

## GOVERNING BY DEFAULT

### FAILURES OF POLICY PROCESS IN ROMANIA

*The key contention of this paper is that in the CEE region – for which Romania is used as an illustrative case – poor public performance can be explained by failed reforms on two crucial dimensions of governance: (i) public administration reform proper (structure and stability of the central administration, civil service issues); and (ii) the process of decision making. The latter is especially important because it affects the whole public sector indiscriminately. The flawed policy process, probably the most crucial (and ignored) source of poor governance, is characterized by little consultation, hasty decisions and poor implementation capacity. If at all, the public debates on crucial trade-offs – or conflict – occur after policies are implemented, not before. This creates uncertainty, case-by-case pressures and negotiations whether rules should be actually applied or not, and ultimately mistrust in public institutions. The immediate symptom of this model of governing by default is the large gap between written plans and strategies, on the one hand, and social realities on the other. A set of case studies is used to illustrate the idea that, unless these problems are dealt with, there is little chance that the government decisions will achieve the desired results, whatever these may be.*

There is ample evidence today that sustainable growth is heavily dependent on the quality of governance in a particular country. One of the most recent and complete such evaluations, conducted on 175 states, aggregating the main cross-country measurements produced by various organizations, reports a strong and positive causal link between the quality of policies and administration on the one hand, and economic performance on the other<sup>1</sup>. Even more interesting, the authors report a weak and *negative* causation running in the opposite direction, from per capita income to governance, after the first positive effect is controlled for. In other words:

- good governance leads to growth and prosperity;
- but economic growth and greater prosperity do not by themselves bring about good governance – on the contrary, sometimes they can encourage misgovernance.

These conclusions are very important and have significant policy implications, especially in the transition countries. Waiting for the time to pass and solve the problems of misgovernance as the society gets richer does not work. Actually it may even aggravate them, since greater wealth only raises the stakes of the social transactions, without changing their nature, and increases the pressure of rent-seeking, state capture and bureaucratic corruption. “When the institutions of the state are captured by vested interests in this way, entrenched elites can benefit from a worsening of the status quo of governance and can resist demands for change even as incomes rise.” (*op cit*).

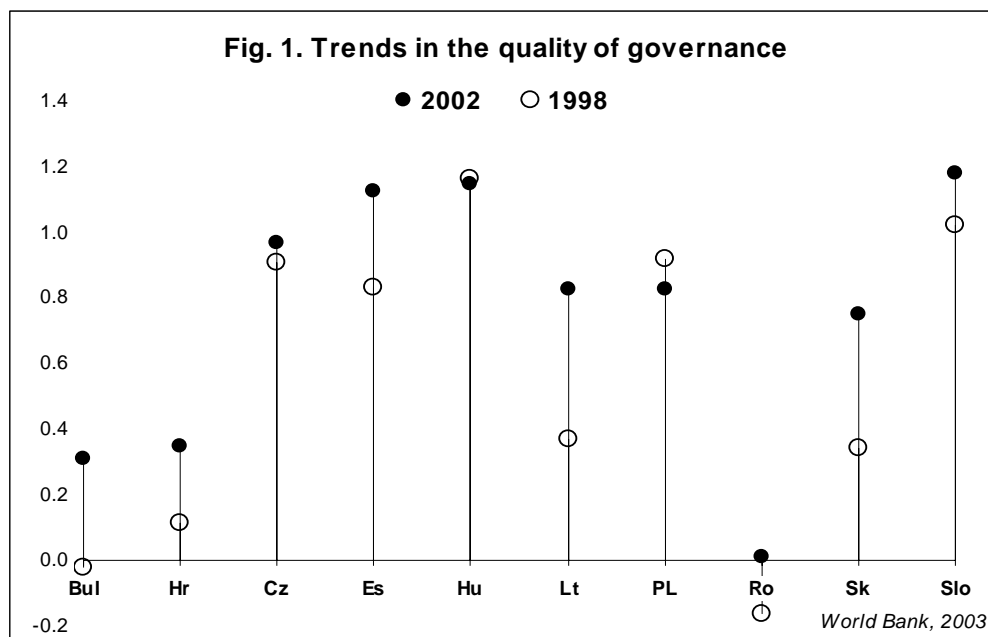
Therefore, since good governance is not a “luxury good” to which a country automatically graduates when it gets richer, it means that reforms in this particular

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<sup>1</sup> D. Kaufmann and A. Kraay, 2003. *Aggregate Governance Indicators 1996-2002*, [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance)

area should be regarded as a separate goal which must be pursued with determination and specific strategies. And, since there is no specific *acquis communautaire* on public administration reform to guide policy in EU candidate countries, they have to find themselves resources and muster public support for this crucial point on their development agenda. The following sections of this paper will analyze in comparative context to what extent this strategic goal has been accomplished in Romania.

