invalidity of acts or contracts taken in conflict of interest situations, applicable sanctions and use of new technologies.

*Chapter VI* concerns institutional capacities with regard to both systems: integrity institutions' background, independence and accountability key issues, mission, resources, priorities, institutional capacity building process and international cooperation issues.



# ACRONYMS AND ABBREVIATIONS

AL	- Albania
BiH	- Bosnia and Herzegovina
BG	- Bulgaria
HR	- Croatia
KS	- Kosovo <sup>2</sup>
MK	- Macedonia <sup>3</sup>
MD	- Moldova
ME	- Montenegro
RO	- Romania
RS	- Serbia
Cat/ES	- Catalonia, Spain
SI	- Slovenia
AFO/Cat	- Anti-Fraud Office of Catalonia, Spain
ANI/RO	- National Integrity Agency, Romania
BULNAO	- Bulgarian National Audit Office
CCCEC/MD	- Center for Combating Economic Crimes and Corruption, Moldova
CEC/BiH	- Central Election Commission of Bosnia and Herzegovina
CPC/SI	- Commission for Prevention of Corruption, Slovenia
CPCI/ME	- Commission for Prevention of Conflict of Interest, Montenegro
HIDAA/AL	- High Inspectorate of Declaration and Audit of Assets, Albania
KAA	- Kosovo Anti-corruption Agency

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<sup>2</sup> Under UNSCR 1244/99

<sup>3</sup> The Former Yugoslav Republic of Macedonia

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SCPC/MK	- State Commission for Prevention of Corruption, Macedonia
AC	- Anti-corruption
AD	- Asset Declaration
CoI	- Conflicts of Interests
EU	- European Union
EUR	- the euro
IEN	- Integrity Experts Network
OECD	- Organisation for Economic Co-operation and Development
RAI	- Regional Anti-corruption Initiative for South-Eastern Europe
SIGMA	- Support for Improvement in Governance and Management. Sigma is a joint initiative of the OECD and the European Union, principally financed by the EU
UN	- United Nations
UNCAC	- United Nations Convention against Corruption



# I. BACKGROUND

## A. About the Regional Anti-corruption Initiative

Last 10 years have been a period for major changes, new developments and challenges for the countries in South-Eastern Europe tailored towards EU accession. In this background in 2000 was set up the Regional Anti-corruption Initiative (RAI) with the idea to carry out the fight against corruption in the region as part of international efforts to support the resurrection of the Balkans after years of civil wars, instability and transitional democratic processes. Initially adopted under the political shelter of the former Stability Pact for South-Eastern Europe, RAI had passed through difficult times before the member states (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania and Serbia) signed a Memorandum of Understanding in 2007, by which they took care of the financing and leadership of the Initiative, thus providing ground for more intensive fight against corruption in the Balkans. Currently, Regional Anti-corruption Initiative Secretariat is the only center in South-Eastern Europe dealing solely with anti-corruption issues and directly supporting the member states in “Justice and Home Affairs” area on their way to full Euro-Atlantic integration.

## B. What is the “Integrity Experts Network”?

One of the priority areas of work for Regional Anti-corruption Initiative is Conflict of Interest and Declaration of Assets. The Integrity Experts Network (IEN) was set-up as a result of precise assessment of regional needs and requests in the area, made by RAI Secretariat. After 10 years of experience, through numerous discussions with anti-corruption experts in the region, it was identified that a new approach towards fighting corruption was



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needed. The local experts expressed their opinion that their international partners should re-orient their approach from being present in the countries and trying to apply certain policies to internal systems, identified usually in Western societies as good ones, to provide a ground, platforms and possibilities to local experts for frequent meetings, where they could discuss, share their experience specific for the region, identify the best solutions applicable in the different areas and fasten the regional cooperation in addressing the issues of mutual interest. It was assessed that those aims could be reached by setting up professional networks of practitioners.

The idea for creation of IEN was launched for the first time in May 2008 during a twinning type activity of sharing experience among the Albanian

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High Inspectorate of Declaration and Audit of Assets (HIDAA), at that time already a well-experienced body, and the Romanian newly established National Integrity Agency (ANI). Later on in November 2009 the idea was further discussed in Kosovo during an anti-corruption workshop

that gathered experts from some of the integrity agencies in the Balkans. After the idea had been generally adopted RAI Secretariat started to search for a sustainable local partner, which would support the efforts for setting up of such network. It was a follow-up of our estimation

that we should facilitate, but leave the initiative to the experts themselves in building up and taking advantage of the network. RAI Secretariat found as a reliable partner HIDAA and launched the Integrity Experts Network on 3rd of May, 2010, at a conference, held in Tirana, Albania.





Since the beginning IEN was envisaged to serve as a platform for policy making, exchange of information, experience and best practices between the practitioners in the area in focus. In that regard, the represented institutions adopted Declaration of the Network foundation and Statute about its functioning. It was agreed that the IEN Secretariat functions would be managed by RAI Secretariat in close cooperation with the institution having the Chairmanship-in-Office of the Network. HIDAA received the first Chairmanship-in-Office of the Network in the period of May 2010 – May 2011, while the State Commission for Prevention of Corruption of Republic of Macedonia took the second one in the period of June 2011- May 2012.



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## C. IEN Member Institutions

22 IEN is composed by 12 members institutions: High Inspectorate of Declaration and Audit of Assets (Albania) - [www.hidaa.gov.al](http://www.hidaa.gov.al), Central Election Commission (Bosnia and Herzegovina) - [www.izbori.ba](http://www.izbori.ba), National Audit Office (Bulgaria) - [www.bulnao.government.bg](http://www.bulnao.government.bg), Commission for Conflict of Interest in the Exercise of Public Office (Croatia) - [www.sukobinteresa.hr](http://www.sukobinteresa.hr), Kosovo Anti-corruption Agency - [www.akk-ks.org](http://www.akk-ks.org), State Commission for Prevention of Corruption (Macedonia) - [www.dksk.org.mk](http://www.dksk.org.mk), Center for Combating Economic Crimes and Corruption (Moldova) - [www.cccec.md](http://www.cccec.md), Commission for Prevention of Conflict of Interest (Montenegro) - [www.konfliktinteresa.me](http://www.konfliktinteresa.me), National Integrity Agency (Romania) - [www.integritate.eu](http://www.integritate.eu), Anti-corruption Agency (Serbia) - [www.acas.rs](http://www.acas.rs), Commission for the Prevention of Corruption (Slovenia) - [www.kpk-rs.si](http://www.kpk-rs.si), Anti-fraud Office of Catalonia (Spain) - [www.antifrau.cat](http://www.antifrau.cat) These are the responsible institutions in the respective countries dealing with conflict of interest and declaration of assets, the so called "integrity issues".

The fact that in IEN as members there are newly established bodies such as Serbian Anti-corruption Agency, and well experienced ones (HIDAA), institutions with broad competences (National Audit Office of Bulgaria) and with specific competences (Croatian Commission for Conflict of Interest in the Exercise of Public Office), bodies coming from Western Europe (Catalonia, Spain), provides the experts with the unique opportunity to enrich their knowledge by comparing a variety of different approaches and solutions.

## D. The Publication

After the first year of IEN existence several findings could be underlined. The most important one is that the problems in South-Eastern Europe (in general and particularly in the area of conflict of interest and declaration of assets) are specific for the region and are of mutual interest to the countries of this region. Therefore, if experts would like to achieve more effectiveness and better results, these issues should be tackled not only on national, but most of all on regional level. The best approach is the direct one – to explore and share various practical solutions of each separate issue and to apply the one that fits the most. In addition, it was insisted on the

importance of elaborating integrity manuals in the framework of IEN, using an active participation and support of member institutions, thus making shared experience, knowledge and expertise in the area accessible to a large group of interested persons.

Current publication represents a compilation of good practices and positive experiences related to integrity issues. It was accomplished in 2011 under the project "*Strengthening the Integrity System in South-Eastern Europe*" supported by US State Department through the RCC Secretariat. The publication was facilitated by IEN members, who contributed by providing information through filling in a detailed questionnaire prepared by RAI Secretariat. The questionnaire consisted of 4 principal chapters with 50 questions in total. The overall aim behind the structure of the questions was to achieve a broad, realistic and objective overview of the current status in the integrity area under focus, taking into account the most relevant international standards and good practice in the area.

Concerning the scope of the study, it covers and presents the current situation with regard to rules, solutions and experiences in 9 countries participating in the IEN. Practice and experiences from Croatia, Serbia and Slovenia are not included in this study.



## II. INTERNATIONAL STANDARDS AND GOOD PRACTICES

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**T**wo specific regional instruments have already set up standards on integrity issues for the American and African contexts. The Inter-American Convention against corruption (IACAC)<sup>4</sup> is one of the earliest international instruments in this regard. This convention, *inter alia* in its Article III, paragraph 4, requires from state parties to consider the applicability of measures to create, maintain and strengthen “systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public”. Another instrument is the African Union Convention on Preventing and Combating Corruption<sup>5</sup> which underlines in its Article 7 that State Parties commit themselves *inter alia* to “require from all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.”

Apart from the two previous instruments, other important European and international standards and recommendations on integrity issues (conflict of interest prevention, declaration of assets from public officials and

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<sup>4</sup> Adopted at the third plenary session, held on March 29, 1996. This convention has been signed by 34 countries and ratified by 33 state parties of Americas. For further information, see <http://www.oas.org/juridico/english/treaties/b-58.html>

<sup>5</sup> Adopted on 11 July 2003. This convention has been signed by 45 out of 53 member states from the African Union and ratified by 31 of them. For further information, see [http://www.au.int/en/sites/default/files/AFRICAN\\_UNION\\_CONVENTION\\_PREVENTING\\_COMBATING\\_CORRUPTION.pdf](http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf)



integrity related issues) have been developed during last 15 years. Some of them have the specific feature in the sense that they are among “soft” or recommending standards.

The Council of Europe has been the first organization to adopt two international standards for its member states in the area under focus. The first well-known one has been the Resolution (97) 24 on the “Twenty Guiding Principles for the Fight against Corruption”<sup>6</sup>. This catalogue of guiding principles (GP) is an important reference especially with regard to the following guiding principles:

- GP 1: “to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behavior”;
- GP 3: “to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations”;
- GP 7: “to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks”;
- GP 10: “to ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct”;
- GP 20: “to develop to the widest extent possible international co-operation in all areas of the fight against corruption”.

It appears from the previous guiding principles that most of them refer to corruption in general, and their link with issues related to conflict of interest prevention and assets declaration systems is neither really obvious nor explicit. However, taking into account the various solutions of integrity institutions, as it will be explained in this study and the fact that efficient conflict of interest prevention and strong assets declaration

<sup>6</sup> Adopted by the Committee of Ministers of Council of Europe on 6 November 1997 at its 101st session. See the link at: <https://wcd.coe.int/ViewDoc.jsp?id=593789&Site=CM>

## Rules and experiences on integrity issues

systems are powerful tools to prevent corruption and to increase integrity among public officials, the previous instrument is an invaluable guiding tool.

The second instrument is the Council of Europe Recommendation No.R (2000) 10 of the Committee of Ministers to Member states on “codes of conduct for public officials”<sup>7</sup>. This instrument sets standards of integrity and conduct to be observed by public officials; however it is not applicable to elected representatives, members of the Government and holders of judicial office. Some provisions of the Model Code of Conduct for Public Officials, such as Article 13 (Conflict of interest), 14 (Declaration of interests), 15 (Incompatible outside interests), 16 (Political or public activity), 17 (Protection of the public official’s privacy) 18 (Gifts), 19 (Reaction to improper offers) and 26 (Leaving the public service) are particularly relevant for topics under our focus.

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The previous Council of Europe’s standards are monitored by the Group of States against Corruption (GRECO) which has been established in 1999 by the Council of Europe to monitor States’ compliance with the organisation’s anti-corruption standards<sup>8</sup>. During its second evaluation round, covering among other themes the topic related to public administration and corruption, GRECO has evaluated its member countries with regard to conflict of interest, incompatibilities, accessory activities, gifts and whistleblowers’ protection<sup>9</sup>. Starting with 2012, GRECO will initiate the Fourth Evaluation Round which will be focused on “Corruption prevention in respect of Members of Parliament, Judges and Prosecutors”<sup>10</sup>.

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<sup>7</sup> Adopted by the Committee of Ministers of Council of Europe on 11 May 2000 at its 106th session. See the link at: [http://www.coe.int/t/dghl/monitoring/greco/documents/Rec%282000%2910\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Rec%282000%2910_EN.pdf)

See the Explanatory Memorandum at: <https://wcd.coe.int/ViewDoc.jsp?Ref=ExpRec%2800%2910&Sector=CM&Lang=en>

<sup>8</sup> Currently, GRECO comprises 49 member states (48 European States and the United States of America). All IEN members excepting one are already GRECO members.

<sup>9</sup> This topic has been evaluated with regard to guiding principles 9 (public administration) and 10 (public officials). Recommendations on conflict of interest, revolving doors/pan-touflage, and whistleblowers’ protection have been among main findings. See for further information: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports\(round2\)\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp)

<sup>10</sup> See the questionnaire at: [http://www.coe.int/t/dghl/monitoring/greco/source/Greco%20\(2011\)%209E%20Questionnaire.doc](http://www.coe.int/t/dghl/monitoring/greco/source/Greco%20(2011)%209E%20Questionnaire.doc)

Conflict of interest prevention and assets declaration system will have the core attention with regard to concerned public officials.

The OECD “Guidelines for Managing Conflict of Interest in the Public Service”<sup>11</sup> is another valuable tool in the area among soft standards which contains clear and precise technical guidance on *inter alia* conflict of interest definition and concepts, policies and core principles in managing conflict of interest, tools and procedures for the identification, management and resolution of conflict of interest situations.

There is no clear EU reference or *acquis communautaire* on conflict of interest prevention or assets declaration. However, candidate countries from SEE are periodically monitored by the European Commission with regard to the anti-corruption agenda. As a consequence, conflict of interest prevention and assets declaration system have become *de facto* a standard for the European Union towards candidate countries, as well as for the last two newest member countries even after accession<sup>12</sup>.

The United Nations Convention against Corruption (UNCAC)<sup>13</sup> is the most recent global international standard in the area. Some of its provisions such as Article 5 (Preventive anti-corruption policies and practices), 6 (Preventive

<sup>11</sup> These guidelines are part in the annex of the relevant recommendation that has been adopted by the OECD Council in June 2003 for its member states. Even though only two countries from IEN members are OECD members which counts 34 countries, the fact is that almost all IEN countries have been inspired from OECD guidelines and other related works or practices in their reforms aiming at establishing conflict of interests’ prevention tools.

Please consult the guidelines at: <http://www.oecd.org/dataoecd/13/22/2957360.pdf>  
Based on these guidelines, a rich toolkit on managing conflict of interest in the public sector has been issued in 2005. See for further information: [http://www.oecd.org/document/46/0,3746,en\\_2649\\_34135\\_41879598\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/46/0,3746,en_2649_34135_41879598_1_1_1_1,00.html)

<sup>12</sup> SIGMA does periodical assessments of SEE countries at the request of the European Commission covering also integrity issues. For more information, please consult: <http://www.sigmaweb.org>

For consultation of EU progress reports, please refer to: [http://ec.europa.eu/enlargement/index\\_en.htm](http://ec.europa.eu/enlargement/index_en.htm) For EU reports on Bulgaria and Romania under the Cooperation and Verification Mechanism, please consult the following link: [http://ec.europa.eu/dgs/secretariat\\_general/cvm/progress\\_reports\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/cvm/progress_reports_en.htm)

<sup>13</sup> Adopted by the General Assembly by its Resolution 58/4 of 31 October 2003 and entered into force on 14 December 2005. It comprises 154 state parties; all IEN countries have ratified it, excepting one.

For further information, please consult: <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

anti-corruption body or bodies), 7 (Public sector), 8 (Codes of conduct for public officials), 12 (Private sector) and 48 (Law enforcement cooperation) are important and relevant with regard to the scope of our work. Some of these provisions are mandatory while others are optional (obligations to consider). Among mandatory provisions there are [“each state shall adopt”] those provided in Article 5, paragraphs 1 and 4, Article 6, Article 9, paragraph 1 and Article 48, paragraph 1. UNCAC optional provisions [“shall consider adopting” or “shall endeavor to”] include *inter alia* articles 7.4, 8.5, 12.2, 48.2, 48.3 and 52.5.

The most relevant UNCAC provisions related to assets declaration system and conflict of interests are as following:

- “Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest” (Article 7.4);
- “Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials” (Article 8.5);
- “Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and providing for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention” (Article 52.5);
- Measures taken by states may include “preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure” (Article 12.2.e);
- [Public procurement] systems shall address “where appropriate, measures to regulate matters regarding personnel responsible for

procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements” (Article 9.1.e).

It results from the previous provisions that States Parties are required to introduce general provisions for all holders of public office, and depending on the office concerned on the following areas of concern:

- ➔ conflict of interest, incompatibilities of functions or incompatible activities and associated activities, including the specific requirement for declaration of interests of all public officials involved in public procurement;
- ➔ gifts and hospitality;
- ➔ disclosure and registration of assets and interests for all public officials or those from a certain level defined.

Conflict of interest’s prevention system should present several important features such as among others covering all major types, management through appropriate procedures and available information and consultations mechanisms and processes; a body/bodies assigned to investigate, obtain all necessary information and impose sanctions and solutions in case of failures, appropriate sanctions, public availability of the information managed in this process, etc.

A number of important issues are to be considered also in the area of assets declaration: the agency or institution being assigned to administer and manage the disclosure and verification system, as well as to investigate breaches and pursue sanctions; the verification and other procedures; the application of sanctions; the effective access to relevant information for checking and verification of declarations collected; robust procedures for verification; and the means to ensure effective compliance. Concerning the scope of public officials (as referred in Article 52.5 by the term of “appropriate public officials”), inclusion criteria may be not only the selection “by rank” but also by “risk” or “vulnerability” (which may cover, depending on specific contexts, any officials in the position of buying and spending on behalf of the State, sensitive areas such as customs, taxes, etc. or specific categories of officials (e.g. those performing activities in regulatory bodies). Besides public officials, the scope of related persons presents a specific interest and consideration. The information to be disclosed, the level of detail, and how often such information should be submitted, constitute another important group of issues to be defined.



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In the Technical Guide to the UNCAC, different elements and features are provided with regard to the previous issues.

The requirements on the *disclosure and registration of assets and interests* (articles 8.5 and 52.5, UN, 2009, pp.25-26) should ensure that:

- Disclosure covers all substantial types of incomes and assets of officials (all or from a certain level of appointment or sector and/or their relatives);
- Disclosure forms allow for year-to-year comparisons of officials' financial position;
- Disclosure procedures preclude possibilities to conceal officials' assets through other means or, to the extent possible, held by those against whom a State Party may have no access (such as overseas or held by a nonresident);
- A reliable system for income and asset control exists for all physical and legal persons – such as within tax administration – to access in relation to persons or legal entities associated with public officials;
- Officials have a strong duty to substantiate/prove the sources of their income;
- To the extent possible, officials are precluded from declaring non-existent assets, which can later be used as justification for otherwise unexplained wealth;
- Oversight agencies have sufficient manpower, expertise, technical capacity and legal authority for meaningful controls;
- Appropriate deterrent penalties exist for the violations of these requirements.

With regard to *conflict-of-interest* requirements (articles 7.4, 8.5 and 9.1.e, UN, 2009, p.26), States Parties should pay particular attention to:

- ➔ What posts or activities are considered incompatible with a particular public office?
- ➔ What interests and assets should people declare (including liabilities and debts)?
- ➔ Do different posts have different types of conflict-of-interest requirements?
- ➔ What level and detail of information should be declared (thresholds)?
- ➔ What form should the declaration have?
- ➔ Who verifies the information disclosed?
- ➔ Who should have access to the information?
- ➔ How far should records of indirect interests (such as family) go?

- ➔ Who should have the obligation to declare (for example, depending on the risk of, or exposure to, corruption; depending on the institutional capacities to verify the declarations)?
- ➔ To which extent and in what way should the declarations be published (with due consideration of privacy issues and institutional capacity)?
- ➔ How will compliance to the obligation to declare be enforced and by whom?

All State Parties should also have stated policies and procedures relating to *gifts and hospitality* (Article 8.5, UN, 2009, pp.26-27). These should address:

- Permission to receive a gift, invitation or hospitality;
- Information required for a register;
- Access to the register;
- Ownership of any gift;
- Verification of information;
- Means of investigating breaches or allegations;
- Sanctions.

Concerning *post-employment restrictions* for all public officials in the private sector (Article 12.2.e), the Technical Guide to the UNCAC (UN, 2009, p.59) recommends the need of considering measures from State Parties that would have specific consequences for public officials who attempt to:

- ◆ Use their office to favour potential employers;
- ◆ Seek employment during official dealings;
- ◆ Misuse confidential information gained through public employment;
- ◆ Represent private interests on a matter for which they were responsible as a public employee;
- ◆ Represent (within a specified time period) private parties on any matter in front of the specific office or agency in which they had previously been employed.

Definitions of *post-public employment activities* and the procedures governing movement should be clear and understandable. States Parties may wish to consider (UN, 2009, pp.59-60):

- Permission being included in all terms and conditions of appointment;
- The right to impose conditions on use of information and contact with previous employers;

## Rules and experiences on integrity issues

- The right to notify private sector competitors of a move of a significant public official to a rival firm;
- The right to debar any private sector entity from dealings with a State Party if any conditions are breached.

In drafting such provisions, State Parties should consider:

- ➔ Length of time for any restriction;
- ➔ The precise level or group of officials subject to restrictions;
- ➔ Defining with some precision the area in which representation is not permitted by former officials.

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With regard to *international cooperation*, Article 48 of UNCAC is related to law enforcement cooperation covering mainly investigative bodies (police or prosecution services). However, it may be a sufficient ground for enabling integrity institutions to strengthen mutual, regional or international cooperation for operational purposes. Instruments of cooperation that may be used on the basis of this provision may cover *inter alia*: the exchange of strategic and technical information (information on trends, typologies, modus operandi, illegal techniques involved, routes to disperse the proceeds or suspicious assets or transactions, etc.), technical support (threat assessment, risk analysis, sharing of specific technical tools and materials, developing patterns and trends, such as the use of falsified documentation, the abuse of corporate or personal identities), cooperation in the field of professional training and working groups (dissemination of good practices, developing trends and techniques, development of networks, personnel or staff exchange when needed), the use of contact points and networks (fostering mutual trust and confidence, developing common strategies, addressing new trends, resolving practical problems), participation in joint investigation teams etc.

Another requirement which results from Article 52.5 concerns measures taken to permit competent authorities to share the information obtained through the disclosure system with the competent authorities in other State Parties to facilitate the identification, investigation, restraint, claim, and recovery of proceeds of offences established in accordance with this Convention. Bilateral agreements or memorandums of understanding for the exchange of information between anti-corruption bodies (or FIUs or any other body designated under articles 6 and 36) will need to be reconciled with legislation relating to privacy or, if involving disclosure of bank or tax details, bank secrecy and tax confidentiality legislation. When drafting

such agreements it is advisable including formal channels for transmitting information, not only upon request, but also spontaneously (see article 56), a measure that will considerably improve the exchange of information. State Parties should consider how this procedure may be coordinated if there are a number of domestic agencies involved.

In addition to the provisions mentioned in the previous paragraphs, Article 5 of UNCAC, which requires practices rather than legislation, refers to *inter alia* “anti-corruption policies” that reflect the principles of [...] integrity, transparency and accountability” (paragraph 1) or “effective practices aimed at the prevention of corruption” (paragraph 2). Paragraph 4 of Article 5 provides that “state parties shall [...] collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this Article”. According to the Legislative Guide of UNCAC (2006, p.16), Article 6 of the convention (Preventive anti-corruption body or bodies) “is not intended to refer to the establishment of a specific agency at a specific level. What is needed is the capacity to perform the functions enumerated by the article”.<sup>14</sup>

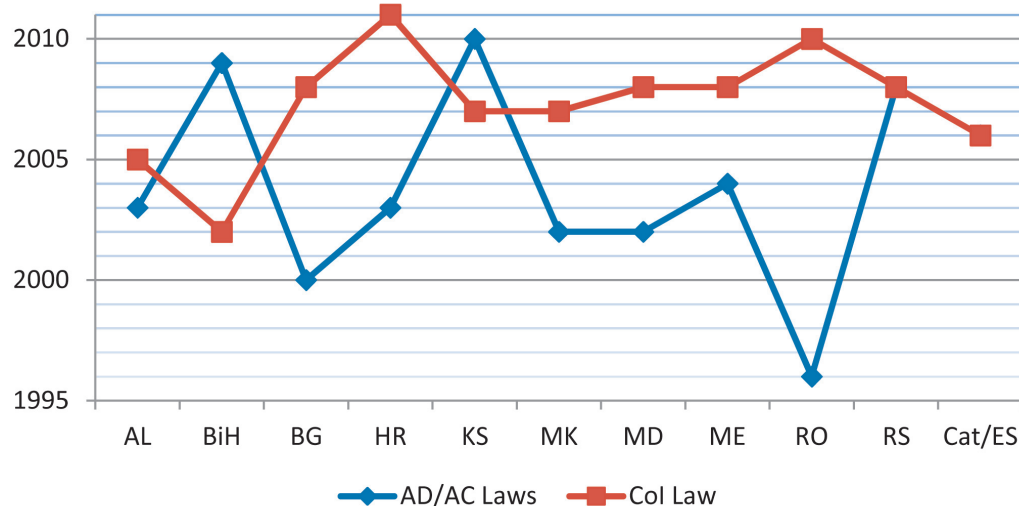
At its third session, held in Doha from 9 to 13 November 2009, the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 3/1, entitled “Review mechanism”. It has been decided that each review phase shall be composed of two review cycles of five years each, and that one fourth of the States parties will be reviewed in each of the first four years of each review cycle. The review mechanism during the first cycle will include chapters III (Criminalization and law enforcement) and IV of UNCAC (International cooperation) whereas the second cycle review will be focused on chapters II (Preventive measures) and V of UNCAC (Asset recovery).

<sup>14</sup> For further information, please refer to:  
[http://www.unodc.org/documents/treaties/UNCAC/Publications/Legislative\\_Guide/06-53440\\_Ebook.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Legislative_Guide/06-53440_Ebook.pdf)

## III. LEGAL FRAMEWORK

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The current **legal framework** in the area of conflict of interest and declaration of assets has been mainly developed in the last 10 years. The integrity requirements of the main categories of public officials (head of state, MPs, other elected officials, government members/deputies, politically appointed officials, judges, prosecutors, bailiffs, police/armed forces officials, civil servants) are regulated in several legal acts. The police/armed force officials (Catalonia/Spain) and the politically appointed persons (Moldova, Romania) are not subject of regulation regime.



**Figure 1:** Adoption periods (in years) of AD, AC and Col laws by countries



Country	AD/AC Laws	Col Law
AL	2003 <sup>15</sup>	2005
BIH	2009 <sup>16</sup>	2002
BG	2000	2008
HR	2003	2011 <sup>17</sup>
KS	2010	2007
MK	2002	2007
MD	2002	2008
ME	2004	2008 <sup>18</sup>
RO	1996	2010 <sup>19</sup>
RS	2008 <sup>20</sup>	2008
Cat/ES	2006	2006 <sup>21</sup>

**Table 1:** Adoption periods (in years) of AD, AC and Col laws by countries<sup>22</sup>

The main instrument in place is the Law on Conflict of Interests, which has been adopted in all IEN member states participating in the study. Most of the countries (Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Montenegro, Romania and Serbia) elaborated or significantly amended their Law on Conflict of Interests in 2008-2011. The regulation in Bosnia and Herzegovina is specific, as there is a Conflict of Interest Law on state level and similar laws on entity levels, which reflects the unique internal structure of the country.

The assets disclosure area is defined either in separate Asset Declaration Law (Albania, Bulgaria, Kosovo and Moldova), Conflict of Interest Law

<sup>15</sup> Initial AD law dating from 1995 has been repealed by the current one.

<sup>16</sup> Provisions for AD are contained in the Col law. The 2009 law concerns the Law on the Agency for Corruption Prevention and Co-ordination of the Fight against Corruption.

<sup>17</sup> Initial Col law dating from 2003 has been repealed by the current one.

<sup>18</sup> Initial Col law dating from 2004 has been repealed by the current one.

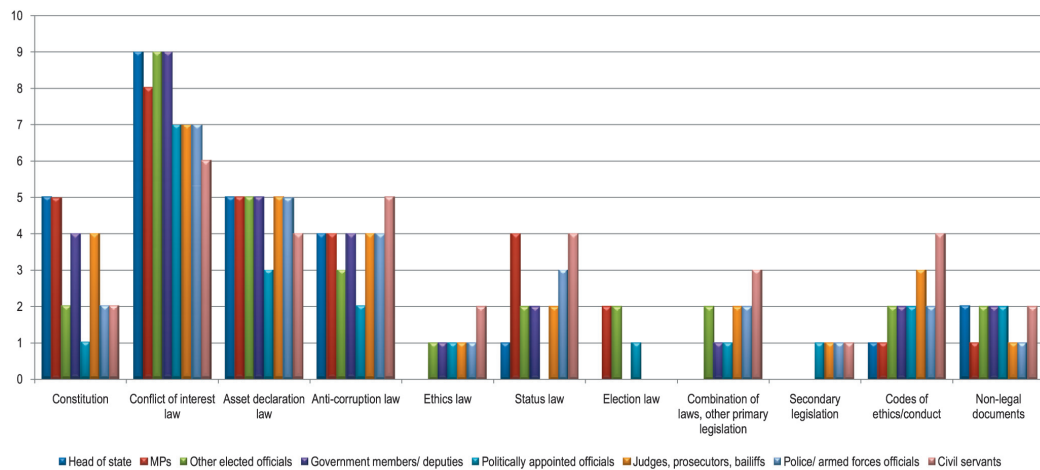
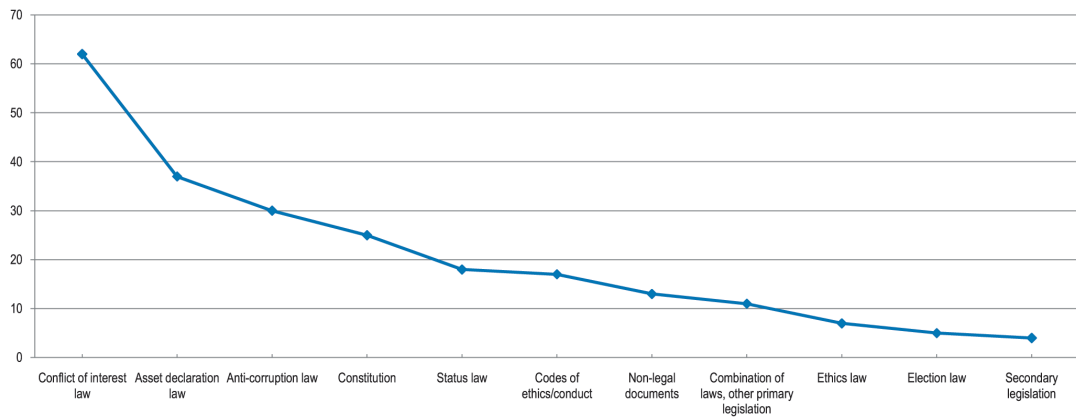
<sup>19</sup> This law has amended Col and other provisions in the law of 2007 related to ANI establishing, organising and functioning.

