

# Regime for Senior Officials Working within the General State Administration

Relevant aspects



GOBIERNO  
DE ESPAÑA

MINISTERIO  
DE POLÍTICA TERRITORIAL  
Y FUNCIÓN PÚBLICA

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## Introduction

One single regulation -Act 3/2015 of 30 March, which regulates the holding of General State Administration senior positions- includes provisions relating to the appointment of senior officials, and clarifies their severance pay regime, social protection, use of human and material resources, as well as setting out incompatibilities and the prevention of conflicts of interest.

In turn, the regulation that develops the Preliminary, 2nd and 3rd sections of Act 3/2015 of 30 March, which regulates the holding of General State Administration senior positions and approved under Royal Decree 1208/2018 on 28 September, establishes that declarations, notifications and documents are to be presented electronically. Among other matters, it also expands on the procedures and contents that are aimed at ensuring senior officials' compliance with their declaration duties.

Order TFP/2/2020 of 8 January, modified by Order TFP/350/2020 of 16 April, approves the forms for making declarations, notifications and electronic documents by senior officials and determines that, from 20 October 2020, it will be mandatory to complete those declaration, notification and electronic document forms using the Subsede electronica del Portal Funciona.

Lastly, Section II of Act 19/2013 of 9 December, on transparency, access to public information and good governance, establishes the set of good governance principles to be observed by senior officials in the exercise of their duties.

This publication sets out the most relevant aspects of the General State Administration's regime for senior officials, and aims to help those officials' understanding and compliance with their duties, in accordance with applicable regulations.

## Eligibility for holding a senior position

It is the responsibility of each General Technical Secretariat to compile the following documentation in accordance with any internal procedures established for its ministerial department, as well as for any attached state, foundation and corporate public sector organisations and entities:

- Statement of compliance regarding eligibility (Form 1), in which the candidate proposed for a senior position vouches that he or she meets the requirements for being appointed as set out in Article 2 of the Act - in particular, indicating the absence of any reason that may impede the good reputation required and the veracity of the information provided.

- Curriculum vitae (Form 2), signed by the candidate who has been nominated for the senior position.

Both documents shall be examined by the body responsible for the proposed appointment prior to such appointment. After their appointment, the curriculum vitae shall be published on the website of the body, organisation or entity for which they provide their services.

The General Technical Secretariat may forward on to the Office of Conflicts of Interest (OCI) both the Statement of compliance regarding eligibility (Form 1) and the Curriculum Vitae (Form 2), in accordance with Article 28 of Act 39/2015 of 1 October, regarding the common administrative procedure for public authorities, and for the purposes of complying with Article 2 of Act 3/2015. In such case, it will not be necessary for the senior official to fill out and submit to the OCI the forms mentioned above, where they have already been sent directly by the General Technical Secretariat.

However, **within 7 days** of their appointment, the senior official must send their Criminal record certificate directly to the OCI or give their authorisation for the OCI to have direct access to any of their details recorded in the Central Prisoners Register, in accordance with Article 4.2 of the Regulation (Royal Decree 1208/2018 of 28 September). This authorisation may be given through the Subsede electronica del Portal Funciona.

Anyone holding a senior position shall be deemed to be a **person with public responsibility** for the purposes of Article 14 of Act 10/2019 of 28 April, on preventing money laundering and terrorism financing.

## Principles of good governance

Section II of Act 19/2013 of 9 December lays down the set of principles of good governance that are to be observed by senior officials in carrying out their duties, and these shall inform the interpretation and application of the penalty regime.

In particular, it provides that in carrying out their duties, senior officials shall observe the provisions of the Spanish Constitution and the rest of the legal system and shall promote respect for fundamental rights and public freedoms.