Fig. 1 shows that, according to the World Bank, CEE accession countries have advanced with various degrees of success towards the goal of good governance. Among them Romania scores last on a composite index of governance quality – an average of six scores measuring accountability, government effectiveness, regulatory quality, rule of law, control of corruption, and political stability. Even more important, Romania has registered the smallest improvement in performance between 1998 and 2002 among the accession "laggards". This is concerning, especially since part of the rise is explained by only one of the six indicators (political stability). Explaining the failure to improve the quality of governance in Romania should therefore concentrate on identifying concrete, operational dimensions of institutional capacity which single out the country in regional context.



Institutions can mean many things to many people. The new institutionalist school operates with a broad definition to the term – as rules of the game that govern interactions in society, whether they are formal or informal<sup>2</sup>. Other scholars go as far as incorporating shared values and psychological predispositions in the institutional framework. For the purpose of this analysis, however, we narrowed down the concept to those formal arrangements embodied in laws and organizations, the only ones that can be directly altered by intervention through public policy. More specifically, we refer here to the fundamental design of the central government structure and the assignment of functions among public agencies.

<sup>2</sup> North, D., 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge Univ. Press.

Of course, not all the differences in performance between European states are due to the structuring of their central administrations. Many peculiarities exist which are rooted in historical tradition or local institutional culture, and the uniformization was never on the EU agenda since these states are more or less functional anyway – compared with the scope and speed of the reforms under way in Central and Eastern Europe, the institutional changes in the member states take place at a rather geological pace. However, the blueprint of government matters. A well structured central administration may or may not produce good outputs, depending on other factors like the quality of leadership, the expertise available, motivation, number of coalition partners. But a poorly structured central administration is sure to yield poor results, becoming itself a source of confusion and institutional noise. In such an environment it is more likely to have unclear assignment of responsibilities, overlapping, rivalries and captive agencies.

My main contentions in this paper are that:

- Poor performance in Romania can be explained by failed reforms on two crucial dimensions of public governance: (i) public administration reform proper (structure and stability of the central administration, civil service issues); and, especially, (ii) the process of policy making.
- The flawed policy process, probably the most crucial (and ignored) source of poor governance, is characterized by little public consultations, hasty decisions and poor implementation capacity. If at all, the public debates and identification of crucial trade-offs occur *after* policies start to be implemented, not before, which creates uncertainty, confusion about goals and ultimately mistrust in public institutions. The immediate symptom of this model of governing by default is the large gap between written plans and strategies, on the one hand, and social realities on the other.

A set of case studies is used to illustrate the idea that, until these problems are dealt with, there is little chance that the government decisions will achieve the desired results, whatever these may be. The story has a morale pertaining to the process of EU accession too: without marked improvements in governance, non-enforced EU-compatible laws will continue to accumulate and contribute to the legislative Potemkin village erected by the authorities, in their heroic effort to build the new Romania.

## **1. PROBLEMS OF STRUCTURE**

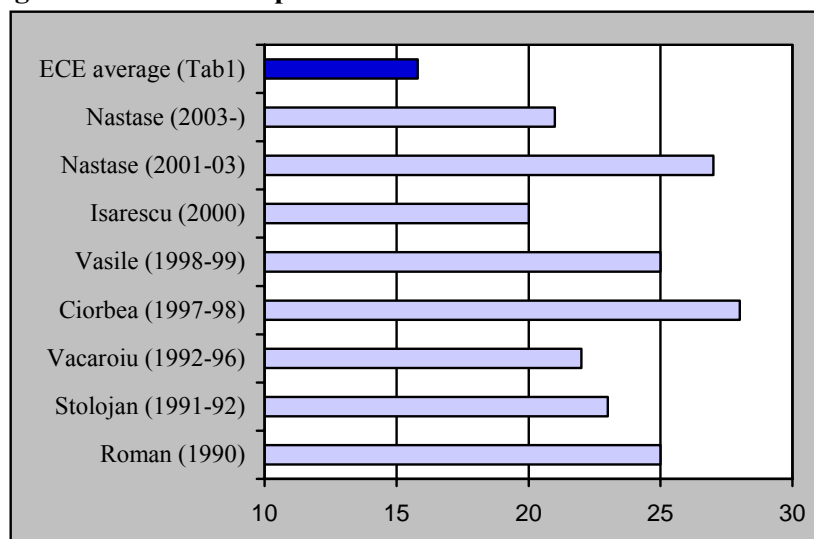
### **1.1. Central administration structures in comparative perspective**

As the current Romanian government led by Adrian Năstase took office after the November 2000 elections, the old issue of instability and proliferation of central agencies was again put under the spotlight by journalists and analysts, both Romanian and foreign. The opposition and the commentators blamed the new Prime Minister for the growth of bureaucracy directly controlled by the parliamentary majority. Năstase replied that there is nothing new here and that the largest post-Communist cabinet was not his, but that of the former PM Ciorbea (Fig. 2).