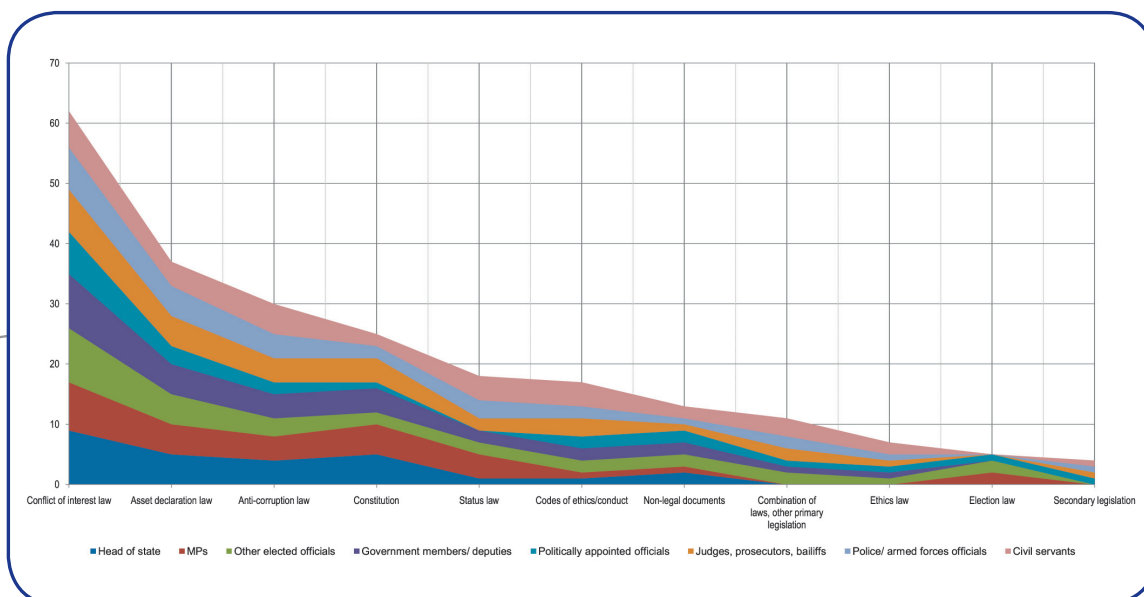
<sup>20</sup> Initial Col law dating from 2004 has been repealed by the current one.

<sup>21</sup> It is question of the same law on Col regulation providing also for some AD requirements.

<sup>22</sup> Only laws already into force are taken into account. Other AC legal acts or provisions in specific laws, codes or sublegal acts are not considered in this comparison.

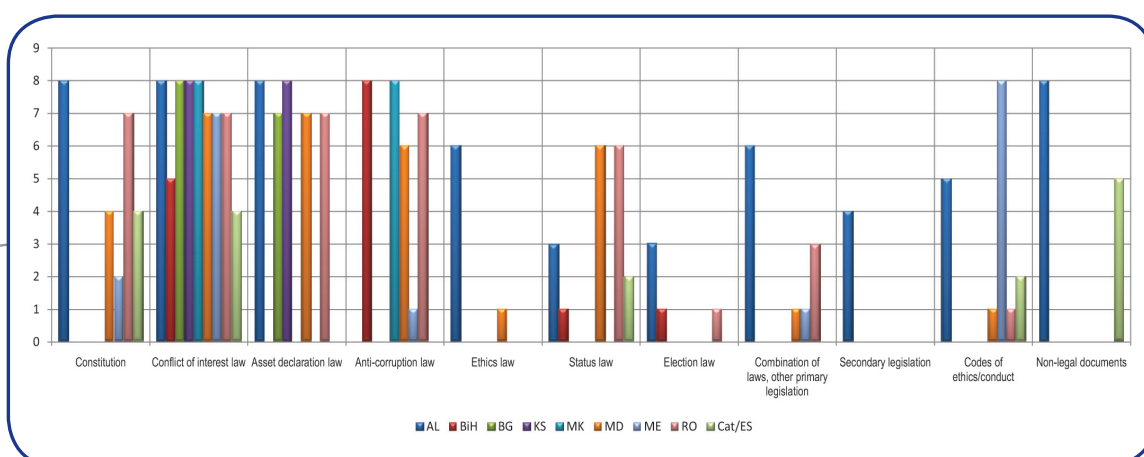
(Bosnia and Herzegovina and Montenegro) or in broader Anti-corruption Law (Macedonia), where it exists. In Romania the area in focus is regulated both by Asset Declaration Law and Anti-corruption Law.





**Figure 2.2:** Legal instruments regulating integrity issues by categories of public officials

Also, integrity requirements are included in the Constitution (Albania, Moldova, Montenegro, Romania and Spain) and additional legal acts – Ethics Law (Albania and Moldova), Status Law (Albania, Moldova, Romania, Spain and Bosnia and Herzegovina), Election Law (Albania, Bosnia and Herzegovina and Romania), extracts from other laws (Albania, Bulgaria, Moldova, Montenegro and Romania), secondary legislation (Albania), codes of ethics (Albania, Montenegro, Spain, Romania and Moldova) and non-legal documents (Albania and Spain).



**Figure 2.3:** Legal instruments regulating integrity issues by categories of public officials and countries



### IV. DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM

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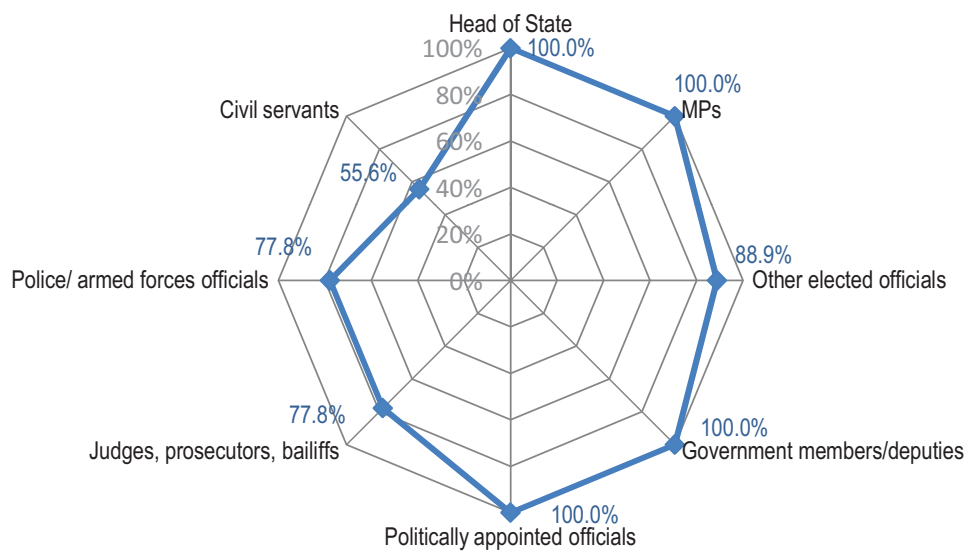
The **scope of the subjects** obliged to declare their assets/private interests is different in the questioned states. In all the countries the following categories - head of the state, MPs, other elected officials<sup>23</sup>, government members and their deputies, and politically appointed officials, have a mandatory obligation to submit asset declarations. In Bosnia and Herzegovina and Spain judges, prosecutors, bailiffs, police and armed force officials, civil servants<sup>24</sup>, other public officials or public sector employees are excluded from the asset disclosure regulation. Regarding civil servants and public officials in general, some of the countries have adopted broad approach (Moldova and Romania), obliging all civil servants and public officials, apart from technical staff, to declare their assets. Others (Albania) have applied a more narrow approach restricted by the level of position of the civil servant (medium-high rank officials, starting from heads of directorates), pay scale and type of risk (customs officers, bailiffs and tax officers), while in Bulgaria the asset disclosure regime is limited to persons occupying high state positions (directors or deputy-directors of institutions).

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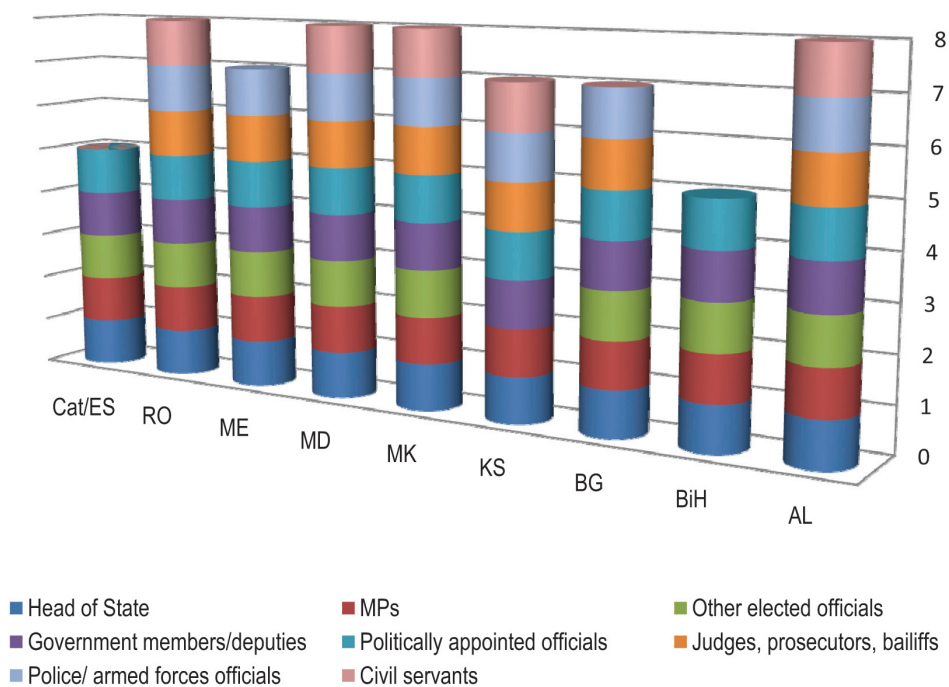
<sup>23</sup> Excepting Kosovo for this category.

<sup>24</sup> Civil servants, other public officials or public sector employees are also not bound to declare assets in Bulgaria and Montenegro.

## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM



**Figure 3.1:** Categories of public officials who are bounded to declare assets/private interests

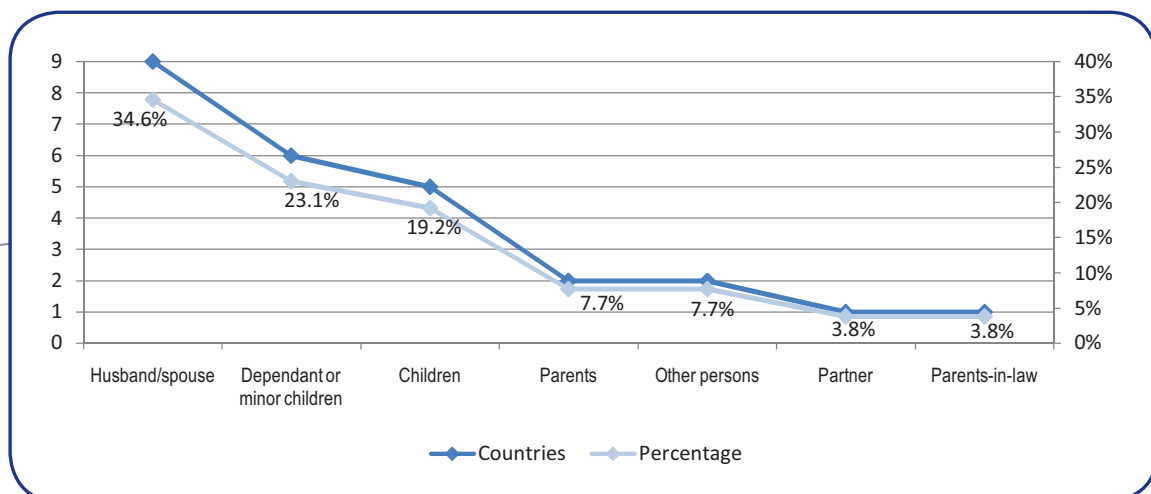


**Figure 3.2:** Categories of public officials who are bounded to declare assets/private interests (Country by country cross tabulation)

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In regard to the obligation of **related persons** of public officials to declare their assets/private interests, there are two different regimes applied in the questioned countries. In some of the states (Spain, Romania and Moldova) related persons are not explicitly included in the regulation. In Moldova and Montenegro the obligation to declare the income/property of the family members and dependants lays on the public official himself, in Romania as well (regarding the income of the official's spouse and children), while in Spain the official's husband or spouse can declare his/her assets or interests only on voluntary basis. The other countries (Albania, Bosnia and Herzegovina, Bulgaria, Kosovo and Macedonia) include related persons in the group of subjects obliged to declare their assets/private interests to a different extent. The common practice identifies the husband/spouse, as well as the official's children<sup>25</sup> as the ones obliged to submit asset declarations. In Macedonia the new trends in human relations have already reflected in the domestic legislation according to which official's partner<sup>26</sup> has been included in the regulation of asset declaration, while in Albania it is under process. There is a specific regulation in Albania that allows case-by-case request by Inspector General of HIDAA for submission of asset declarations by official's parents, parents-in-law or other related persons.



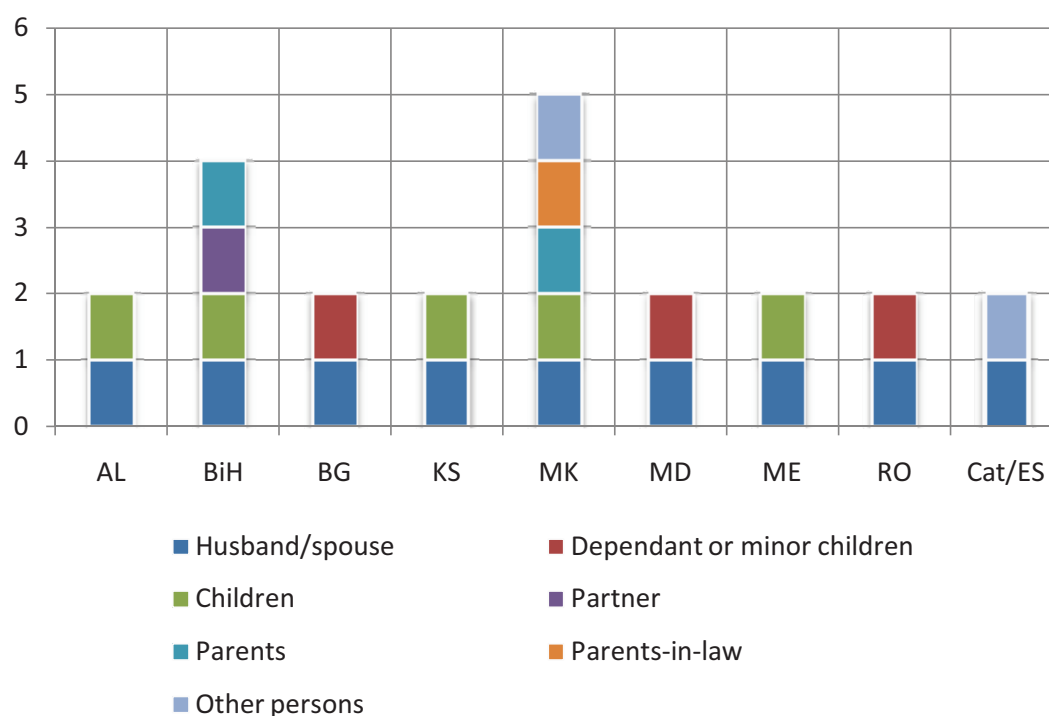
**Figure 4.1:** Related persons who are bounded to declare assets/private interests

<sup>25</sup> There is a distinction between countries that include children in general (i.e. Albania) and those who include only children leaving in the household (i.e. Montenegro, Macedonia).

<sup>26</sup> In Bosnia and Herzegovina, the official's partner, parents and partner's parents and children are considered "close relatives" for conflict of interests' purposes only. For assets declaration purposes, members of the household have to declare their income/property (usually, husband/spouse and children). In Macedonia, relatives who must declare assets when they are members of the household are the husband/spouse, children, parents, parents-in-law, adoptive parents or children, brothers and sisters.



## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM

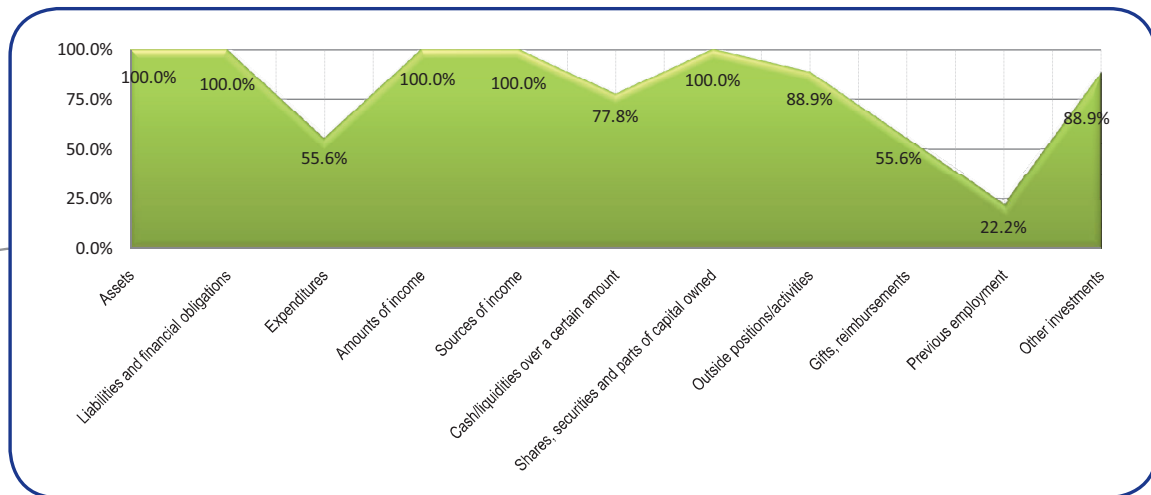


**Figure 4.2:** Related persons who are bounded to declare assets/private interests (Country by country cross tabulation)

The **type of information** requested by the declaration form is similar for public officials and for related persons, when the regime is applicable to the latter. Common for all the systems is the obligation to declare assets (movable/immovable); liabilities and financial obligations; amounts and sources of income; shares, securities and parts of capital owned (only securities in Moldova); other investments<sup>27</sup> (stocks, dividends, bonds, interests, funds, lease contracts, insurance policies).

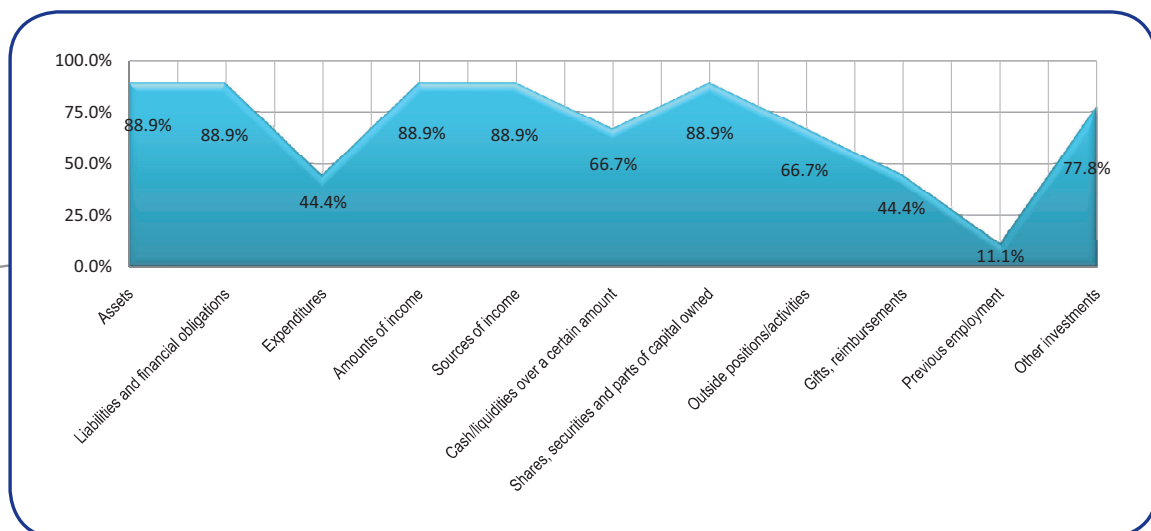
<sup>27</sup> Excepting Bosnia and Herzegovina.

# Rules and experiences on integrity issues



**Figure 5.1:** Information type to be declared by public officials

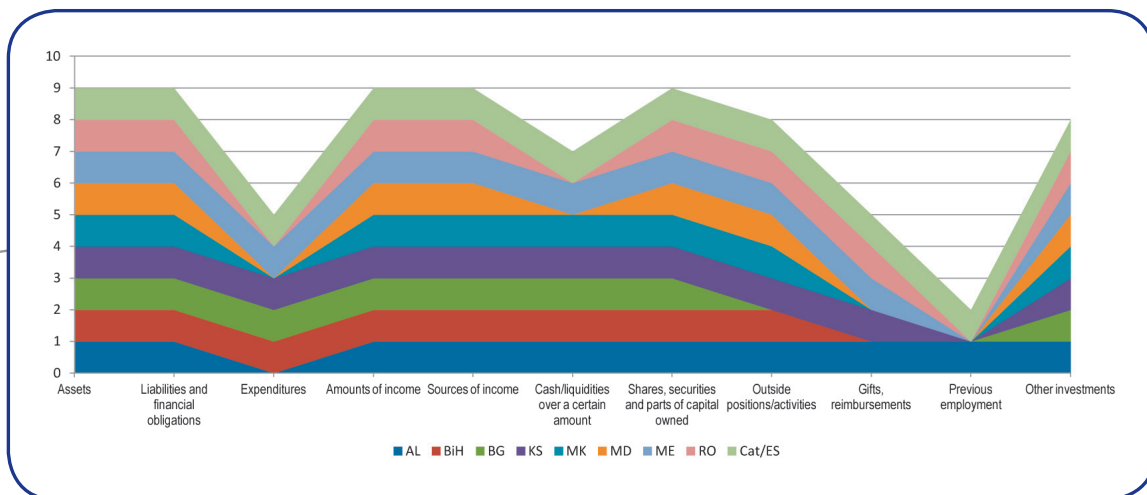
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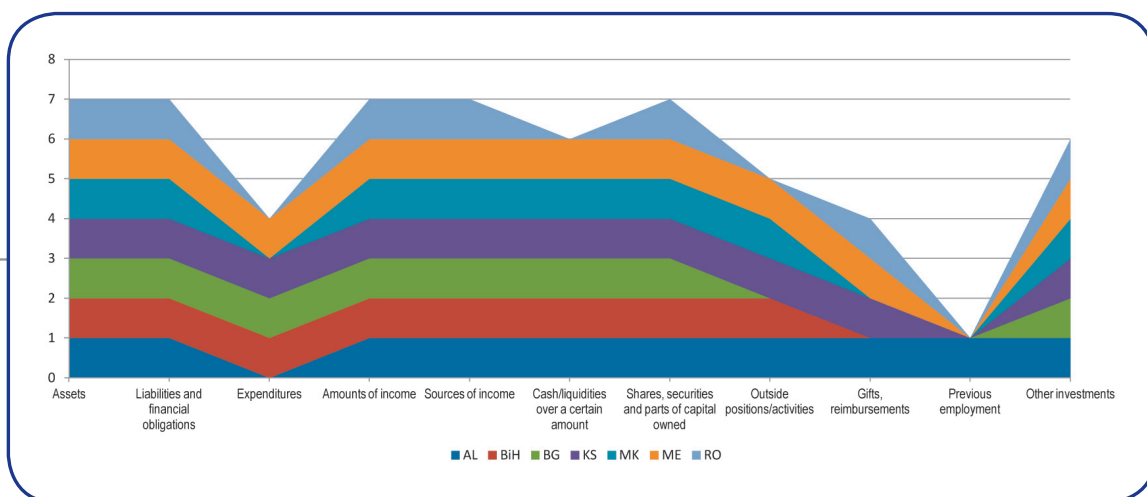
**Figure 5.2:** Information type to be declared by related persons

The expenditures are excluded from the declaration regime in Romania, Moldova, Macedonia and Albania (under process for amendment of the declaration law), the cash/liquidities over a certain amount – in Romania and Moldova, the previous employment – in Bosnia and Herzegovina, Bulgaria, Kosovo, Macedonia, Moldova, Montenegro and Romania, the gifts and reimbursements – in Bosnia and Herzegovina, Bulgaria, Macedonia, Moldova and Spain (only for gifts), while the outside positions/activities are not part of the regulation only in Bulgaria.

## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM



**Figure 5.3:** Information type to be declared by public officials  
(Country by country cross tabulation)



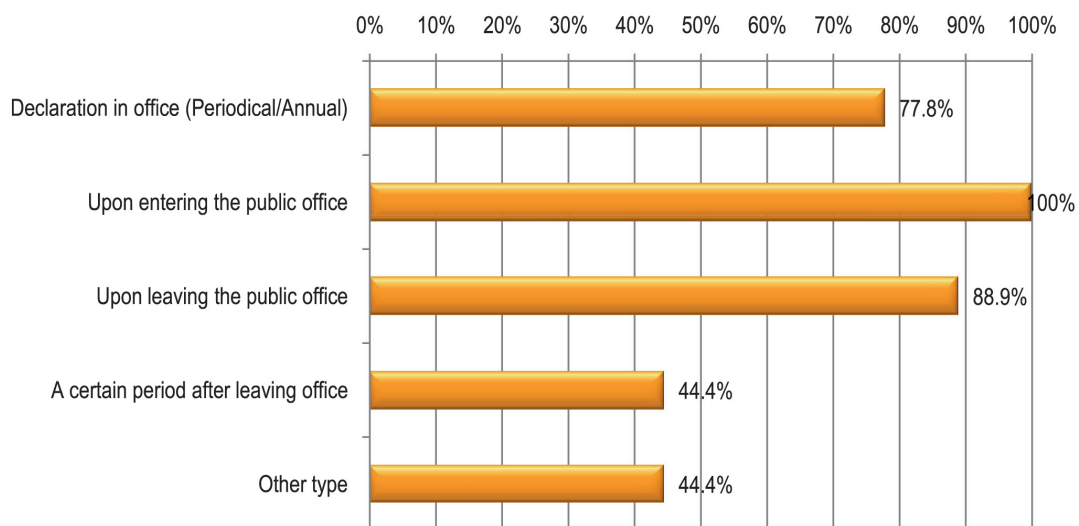
**Figure 5.4:** Information type to be declared by related persons  
(Country by country cross tabulation)

Common trend in IEN states regarding **types of declarations** in place is the incorporation of three forms of declarations: periodical/annual, upon entering the public office and upon leaving the public office. Exception from this practice is the regulation in Bosnia and Herzegovina and Macedonia (no periodical/annual declaration) and Macedonia (no declaration upon leaving the public office). However, in the case of Macedonia, the declaration is obligatory in case of increase of official's property or her/his family property like building a house or other facility, purchase of

## Rules and experiences on integrity issues

real estate, securities, car or any other movables in value, which exceeds twenty average salaries for the previous three month period. Also, an asset declaration should be submitted in Montenegro, if there is an increase of property in more than 5 000 EUR of value. Some of the questioned countries (Macedonia, Moldova, Montenegro and Spain) have included in the regulation regime declarations at a certain period after leaving the public office (1 year in Montenegro and Moldova, 2-5 years in Spain). There is a specific case in Albania, where the Inspector General of HIDAA could request an official's related person to submit a declaration of assets/private interests (declaration upon request<sup>28</sup> that may be casual, periodical or after the end of the related person's situation).

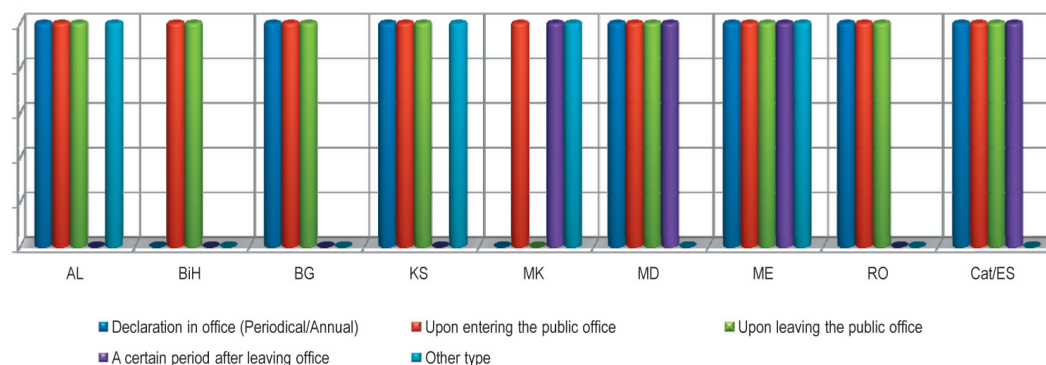
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**Figure 6.1:** Types of declaration forms

<sup>28</sup> This type of declaration exists also in Kosovo.

## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM

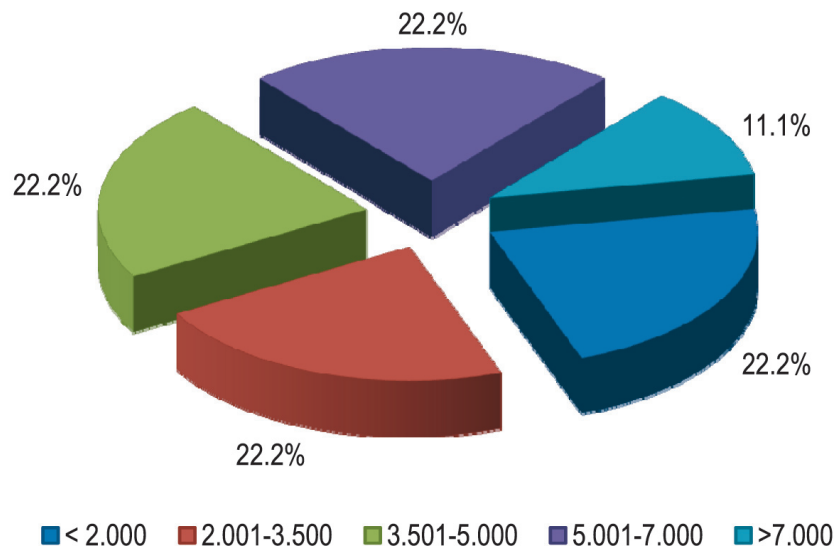


**Figure 6.2:** Types of declaration forms (Country by country cross tabulation)

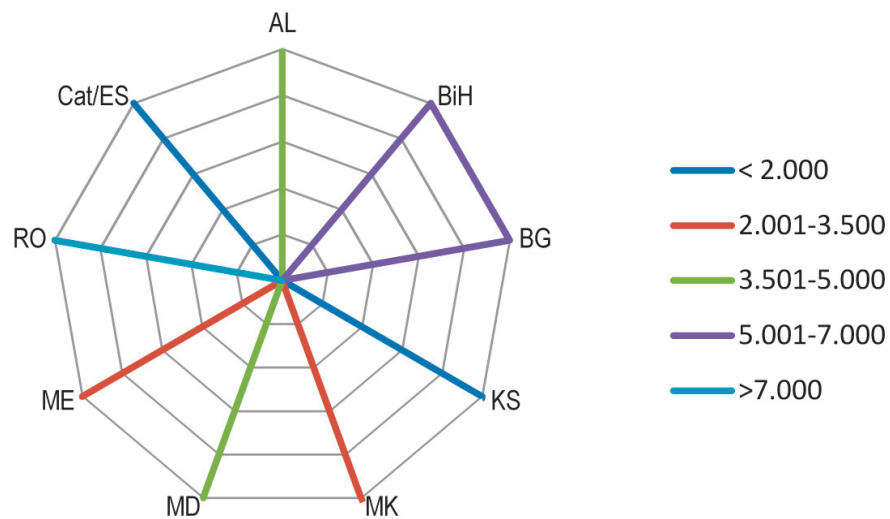
The **depository bodies** for declarations are the specialized institutions dealing with this issue on national level: HIDAA (Albania), CEC (Bosnia and Herzegovina), BULNAO (Bulgaria), SCPC (Macedonia), Central/Departmental control commissions of asset declarations (Moldova), CPCI/ME (Montenegro), ANI (Romania), Office of Conflict of Interest (Spain)/Government Department (Catalonia) and KAA (Kosovo). In most of the countries every public institution/authority has the obligation or follows an established practice to publish on its own website declarations of assets and interests submitted by its employees.

The **scope of assets declaration** reflects the scope of subjects obliged to declare their assets/private interests. The number of officials who declare assets/private interest vary between 310 in Spain (136 in Catalonia) and 350.000 in Romania. Their percentage in comparison with the total number of public officials in the questioned states starts from 0.052% in Spain (0.051% in Catalonia), around 5% in Albania, to 80-85% in Romania. In regard to the verification of data in submitted declarations some countries apply systematic annual verification (Albania, Bulgaria and Bosnia and Herzegovina). In Albania all declaration forms undergo preliminary (arithmetical and logical) control, while in Bulgaria the verification is conducted by using special software. Random audit is adopted by Albania, Romania and Spain. In Albania 4% declaring subjects undergo a full audit on annual basis, due to a random selection procedure. In Romania the file for verification is randomly assigned to an inspector through "random allocation distribution module", while ANI may start the evaluation activity *ex-officio* or upon notification by any individual or legal entity.