They will also align their activities with the following general principles of behaviour:

a) General principles:

1. They shall act transparently in conducting public affairs, in accordance with the principles of effectiveness, economy and efficiency, and with the aim of satisfying the general interest.
2. They shall perform their duties with a commitment to public service, and refrain from any conduct that is contrary to these principles.
3. They shall respect the principle of impartiality, so that they maintain independent judgement, unrelated to any particular interest.
4. They shall ensure equal treatment without discrimination of any kind in carrying out their duties.
5. They shall act with due diligence in carrying out their duties and encourage quality in the provision of public services.
6. They shall uphold worthy conduct and treat members of the public correctly.
7. They shall assume responsibility for their own decisions and actions and those of the organisations they direct, notwithstanding any others that may be legally required.

b) Principles for action:

1. They shall carry out their activities with full commitment and with full respect for the regulations that govern incompatibilities and conflicts of interest.
2. They shall exercise due diligence with regard to facts or information that they become aware of in the course of, or in connection with, the exercise of their duties.
3. They shall notify enforcing bodies of any irregularity of which they are aware.
4. They shall exercise the powers delegated to them under the regulations in force for the exclusive purpose for which they were granted and shall avoid any action that could endanger the public interest or the Authorities' assets.
5. They shall not become involved in situations, activities or interests that are incompatible with their duties and shall refrain from becoming involved in any matter where there is a cause that could affect their objectivity.
6. They shall not accept gifts that go beyond normal social or courtesy purposes, or accept favours or services under advantageous terms that may influence the

exercise of their duties. Any gifts that have greater institutional relevance shall be incorporated into the assets of the corresponding Public Authority.

7. They shall perform their duties transparently.
8. They shall properly manage, protect and conserve public resources. Such resources are not to be used for activities other than those permitted under applicable regulations.
9. They shall not use their position within the Administration to obtain personal or material advantages.

The aforementioned principles of good governance are supplemented by certain provisions of Act 3/2015 of 30 March.

Firstly, senior officials shall be appointed from among suitable persons - taken to mean those who meet the requirements of good repute, as well as with the appropriate training and experience, as deemed by both the proposing person and the person appointing the senior official. Hence, the obligation to submit the Statement of compliance regarding eligibility (Form 1), Curriculum vitae (Form 2) and criminal record certificate as described above. Senior officials also undertake to comply with eligibility requirements for the duration of the time that they hold the position.

Act 3/2015 of 30 March further establishes that the exercise of the senior position shall be subject to complying with the following principles, which shall inform the regulations applicable to the exercise of the duties and activities relating to senior positions; these shall be used as interpretative criteria when applying sanctioning provisions:

- a) General interest
- b) Integrity
- c) Objectivity
- d) Transparency and responsibility
- e) Austerity

It also establishes that senior management shall manage human, financial and material resources in accordance with the principles of efficiency and sustainability.

## Severance pay

Anyone who has the right shall receive monthly financial compensation, for a maximum period of **two years**.

The receipt of pensions, allowances and any other financial benefit to which the senior official may be entitled as a result of leaving their position is incompatible with any remuneration charged to the public authorities, or any of their subsidiary bodies, organisations or undertakings, or where charged to constitutional bodies or resulting from the application of tariffs, as well as any remuneration from private activity (except those provided for under Article 13.2c of Act 3/2015) with the receipt of retirement pension due to passive rights or through any public and obligatory social security system.

**Within fifteen working days** of any potential incompatibility, any senior official entitled to receive this compensatory pension must submit the document Senior officials' option upon leaving the service (Form 14) to the OCI, along with the Declaration of responsibility not to carry out paid work upon leaving the service (Form 15) through the Subsede electrónica del Portal Funciona.

Once this documentation has been received, the OCI will send the senior official any remaining documentation that needs to be completed and sent directly to the payer.

### **Specific characteristics applicable to career civil servants**

Career civil servants in special service situations (by virtue of their seniority) who, after leaving the service, opt to receive a compensatory pension, shall be placed on personal voluntary leave, and must remain on such leave for at least two continuous years, even if their compensatory pension entitlement is shorter.

In the event that a senior official does not apply to re-enter active service within one month of leaving, they will be declared to be on voluntary personal leave, and will have to remain as such for at least two continuous years, starting from the day on which they lost their senior official status.