Moreover, in June 2003 the government was reshuffled and a number of nine ministerial portfolios eliminated, in an attempt to streamline the work of the cabinet. Although some of these central agencies and their staff were actually kept in place under a different name and institutional affiliation – and in spite of the fact that some

of them have just reappeared in the spring of 2004, as the cut was judged by the prime minister as too radical – this was still one of the most important government downsizings in Romania so far, bringing it closer to the regional average as far as the cabinet size is concerned. Nevertheless, in a broader perspective, this was just an episode in what appears to be an institutionalized expansion-contraction cycle of the central bureaucracy in Romania. Lacking the capacity to implement policies and change social realities, the Romanian government looks inclined to embark on periodical reorganizations and re-labeling of institutions as a substitute for policy action.

**Fig. 2. The number of portfolios in the Romanian cabinets after '89**



The following table compares the structure and functions of the central administration in Romania (the latest three cabinets) with that of other nine European countries. Of these, six are ex-Communist countries currently candidates for EU accession and constantly ranked ahead of Romania by the EU monitorization process – they can thus be regarded as a source of best-practices – while the other three are EU members. Like Romania, all nine are unitary states with various degrees of devolution of powers to the sub-national levels of government, so the comparison is legitimate.

Two opposing tendencies are obvious when we analyze the structure of central administrations in the EU candidate countries. On the one hand, the necessity to manage the thousand details of institutional alignment – in other words, to deal with the so-called *orthodox paradox*, i.e. the situation when the state has to reform itself fundamentally while still performing its everyday functions, which looks very much like an attempt to rebuild the ship piece by piece while sailing in high seas – and the obligation to continue to provide public goods and alleviate the social pains of transition, lead to the expansion and diversification of the public sector. On the other hand, the budgetary constraints and manageability considerations require a drastic limitation of the scope of government. Finding the right equilibrium between these opposing tendencies is a matter of applied policy rather than a theoretical issue.

In spite of the differences between these societies, there are nevertheless some basic characteristics that define the whole region: the same socio-political system until a decade ago, the same direction of movement today, the same kind of social and administrative problems that the public sector faces. Even the basic constitutional

arrangements differ surprisingly little in Central and Eastern Europe today: all countries have typically coalition governments with collective cabinet responsibility, a legislature which is not very strong and transformative (unlike the US Congress), being dominated by the executive, and carefully balanced President-Prime Minister systems that avoid the extreme cases of American-style presidentialism or British-style domination of the PM. The Polish president, for example, arguably the strongest in CEE, has less power than his French counterpart, while the Hungarian or the Czech presidents, even though elected by the parliaments, are more than symbolic figures when it comes to policy, unlike the German or Italian ones. Thus, by design of by default, the CEE political systems tend to cluster towards the middle of the scale, which has pure presidentialism at one end and parliamentarism at the other. Romania sits somewhere in the middle, with a semipresidential system that gives to the head of the republic somehow less power than in Poland.

In order to analyze the structure of governments in the ten countries we employ a twofold categorization of their components that is common in the theory of public administration: *line* and *staff* agencies. Central ministries are always a bit of both, of course, but depending on their main functional purpose one or the other character tends to predominate. So that we can distinguish:

- Line ministries – they manage a certain segment of the public sector defined functionally and usually provide certain identifiable public goods
- Coordination ministries – they supervise the inter-sectoral governmental action, manage cross-departmental programs and perform other functions that cannot be specified in terms of public goods provision, like generating forecasts and strategic plans. In this category we can distinguish:
  - (b1) Prime Minister’s office, with or without an additional ministry of the Chancellery attached
  - (b2) Ministries of economy and development
  - (b3) Ministries of administrative coordination

It becomes now apparent, following data in Tab. 1, that Romania’s institutional problem has several related aspects: a high overall number of ministries; a high level of instability of agencies, especially those in charge with coordination; and, as a result of the institutional proliferation, a certain degree of overlapping and ambiguity in the coordination structures.