# Rules and experiences on integrity issues



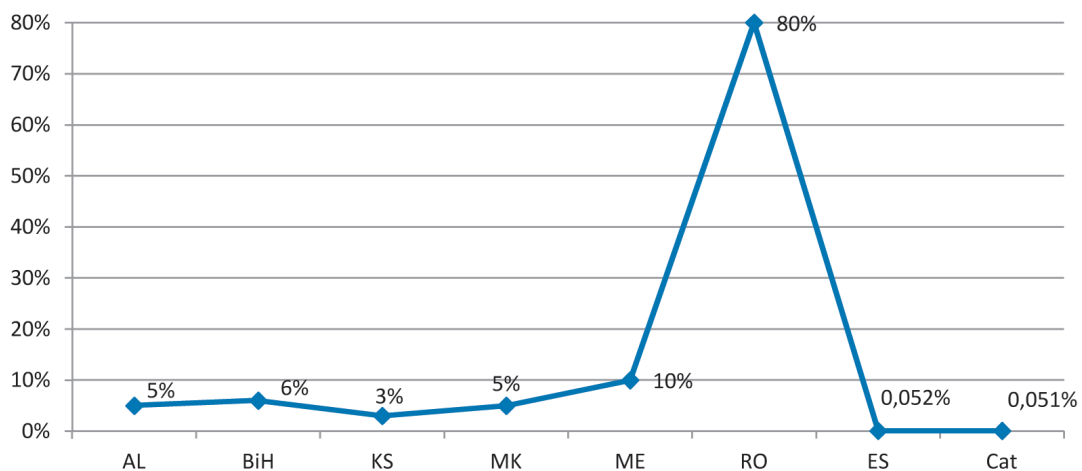
**Figure 8.1:** Number of officials who declare assets/private interests



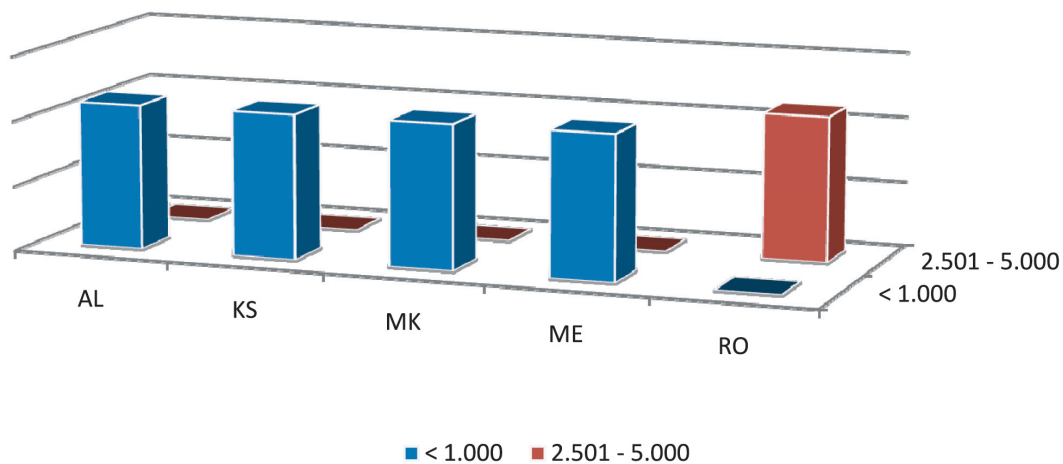
**Figure 8.2:** Number of officials who declare assets/private interests (Country by country cross tabulation)



## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM

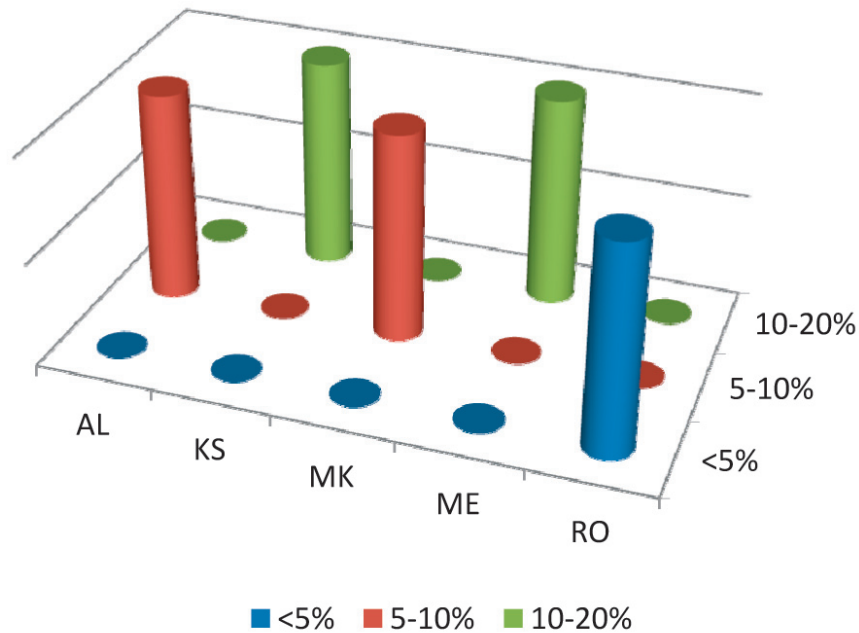


**Figure 8.3:** Percentage in comparison with the total number of public officials/employees



**Figure 8.4:** Declarations that are subject to full audit

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**Figure 8.5:** Percentage of AD the agency can audit for accuracy and potential Col

In regard to **transparency** all of the questioned states have adopted a regulation that introduces free access to the whole content of assets declarations with the exception of personal data (personal identification number, address, signature, account number) protected by relevant personal data protection legislation, which are kept confidential. The declarations are published on-line on the websites of the institutions in charge.

## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM

Categories of public officials	Disclosure is publicly available (online access via the Internet or the Official Gazette)							
	BIH	BG	KS	MK	MD	ME	RO	Cat/ES
1. Head of state	X <sup>29</sup>	X	X	X	X <sup>30</sup>	X	X	X <sup>31</sup>
2. MPs	X	X	X	X	X	X	X	X <sup>32</sup>
3. Other elected officials	X	X	X	X	X	X	X	X
4. Government members / deputies	-	X	X	X	X	X	X	-
5. Politically appointed officials	-	X	X	X	X	X	X	-
6. Judges, prosecutors, bailiffs	-	X	X	X	X	X	X	-
7. Police/ armed forces officials	-	X	X	-	-	X	X	-
8. Civil servants/other public officials or public sector employees	-	-	X	-	-	-	X	-
9. Spouses and children	-	X	X	X	-	X	X	X
10. All declaring officials	-	-	X	-	-	X	X	-

**Table 2.1:** Transparency

<sup>29</sup> Only for AD forms, no information is disclosed or made available for Col declarations.

<sup>30</sup> Annual publication in the media or in official websites of respective institutions.

<sup>31</sup> All signs in red color concern AD forms.

<sup>32</sup> All signs in green color concern declaration of activities.

# Rules and experiences on integrity issues

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Disclosure is made publicly available by the institution (not published, hard copy)							
Categories of public officials	Their access is free upon request without conditions						Their access is offered under conditions
	AL	KS	MK	MD	ME		Cat/ES
1. Head of state	X	X	-	X	X		X x
2. MPs	X	X	-	X	X		-
3. Other elected officials	X	X	-	X	X		X x
4. Government members / deputies	X	X	-	X	X		X x
5. Politically appointed officials	X	X	-	X	X		X x
6. Judges, prosecutors, bailiffs	X	X	-	X	X		-
7. Police/ armed forces officials	X	X	X	X	X		-
8. Civil servants/other public officials or public sector employees	X	X	X	X	X		-
9. Spouses and children	X	X	-	-	-		x
10. All declaring officials	X <sup>33</sup>	X	-	X	X		-

(X = Yes, - = Not Applicable)

**Table 2.2:** Disclosure made available or under specific conditions

<sup>33</sup> Through HIDAA's Office for Public and Media Relations.

In Spain the regime is more restricted. The *Registry of Activities* has a public character. The individual, who wishes to access the declarations submitted to the Registry of Activities of high public officials can, upon identification, request certification of its content. The certifications can consist of the expedition of authentic copies of the original declarations archived in the Registry. If the request does not contain any specificity, the Registry will understand that the request refers to the current situation of the senior official. The generic requests and those, where the high public official is not identified, are not admitted. . With regards to the *Registry of Assets* the law sets out that it has reserved character and can only be accessed by determined institutions and bodies (Congress, Prosecutor's Office, etc.) On yearly basis, those declarations are published in the Spanish Official Gazette without any information that can help to identify the address of the properties or the location of the goods published.

Disclosure is not made publicly available (not accessible)		
Categories of public officials	BIH	Cat/ES
1. Head of state	X <sup>34</sup>	-
2. MPs	X	X <sup>35</sup>
3. Other elected officials	X	X <sup>36</sup>
4. Government members / deputies	X	x
5. Politically appointed officials	X	x
6. Judges, prosecutors, bailiffs	X	-
7. Police/ armed forces officials	X	X x
8. Civil servants/other public officials or public sector employees	X	X x
9. Spouses and children	X	-
10. All declaring officials	X	X x

(X = Yes, - = Not Applicable)

**Table 2.3:** Absence of disclosure

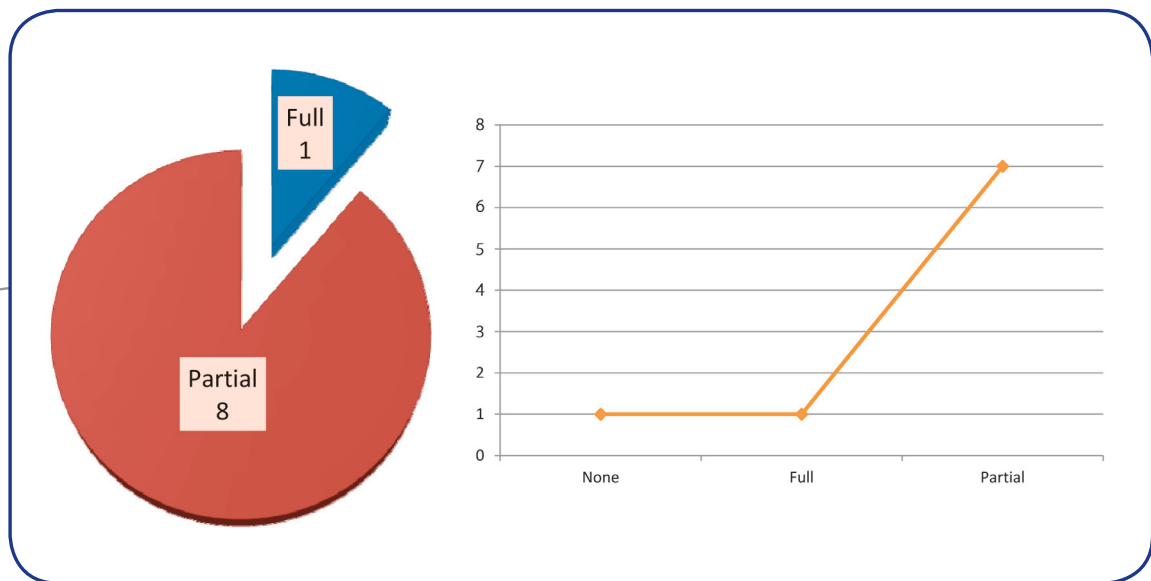
<sup>34</sup> Concerning Col declarations only.

<sup>35</sup> All signs in red color concern AD forms.

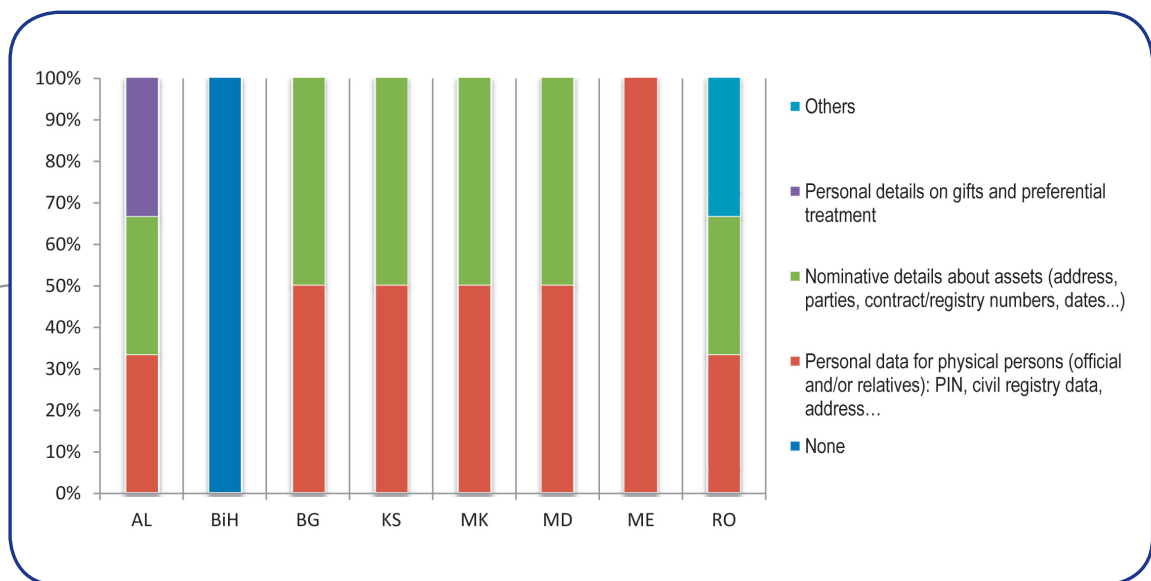
<sup>36</sup> All signs in green color concern declaration of activities.



# Rules and experiences on integrity issues



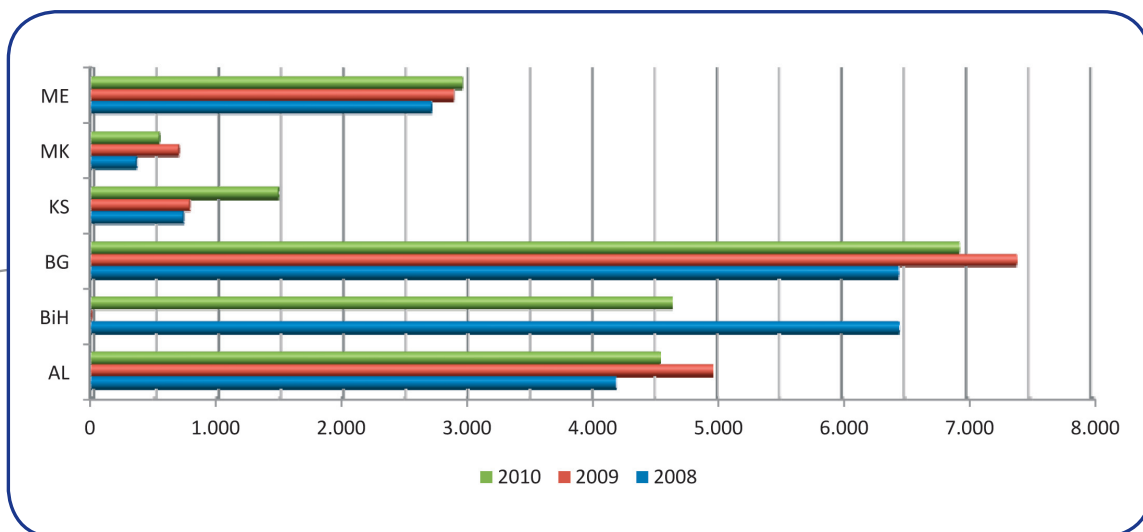
**Figure 9.1:** Extent of information being disclosed for AD (left) and Col (right)



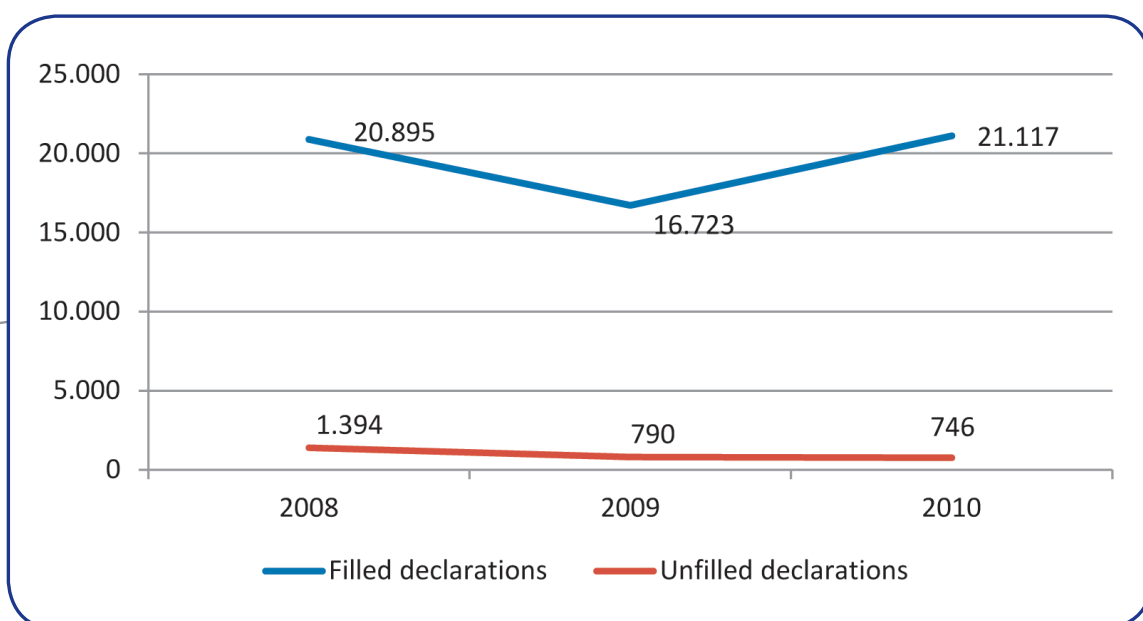
**Figure 9.2:** Private information kept confidential

Generally, the integrity institutions do not have well developed systems for collecting and analysing **statistical data**. The common trend is the presence of a similar level of filled declarations per country for the last three years.

## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM



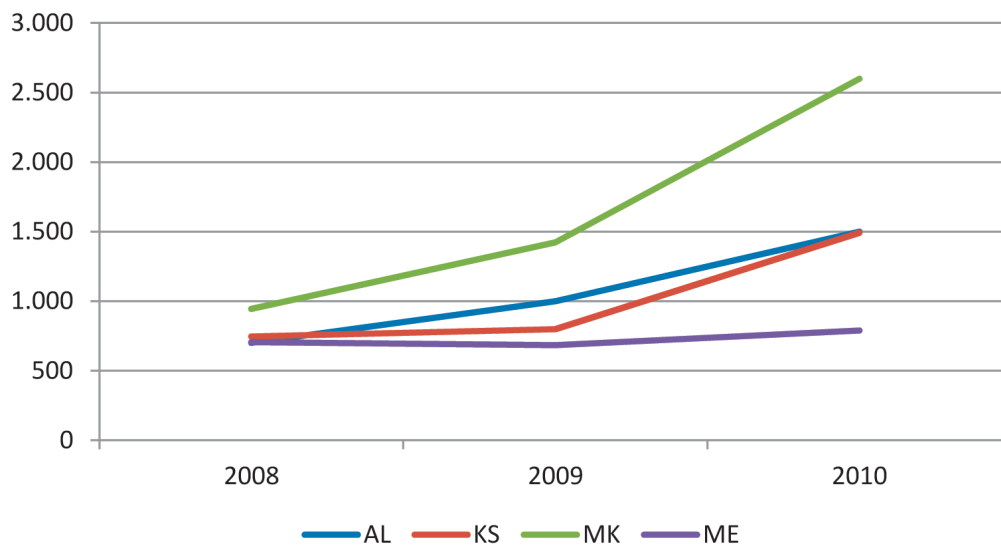
**Figure 10.1:** AD filled declarations (2008-2010)



**Figure 10.2:** Filled and unfilled ADs (2008-2010) – N=6

Regarding the level of unfilled/problematic declarations there is a significant increase in their number for 2010 in Bosnia and Herzegovina and Kosovo, while in Albania and Macedonia there is a major reduction. A general positive trend is observed in the increase of number of asset declaration forms acceded/consulted through internet or on paper.

## Rules and experiences on integrity issues



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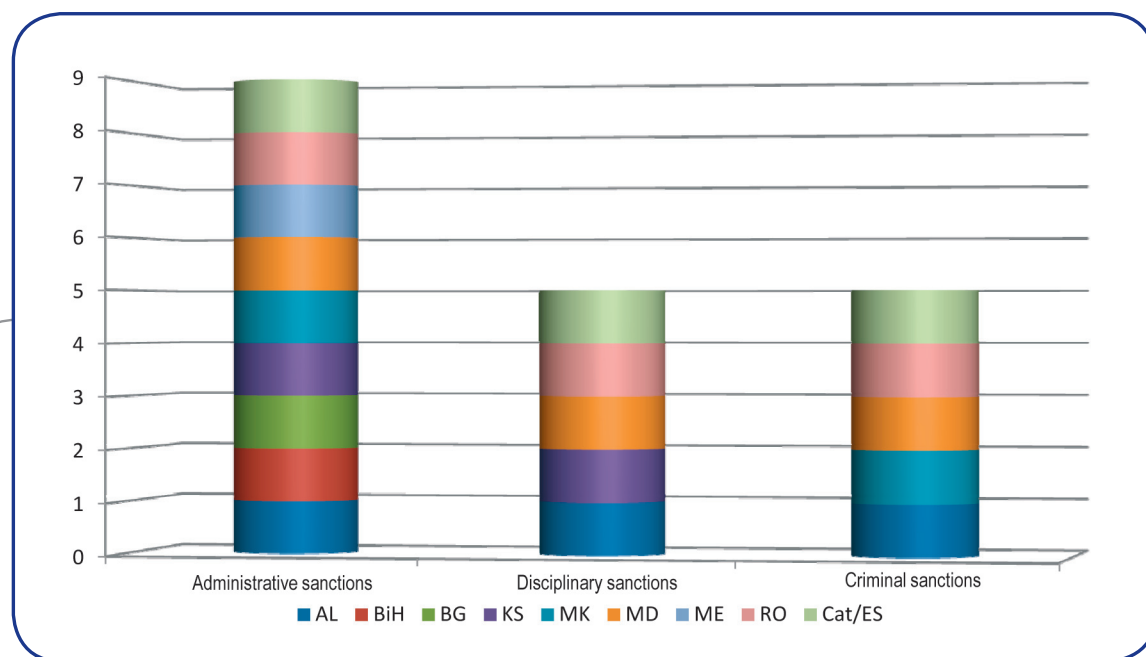
**Figure 10.3:** Number of AD forms acceded/consulted (2008-2010) – N=4

In case of failure in declaration of assets and private interests, there is a different regime of **sanctions** applied in the questioned states. Regarding the types of sanctions in place, the general trend is to apply administrative, disciplinary and criminal sanctions – separately or in combination, if possible. In Bosnia and Herzegovina, Bulgaria and Montenegro only administrative sanctions are in place in the frame of asset declaration regime.



**Figure 11.1:** Existence of sanctions for AD regime

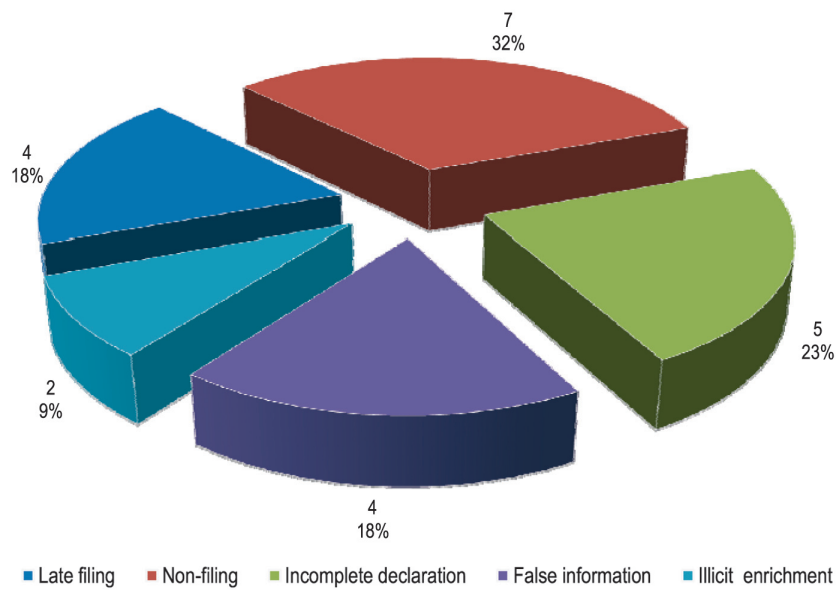
## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM



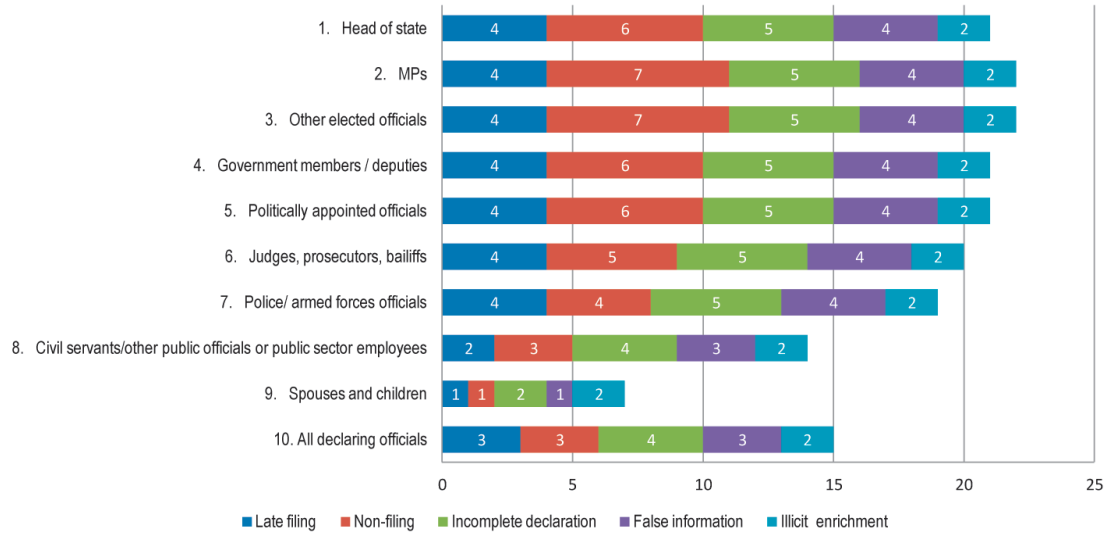
**Figure 11.2:** Categories of sanctions for AD by countries

In some countries (Albania, Montenegro and Romania) there are sanctions for all categories of declaration failure: late filing, non-filing, incomplete declaration, false information and illicit enrichment (without Montenegro). In other countries the scope of sanctioned irregularities is narrower: in Bulgaria – late filing and non-filing, Bosnia and Herzegovina – non-filing, Moldova – false information, Macedonia – non-filing, incomplete declaration and false information, Kosovo – non-filing and incomplete declaration.

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**Figure 11.3:** AD sanctions by countries



**Figure 11.4:** AD sanctions by categories of public officials and by countries



## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM

Categories of public officials	Late filling					Non-filling						
	AL	BG	ME	RO		AL	BiH	BG	KS	MK	ME	RO
1. Head of state	X	X	X	X		X	X	X	-	X	X	X
2. MPs	X	X	X	X		X	X	X	X	X	X	X
3. Other elected officials	X	X	X	X		X	X	X	X	X	X	X
4. Government members / deputies	X	X	X	X		X	-	X	X	X	X	X
5. Politically appointed officials	X	X	X	X		X	-	X	X	X	X	X
6. Judges, prosecutors, bailiffs	X	X	X	X		X	-	X	-	X	X	X
7. Police/ armed forces officials	X	X	X	X		X	-	X	-	-	X	X
8. Civil servants/ other public officials or public sector employees	X	-	-	X		X	-	-	X	-	-	X
9. Spouses and children	X	-	-	-		X	-	-	-	-	-	-
10. All declaring officials	X	-	X	X		X	-	-	-	-	X	X

(X = Yes, - = Not Applicable)

**Table 3.1:** AD sanctions by categories of public officials

# Rules and experiences on integrity issues

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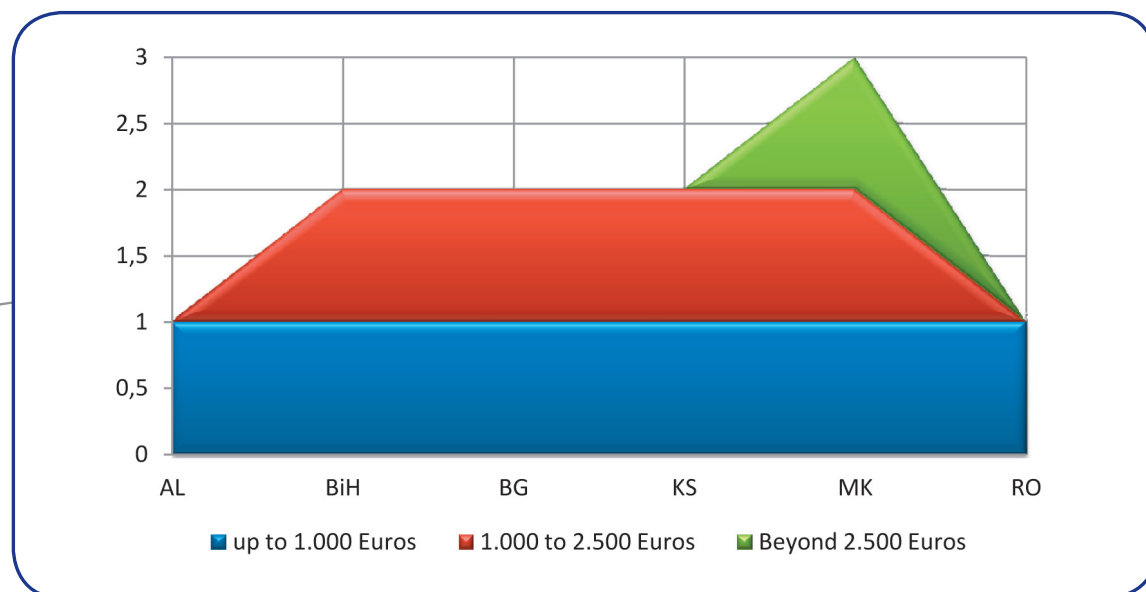
Categories of public officials	Incomplete declaration					False information				Illicit enrichment	
	AL	KS	MK	ME	RO	AL	MK	ME	RO	AL	RO
1. Head of state	X	X	X	X	X	X	X	X	X	X	X
2. MPs	X	X	X	X	X	X	X	X	X	X	X
3. Other elected officials	X	X	X	X	X	X	X	X	X	X	X
4. Government members / deputies	X	X	X	X	X	X	X	X	X	X	X
5. Politically appointed officials	X	X	X	X	X	X	X	X	X	X	X
6. Judges, prosecutors, bailiffs	X	X	X	X	X	X	X	X	X	X	X
7. Police/ armed forces officials	X	X	X	X	X	X	X	X	X	X	X
8. Civil servants/ other public officials or public sector employees	X	X	X	-	X	X	X	-	X	X	X
9. Spouses and children	X	X	-	-	-	X	-	-	-	X	X
10. All declaring officials	X	X	-	X	X	X	-	X	X	X	X

(X = Yes, - = Not Applicable)

**Table 3.2:** AD sanctions by categories of public officials

The most applicable administrative sanction is fine varying from 12.5 EUR (Romania) to 2.500 EUR (Albania, Bulgaria and Kosovo) and up to 3.000 EUR (Macedonia). Among the criminal sanctions which are applied the most commonly used are: fines, imprisonment from 6 months to 3 years, and prohibition to hold a public office for a fixed period of time. The applicable disciplinary sanctions vary from dismissal from office or suspension of the right to advance in payment, to verbal or written warning.

## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM



**Figure 11.5:** Range of administrative fines

Administrative sanctions	Fine level	Country
Late delivery of the periodic declaration without good cause		AL
Failure to rectify material errors or mistakes in the declaration		KS
Failure to submit the declaration upon taking public office		KS
Failure to submit the declaration upon leaving the public office		KS
Failure to submit asset declaration and declaration of interest in terms provided by the law		RO
Non-respect of obligations foreseen in Article 6 (collection, recording, publishing AD & Col forms, advising, reporting etc.) by persons responsible for the implementation of the law or managers of their institution		RO
Non disciplinary sanction or non-observance of termination of the public position, as appropriate, where the notice of determination has become final		RO
Non-filing of assets declarations		MK

# Rules and experiences on integrity issues

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Administrative sanctions	Fine level			Country
Unreported income or assets (70% tax rate)				MK
Non-filing of private interests declarations				MK
Failure to submit a regular annual periodic declaration				KS
Declining an inspection of financial operations				BiH
Failure to submit the declaration upon request (public official and natural or legal persons related to him)				KS
Failure to fill the declaration or notification within the required deadline + Repeated violation (the offence committed within one year from an existing similar sanction imposed)				BG

Up to 1.000 EUR

1.000 to 2.500 EUR

Beyond 2.500 EUR

**Table 3.3:** Administrative sanctions related to the declaration system (assets / private interests)

Criminal sanction	Penalty	Country
Failure to make a self-declaration or a declaration on request; refusal to declare	Fine <sup>37</sup> or imprisonment up to 6 months	AL
Hiding assets/Making a false declaration	Fine or imprisonment up to 3 years	AL
Making false statements <sup>38</sup>	Fine or imprisonment from 3 months to 2 years	RO

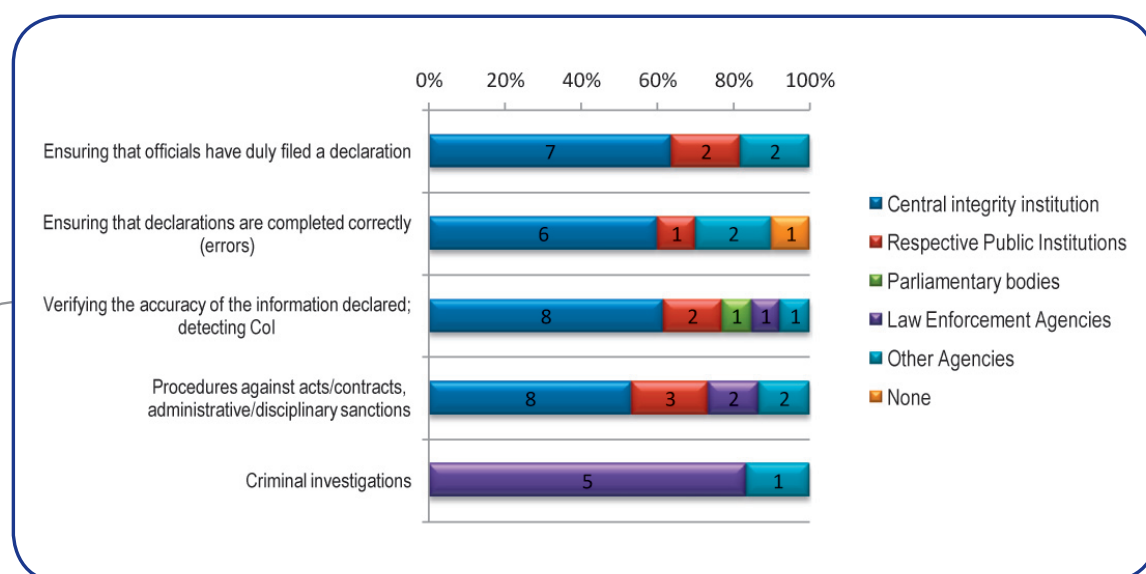
**Table 3.4:** Criminal sanctions related to the asset declaration system

<sup>37</sup> The criminal fine applicable to misdemeanors is from 350 to 21.500 euro.

<sup>38</sup> In other countries, false declarations are subject of relevant criminal incriminations on falsifications.

## DECLARATION OF ASSETS/PRIVATE INTERESTS SYSTEM

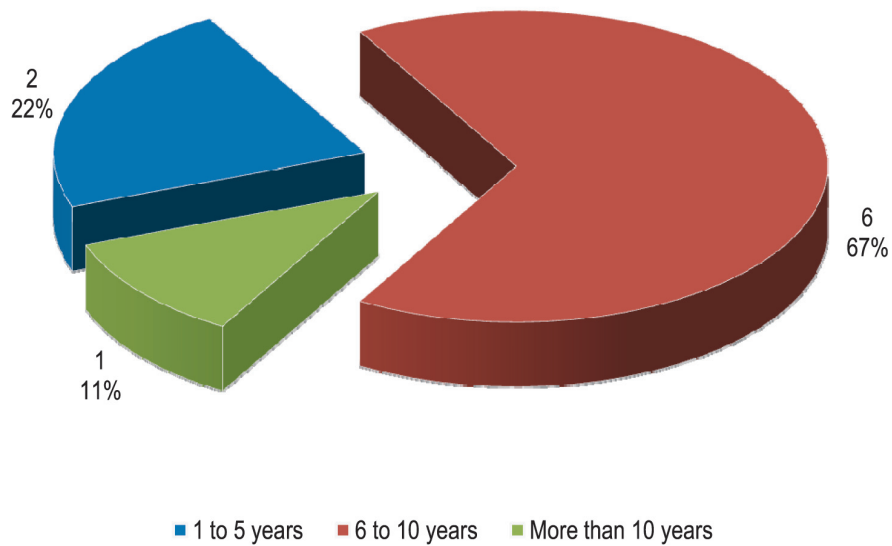
Common trend in the questioned states is to have the national institution dealing with assets declaration and conflict of interest, responsible for **monitoring the compliance**, in particular: ensuring that the officials have duly filled declarations; ensuring that the declarations are filled correctly; verifying the accuracy of the information declared, detecting potential sources of conflict of interest and tracking changes of assets; applying procedures against acts/contracts and imposing administrative sanctions or recommending disciplinary measures. Related criminal investigations are prerogative of law enforcement bodies. In some of the countries (Albania, Romania, Moldova, Macedonia, Montenegro, Spain and Kosovo) other public institutions are involved in monitoring compliance process, and especially in ensuring the correct fulfillment of declarations (duly filled, without gaps or errors) and in applying disciplinary sanctions. In Romania, according to law regulation, every public institution/authority should officially designate a person responsible for the implementation of legal provisions related to wealth and interests declarations.



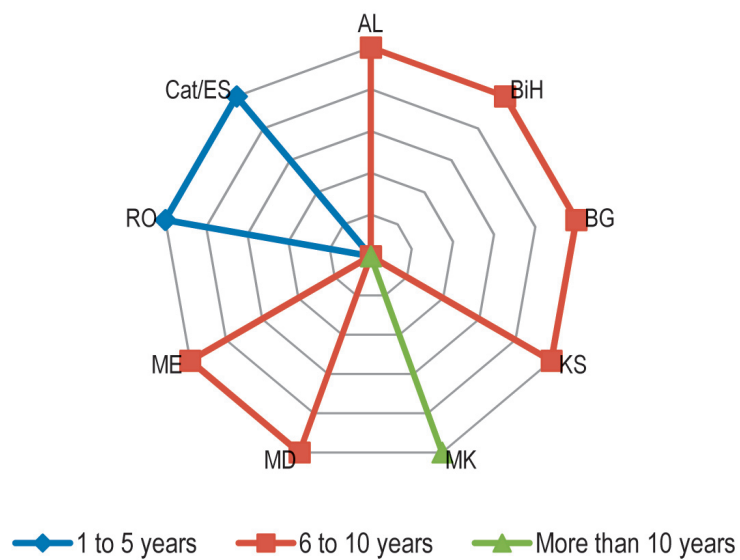
**Figure 12:** Monitoring compliance & institutions involved

As far as the **legal period for keeping the asset declarations** is concerned some of the states apply 1-5 years period (Romania and Spain), others up to 10 years (Albania, Bosnia and Herzegovina, Bulgaria, Kosovo, Montenegro and Moldova), while Macedonia keeps the records for more than 10 years. After that the declarations are being archived in accordance with the respective national law.

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**Figure 13.1:** Duration of AD Records Keeping



**Figure 13.2:** Duration of AD Records Keeping (Country by country cross tabulation)





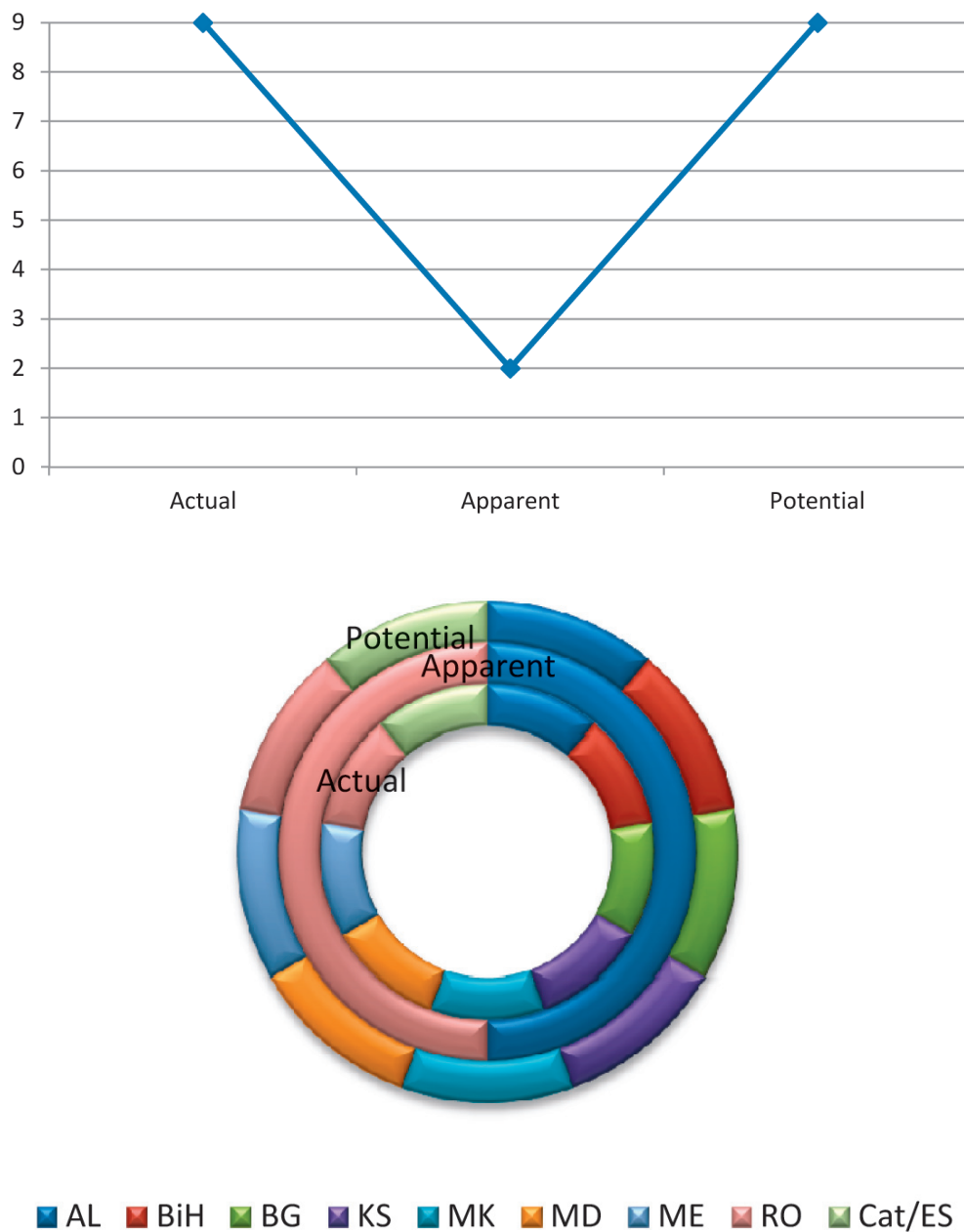
## V. CONFLICT OF INTEREST PREVENTION REGIME

**T**he conflict of interests is generally defined as a “conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of his official duties and responsibilities”<sup>39</sup>. There is also a general acceptance that the cause-effect relation between the private interest (cause) and improper performance of official duty (effect) includes different forms and features by which *actual* (at present or in the past), *potential* (at present or in the future) and *apparent* (in the past, at present or in the future) conflict of interests forms are recognized.

Some of the questioned countries (Albania and Romania) include in their regulation regime all **forms** of conflict of interest: actual, apparent and potential. The others have generally regulated only actual and potential conflict of interest forms.

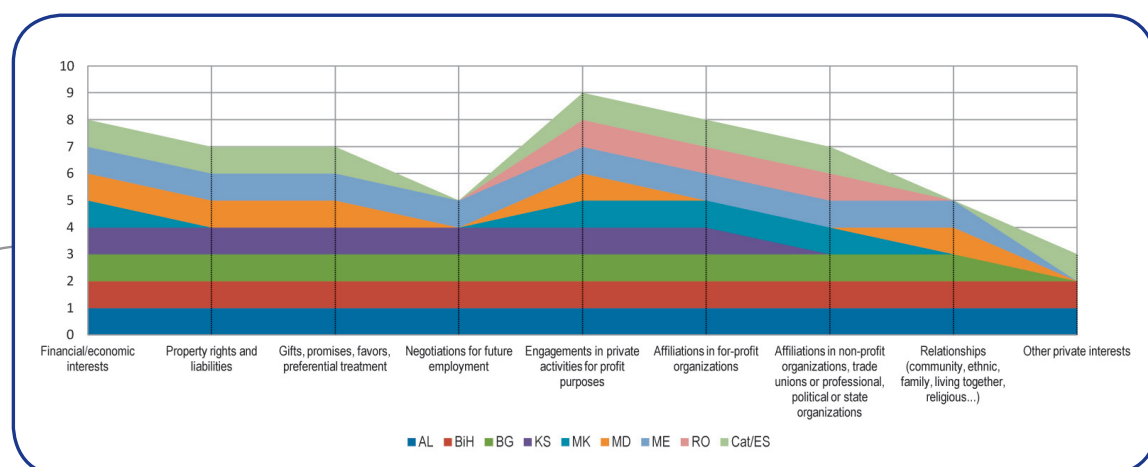
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<sup>39</sup> See footnote no 11.



**Figure 14:** Conflict of interest forms

With regard to the content of the term “**private interests**”, its scope varies in the different countries. The scope of the term is broader in Albania, Bosnia and Herzegovina, Bulgaria, Montenegro, Spain and Kosovo, incorporating financial/economic interests; property rights and liabilities; gifts, promises, favors and preferential treatment; negotiations for future employment (without Spain); engagements in private activities for profit purposes; affiliations in for-profit organizations; affiliations in non-profit organizations, trade unions, or professional, political or state organizations (without Kosovo); and community, ethnical, family, living together or religious relationships (without Spain and Kosovo). The aspects covered by the term “private interests” are the most limited in Romania, as it includes only engagements in private activities for profit purposes, affiliations in for-profit organizations, affiliations in non-profit organizations, trade unions, or professional, political or state organizations.



**Figure 15:** Private interest scope

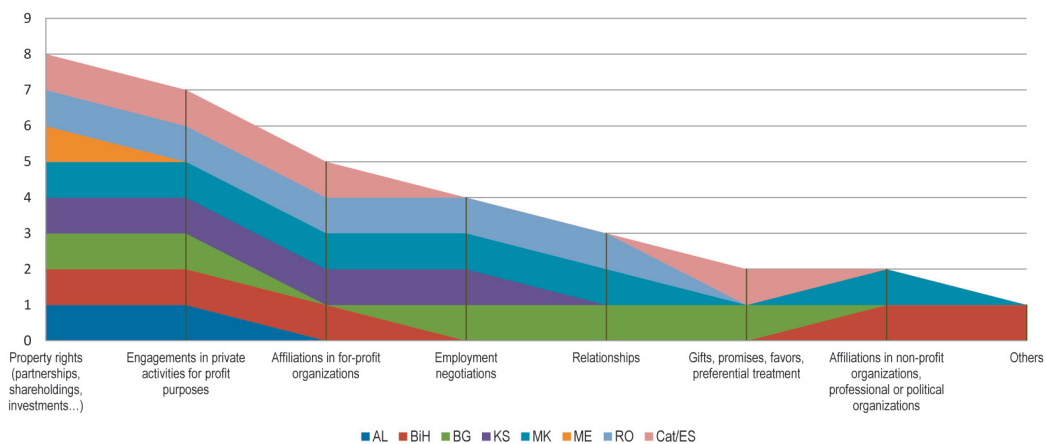
According to statistical data property rights (partnerships, shareholdings, investments) and engagements in private activities for profit purposes are identified in practice as the most frequent **factors that hold a potential for conflict of interest** among public officials.

# Rules and experiences on integrity issues



**Figure 16.1:** Conflict of interest most frequent factors

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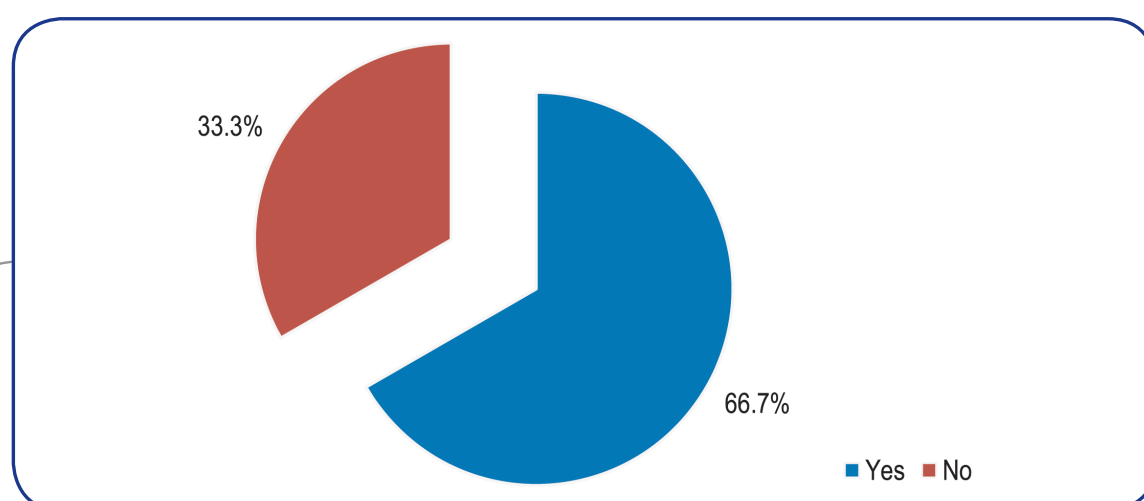


**Figure 16.2:** Conflict of interest most frequent factors  
(Country by country cross tabulation)

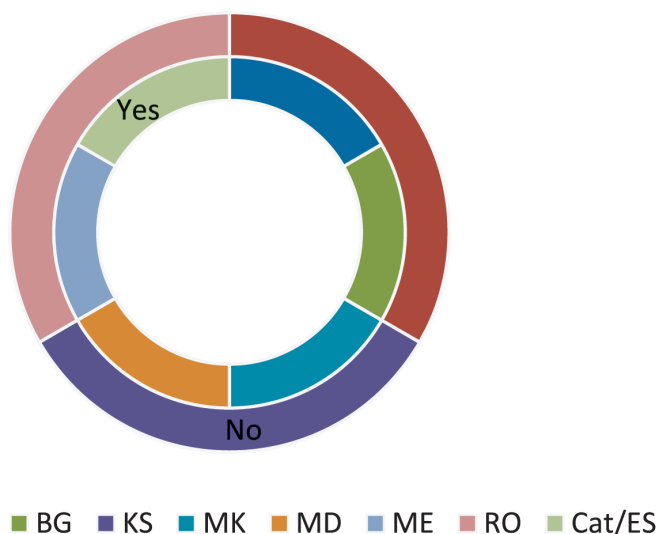
One of the vulnerable areas is the obligation for public officials to declare their **private interests on case-by-case basis**. The regulation in Bulgaria, Moldova and Spain envisages the obligation for certain categories of public officials to update declarations of personal interests as many times as changes occur in the declared information or circumstances. The change could be related to their assets or to new activity (being a founder or holding a leading position, administration, audit or control position held in

a non-commercial organization or political parties; being a shareholder or stockholder in an economic entity, including credit institutions, insurance organizations and financial institutions; relations with international organizations, etc.) The update should be made within a fixed period of time (usually 15 days).

On the other hand, there is an obligation for public officials to fill a declaration of private interest on a particular occasion. Usually such declaration contains information about public official's interest or interest of related persons, the decision to be taken personally or taken with their participation, or an action to be taken in performance of their job duties. It is often related also to the official's quality or related persons' quality, of a founder, stockholder, shareholder, member of the administrative council, member of control or audit commission in a legal person (commercial or non-commercial), if such legal person has received from the public organization, in which they are employed, goods, including money, credits secured by the state or local public administration authority or a public acquisition order, etc. The regulation in Macedonia envisages filling declaration prior to decision making process in public procurements. According to the regime in Albania, every official, in the exercise of his public duties or the exercise of his competencies is obliged, on the basis of his *knowledge and in good faith*, to make a self-declaration in advance, case-by-case, about the existence of his private interests that might become cause for the emerging of a conflict of interests. Amendments to the legislation in Montenegro ensure that specific categories of public officials, as defined by the law, are obliged to submit the declaration on existence of private interest, prior to decision-making.



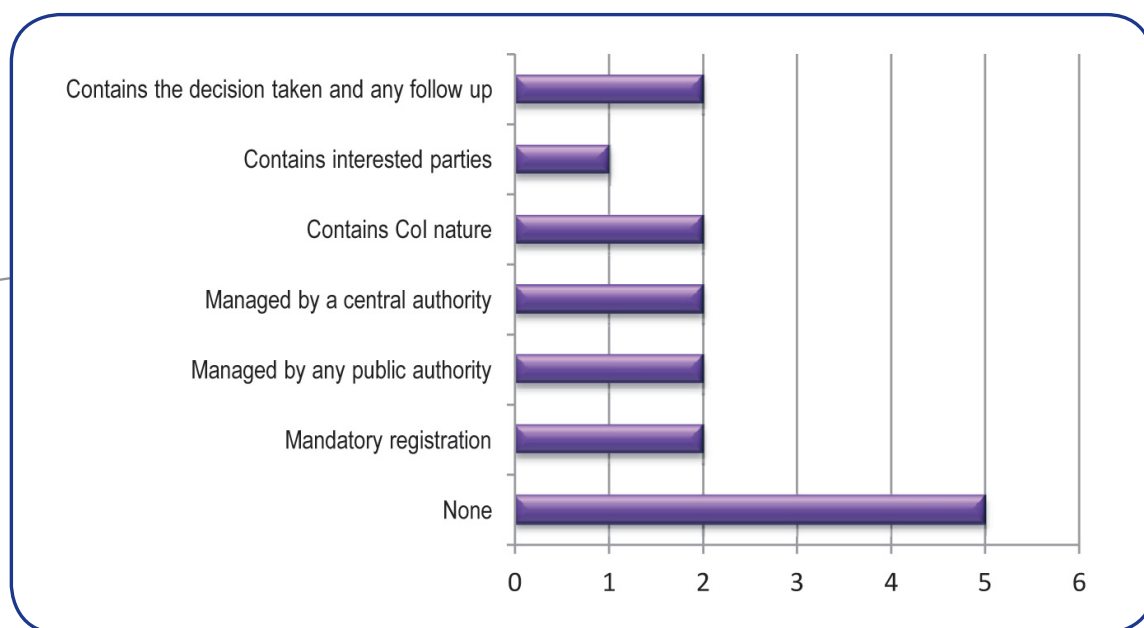
**Figure 17.1:** Mandatory case-by-case conflict of interest declaration



**Figure 17.2:** Mandatory case-by-case conflict of interest declaration  
(Country by country cross tabulation)

The general trend in the questioned states (Romania, Moldova, Macedonia, Montenegro, Spain and Kosovo) is that they do not maintain special **registers for case-by-case** conflict of interest situations. Such registers exist only in Albania. They are kept by the responsible authorities of the institutions, while a copy of them remains at disposal of HIDAA. In parallel, HIDAA also maintains its own register for case-by-case conflict of interest declarations detected by its inspectors, which contains information about conflict of interest nature, involved parties, decision taken and the related follow up. In Bosnia and Herzegovina there is a register of initiated procedures, pronounced sanctions and received gifts kept by CEC, which provides data about conflict of interest nature and decisions taken. According to the new Law on Conflict of Interest in Bulgaria, there will be created two registers: the register of the alerts of conflict of interest, as received, and of the decisions on ascertainment of conflict of interest, as issued and, the register of written statements of administrative violations as drawn up and of penalty decrees as issued. The former register shall record the consecutive number and the date of the alert of a conflict of interest, the whistle-blower, a brief description of the alert, number, date and content of the decision. The latter register shall record the date and content of the act of ascertainment of the violation, the number and date of the penalty decree as issued, and a description of the sanction imposed.



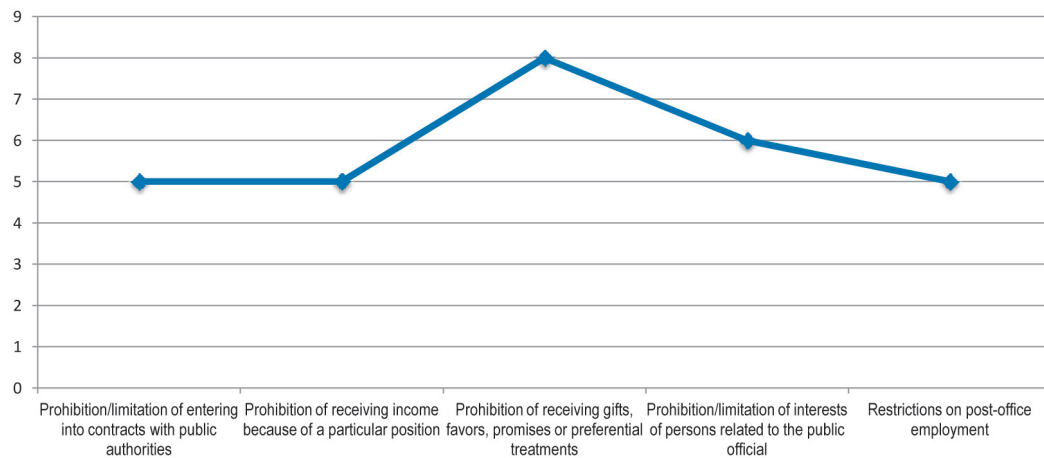


**Figure 18:** Case-by-case conflict of interest register

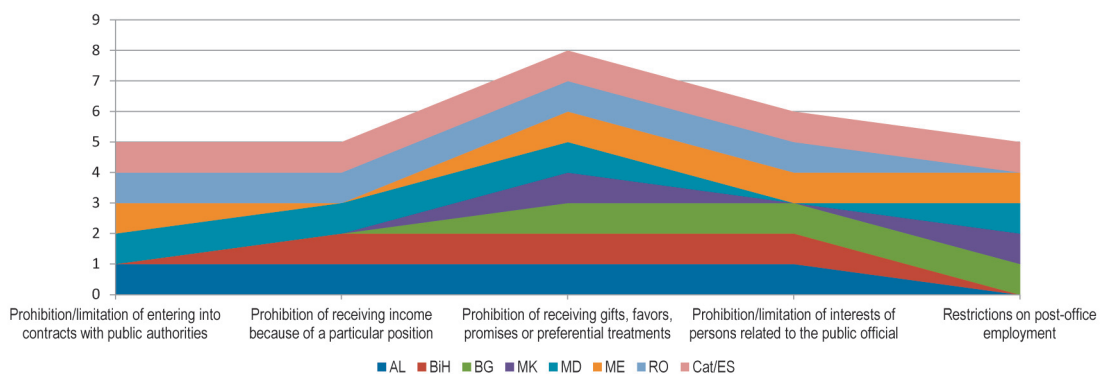
There is a broad range of specific **prohibitions/limitations of private interests** that are in place in the countries in focus: prohibition/limitation of entering into contracts with public authorities; prohibition on receiving income because of a particular position; prohibition of receiving gifts, favors, promises or preferential treatments; limitation of interests of persons related to the public official; and restrictions on post-office employment (migration of public officials to the private sector – “revolving doors”/“pantouflage”). However, there are also some exceptions as following: the prohibition on receiving income because of a particular position is not in place (Bulgaria, Macedonia and Montenegro);– for prohibition of interests of persons related to the public official (Macedonia and Moldova); for restrictions on post-office employment (Albania<sup>40</sup>, Romania and Kosovo) . Regarding post-office employment, in Bosnia and Herzegovina the restriction concerns only public enterprises. The period of time applied for restrictions on migration of public officials to the private sector varies from 1 year (Bulgaria, Moldova and Montenegro), 2 years (Spain) to 3 years (Macedonia).

<sup>40</sup> Although the post-office employment is not prohibited as such in Albania, there are however some restrictions for 2-year period after leaving the public office (prohibition to represent any person or organization in a conflict or trade relations with the public administration in relation to the public office he/she had hold, prohibition to use confidential information). Similar restrictions are also in place in Montenegro for 1-year period.

# Rules and experiences on integrity issues



**Figure 19.1:** Specific prohibitions/limitations of private interests

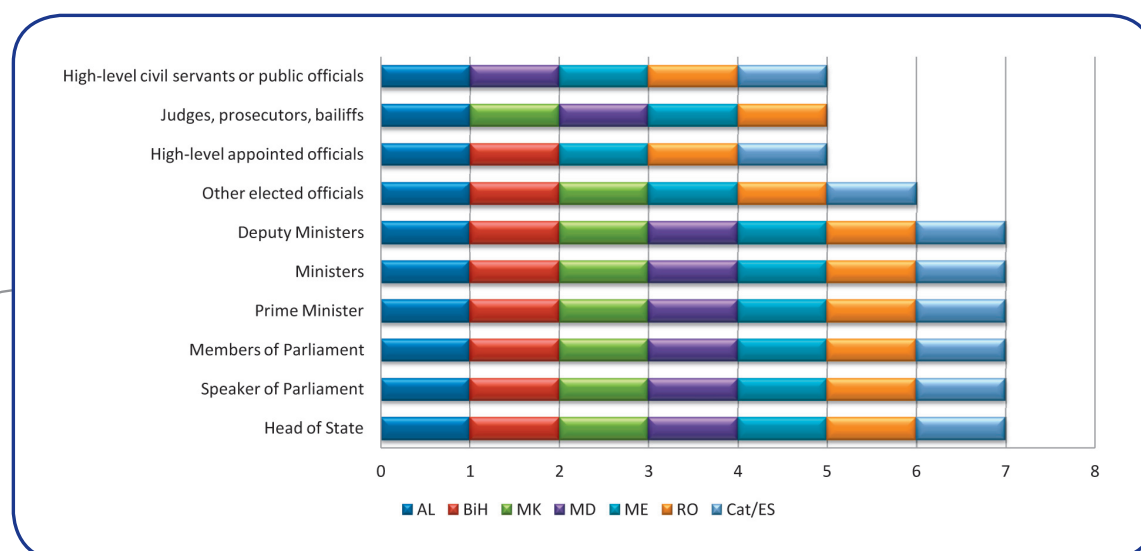


**Figure 19.2:** Specific prohibitions/limitations of private interests (Country by country cross tabulation).

As far as the ***incompatibilities***<sup>41</sup> of public officials are concerned, almost all of the questioned states have adopted legal standards covering the area.

<sup>41</sup> In this book the notion of “incompatibility” is used and refers in accordance with “conflict of interest” concept to any incompatibility between a private position or activity and the public office although there are also incompatibilities between public – public positions or activities which are linked to the constitutional principle of separation of powers.

The only exception is Kosovo. In some of the countries there are no legal provisions regarding incompatibilities of judges, prosecutors and bailiffs (Bosnia and Herzegovina and Spain), high-level civil servants or public officials (Bosnia and Herzegovina and Macedonia), high-level appointed officials (Macedonia and Moldova) and other elected officials (Moldova). The system of incompatibilities of public officials adopted in the different countries varies from total prohibition of certain activities to a more limited approach.