## Preventing conflicts of interest

The senior official shall serve the general interest objectively and shall prevent his personal interests from influencing the performance of his duties.

There will be a conflict of interest when the decision to be taken may affect personal interests, with the following being considered as such:

- a) Their own interests.
- b) Family interests, including those of their spouse or person with whom they live in a similar relationship and relatives within the fourth degree of consanguinity or second degree of affinity.
- c) The interests of anyone with whom they have a pending litigation issue.
- d) The interests of anyone with whom they have a close friendship or manifest enmity.
- e) The interests of legal or private entities to which the senior official has been linked as part of an employment or professional relationship of any kind in the two years prior to the appointment.
- f) Those of legal or private entities to which the family members referred to in (b) above are linked as part of an employment or professional relationship of any kind, where such relationship involves the exercise of managerial, advisory or administrative functions.

## Abstaining

In the event that a senior officer falls within a conflict of interest as defined in the previous paragraph, they are required to abstain.

The senior official shall abstain in writing, notifying their immediate superior or body that appointed them and, within **one month**, this shall be reported by the senior official to the OCI's Register of Senior Officials' Activities, using the document Abstaining from administrative proceedings (Form 8) through the Subsede electrónica del Portal Funciona.



Abstaining during a collegiate organisation's meeting shall be recorded in the minutes and reported by the collegiate organisation's secretary to the OCI's Register of Senior Officials' Activities using document Abstaining from collegiate organisations (Form 9).

## Exclusive commitment

The senior officer shall carry out his duties on a full-time basis and shall not combine working activity with any other position, office, representation, profession or activity, public or private, on his own account or on behalf of others, whether alone or via substitution or proxy. The senior official may not therefore receive any other public or private remuneration.

## Exceptions to the exclusive commitment principle

The exercise of a senior official's duties shall be compatible only with the following activities, which must in any case be reported to the Office of Conflicts of Interest:

### **Public activities compatible with the exercise of high office:**

- Carrying out their institutional duties, those for which they are commissioned by the government, and those to which they are appointed based on their qualifications.
- Conduct temporary missions of representation to other States, or with international organisations or conferences.
- The duties of chairing the companies referred to in Article 166.2 of Act 33/2003 of 3 November regarding Public Authorities Assets, where the nature of the company's objectives is related to the powers legally attributed to the senior officer, as well as representing the General State Administration within collegiate organisations, managers or boards of directors of organisations or companies with public capital, or organisations governed by public law.

Being a member of more than two boards of directors of such bodies, undertakings, companies or entities, or being chairman of the companies referred to in the previous paragraph, shall require authorisation by the Council of Ministers.

In these situations, senior officials may not receive any remuneration except for travel, accommodation and transfer expenses in accordance with current regulations. Any accrued sum of any kind that should not be received shall be paid directly by the organisation, entity or company to the Treasury.

- Carrying out ordinary research activities specific to the organisation or institution in which they exercise their duties, without receiving remuneration for them. This exception covers production and creative tasks that are literary, artistic, scientific or technical in nature and publications resulting therefrom.
- Members of the government and Secretaries of State may make their activity compatible with that of a Member of Parliament or Senator of the Spanish Parliament under the terms of Spain's General Electoral System Act.

**Public activities compatible with holding high office:**

The following private activities may be carried out by senior officials, provided that doing so does not compromise the senior official's impartiality or independence when carrying out their duties:

- Activities involving simply administering personal or family wealth under the limits established by law.
- Creative and production tasks that are literary, artistic, scientific or technical in nature and publications resulting therefrom, as well as occasional collaboration on an exceptional basis and speaking at conferences, seminars, working sessions, lectures or courses of a professional nature, provided that these are not the result of an employment or service relationship and do not detract in any way from the strict compliance of their duties.
- Taking part in non-profit cultural or charitable organisations and foundations, provided that they do not receive remuneration or income for such participation greater than that authorised under Article 3.5 of Act 49/2002 of 23 December, which regulates the tax regime for non-profit entities and tax incentives for patronage.