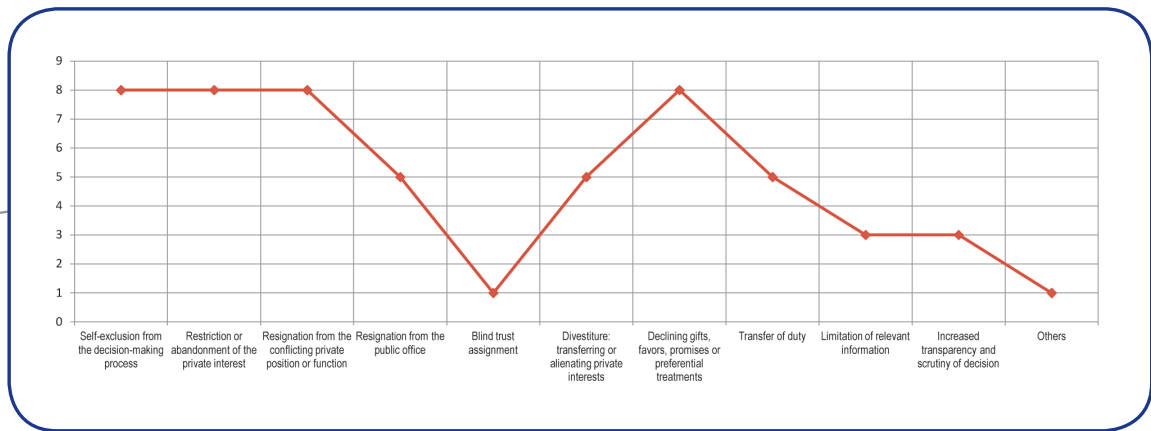
**Figure 20:** Legal standards regarding incompatibilities of public officials

Current system of **measures for addressing and resolving conflict of interest situations** is richer in Albania and Kosovo comparing to the other countries involved in this study. It includes self-exclusion from the decision-making process; restriction or abandonment of private interest; resignation from the conflicting private position or function; resignation from the public office; divestiture – transferring or alienating private interests (the official sells any shares or other properties that have created the conflict of interest); declining gifts, favors, promises or preferential treatments; transfer of duty; limitation of relevant information; and increased transparency and scrutiny of decision. The institute of *blind trust*<sup>42</sup>

<sup>42</sup> The “blind trust” is known as an arrangement in which the financial holdings of a public official are placed in the control of a trusted person (trustee, fiduciary) in order to avoid a conflict of interest. The owner of the assets (the public official) is ‘blind’ to how his or her funds are managed and what assets are bought or sold. However, the owner of the trust can still collect interest and dividends. In the Albanian legislation, it is defined as the “passive ownership of shares or parts of capital”.

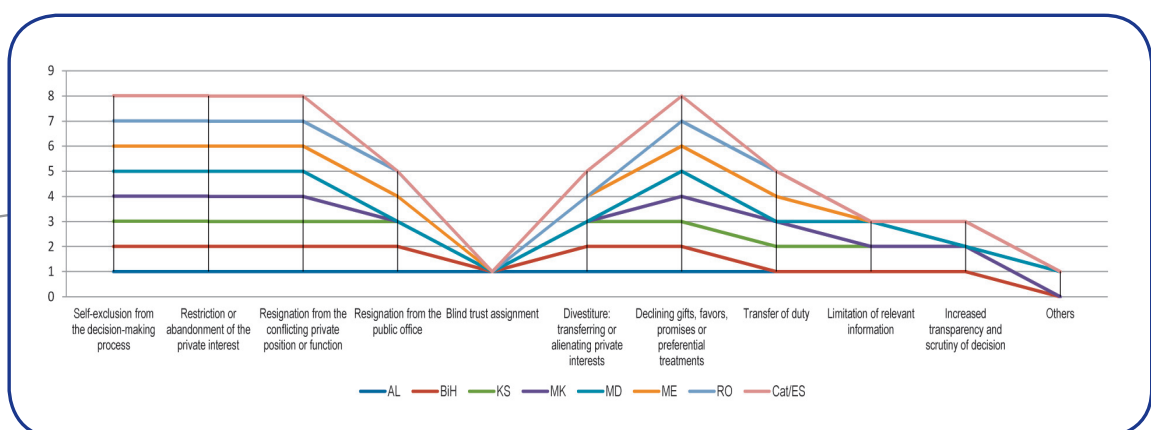
# Rules and experiences on integrity issues

*assignment of pecuniary interests* is an exceptional case applied only in Albania.



**Figure 21.1:** Conflict of interest resolution measures

Among the other measures for resolving conflict of interest situations not adopted in the regulation regime by the other countries are resignation from the public office (Spain, Macedonia and Moldova), divestiture – transferring or alienating private interests (Romania, Moldova and Macedonia), transfer of duty (Bosnia and Herzegovina, Spain and Moldova), limitation of relevant information (Romania, Bosnia and Herzegovina, Macedonia, Montenegro and Spain) and increased transparency and scrutiny of decision (Bosnia and Herzegovina, Romania, Moldova, Macedonia and Spain).



**Figure 21.2:** Conflict of interest resolution measures  
(Country by country cross tabulation)

The regulation of consequences that are generated on a certain act or contract by a decision-making under conflict of interest is a critical and vulnerable area. A decision-making which is marked by a conflict of interest situation generally provokes the **invalidity of the act or the contract**. Being fully (absolute invalidity) or partially (relative invalidity) null and void, the invalidated part or the entire act/contract do not create any juridical consequence. The nullity may arise from any cause, including the conflict of interest. Generally speaking, the integrity institutions are responsible for the prevention and detection of conflict of interest cases. They file requests to the relevant institutions for proclaiming the acts taken under conflict of interest as null and void. There is still not a very developed practice in this area because the general trend is to be focused mainly on consequences of conflict of interest situations towards the public official and related persons. On the other hand, integrity institutions need to have some more clear and explicit role in order to be legitimated to act during any administrative or judicial proceedings.

In case when conflict of interest and declaration of assets rules are breached the questioned states, with the exception of Spain, apply the fines as the most effective **administrative sanction**. The Spanish legislation excludes fines as proper sanction, while for severe violations the sanctions are restriction of pension that all public officials receive when leaving office. They are also obliged to restitute the amounts unduly received, without prejudice of further responsibilities that may arise.

In Moldova and Kosovo fines as administrative sanction are not yet adopted. In the other countries low level fines (up to 500 EUR) are applied for failure to submit wealth declarations under expected deadline (only in Macedonia the fines in such case are higher), withholding required information, failure to make self-declaration or a declaration on request, failure to issue authorization, not fulfilling the legal obligations by persons within public institutions/authorities designated with the implementation of wealth and interests legislation, etc.

The table 4 (below) gives an illustration of examples of administrative fines in different countries which are divided in 3 different levels.

# Rules and experiences on integrity issues

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Administrative sanctions	Fine level			Country
Failure to make a self-declaration or a declaration on request (case-by-case declaration of private interests) Other violations of Col law				AL
Failure to issue an authorization that authorizes the public institution to check and obtain personal data about the official, wherever they are recorded				AL
Violation of prohibitions/limitations of: <ul style="list-style-type: none"> <li>– entering into contracts with public institutions;</li> <li>– receiving income because of a particular function;</li> <li>– receiving gifts, favor, promises or preferential treatment;</li> <li>– ownership of shares or parts of capital for related persons (applicable to public officials concerned, related persons, trusted persons or managers of companies)</li> </ul>				AL
Failure to submit within the required deadline declarations on incompatibility, on private interests, on occurrence of a change in circumstances or on a private interest on a particular occasion Failure to protect the identity of the whistle-blower, to secure facts and data collected from this source and to safeguard written documents entrusted to the official				BG
See applicable similar sanctions referred in the table 3.3.				RO
Violation of resolution ways of continuing Col cases (resignation from management functions or membership in management organs, interruption of prohibited private activities, application of blind trust instruments, alienation conditions of the ownership, respect of deadlines required, resolution instruments required to be applied by superiors or superior institution in case of failure by the official, i.e. review of official duties, transferring the official to another position...)				AL



Administrative sanctions	Fine level	Country
<p>Failure to observe the prohibitions of Articles 20, 21, 22 and 27 of the law:</p> <ul style="list-style-type: none"> <li>– Failure to provide full protection and independence to persons working in the bodies for detection and eradication of corruption</li> <li>– Prohibition of exerting incompatible activities with the public function; prohibition to carry out activities causing damage to the state capital, prohibited activities or membership in bodies of public enterprises, public institutions or legal persons with state capital and in private enterprises,</li> <li>– Violation of restrictions in the co-operation with legal persons wherein the official has private interests (exclusion from any decision-making and information of the State Commission);</li> <li>– Violation of obligation of information in carrying out activities 3 years after cessation of the public office in the area of his former public competences;</li> </ul> <p>Failure to report for a property, activity, employment or other data related to i.e. restrictions in co-operation with legal persons, using state loans, managing state property, notification for the use of foreign aid, carrying out activities after cessation of office, prohibition to acquire shareholding rights, prohibition on exerting influence to employ close relatives, misuse of public procurements, obligation to declare assets, declaring changes in the assets situation;</p> <p>Failure to report any punishable act or infringement of legal provisions</p>		MK

# Rules and experiences on integrity issues

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Administrative sanctions	Fine level			Country
<p>Violation of articles 5, 6 and 8:</p> <ul style="list-style-type: none"> <li>– Prohibition of assuming incompatible positions in public companies, privatization agencies, private companies in which the respective public institution has invested during last 4 years, and private companies that contract or do business with government authorities at any level such as serving in respective boards or being an authorized person or managing such companies or agencies;</li> <li>– Prohibition from entering into contracts with any public enterprise for private services;</li> <li>– Prohibition from entering into contract for personal services with any private company that contracts or does business with the public institution where the official holds office provided that value of annual transactions exceeds 2.500 EUR.</li> </ul> <p>Violation of articles 9 and 10 (prohibition of receiving gifts, promises, preferential treatment or any other benefit)</p> <p>Violation of article 10 by a close relative to the official</p>				BiH
<p>Violation of articles 13, 14 or 16:</p> <ul style="list-style-type: none"> <li>– Obligation of any public or private enterprise that submits a bid or provide goods or services for government to disclose contributions already made to political parties for last 2 years and the list of public officials in incompatible positions within their organs for the same period;</li> <li>– Obligation of disclosure of enterprise information for those that benefit from state funds (contacts and names of managers and members of respective boards);</li> <li>– Obligation of disclosure of annual enterprise reports</li> </ul>				BiH
<p>Failure in the application of required measures by the responsible public institution against the official or any other responsible official after the invalidation of the act (disciplinary punishment, indemnification burden, compensation in favor of the institution, criminal proceedings when applicable)</p>				AL

Administrative sanctions	Fine level	Country
<ol style="list-style-type: none"> <li>1. the public official does not submit to the Commission data on person to whom he/she transferred managerial rights and evidence on transfer of managerial rights, within five days following the day of transfer of managerial rights (Article 7, paragraph 3); <i>[A warning may be issued instead of the fine.]</i></li> <li>2. the public official does not hand over the gift that he/she could not refuse nor return to the gift-giver or to the authority in which he/she performs the public function (Article 15, paragraph 3). <i>[In addition, a safeguard measure of seizure of objects shall be imposed.]</i></li> </ol> <p>Fine imposed on person whose public function terminated, if within one year from the termination of the public function he/she:</p> <ol style="list-style-type: none"> <li>1. appears before the authority where he exercised his public function in the capacity of a representative or attorney of a legal entity that has or is establishing business relations with such an authority (Article 13, point 1); <i>[In addition, a safeguard measure shall be imposed - - the prohibition on performing of duties lasting from six months up to one year.]</i></li> <li>2. represents a legal or physical entity before the authority where he exercised his public function, if as a public official he participated in decision making in that particular case (Article 13, point 2);</li> <li>3. performs the activities of management or auditing in the legal entity where, at least a year before the end of his public function, his duties were connected to supervisory or control activities (Article 13, point 3);</li> <li>4. enters into contractual relations or any other form of business cooperation with the authority where he exercised his public function, two years before termination of the public function in that management body (Article 13, point 4);</li> <li>5. uses, for the purpose of getting benefit for themselves or somebody else, or for the purpose of causing damage to another person, knowledge and information acquired in the performance of public office, unless those information and knowledge are available to the public (Article 13, point 5).</li> </ol>		ME

# Rules and experiences on integrity issues

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Administrative sanctions	Fine level	Country
<ol style="list-style-type: none"> <li>1. the public official does not report any income acquired by performing scientific, educational, cultural or sport activities, or from copyrights, patent rights, and other related intellectual and industrial property rights to the Commission (Article 6, paragraph 2);</li> <li>2. the public official, who is the owner or founder of a public company, other company, institution or any other legal entity, does not transfer his/her managerial rights in such entities to any other legal or physical entity that is not connected with him/her, within 15 days from the day of being elected, appointed or nominated to the public function, (Article 7, paragraph 1); <i>[this fine is imposed to the related person – family member of the public official as well]</i></li> <li>3. the public official does not resign from the function of the President or the member of the management body or supervisory body, executive director or member of the management in the company, within 15 days from the day of being elected, appointed or nominated to the public function (Article 8, paragraph 2);</li> <li>4. the public official does not resign from the public function, when in exercising public function accepts to perform other duty, i.e. function of the president or member of the management body or supervisory body, executive director or member of the management in the company, public company, public institution, or other legal entity with a capital share owned by the state or municipality, within 15 days from the day of starting other function or duty (Article 10);</li> <li>5. the public official concludes any contract on provision of services with a public company or any contract on provision of services with other company which is under a contractual relation with the Government or municipality i.e. which performs any activity for the Government or municipality, unless the value of such a contract is less than € 500 per year (Article 11);</li> <li>6. the public official accepts money, securities or precious metal, regardless of their value, a gift, except the protocolary and appropriate gift of small value (Article 14, paragraphs 1 and 2);</li> </ol>		ME

## CONFLICT OF INTEREST PREVENTION REGIME

Administrative sanctions	Fine level		Country
<p>7. the public official does not return a gift or equivalent money value of the gift, in case when the authority in which the public official performs public function and body competent for election and appointment of the public official confirm the opinion of the Commission that the public official accepted gifts contrary to the provisions hereof (Article 18, paragraph 3);</p> <p>8. the public official does not submit the report to the Commission in due time, or does not present accurate data in the report (Article 19, paragraphs 1 and 2).</p>			ME
<p>Failure to avoid the incompatible function</p> <p>Failure to maintain registers of the declarations by the electing or appointing authorities</p>			BG
<p>Repeated violation (the offence committed within one year from an existing similar sanction imposed)</p> <p>(see sanctions in the last line above and in the fourth line from the top)</p>			BG
<p>Violation of any provision of Chapter II (it includes prohibitions of activities during the execution of public office such as incompatible activities, representation of public authorities, prohibition of conflict of interest situations i.e. participation, voting for private interest, exerting functions, imposing sanctions, disposing state or public property, performing activities in the interest of private legal persons wherein the official has a private interest, using public information for private interests, engaging in consulting activities, commercial advertising.</p>			BG
<p>Repeated violation (the offence committed within one year from an existing similar sanction imposed)</p> <p>(See the sanction on the previous line above)</p> <p>Failure to submit the declaration of a private interest on a particular occasion</p>			BG

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Administrative sanctions	Fine level		Country
Violation of the ineligibility to occupy a public position within 1 year after a conflict of interest situation ascertained (sanction inapplicable to elected officials) Violation of prohibited incompatible activities within 1 year after vacating office Prohibition of representing natural or legal persons in any public procurement procedure involving EU funds within 1 year after vacating office			BG
Prohibition of participation in any public procurement involving EU funds against any legal person wherein the official has private interests after vacating office (has become a partner, holds interests, or is a managing director or member of a management or supervisory body)			BG

Up to 1.000 EUR

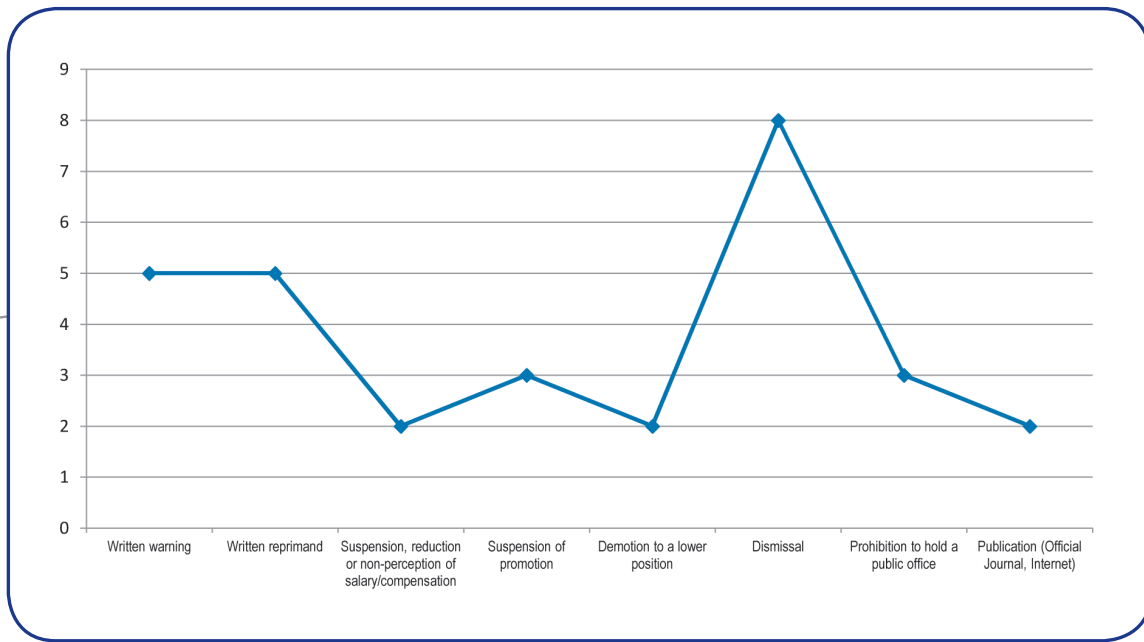
1.000 to 2.500 EUR

Beyond 2.500 EUR

**Table 4:** Conflict of interest administrative sanctions

44.4% of countries questioned share the opinion that administrative sanctions are in general effective, proportionate and dissuasive.

**Disciplinary sanctions** are applied in conformity with the laws that regulate labor relations or the status of public officials. In some cases, they are defined by respective conflict of interest laws. Among the most frequently used are: dismissal from office (Spain, Romania, Bulgaria, Moldova, Montenegro, Macedonia, Albania and Kosovo), written warning (Albania Macedonia, Moldova, Romania and Spain), written or public reprimand (Albania, Macedonia, Moldova, Romania and Spain).

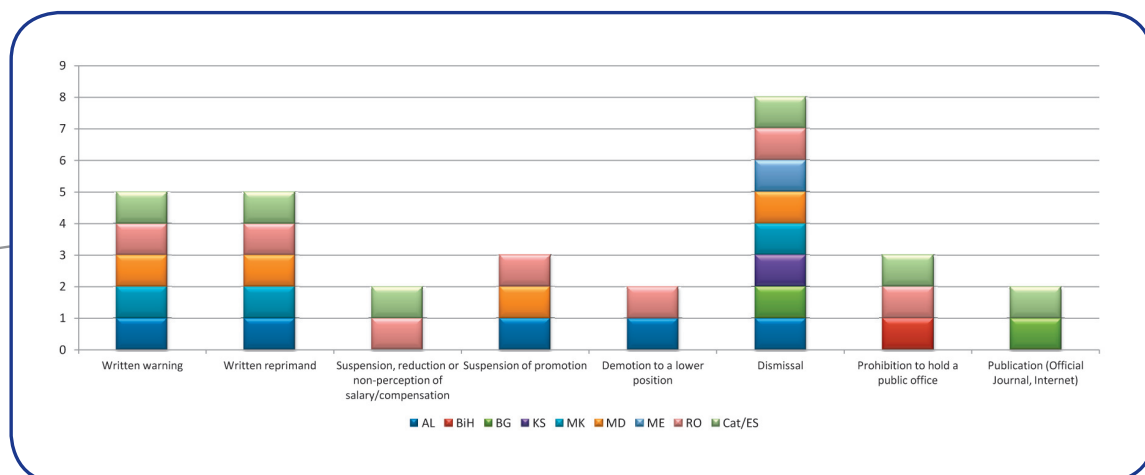


**Figure 24.1:** Disciplinary sanctions for Col cases

Other types of applicable sanctions are also: ineligibility or prohibition to hold a public office – 1 to 4 years (Bosnia and Herzegovina, Romania and Spain – no-reelection 5 to 10 years for serious cases), suspension of the right for promotion or salary increase (Albania, Moldova and Romania), restriction in receiving compensation (Spain), reduction of salary allowance (Romania), or demotion to a lower position (Albania and Romania). A specific sanction is publishing of the decision in the Spanish Official Journal, or announcement of the official's name on the web site of the relevant institution (Bulgaria).



## Rules and experiences on integrity issues



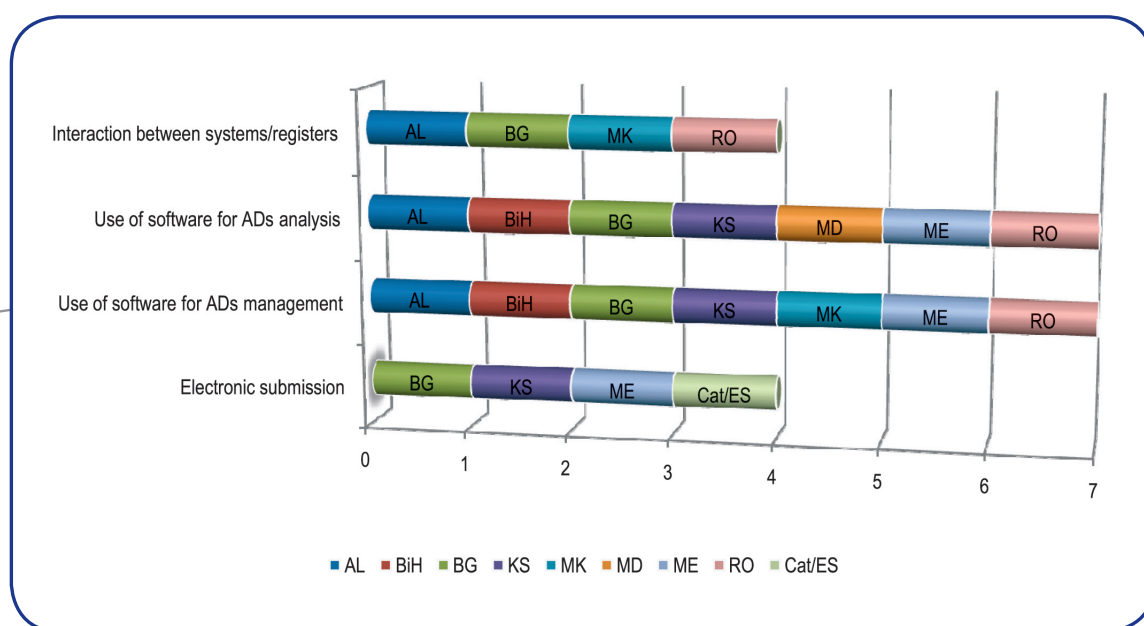
**Figure 24.2:** Disciplinary sanctions for Col cases  
(Country by country cross tabulation)

Almost all integrity institutions define disciplinary sanctions as effective and important for the conflict of interest regulation. In Albania, for all cases of conflict of interest detected by HIDAA, the institution has requested the application of disciplinary measures by the public institutions. All the cases were reported to the relevant disciplinary authority of the public institutions. There are some concerns about vulnerabilities in the efficiency of use of disciplinary measures in Romania related to the fact that 40% of all cases of incompatibilities or conflict of interests are challenged in court (a case remains in court for a period of time between 3 months and 2 years), while ANI does not have locus to appeal Disciplinary Committee's decisions in court (157 days is the medium time frame, in which the Disciplinary Committee takes an action). In Montenegro, as in other countries in general, the norm regulating the request for dismissal from public office made by CPCI/ME is currently not legally binding for the authorities. The amendments to the law envisage pecuniary sanctions for failure of the authority to act upon the CPCI/ME request.

The common trend with regard to forms of *receiving and processing asset declarations* is related to growing impact of **new technologies**. In Bulgaria, Montenegro, Spain and Kosovo the declarations may be submitted in electronic format, while the hard copy remains additionally applicable because of the official's signature. Such systems are in process to be developed and established in Albania and Romania as well. The integrity institutions are already using software for management (not in Moldova

and Spain) and analysis (without Macedonia and Spain) of declarations of wealth and/or private interests. On the other hand, some of the countries have interaction between their database and public registers managed by other institutions (except for Bosnia and Herzegovina, Moldova, Montenegro, Spain and Kosovo).

However, this area is and still will be characterized by a lot of needs, challenges and interest for further development and improvement in the future. The possession of strong and dynamic ICT infrastructure and capacities will be crucial for integrity institutions in respect to at least two main considerations: their capacities, role and results in carrying out their mission and responsibilities, and changes in proportion and intensity between subjective supports (which are inevitably marked by individual/institutional discretion and willingness) and objective ones (the increase of latter instruments will reduce discretion and could have different impact on motivations).



**Figure 25:** ICT in receiving and processing AD forms



# VI. INSTITUTIONAL CAPACITIES

### A. Integrity Institutions Background

The integrity institutions in all of the questioned countries have been **established** in the first decade of 21st century which has been characterized by huge reforms in Justice and Home Affairs area in South-Eastern Europe. Some of the bodies are profiled in conflict of interest and declaration of assets (Albanian High Inspectorate of Declaration and Audit of Assets established in 2003, Montenegrin Commission for Prevention of Conflict of Interest operational since 2004 and National Integrity Agency of Romania – 2007). Others have broader competences in the anti-corruption field (Center for Combating Economic Crimes and Corruption of Moldova – 2002, Macedonian State Commission for Prevention of Corruption – 2002, Antifraud Office of Catalonia – 2009, and Kosovo Anti-corruption Agency - 2006). The structures dealing with integrity issues are departments of the institution auditing the public funds and the electoral body respectively, e.g. in Bulgaria it is the Public Registry Department created in 2007 as part of National Audit Office and in Bosnia and Herzegovina it is the Central Election Commission created in 2001.

Country	AD/AC Laws	Col Law	Integrity Institution's Establishment
AL	2003	2005	2003
BiH	2009 *	2002	2001
BG	2000	2008 **	2007
HR	2003	2011	2005
KS	2010	2007	2006
MK	2002	2007	2002
MD	2002	2008	2002, 2010***
ME	2004	2008	2004
RO	1996	2010	2007
RS	2008	2008	2010
Cat/ES	2006	2006	2008

\* The Agency for Corruption Prevention and Co-ordination of the Fight against Corruption which is under staffing procedure has been establishment under the 2009 law.

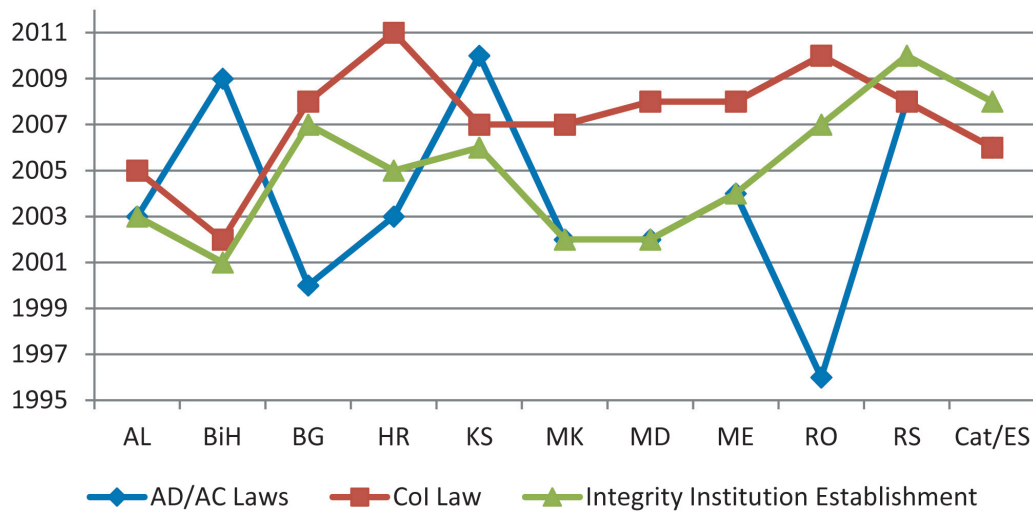
\*\* Amendments of the 2008 law on Col that intervened in 2010 provide for the establishment of the Commission for Prevention and Ascertainment of Conflict of Interest as an independent body.

\*\*\* According to the law no 180 of 28.07.2011 the National Integrity Commission will be established in the Republic of Moldova starting from March 2012. The Commission is an autonomous public authority, independent, with permanent activity, which cannot be influenced in the process of performing its duties by any public authority, person or entity.

The main objective of the Commission is to implement the mechanism of verification and control of declarations of the income and ownership by the state dignitaries, judges, prosecutors, public functionaries and certain persons vested with managerial functions and of the declarations of the personal interests. In addition, it will also implement the mechanism of solving the conflict of interests, acting according to principles of legality, impartiality, independence, short-time frame, the right to defense and good governance. The Commission's duties are set by the Law no 1264-XV from 19.07.2002 on declaration and control of the income and ownership by the state dignitaries, judges, prosecutors, public functionaries and certain persons vested with managerial functions and by the Law no. 16-XVI from 15.02.2008 on conflict of interest.

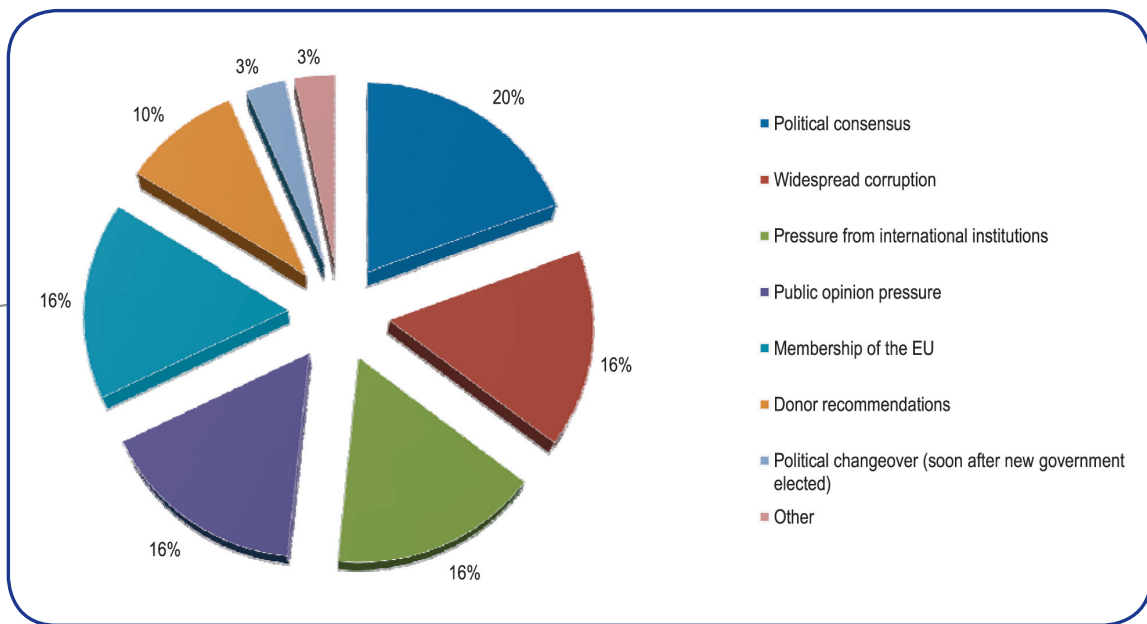
**Table 5:** Establishment of integrity institutions in comparison with adoption periods of AD, AC and Col laws (in years)

## Rules and experiences on integrity issues

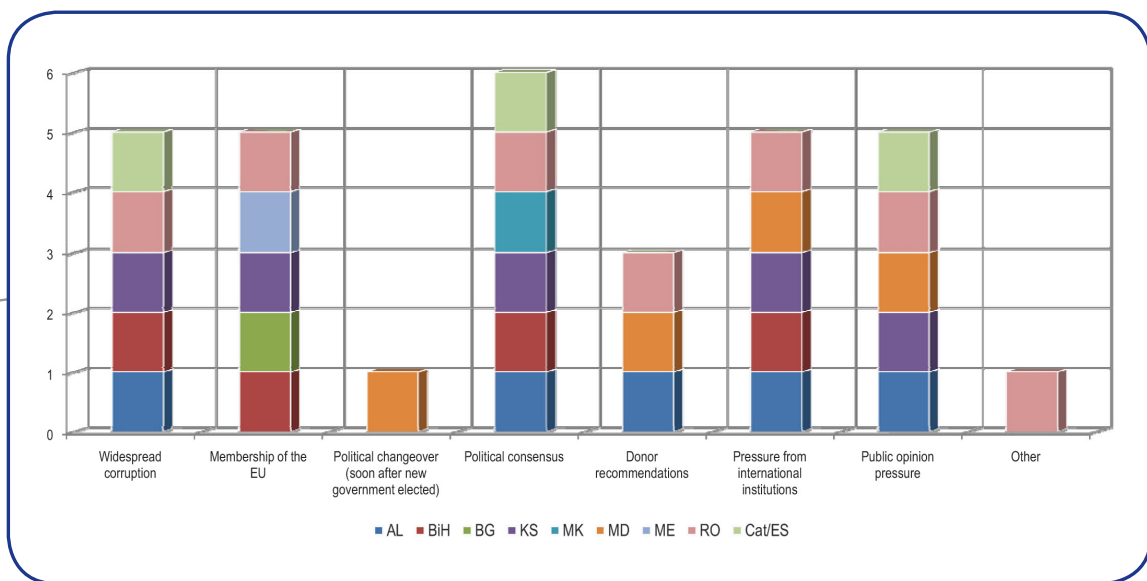


**Figure 26.1:** Legislative and institutional development trend in the integrity area

The main **driving force** for the establishment of integrity institutions have been the widespread corruption, membership in EU, donor recommendations, pressure from international partners, domestic public opinion pressure and political consensus. The creation of CCCEC in Moldova has been additionally influenced by political changeover. Membership in EU, as well as a recommendation from the Group of States against Corruption (GRECO), have been *inter alia* relevant incentives for the establishment of ANI in Romania.