## Activities that are incompatible with holding high office

In view of the principle of exclusive commitment, senior officers may not undertake, either on their own behalf or through substitution or proxy, any other position, office, representation, profession or activity, public or private, on their own behalf or that of others, which are not exempted in accordance with the previous paragraph.

Consequently, among others, the following activities may not be carried out by active senior officers:

- Teaching in public or private universities. Directing doctoral theses or being members of thesis evaluation panels.
- Being a member of selection bodies for public employees or for civil service examination trainers.
- Holding positions in private companies (chair, director, administrator, representative etc).

## Asset limitations

Senior officials may not hold, either directly or indirectly, more than ten percent of the shares in any company that has agreements or contracts of any kind with the state, autonomous region or local public sector, or is in receipt of subsidies from any public administration.

This prohibition shall also be applicable if the company in which they participate is a subcontractor to another company that has contracts of any nature with the state, autonomous region or local public sector, where such subcontracting has taken place with the successful bidder of the contract with the Administration in which the senior official provides services and in relation to the subject-matter of that contract.

In the event that the situation described above occurs, the senior official must notify the Office of Conflicts of Interest, which must describe the measures to be taken to ensure objectivity in public behaviour.

In the case of public limited companies with more than 600,000 euros of subscribed share capital, the prohibition will affect equity stakes that are below ten percent but which represent a position in the company's share capital that may act as a relevant determinant of its actions.

Likewise, where a senior officer has any holding under the terms referred to in the previous paragraphs, **within a period of three months** from the day following their appointment, they shall be required to dispose of the holdings and the rights attached thereto or transfer them to an independent third party for the period of time that they hold that office. Where the holding was acquired by hereditary succession or other gratuitous title during the exercise of the office, the sale or transfer must take place within three months of acquisition.

Such sale or transfer, as well as the identification of the independent third party, is to be declared to the Register of Activities and the Register of Assets and Property Rights and must have received a favourable report in advance from the Office of Conflicts of Interest.

## Controlling and managing securities and financial assets

Senior officers must engage a firm authorised to provide investment services for managing and administering shares or debt securities accepted for trading on regulated markets or under multilateral trading systems, derivatives on such shares, shares in any company that has announced its decision to apply for acceptance on to trading and shares in collective investment undertakings. This requirement shall not apply where the amount of said securities and financial instruments is not greater than 100,000 euros, calculated according to the value for the purposes of Capital Gains Tax. This engagement is to remain in place for the period of time that the senior position is held.

The provisions of the preceding paragraph shall not apply where the senior officer's securities or financial assets holdings are units in collective investment undertakings and where they do not hold a majority position; or, in the case of securities of different entities, where the senior officer does not carry out any act of disposal at his own initiative and merely receives dividends, interest payments or equivalent remuneration in kind, or makes use of exchange, conversion or public takeover bids.

A copy of the signed contracts shall be delivered to the Office of Conflicts of Interest to be recorded in the Registers, as well as to the National Securities Market Commission.

## Limitations on exercising private activities two years after leaving the service

For **two years** following the date of leaving the service, senior officials may not provide services to private entities that have been affected by decisions in which they participated. The prohibition also extends to entities belonging to the same corporate group.

A senior official shall be deemed to participate in taking a decision affecting an entity in the following circumstances:

- a) Where the senior officer, or his superior based on his proposal or the heads of its subsidiary bodies due to delegation or substitution, signs a compulsory report, administrative decision or equivalent deed subject to private law in relation to the company or entity in question.
- b) Where by means of vote or presenting the relevant proposal, they took part in collegiate organisations' sessions during which the decision relating to the company or entity was taken.

In addition, the senior official of a regulatory or supervisory body or organisation may not provide services to private entities subject to its supervision or regulation whilst they held the senior position, for **two years** after leaving the position.

No incompatibility shall apply to senior officials who, prior to occupying their public position, had worked professionally in private companies and to which they wished to return, provided that the activity they will be carrying out is in jobs that are not directly related to the competences of the public post and provided they are not in a position to take decisions that affect the public post.