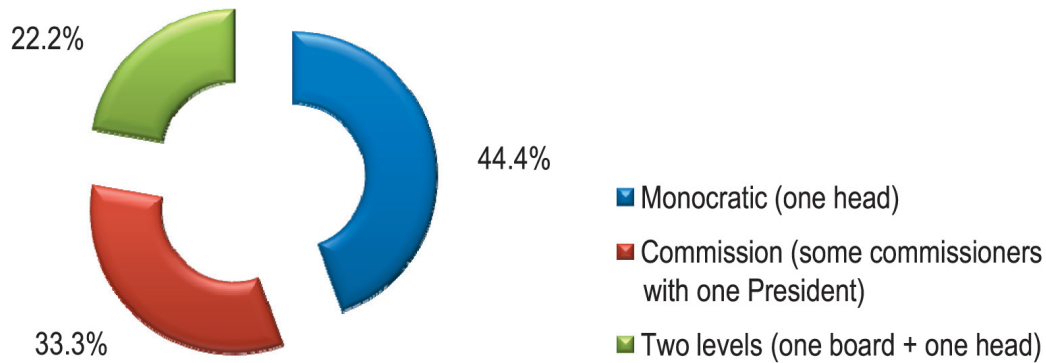
**Figure 26.2:** Reasons that influenced the creation of the institution



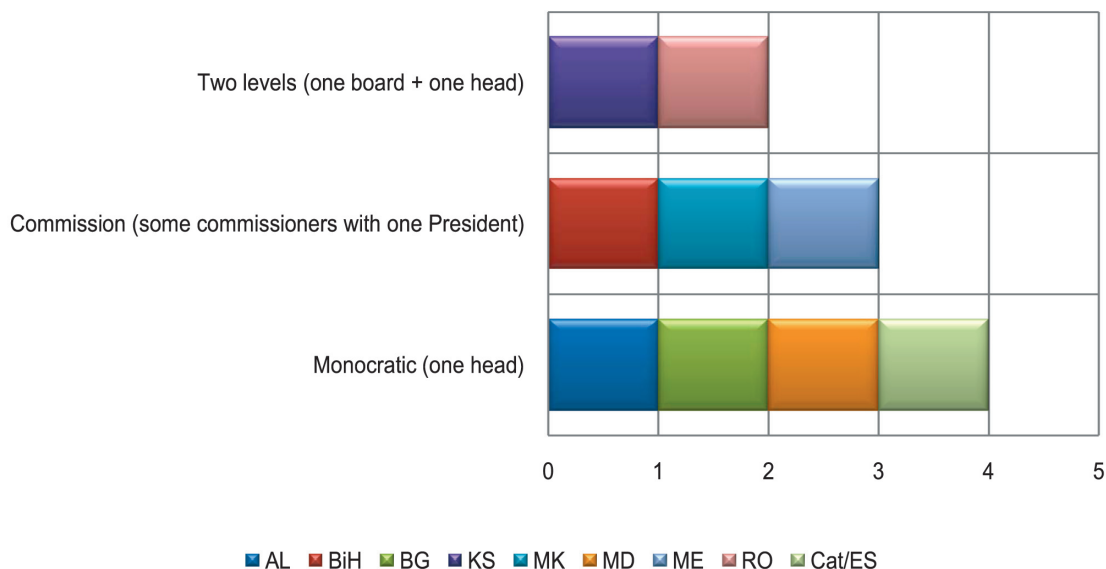
**Figure 26.3:** Reasons that influenced the creation of the institution (Country by country cross tabulation)

# Rules and experiences on integrity issues

Regarding **management** of the integrity institutions some of them are governed by collegial bodies (CEC of Bosnia and Herzegovina, SCPC of Macedonia and CPCI of Montenegro), while most of them are managed by Director (CCCAC, KAA and AFO), President (ANI and BULNAO) or Inspector General (HIDAA).



**Figure 27.1:** Categories of governing bodies



**Figure 27.2:** Governing body of the institution  
(Country by country cross tabulation)



## B. Independence and Accountability

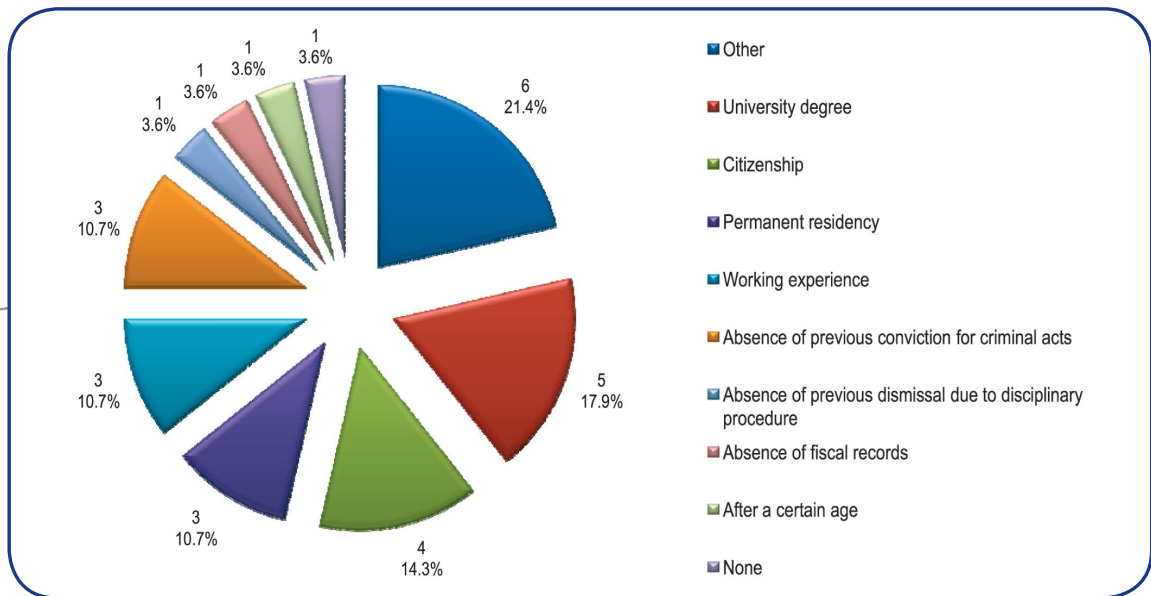
### Key issues:

- Legal status rather than sublegal or executive regulations;
- The composition of the body and/or any supervisory board;
- Rules and procedures governing the appointment, mandate and dismissal of the governing authority(ies) and other designated senior personnel;
- Autonomous and appropriate budget;
- Mechanisms to ensure the transparency and accountability of the body, such as through the ability to issue periodic public reports, reporting to/or being a subject of review by competent institutions, such as parliamentary committees, annual external audit and, where relevant, to the courts through judicial review;
- Suitable recruitment regime(s), evaluation and promotion procedures;
- Operational independence (ability to determine its or their own work agenda without interference);
- Formal paths to allow cooperation and exchange of information with other agencies;
- Respect of confidentiality requirements.

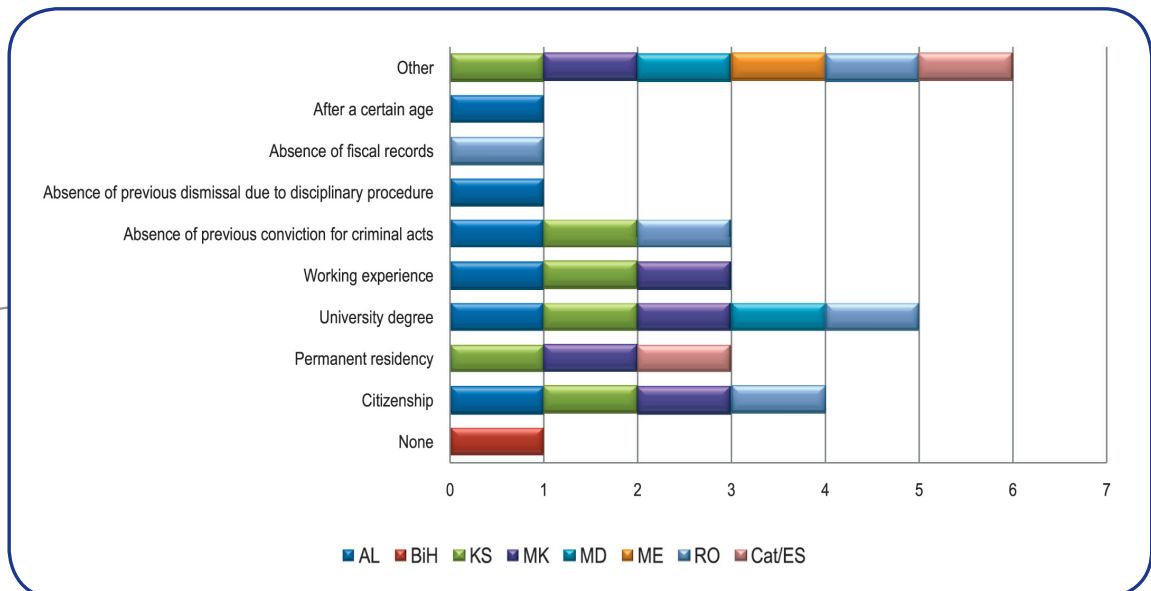
The **independence** of integrity agencies is one of the conditions for effective work. A lot of factors could influence the independence in a good or bad manner, thus reflecting on the results achieved. This issue should be tackled starting with the appointment of the leading body of the institution. In all of the questioned states the collegial managing body or the head of the agency is appointed by the Parliament. The only exception is in Moldova, where the Director of CCCEC is appointed by the Government. The selected persons should meet several preconditions, which generally are: citizenship, educational census (degree in law, finances or economics), permanent residency, working experience, pure criminal and disciplinary background, full exercise of rights, medical and psychological health, etc. There is a specific requirement in Romania, according to which the President of ANI should have not been an agent or collaborator of intelligence services

# Rules and experiences on integrity issues

before 1990, or an operative worker, including an undercover agent, informer or collaborator of the intelligence services.

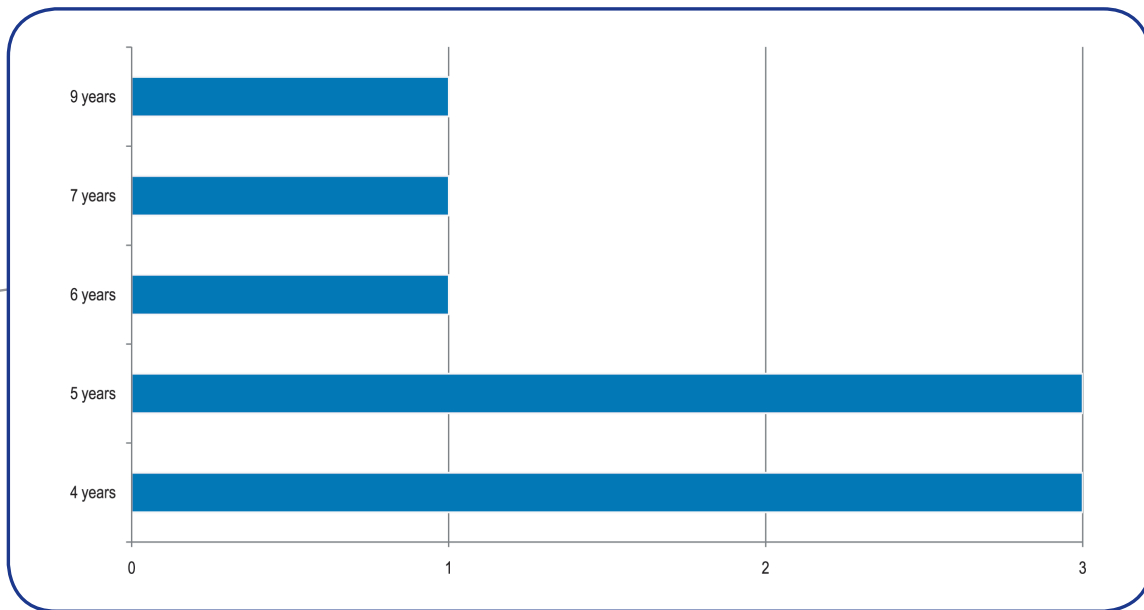


**Figure 28.1:** Selection, election/appointment criteria of the governing body of the institution



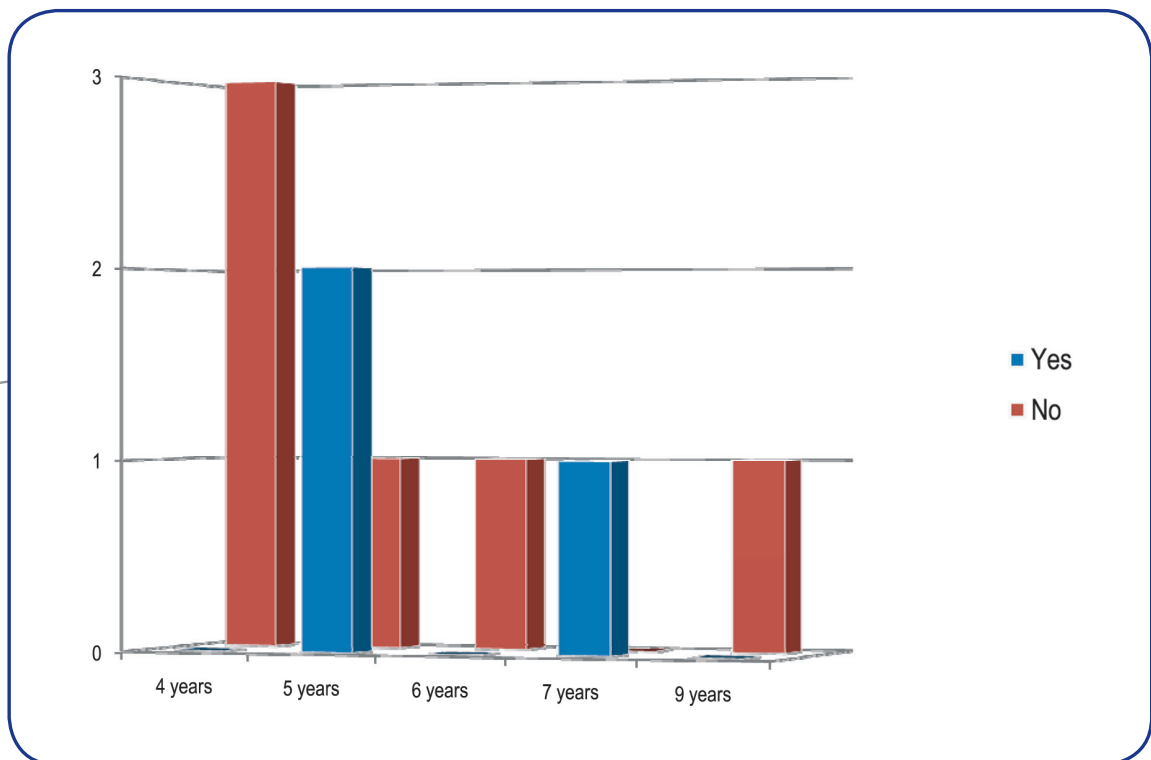
**Figure 28.2:** Selection, election/appointment criteria of the governing body of the institution (Country by country cross tabulation)

The **mandate** of the members of the governing body varies from 4 years (Romania, Moldova and Macedonia), 5 years (Albania, Montenegro and Kosovo), 6 years (Bulgaria), 7 years (Bosnia and Herzegovina), up to 9 years (Spain). It could be renewable (Albania, Bosnia and Herzegovina and Kosovo) or non-renewable (Macedonia, Moldova, Romania, Montenegro Bulgaria and Spain).



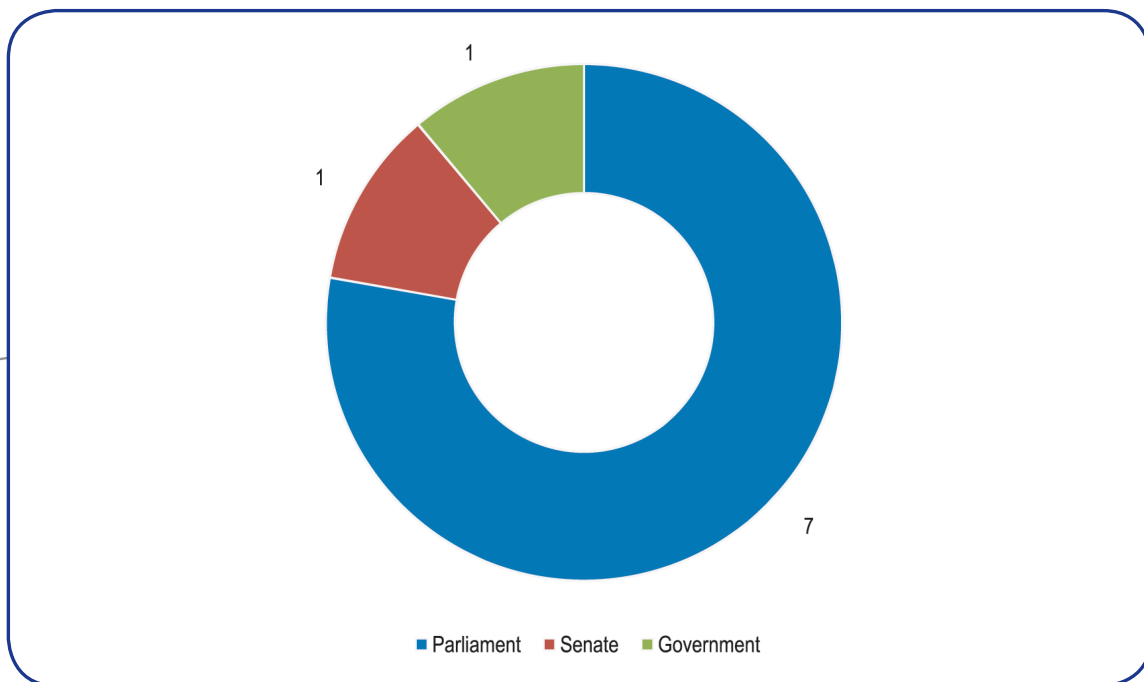
**Figure 28.3:** Mandate duration

## Rules and experiences on integrity issues



**Figure 28.4:** Mandate renewal

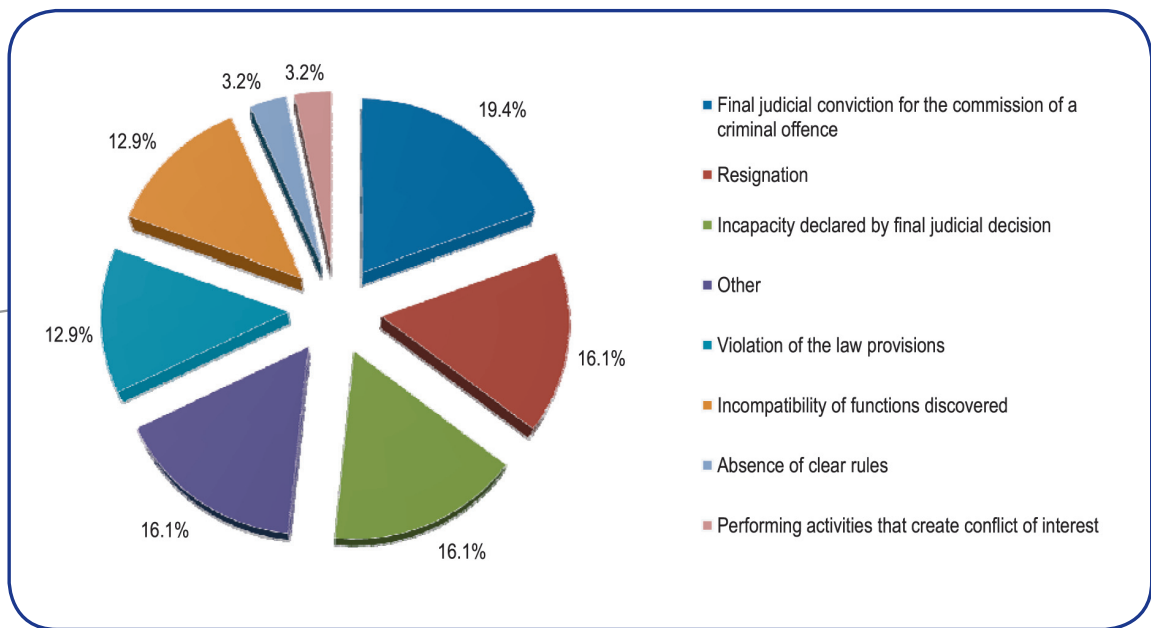
The structure of the integrity agencies is usually defined in the organic law or in additional legal act, while the selection of the staff and operational activities are prerogative of the director/president or the collegial body. The regulatory regime in questioned states contains formal provisions providing independence to integrity institutions. The common practice is that the members of the governing body could be dismissed from position before the end of their mandate by decision of the institution that designates them – the relevant National Assembly (with 3/5 majority in Spain), the Senate in Romania or in case of Moldova – the Government.



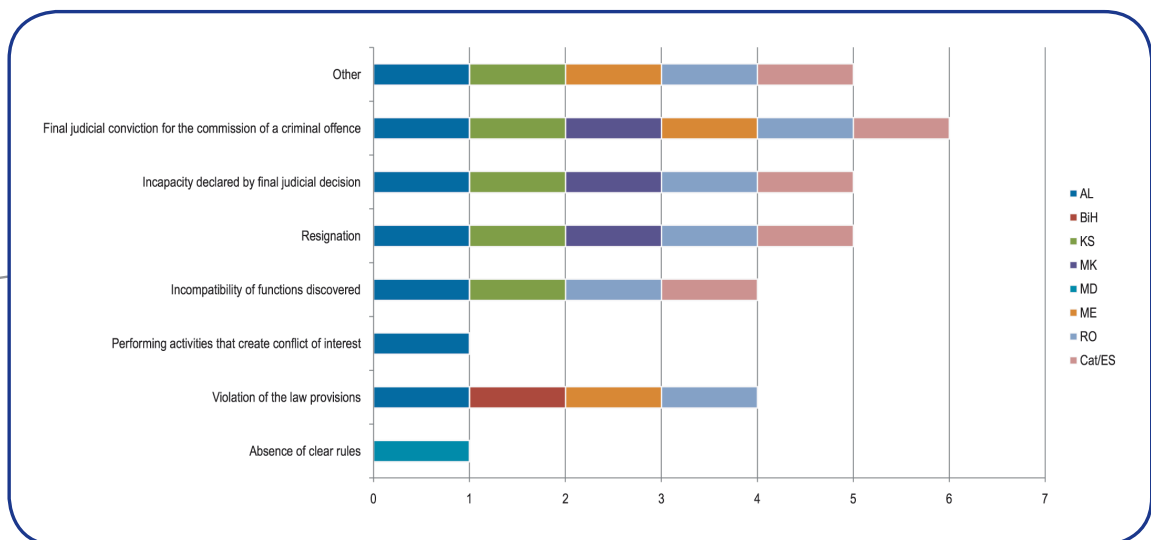
**Figure 28.5:** The competent dismissing authority

**Legal grounds for dismissal** of the governing body or head of integrity institutions include *inter alia*: the final judicial conviction for the commission of a criminal offence (AL, KS, MK, ME, RO, Cat/ES), the resignation (AL, KS, MK, RO, Cat/ES), the incapacity declared by final judicial decision (AL, KS, MK, RO, Cat/ES), the violation of the law provisions (AL, BiH, ME, RO), a discovered incompatibility of functions (AL, KS, RO, Cat/ES), the performance of an activity that creates conflict of interest (AL). Among other specific reasons for dismissal there are: the absence from work for more than 3 months (AL), failure to fulfill the legal mandate (KS), becoming a member of political party (ME), management inability (RO), gross and serious negligence in fulfilling the obligations and duties of the post (Cat/ES). In case of Moldova there is an absence of clear rules in this regard.

# Rules and experiences on integrity issues



**Figure 28.6:** Legal grounds for dismissal of the governing body/head of the institution

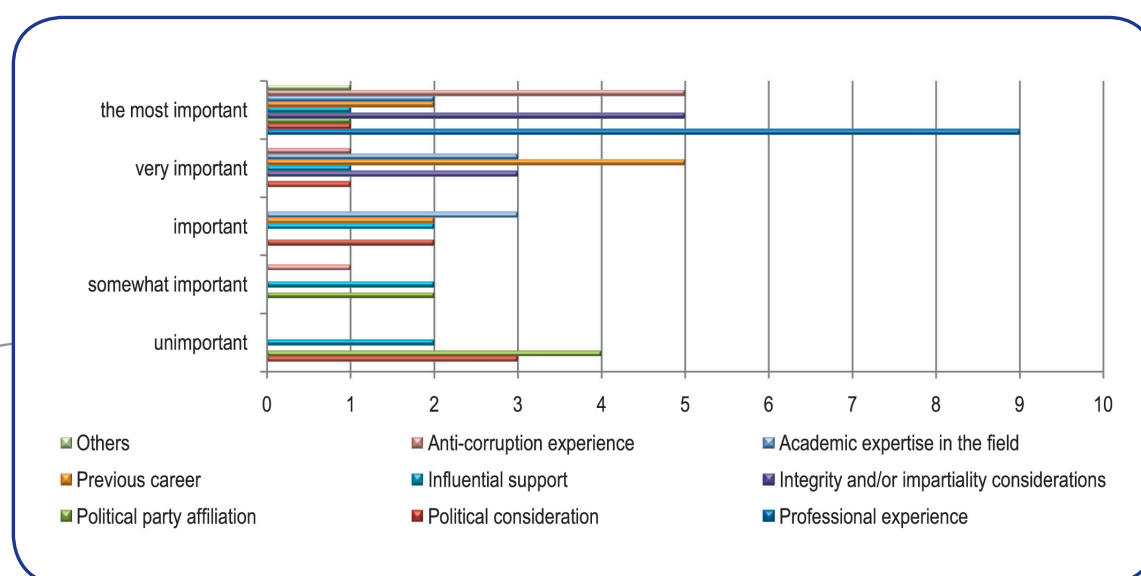


**Figure 28.7:** Legal grounds for dismissal of the governing body/head of the institution

Apart from Moldova, the integrity experts claim that the formal independence is projected in practice and that they do not seek or receive disposals related to the assessments on wealth of persons, conflict of interests situations and incompatibilities from any public authority, institution, political party or person.

With regard to financing, which is of decisive importance to independence and effectiveness, the common trend is that integrity institutions have **autonomous budget** with the exception of CEC of Bosnia and Herzegovina and CPCI of Montenegro

Among the **criteria for appointment** of governing body, members/head of institution, the integrity agencies underline as the most important professional experience in the field or similar/related experience, integrity or impartiality considerations, anti-corruption experience in public or private capacity and previous career. The academic expertise in the field is considered of mid-level importance, while influential support, political consideration and, especially, political party affiliation are recognized as not so relevant to the election process.

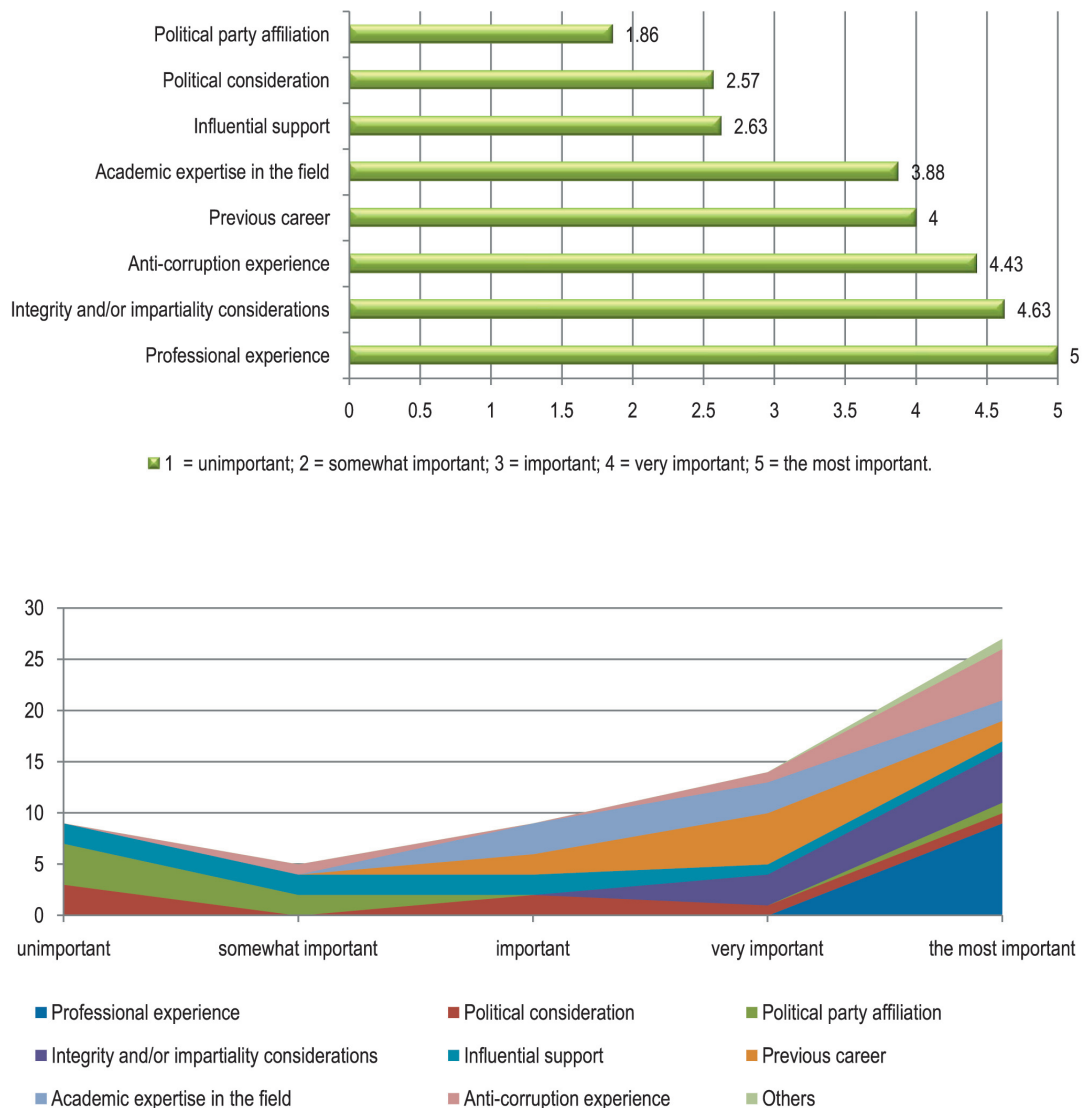


**Figure 29.1:** Criteria for the election/appointment of the governing body of the institution



# Rules and experiences on integrity issues

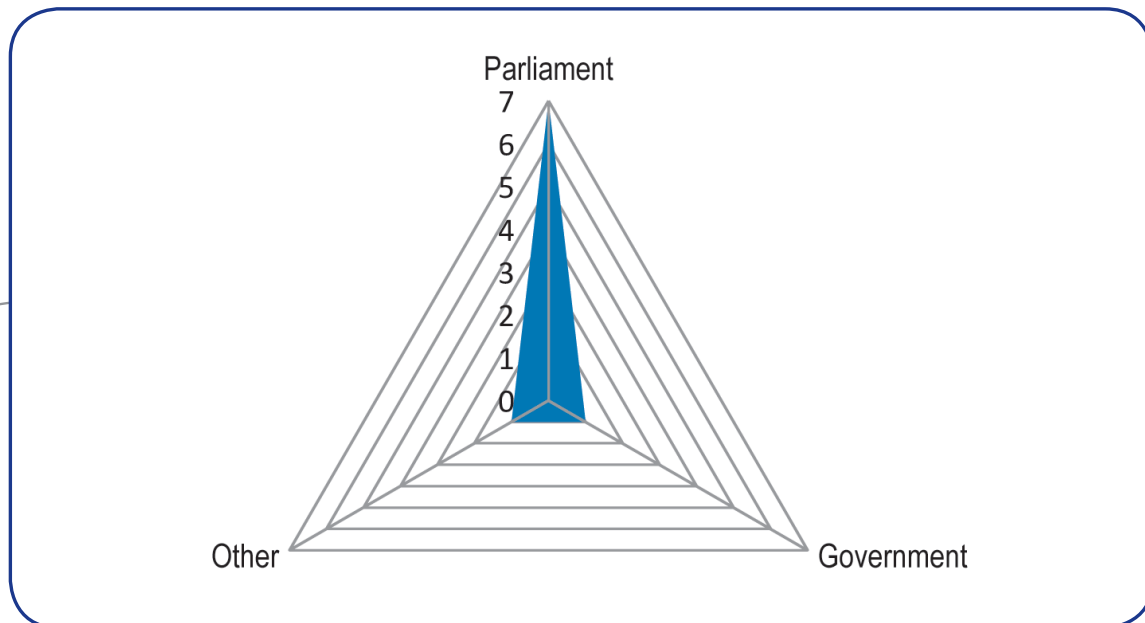
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**Figure 29.2:** Election/appointment criteria relevance using T-test method

The **accountability** of integrity institutions is the other factor, in addition to independence, decisive for their effectiveness. The general trend is that these bodies are accountable to the respective National Assemblies/Parliaments. The only exception is CCCEC, which is supervised by the Government of Moldova, in parallel to the control conducted by a special commission in the Moldavian Parliament. A similar case is detected in Romania, where the National Integrity Council – a representative body under parliamentary

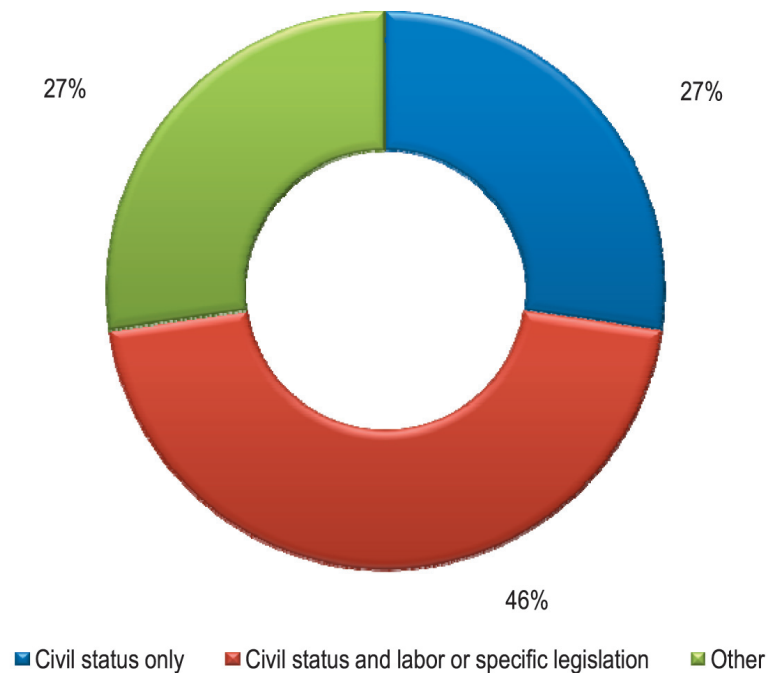
authority, exercised by the Senate with non-permanent activity, supervises ANI on management and operational level.



**Figure 30.1:** Supervision body of the institution

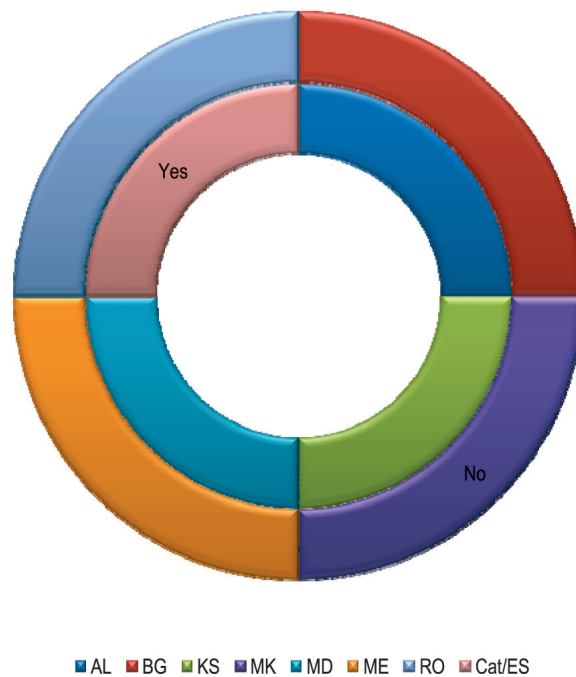
The integrity institutions must render annual **reports** to the supervising body, with the exception of Moldova, where the reports are made on quarterly basis. In Romania, in addition to the annual institution report, ANI also submits monthly progress reports to Ministry of Justice that compiles a national report to European Commission (part of Cooperation and Verification Mechanism) and President's activity quarterly reports. Also, HIDAA in Albania and ANI in Romania are obliged to issue reports whenever required by the supervising body. The reports are generally public and could be found on the institutions' official websites.

The **recruitment** of the staff is generally the main responsibility of the head/ collegial body of the institution. The personnel in the service of the integrity agencies is selected in accordance with the principles of equality, public announcement, merit and capacity. There may be temporary/permanent employees or civil servants. The applicable legislation is in the respective Civil Servants Law/Statute and Labour Code. The recruitment procedures for integrity inspectors are more demanding considering the importance of their position in the institutional hierarchy.



**Figure 30.2:** Staff recruitment regime

As far as **statistics** are concerned, they are public and also available on agencies' official websites. Regarding **power to issue mandatory regulations**, the common trend is that the integrity institutions do not have such prerogatives with the exception of CCCEC in Moldova and Anti-corruption Agency of Kosovo. The Anti-Fraud Office of Catalonia can make proposals and recommendations concerning regulatory provisions in force or under approval procedure, so that they can be sent to Parliament, to the government of Catalonia, local entities and, under the terms permitted by the legislation, to central government, Community and international institutions. Similar powers has HIDAA. It can issue recommendations for the Assembly of the Republic of Albania for the assessment of draft laws related to conflict of interests and declaration of assets, when requested by that institution. The CPCI/ME has powers to initiate amendments to other laws, especially to the ones containing clauses related to conflict of interest (Law on Public Procurements, Law on Civil Servants and Public Employees, Law on Local Government, Law on Central Bank, Law on Protection of Competition, Law on Concessions, Law on State Prosecutor, and Law on Notaries).



**Figure 30.3:** Possibility to issue mandatory regulations and ensure coherence of their implementation (Country by country cross tabulation)

## C. Mission

### Key issues (mandate and powers):

- ◆ Statutory authority (formal legislative authority);
- ◆ Possibility to publish manuals of guidance;
- ◆ Possibility to make recommendations for future legislation and consultation before any anti-corruption legislation is introduced;
- ◆ Where investigative powers are conferred, allowing the body the ability to commence an inquiry on its own initiative;
- ◆ Powers to obtain documentation, information, testimonies or other evidence;
- ◆ Exchange of information with appropriate bodies, domestically and internationally;
- ◆ Appropriate independence;

# Rules and experiences on integrity issues

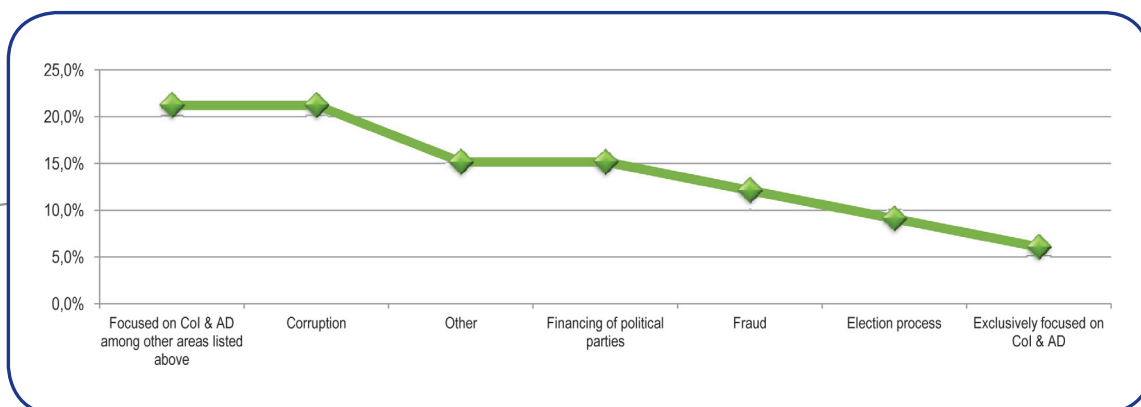
- ◆ Staff protection from civil action when carrying out their duties in good faith;
- ◆ Appropriate levels of accountability and reporting;
- ◆ Appropriate leadership;
- ◆ Appropriate level of resources.

## Functions:

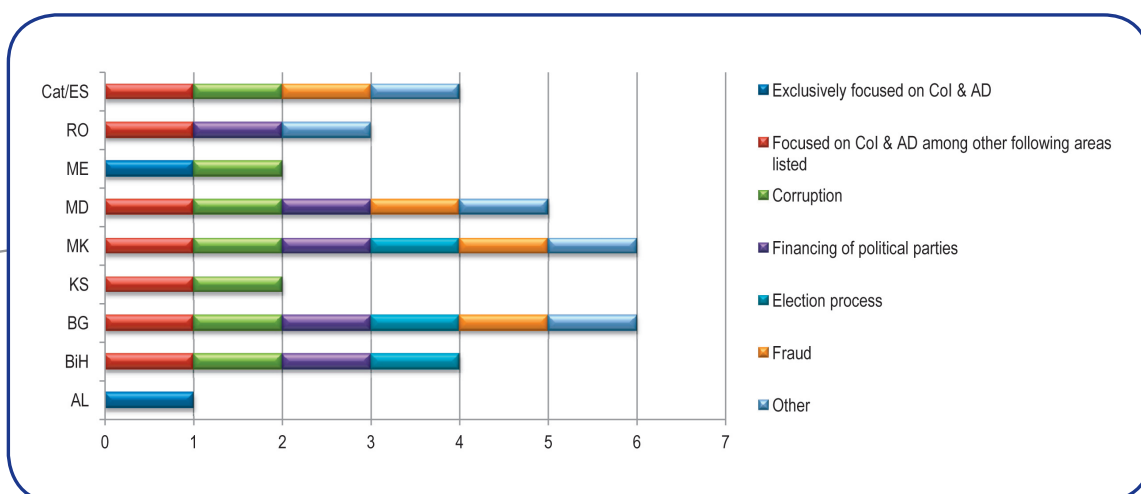
- Receiving and reviewing complaints from the public;
- Receiving audit;
- Undertaking research into legislation and administrative procedures;
- Undertaking public opinion surveys;
- Developing other sources of information;
- Ability to enter into agreements to facilitate collaboration with other agencies and with relevant international and regional organizations;
- Authority to publish their reports;
- Production of manuals of guidance, etc.

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With regard to the **mission** of the integrity agencies, the general trend is that they have a broader scope of activities than the area in focus. Only HIDAA, CPCI/ME (to some extent corruption) and ANI (financing of political parties in addition) are exclusively dealing with integrity issues – conflict of interest prevention and declaration of assets. The others have integrity field as one of the aspects of their work among other areas – corruption (CEC/BiH, BULNAO, CCCEC/MD, CPCI/ME, SCPC/MK, AFO/Cat and KAA), financing of political parties (CEC/BiH, BULNAO, SCPC/MK, CCCEC/MD and ANI/RO), election process (CEC/BiH, BULNAO, and SCPC/MK) and fraud (BULNAO, SCPC/MK, CCCEC/MD and AFO/Cat).



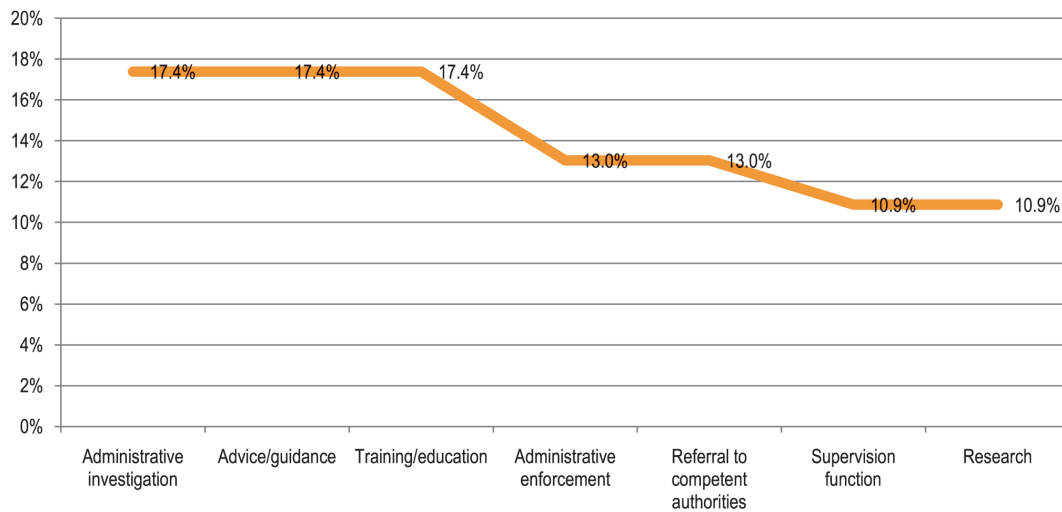
**Figure 31.1:** Mission of the institution



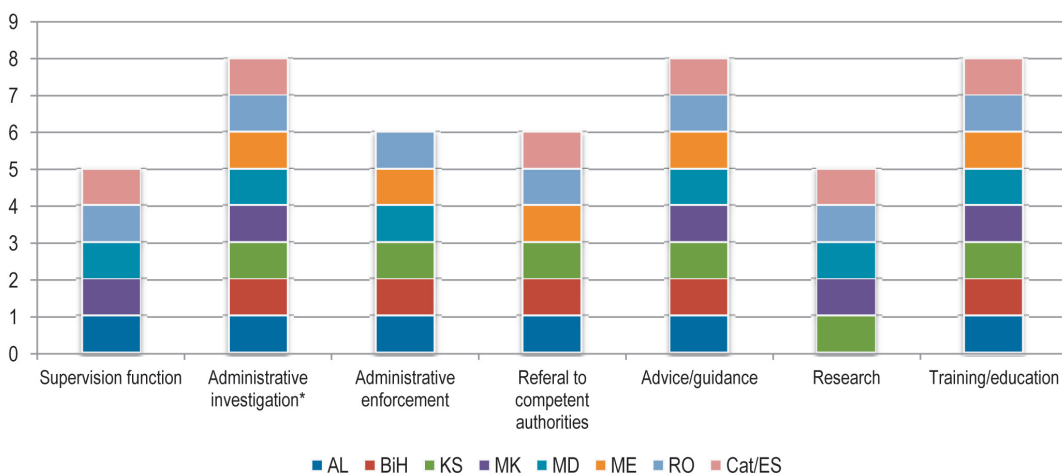
**Figure 31.2:** Mission of the institution (Country by country cross tabulation)

The scope of **functions** fulfilled by the integrity institutions is also broad and reflects their mission. They execute: supervision function towards other public institutions (except CEC/BiH, CPCI/ME and KAA); administrative investigations – initiated on own initiative, based on complaints received from individuals or initiated by request of a specific body (except ANI/RO); administrative enforcement function (except SCPC/MK and AFO/Cat); referral to competent judicial/other public authority (except SCPC/MK and CCCEC/MD); advice/guidance; research (except CEC/BiH, CPCI/ME and HIDAA/AL); and training/education programs.

# Rules and experiences on integrity issues



**Figure 32.1:** Institutional functions

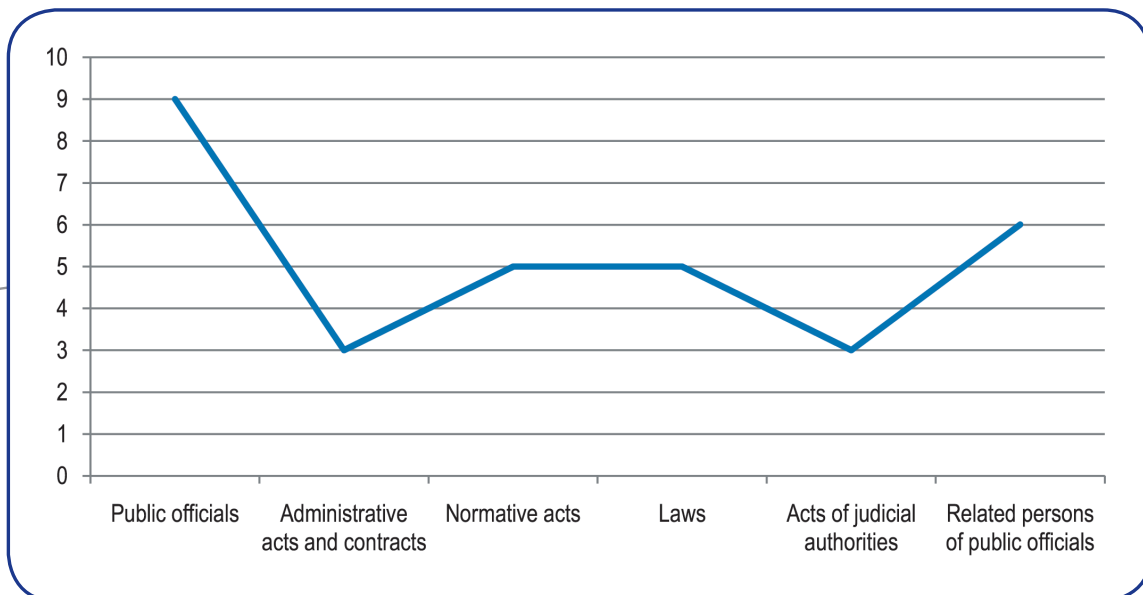


\* Almost all institutions, excepting one, carry out administrative investigation through 3 main ways: ex-officio, based on complaints received by individuals, or by a request received from a specific body.

**Figure 32.2:** Institutional functions (Country by country cross tabulation)

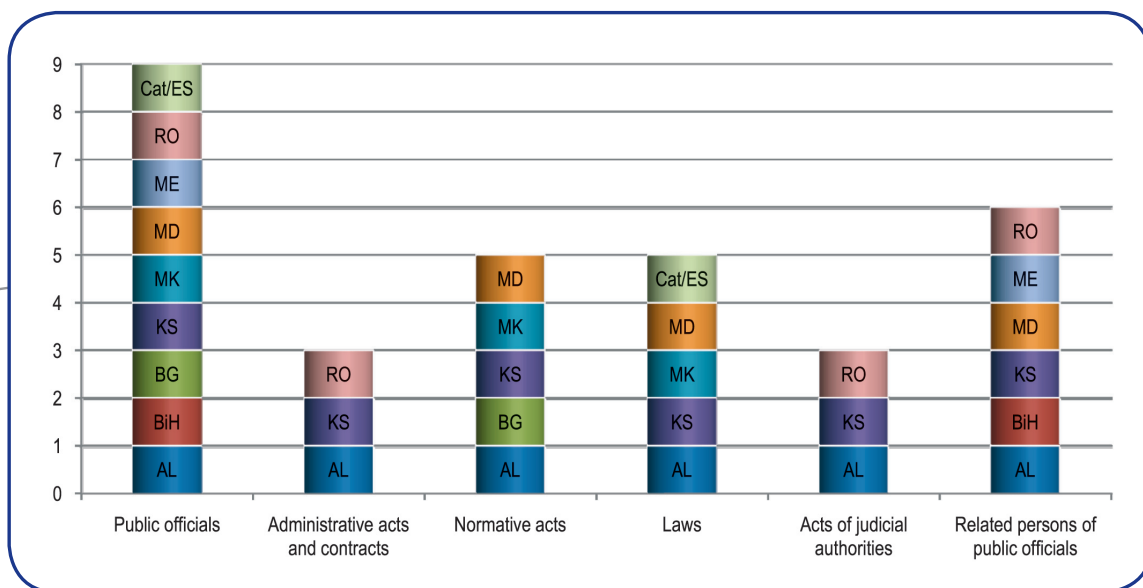


The main mission of integrity agencies is related to **public officials**. In this aspect their work is focused on determination of rules for the declaration and audit of assets, the legitimacy of the sources of their creation, financial obligations for elected persons, public employees, their families and persons related to them. Also, it should guarantee an impartial and transparent decision-making in the best possible interest of the public and of its trust in public institutions through preventing conflicts between public interests and private ones of an official in the exercise of his functions. The scope of their mission is extended to administrative acts and contracts (apart from CEC/BiH, BULNAO, CCCEC/MD, SCPC/MK, CPCI/ME and AFO/Cat), normative acts (except ANI/RO, CEC/BiH, CPCI/ME and AFO/Cat), laws (apart from CEC/BiH, BULNAO, CPCI/ME and ANI/RO), acts of judicial authorities (except CEC/BiH, BULNAO, SCPC/MK, CCCEC/MD, CPCI/ME and AFO/Cat) and related persons for the purpose of ensuring effective implementation of assets declaration rules and proper treatment of conflict of interest situations.



**Figure 33.1:** Mission's scope

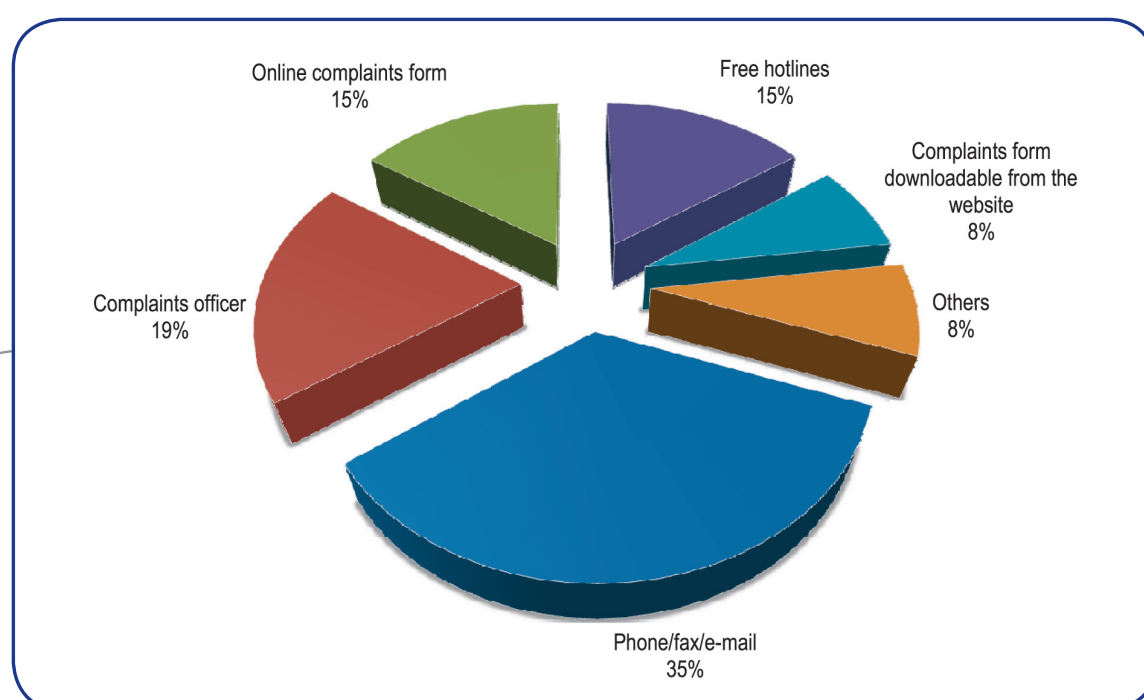
# Rules and experiences on integrity issues



**Figure 33.2:** Mission's scope (Country by country cross tabulation)

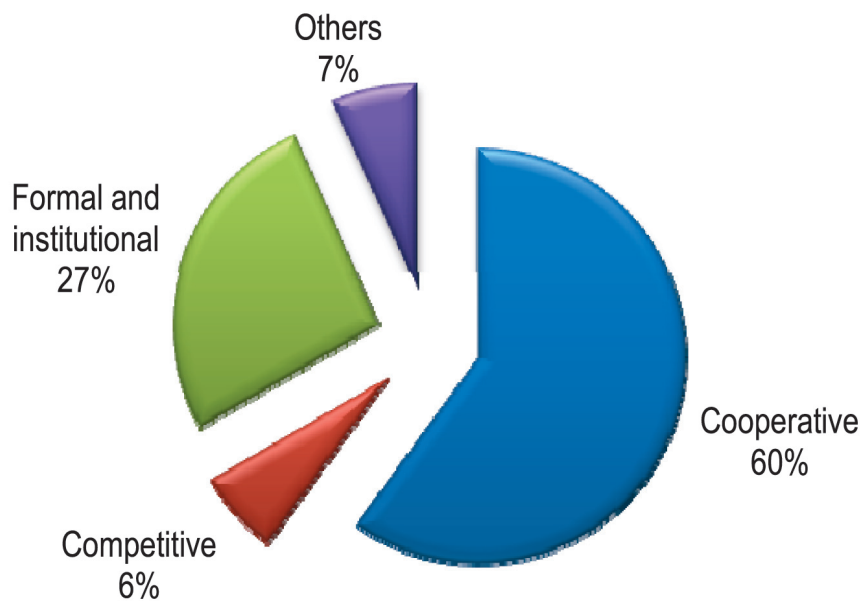
The integrity institutions have some **special powers** regarding their mandate to deal with conflict of interest and declaration of assets or regarding the broader scope of activities that they conduct under their legal prerogatives. In the first case could be taken the example of HIDAA/AL, which, in addition to its main powers also has prerogatives in: management and improvement of the polices and mechanisms of preventing and avoiding conflicts of interest; offering technical assistance for advising and supporting legal and substatutory initiatives undertaken by the public institutions for prevention of conflicts of interest; strengthening the capacities for the administration of conflicts of interests in the public institutions; monitoring, audit and assessment of the compatibility with the principles and obligations of the law of the substatutory acts and internal rules approved by public institutions for conflicts of interest; and, at specific request, counseling particular officials, superiors, and superior institutions, about specific cases of the appearance of a conflict of interests and questions of ethics related to them, as well as on the periodical registration of interests. In the second case could be given the example of CCCEC/MD, which, in addition to integrity issues, is also responsible for prevention, disclosure and investigation of financial-economic and tax offences; counteraction of corruption and protectionism; prevention and counteraction of money laundering and financing of terrorism; and anti-corruption expertise of draft legislative acts and draft normative acts of the Government in their compliance with state policy of preventing and combating corruption.

The integrity agencies have applied various **procedures** to facilitate general public **in reporting conflict of interest allegations**. Among the most frequently used are phone/fax/e-mail contact details (applied by all institutions), free hotlines (HIDAA/AL, CCCEC/MD, CPCI/ME and KAA), online complaints form (ANI/RO, CCCEC/MD, AFO/Cat and KAA), complaints officer (CEC/BiH, BULNAO, CCCEC/MD, AFO/Cat and KAA), complaints forms downloadable at the integrity institution's website (CEC/BiH and KAA). There are other procedures in place adopted by some of the agencies like submitting a standard letter (CEC/BiH and AFO/Cat), special mail boxes placed in front of the institution's headquarters (CCCEC/MD) or filling complaints in free written form (SCPC/MK).



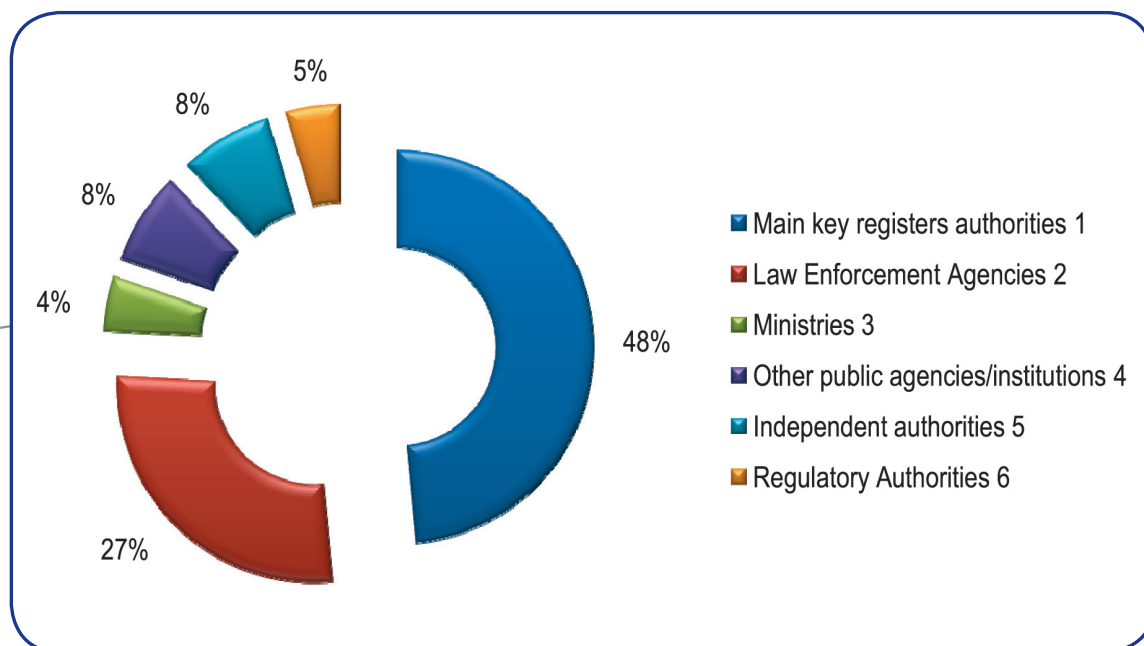
**Figure 35:** Accessible procedures for reporting Col allegations

In order to execute effectively their obligations in checking asset declarations and detecting conflict of interest situations, integrity agencies have established **working relationships with other relevant public institutions** on national level. In general, these relations are estimated as **cooperative**, only in the case of CCCEC/MD, they are also considered as competitive.



**Figure 36:** Relationship with other public institutions

In the daily communication between CEC/BiH and other public institutions there were problems emerged in relation to resistance or refusal to provide/disclose information, which is somehow explained with the complexity of the state structure. The above-mentioned working relationships are formal and institutional. In addition to possibilities offered by legislation, domestic cooperation is arranged through signing of protocols, agreements or memorandums of understanding with Movable and Immovable Registry Offices, Tax Offices, Customs, Commissions for Protection of Competition, National Banks, Money Laundering Directorates, Institutes of Public Administration, Statistical Institutes, Public Procurement Agencies, General Police Directorates, General Prosecutors' Offices, Commercial Registers, Anti-corruption Bodies, various ministries, etc.