For a period of **two years**, senior officials may not, either directly or via entities in which they hold a direct or indirect interest of more than ten percent, enter into technical assistance, service or similar contracts with the public administration in which they have provided services - either directly or via contractors or subcontractors, where these are directly related to the senior official's duties. The entities for whom they provide services must adopt procedures to prevent and detect situations of conflict of interest during the period indicated.

The provisions in the previous paragraphs shall also apply to senior officials who return to public service and are granted compatibility to provide paid services of a private nature.

Among other activities aimed at verifying the veracity of declarations regarding activities upon leaving the service, the OCI shall on a quarterly basis examine information regarding registration within the Social Security Department General Treasury's social security schemes.

## Prior notice of commencing new activities for two years after leaving the service

For **two years** following the date of leaving the service, senior officials are to notify the OCI **prior** to commencing any activities. The notification shall cover at least the following points:

- The private activity that is to be carried out, including specification of whether the activity will be carried out on a self-employed or employed basis. In the latter case, the details identifying the company or organisation he is going to work with shall be provided, and details of its business purpose.
- Express declaration that the private activity is not directly related to the competencies of the position held; to this effect, and in accordance with the provisions of Article 15 of Act 3/2015.

For this purpose, the senior official shall send the OCI the Declaration of activities upon leaving the service (Form 5) or the abbreviated document Notification of any modification to the declaration of activities upon leaving the service (Form 5. Modification) through the Subsele electrónica del Portal Funciona. This declaration or notification shall be accompanied by any supporting documentation that the person in question deems appropriate.

Once the corresponding declaration or notification has been received, the Office of Conflicts of Interest may request any necessary information from any ministerial department, organisation or entity in which the declaring party has worked. A request for compulsory reports shall suspend the one-month deadline for resolving the procedure, in accordance with the provisions of Article 22.1d of Act 39/2015 of 1 October, regarding the Common Administrative Procedure of Public Administrations.

If the OCI considers that the prohibition set out in Article 15 of Act 3/2015 of 30 March is applicable, it shall inform the person concerned and the organisation where he will be providing his services within one month of the declaration being submitted and they, in turn, will have 15 days to respond.

If the OCI's decision is unfavourable and the person in question starts the private activity, the OCI will recommend that the competent body starts the administrative procedure to exercise its sanctioning power.

Any authorisation granted for carrying out private activity after leaving high office shall be published in the General State Administration's Transparency website at the following link:

[https://transparencia.gob.es/transparencia/transparencia\\_Home/index/PublicidadActiva/AltosCargos/Autorizacion-de-actividad-privada-en-altos-cargos.html](https://transparencia.gob.es/transparencia/transparencia_Home/index/PublicidadActiva/AltosCargos/Autorizacion-de-actividad-privada-en-altos-cargos.html)

In addition, any communications and mandatory reports obtained beforehand, along with any decisions to authorise or refuse shall be accessible under the terms of Act 19/2013, of 9 December.

## Declaring activities and assets within three months of taking up the position

Within a non-renewable period of **three months** of taking up their position, senior officials are to submit the following documentation to the OCI:

a) Declaration of activities when taking up the position (Form 3)

This declaration is to identify any activities the senior official had carried out in the two years prior to taking up his position or any he will perform during his tenure.

b) Declaration of Assets & Property Rights upon taking up the position (Form 4)

Senior officials who are required to submit a Capital Gains Tax return to the tax authorities may present the certificate for the most recent annual return instead of form 4.

Senior officials who are not required to submit a Capital Gains Tax return shall, in any case, submit form 4.

c) Publication of Assets & Property Rights in the Official State Bulletin (Form 7)

d) Certificate for the two most recent annual income tax declarations submitted

e) Certificate from the tax authority that they are up to date with tax obligations or, where appropriate, with outstanding tax obligations

As an alternative to the certificates referred to in paragraphs (b), (d) and (e), the Office of Conflicts of Interest may be authorised to obtain such certificates directly from the tax authorities by completing the Authorisation to request tax details (Form 12), ticking the YES box in respect of the documents for which queries are authorised.

## Declaration of activities and assets within three months of leaving the service

Within a non-renewable period of **three months** of leaving the service, senior officials shall submit the following documentation to the OCI:

- a) Declaration of activities upon leaving the service (Form 5)
- b) Declaration of Assets & Property Rights upon leaving the service (Form 6)

Senior officials who are required to submit the Capital Gains Tax return to the tax authorities may present the certificate for the most recent annual return, instead of form 6.

Senior officials who are not required to Capital Gains Tax returns shall, in any case, submit Form 6.

- c) Publication of Assets & Property Rights in the Official State Bulletin (Form 7).
- d) Copy of the annual income tax return for the year they left the service.

This is to be submitted at the time they leave the service, including after 3 months of leaving, if necessary.

As an alternative to the certificates referred to in paragraphs (b) and (d), the Office of Conflicts of Interest can be authorised to obtain such certificates directly from the tax authorities by completing Form 12, and ticking the YES box in respect of the documents for which queries are authorised.

## Notifications relating to declaring activities, assets and property rights while holding a senior position

Whilst in post, senior officials shall submit the following documentation in relation to their activities, assets and property rights through the Sede electrónica del Portal Funciona:

- a) Copy of their annual income tax return for each year in post, including the year in which they leave.

Alternatively, instead of copies of their annual income tax returns, the OCI can be authorised to obtain such returns directly from the tax authorities by completing Form 13.

- b) Notification of any modification in regard to the declaration of activities whilst in post (Form 3. Modification)
- c) Notification of any substantial modification to the declaration of assets and property rights whilst in post (Form 4. Modification) in the event of any substantial change to the initial declaration - for example, in the case of a house purchase, taking out a mortgage, accepting an inheritance, and so on.
- d) Abstaining from administrative procedures (Form 8), as indicated in the "Abstaining" section of this publication.

Abstaining during collegiate organisation meetings must be recorded in the minutes and reported by the collegiate organisation's secretary to the OCI's Register of Senior Officials' Activities using document Abstaining from collegiate bodies (Form 9).

## Mandatory electronic submission of declarations and notifications to the OCI

Senior officials bound by Act 3/2015 of 30 March shall interact with the Office of Conflicts of Interest solely via electronic means, through the Subsede electrónica del Portal Funciona, in accordance with Article 1.1 of Order TFP/2/2020 of 8 January, modified by Order TFP/350/2020, of 16 April.

Access to the Subsede electrónica del Portal Funciona to complete e-forms for declarations, notifications and documents is available at the following link:

<https://sede.funciona.gob.es/public/servicios/solicitudes-alto-cargo>

In order to electronically sign and submit declarations, notifications and other documents to the Office of Conflicts of Interest, senior officials must have an electronic ID card or electronic certificate issued by one of the certifying service providers recognised by the @firma (signature) validation platform.

You can check that the electronic certificate has not been revoked or expired at the following link:

<https://valide.redsara.es>

In the case of incidents or technical queries regarding the operation of the Senior Officials Declarations section, senior officials can use the contact form or call the Technical Support telephone number indicated in the Senior Official Declarations section of Subsede electronica del Portal Funciona.

## Rectifying declarations and reasons for incompatibility

If the OCI finds formal deficiencies in a declaration or lack of required documentation, the person concerned shall be required to remedy these within **one month**. To this effect, the following will be considered to be formal deficiencies:

- Omission of any of the details that identify the declaring party
- Confusion, error or inaccuracy in declarations
- Any words crossed out, amended or between lines, which are not duly noted by the declaring party's signature and raise doubts
- Other material errors

If the OCI finds that the senior official is involved in any reason for incompatibility, it shall inform the declaring party of this fact. If, within **fifteen days** of being informed, the declaring party does not reply or their reply suggests that the reason for potential infringement or incompatibility continues, they shall be required to provide the necessary information within a second period of fifteen days, and will be notified that if this is not done the corresponding administrative procedure will be initiated in order to exercise relevant sanctioning power.