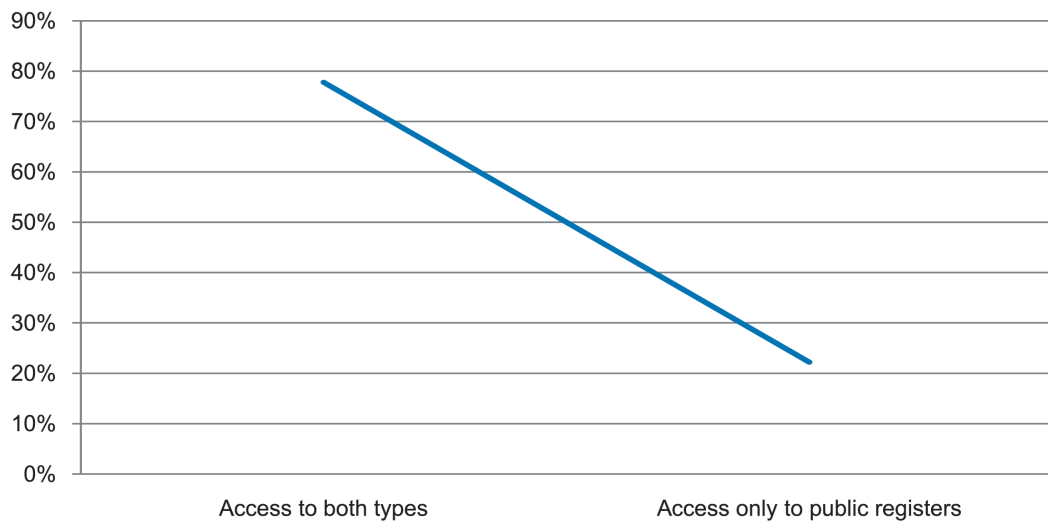


1. Cadastre, geodesy and cartography administration, National Trade Register Office, Land Registration Agency, Tax administration, Customs administration, Transportation services administration, Civil Records Register, National Bank, Statistics Office, Public Procurement/Concessions Registers
2. Police, Prosecutorial Services, FIU, High Judicial Council, State Advocate
3. Interior, Foreign Affairs, Agriculture and Food, Transportation, Public Administration, Information Technology and Communication
4. Civil service authority, maritime administration, Training Institute of Public Administration, universities
5. State Audit Office, Ombudsman, Central Electoral Commission, local authorities
6. Competition, broadcasting, securities exchange

**Figure 37:** Cooperation agreements with other domestic institutions

One of the main issues in this aspect is the authority and mechanism in place for access to the information in public/private registers, which is in principle directly regulated by legislation in almost all integrity institutions in focus. The verification of assets abroad was assessed a weak point being either not possible or hardly achieved and therefore resulting in lack of practical cases.

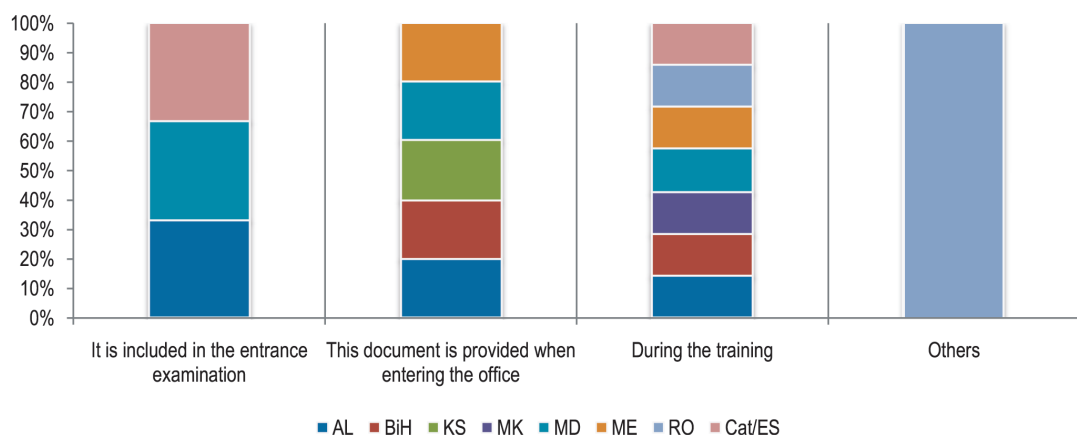
# Rules and experiences on integrity issues



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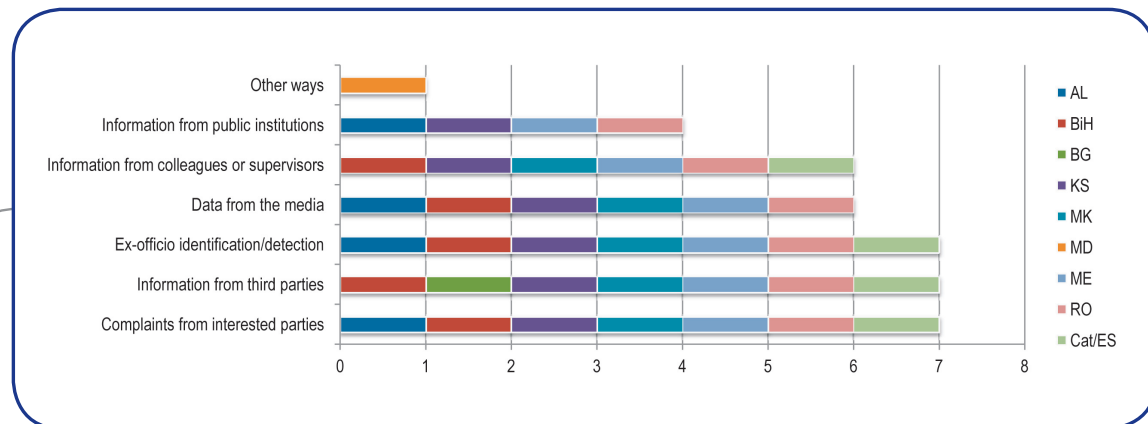
**Figure 38:** Access to public and private registers

The **conflict of interest policy** is presented to the public officials in three different stages related to their service. The policy is included in the entrance examination in some of the questioned states (Albania, Moldova and Spain). Also, it could be provided upon entering the office (Albania, Bosnia and Herzegovina, Moldova, Montenegro and Kosovo) or at a follow-up training (Albania, Romania, Bulgaria, Bosnia and Herzegovina, Moldova, Macedonia, Montenegro and Spain).



**Figure 39:** How are public officials informed on the conflict of interest policy

The practical experience of integrity agencies identifies as the most efficient **ways for detection** of conflict of interest situations complaints from interested parties, information from third parties and ex-officio identification. Also, good results are registered after notifications by public official's colleagues or supervisors and by collecting data from media, while the information from public institutions and risk analysis are still not effective or not used at all.

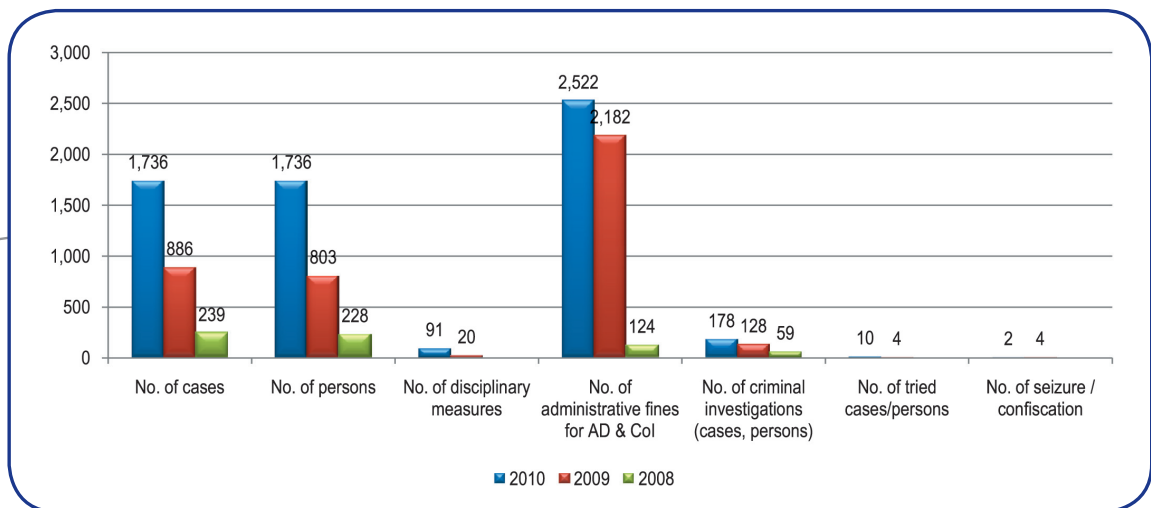


**Figure 40:** The most efficient way for identification and detection of conflict of interest situations

The **statistics** provided for the last 3 years show in general an increase of the number of cases from year to year and a frequent use of administrative sanctions (fines). The level of criminal investigations is in general limited and differences from year to year are not very significant. The number of convictions is low. Seizure and confiscation measures are used only in Romania to the extent of about 5.5 million EUR for the last 3 years.



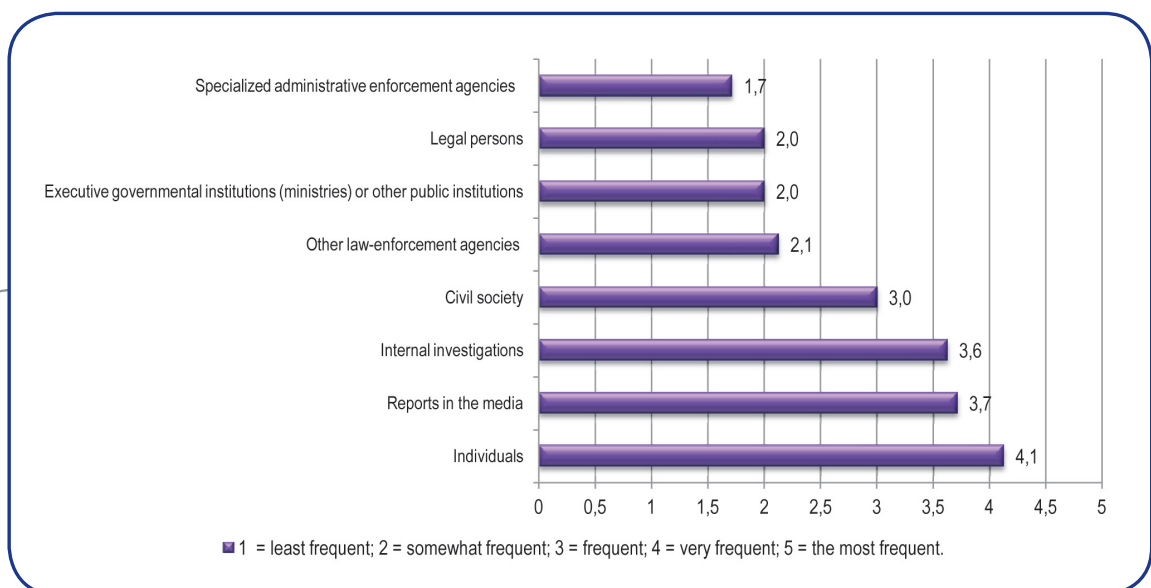
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**Figure 41:** Statistics

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The analysis of the **frequency level in receiving allegations** about legal violations in the area in focus indicates individuals and reports in the media as the most active resources, followed instantly by civil society and notifications due to internal investigations. The allegations received by specialized administrative enforcement agencies, other law-enforcement agencies, ministries or other public institutions and legal persons are of low frequency. It somehow represents the interest of the society in integrity issues.



**Figure 42:** Frequency level/sources of received allegations

## D. Resources

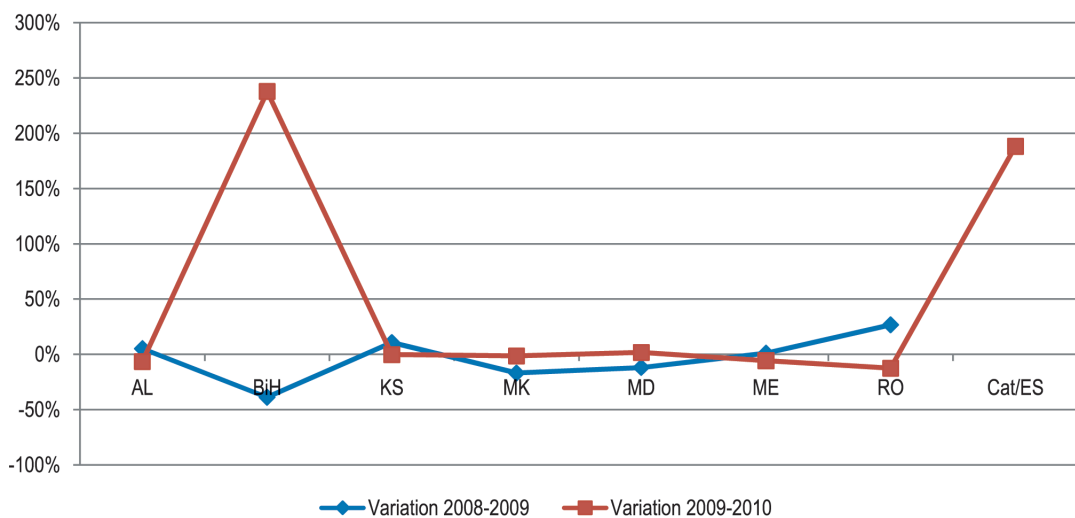
### Key issues:

- Appropriate and adequate resources
- Dedicated and distinct budget
- Freedom from legislative influence over individual items in its budget
- Submission of annual accounts
- Subject to the appropriate external audit
- Adequate staff remuneration

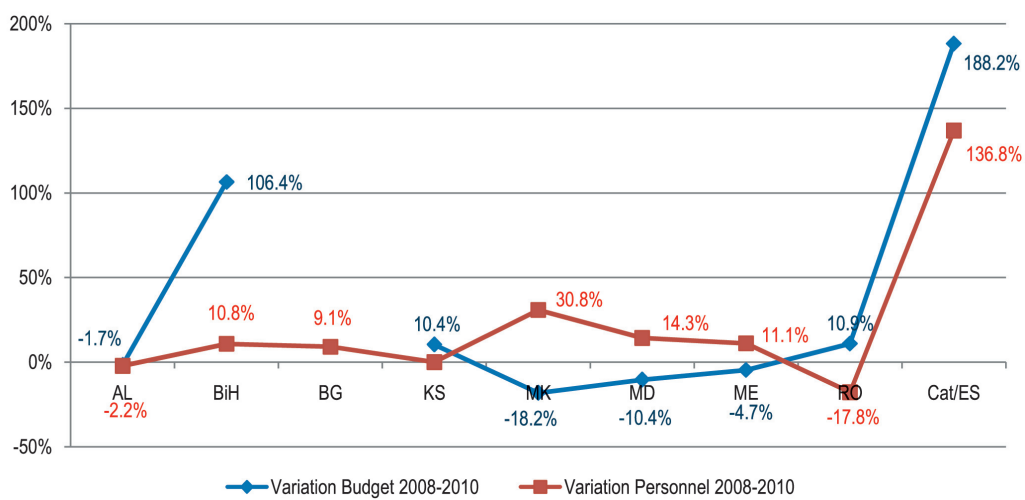
The sufficient **budgetary means** are precondition for effective functioning of integrity institutions. The common trend in the questioned agencies shows the same levels of financing for the last 3 years with a tendency for a slow drop in 2010, mainly due to the world economic crisis and its reflection on the state budgets. There are two exceptions from this trend regarding the significant increase of budgets of AFO/Cat (due to the recruitment of new staff) and CEC (due to the general elections in BiH in 2010). The current budget of integrity agencies is estimated as insufficient by HIDAA/AL, CEC/BiH, CCCEC/MD, CPCI/ME and SCPC/MK, with regard to the responsibilities of these bodies, while BULNAO, KAA and AFO/Cat declare that the funding at their disposal is sufficient for proper performance and execution of their mandate. As far as the **personnel** is concerned, the number of the employees remains at the same levels for the past 3 years in HIDAA/AL, BULNAO, CPCI/ME and KAA; it shows a slow increase in CEC/BiH, CCCEC/MD and SCPC/MK, or a huge one in AFO/Cat, while there is a certain decrease of staff in ANI/RO.

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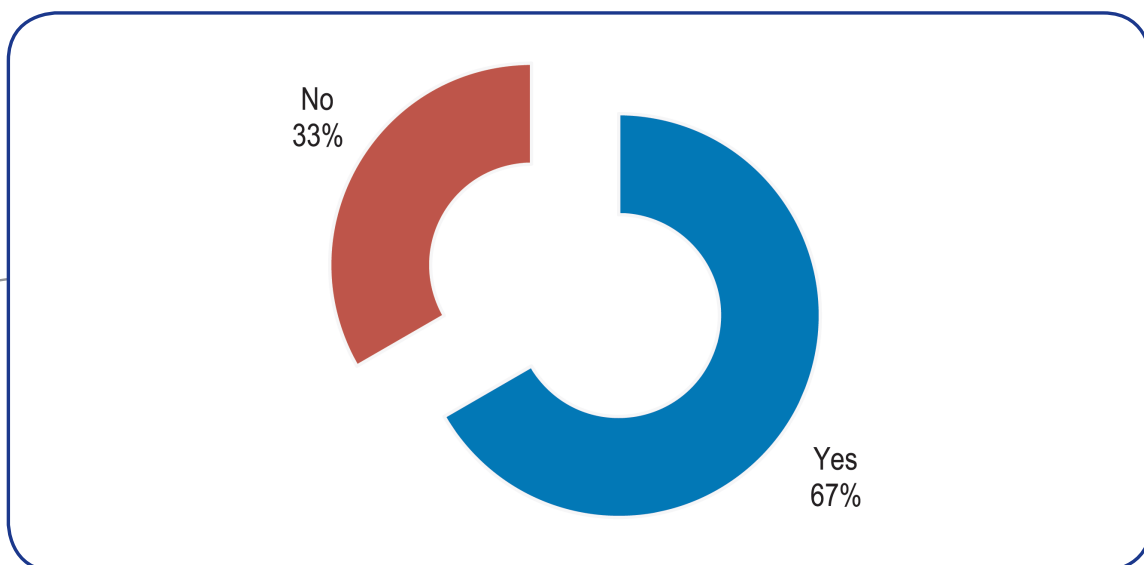


**Figure 43.1:** Budget's variations



**Figure 43.2:** Budget and Personnel's variations

The integrity agencies are still under the focus of the international **donor community**, which indicates the importance of the mission of these institutions regarding the continuing reform in the public sector. The support is provided mainly for technical assistance and technological equipment (modernization of IT systems), improvement of methodology (development/improvement of guidelines for completing assets declarations, manuals for control of statements of assets and interests and identifying states of incompatibility/conflict of interest), training seminars, etc. Among the most supportive donors there are: European Commission - Transition Facility Program and TAIEX (ANI/RO, CCCEC/MD and SCPC/MK), USA Government - US State Department and USAID (HIDAA/AL, CEC/BiH, CCCEC/MD and SCPC/MK), UNDP (CCCEC/MD and SCPC/MK), OSCE (HIDAA/AL and CEC/BiH), Council of Europe (CEC/BiH) and Netherlands (ANI/RO).

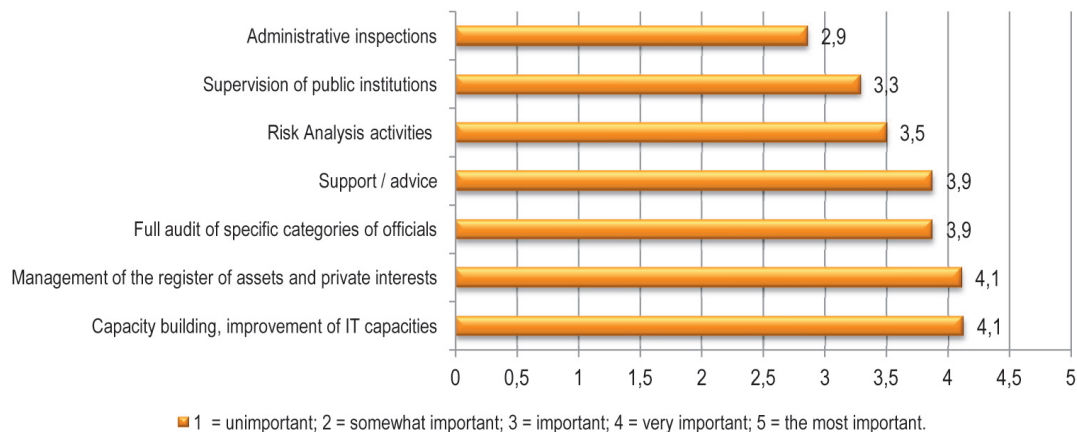


**Figure 44:** International funding/technical support during last 3 years

## E. Priorities

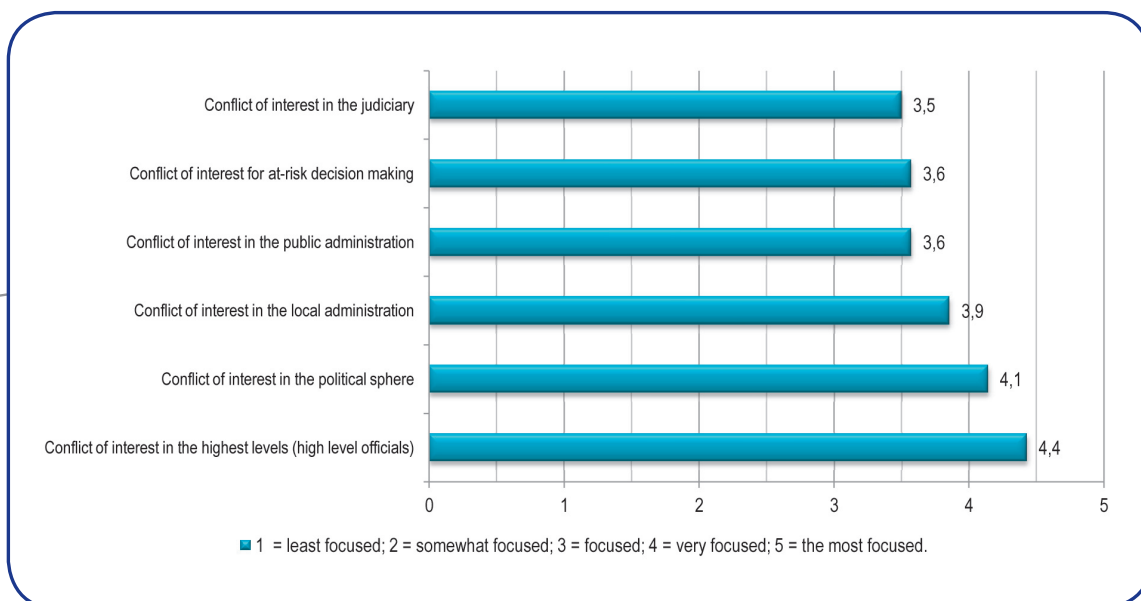
The **priorities in the activities** of integrity institutions are in direct correlation with their main tasks and responsibilities in the area of asset declarations and conflict of interests. The results of the questionnaire define as the most important aspects in their work the following: capacity building, especially the improvement of IT capacities; management of relevant registers of assets and private interests; execution of full audit for specific categories of public officials and support/advise for the implementation of integrity policies and regulations. Other aspects, like risk analysis activities, administrative inspections and supervision of public institutions are estimated as important, but to the less extent.

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**Figure 46:** Scope of activities

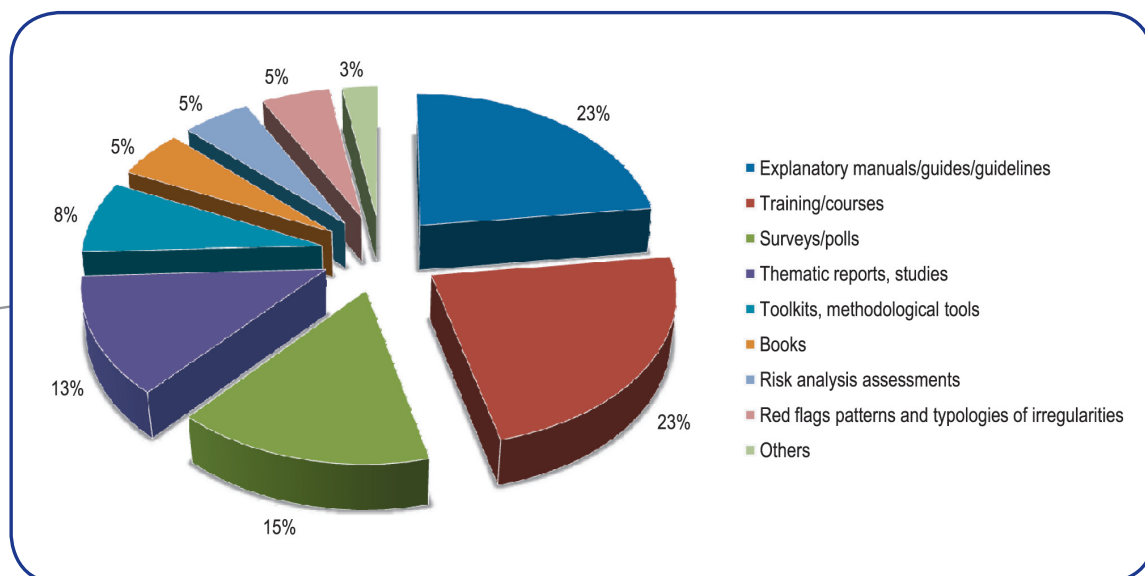
With regard to detection of conflict of interest situations, the efforts of integrity agencies are focused mostly on the political sphere and high level officials. To the less extent they are focused on public administration, local administration and at-risk decision making processes (areas like public procurement, public employment, concessions, privatization, permits/licenses/authorizations), while conflict of interest in the judiciary is marked as of lowest interest.



**Figure 47:** Top priorities areas in focus

## F. Institutional capacity building

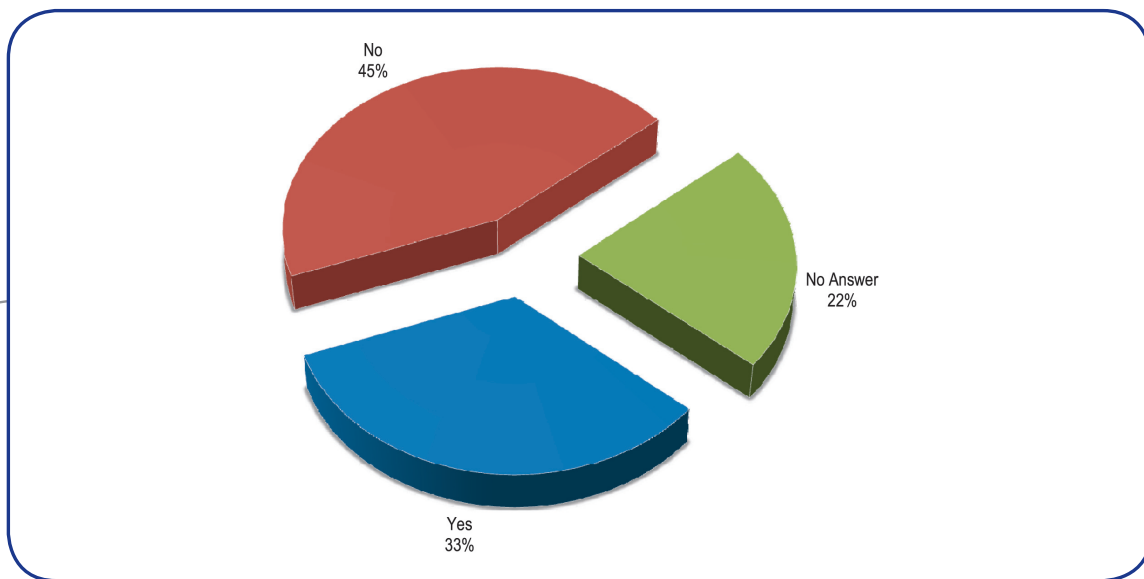
All of the questioned integrity agencies have made significant efforts to increase their ***institutional capacities***. The process of capacity building is permanent one and responds to the dynamic evolution of the regulated social relations. By doing this, the integrity bodies have in main focus the development of explanatory manuals/guides/guidelines and training courses for their practical presentation. In addition, they have worked on thematic reports and studies, toolkits and methodological tools, as well as on implementing various surveys and polls to achieve a clear idea of the current state of play on the integrity field. Other research products like books, risk analysis assessments, red flag patterns and typologies of irregularities have been of less interest to them.



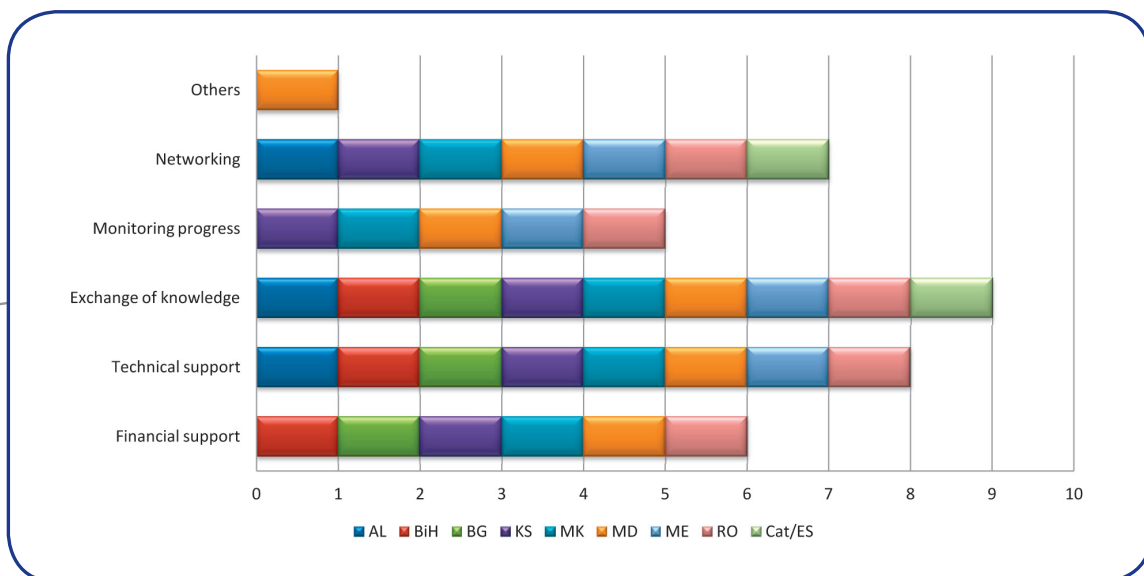
**Figure 48:** Research products already developed

## G. International co-operation

**International cooperation** is identified as one of the most important aspects of the work of public institutions deriving from the common problems, similar priorities in development and the overall globalization process, which should be tackled both, on national and international level. Although some of the integrity institutions in focus have pointed out their involvement in international networks of anti-corruption or other relevant agencies (IAACA, MONEYVAL, EGMONT Group, ACN for Central Asia and SEE, EPAC, etc.), the Integrity Experts Network remains the only international forum focused only on the area of conflict of interests and declaration of assets, providing ground for policy making, exchange of information, experience and best practices between practitioners. In addition to IEN, the integrity agencies maintain fruitful working relations through bilateral agreements (HIDAA/AL - ANI/RO, ANI/RO - CPC/SI, ANI/RO - CPCI/ME, HIDAA/AL - CPCI/ME, CEC/BiH - CPCI/ME, SCPC/MK - CPCI/ME, CPC/SI - CPCI/ME etc.), which were one of the pillars for the establishment of the Network. Making assessment of the experience achieved after attending these multilateral and bilateral forums, the questioned institutions underlined, as main benefits of international cooperation, received financial and technical support, as well as the exchange of knowledge on priority topics.



**Figure 49:** International network participation



**Figure 50:** Relevant benefits from international cooperation





### CONCLUSION

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**T**he main objective of this publication “Rules and Experiences on Integrity Issues” was to present an overall picture of the latest developments in the field of conflict of interest and declaration of assets. The data received from the questioned integrity institutions showed similar ongoing trends and achievements, rather than any major differences. This could be explained by the fact that the institutions participating in the survey represent countries being part of European family – some of them already being EU member states, while the others are on their way to Euro-Atlantic integration, thus sharing common values and standards in the entire area of Justice and Home Affairs.

The area of asset declarations and conflict of interest has mainly been developed in the last 10 years in parallel with the establishment of proper legal basis and sustainable integrity institutions. The common trends are most visible in the scope of the subjects obliged to declare their assets/private interests (mandatory for high-rank officials), type of information requested through the declaration forms, type of declarations applied, transparency and on-line publication of asset declarations, gathering and analysis of statistical data, institutions responsible for monitoring compliance, prohibitions/limitations of private interests, incompatibilities of public officials, invalidity of acts taken under conflict of interest situations, administrative and disciplinary sanctions applied, introduction of new technologies in receiving and processing asset declarations, and accountability of integrity institutions.

The general common lines of development of national integrity frameworks do not exclude some existing differences in the regulations referring mostly to the status of related persons, regime of sanctions applied in case of failure in declaration of assets and private interests, forms of conflict of interest under regulation, treatment of case-by-case declarations of private

interests and conflict of interest situations, measures for addressing and resolving general conflict of interest issues, and procedures for reporting conflict of interest allegations.

Only the future experience will show the best solutions regarding the areas of conflict of interest and declaration of assets regulation, where differences still exist, which afterwards could be applied as common standards. In these lines, IEN will remain as a forum that provides ground for presentation and exchange of best practices in the integrity field. As it was underlined by the questioned institutions, international cooperation, both on bilateral and multilateral basis, is identified as one of the most important aspects of their work, due to the common challenges the integrity institutions face and the similar priorities they have in development and the overall globalization process.

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