The OCI will compare the declarations with those received previously. If any discrepancies are found, the person concerned shall be notified of these within one month for clarification. If this clarification is not provided or is deemed to be insufficient, the OCI will initiate the

administrative procedure to exercise the relevant sanctioning power, as it constitutes an infraction typified under Article 29.2e of Act 19/2013 of December 9 regarding transparency, access to public information and good governance.

## Register of Activities and Register of Assets and Property Rights for senior officials

The electronic Register of Activities will be public. Therefore anyone may request access to the public information and documents it contains (including statements of activities and notifications of abstentions) in accordance with the provisions of Act 19/2013 of 9 December regarding transparency, access to public information and good governance.

The electronic Register of Assets and Property Rights will be reserved and apart from the interested party may only be accessed by the following:

- a) The Congress of Deputies and the Senate, as well as any parliamentary research committees that may be set up
- b) The judicial bodies for instructing and resolving processes
- c) The Public Prosecution Service.

During the **first quarter of each calendar year** the full content of declarations of assets and property rights of members of the Government and senior officials who took up or left office in the previous year will be published in the Official State Bulletin The Bulletin will leave out any data referring to their location, to safeguard the privacy and security of owners.

The content of these declarations can be accessed via the following link to the Transparency Portal:

[https://transparencia.gob.es/transparencia/transparencia\\_Home/index/PublicidadActiva/AltosCargos/DeclaracionesBienesAACC.html](https://transparencia.gob.es/transparencia/transparencia_Home/index/PublicidadActiva/AltosCargos/DeclaracionesBienesAACC.html)

## Control and monitoring reports

The Office of Conflicts of Interest will prepare the following reports provided for under Act 3/2015 of 30 March:

### **Half-yearly report regarding compliance with reporting obligations**

**Every six months**, the Office of Conflicts of Interest shall produce a report on senior officials' compliance with their obligations to declare, as well as violations of any sanctions that have been imposed, identifying those responsible. This report will be submitted to the government to be forwarded to the Congress of Deputies.

This report will contain personalised details about those senior officials who are required to make their declarations, the number of declarations received and to whom they relate, the notifications made in the event of leaving the service and identification of any senior officials who have not complied with these obligations.

Where a sanctioning procedure has been resolved, a copy of the resolution will be sent to the Board of Congress.

The report shall also contain aggregated information about the number of senior officials required to submit declarations, the number of declarations received, the number of notifications made when leaving the service, and the number of senior officials who have not complied with their obligations under this Act. This information will be published in the Official Government Gazette.

The OCI also publishes the report under the following Transparency Portal link:

[https://transparencia.gob.es/transparencia/transparencia\\_Home/index/PublicidadActiva/AltosCargos/ObligacionesAACC.html](https://transparencia.gob.es/transparencia/transparencia_Home/index/PublicidadActiva/AltosCargos/ObligacionesAACC.html)

### **Reports on the asset position of senior officials at the end of their time in post**

Every six months, the Office of Conflicts of Interest will report to the government on its activities relating to its review of senior officials' asset positions at the end of their time in post, with the aim of verifying that they have properly complied with their obligations, and to check for signs of unjustified increase in wealth.

As part of this, within three months of a senior official leaving the service, the OCI shall, as a matter of course, prepare a report reviewing the official's financial situation.

Senior officials whose financial situation is under review must provide all information required and notify of all and any circumstances that are relevant to the preparation of the report.

Prior to its approval, the person concerned must be given notice of the proposed report so that they can make any declarations they consider relevant within 15 days. At the end of this period, the report will be subject to approval and notified to those senior officials whose asset situation has been examined.

If the information in the report shows indications of unjustified increase in wealth, the OCI may request assistance from the State Tax Authority for the purpose of clarifying such information.

After the steps outlined above have been completed, if any administrative or criminal liabilities are found, the relevant organisations will be notified so that any relevant proceedings can be launched if appropriate.

## Penalty regime

Act 19/2013 of 9 December establishes a system of penalties structured into three areas: infractions in regard to conflicts of interest, in regard to financial-budgetary management and in regard to discipline.

Failure to comply with the rules regarding incompatibilities or rules governing declarations to be made by senior officials shall be sanctioned in accordance with the provisions of the penalty regime provided for under Act 3/2015 of 30 March.

In accordance with this sanctioning regime, **very serious** administrative offences are considered to be:

- a) Breach of rules regarding incompatibilities referred to under the Act
- b) Presenting declarations that contain false information or documents
- c) Breach of obligations referred to under Article 18 in relation to managing company shares and holdings
- d) Falsifying or failing to meet the eligibility requirements for being appointed to senior positions.

**Serious** administrative offences include:

- e) Not declaring activities or assets and property rights to the pertinent Registers, after being warned to do so
- f) Deliberately omitting data and documents that should be submitted in accordance with the provisions of this Act
- g) Repeated failure to comply with the duty to abstain in accordance with the provisions of this Act
- h) Committing a minor offence after having already been sanctioned for the same offence within the previous three years.

**Minor administrative offences** include being late in declaring activities or assets and property rights to the pertinent registers, after being told to do so.

## Sanctions

**Very serious and serious** administrative offences will be punished and any breach of the law will be declared and published in the Official State Gazette once the applicable resolution is made final.

Anyone who has committed offences classified as serious or very serious under Act 3/2015 of 30 March will not be eligible to be appointed to senior positions for between 5 and 10 years.

The penalty for **very serious** administrative offences shall also include:

- a) Removal from public office (if they have not already ceased to hold such office)
- b) The loss of the right to receive compensation after termination of employment, if it could have applied
- c) The obligation to repay, where appropriate, any sums unduly received in connection with compensation after termination of employment.

This is without prejudice to any other responsibilities that may apply.

**Minor** administrative offences will be sanctioned with a warning.

In any event, this penalty system shall operate without prejudice to any other responsibilities that may apply. Where there are signs of other liabilities, the State Attorney General's Office will be ordered to assess the implementation of other potential relevant actions and, if appropriate, bring the facts to the attention of the National Attorney General in case they might constitute a crime.

## Applicable regulations

- Act 3/2015 of 30 March, which regulates the holding of General State Administration senior positions (Official State Gazette dated 31 March).
- Act 19/2013 of 9 December, regarding transparency, access to public information and good governance (Official State Gazette dated 10 December).
- Regulations that develops the Preliminary, 2nd and 3rd sections of Act 3/2015 of 30 March, which regulates the holding of General State Administration senior positions, approved under Royal Decree 1208/2018 of 28 September (Official State Gazette dated 29 September).

- Royal Decree 451/2012 of 5 March, which regulates the remuneration regime for senior managers and directors in the public business sector and other organisations (Official State Gazette dated 6 March).
- Order TFP/303/2019 of 12 March, which created the "Funciona" and "Transparencia" (transparency) online portals as sites that fall under the General State Administration's General Access Point main online site.
- Order TFP/2/2020 of 8 January, which determined the date after which interactions with the Office of Conflicts of Interest need to be in electronic form for procedures covered by Act 3/2015 of 30 March, which regulates the holding of the General State Administration senior positions and its implementing regulations, approved by Royal Decree 1208/2018 of 28 September, and under which the corresponding forms for declarations, notifications and electronic documents were approved.
- Order TFP/350/2020 of 26 April, modifying Order TFP/2/2020 of 8 January, which determined the date after which interactions with the Office of Conflicts of Interest need to be in electronic form for procedures covered by Act 3/2015 of 30 March, which regulates the holding of General State Administration senior positions and its implementing regulations, approved by Royal Decree 1208/2018 of 28 September and under which the corresponding forms for declarations, notifications and electronic documents were approved

**OFFICE OF CONFLICTS OF INTEREST**

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*\* An appointment is required for in-person queries*