## **1. 2. The fragmentation and fluidity of central government**

The data presented in the table below show a marked separation of countries into two groups:

- a) *Romania* and *Italy*, where the average number of portfolios revolves around 24-25 (if we smooth out the fluctuations in size which are characteristic to Romania)
- b) All the other countries, with 17 ministries at most, the PM included. For the other candidate countries the average is 15.8 portfolios.

**Tab.1. The central government structure in Romania and 9 other EU candidate or member countries** (situation as of: 2000-03 in Romania; 2000-01 in the other countries)

Ministries		ROMANIA Năstase (2003-)	ROMANIA Năstase (2001-03)	ROMANIA Isărescu (2000)	HUNGARY	CZECH R.	BULGARIA	POLAND	ESTONIA	LITHUAN.	FINLAND	FRANCE	ITALY
<b>a) Line</b>	Finance	X	X	X	X	X <sup>4</sup>	X	Xx <sup>6</sup>	X	X	X		Xx <sup>6</sup>
	Foreign aff.	X	X	X	X	X	X	X	X	X	X	Xx <sup>8</sup>	X
	Defence	X	X	X	X	X	X	X	X	X	X	X	X
	Home aff.	Xx	X	X	X	X	X	X <sup>7</sup>	X	X	X	X	X
	Justice	X	X	X	X	X	X	X	X	X	X	X	X
	Health	X	X	X	X	X	X	X		X	X		X
	Labour-welfare	Xx	X	X	X	X	X	X	X	X	X	X	Xx <sup>11</sup>
	Agriculture	X	X	X	X <sup>1</sup>	X	X	X <sup>1</sup>	X	X	X	X	X
	Industry-trade		X	X		X					X		X
	Environment		X	X	X	X	X	X	X	X	X	X	X
	Culture	X	X	X	X	X	X	X	X	X		X	X
	Education-science	X	Xx	X	X	X	X	X	X	X	X	Xx <sup>9</sup>	Xx <sup>9</sup>
	Youth-sport	X	X	X								X	
	Transportations	X	X	X	X	X	X	X	X	X	X	X	X
	Public works			X									X
	Communications/IT	X	X					X					X
	Small-medium enterpr.		X										
	Tourism		X										X
Minorities			X						X			X <sup>12</sup>	
<b>b) Coordinat.</b>	PM	X	X	X	X	X	X	X	X	X	X	X	X
	Chancellery / secretariat	X	X	X	Xx <sup>2</sup>	X	X						
	<i>Economy - Developm</i>			X	X		X	X	X	X		X <sup>10</sup>	
	Economic coordinat.	X	X										
	Privatization	X	X										
	EU accession, negotiat.	Xx	Xx										X <sup>13</sup>
	Development, forecast		X										
	Local/reg. developm.				X <sup>3</sup>	X	X		X				X
	<i>Administrativ</i>		X	X								X	X
	'Public Function' (Administration)												X
Institutional reforms												X	
Relat. with Parliament		X			X <sup>5</sup>						X	X	
Speaker, Informations		X											
<b>No. portfolios</b>	<b>21</b>	<b>27</b>	<b>20</b>	<b>17</b>	<b>17</b>	<b>16</b>	<b>16</b>	<b>15</b>	<b>14</b>	<b>13</b>	<b>17</b>	<b>26</b>	

1 Agriculture and rural development

2 National security

3 Coordinates Phare programs

4 Finance and economic policy

5 Legislation

6 State treasury separate from Finance

7 Home affairs and administration

8 EU affairs

9 Research as a separate portfolio

10 Super-ministry of economy, finance and industry

11 Social solidarity

12 Equal chances

13 EU policies

There is an obvious trade-off between the size and the operational effectiveness of cabinets. When governments grow too large and fragmented to make truly collective decisions on specific agenda items, as they are supposed to do, the whole process of decision-making becomes slower, less transparent and more likely to be captured by sectoral vested interests. In such cases the cabinets become broad forums where policies are rather legitimized than actually made. The crucial decisions are taken elsewhere, formally but more often informally: either at a lower level in a few powerful departments, or at a higher level by party leaders who are not cabinet members.

Not only continental democracies<sup>3</sup>, but also the Anglo-Saxon countries have lately recognized these difficulties and trade-offs and reduced substantially the size of their cabinets in a move to make them more effective and strategically driven (Australia in 1987, Canada in 1993)<sup>4</sup>. When they joined the democratic world at the beginning of the last decade, most of the CEE countries adopted this conservative view in respect to cabinet structures and set up fewer and larger umbrella central departments that can integrate many issues before bringing them on the cabinet's agenda. This structure has also the advantage of cutting down on the overhead costs associated with corporate services in multiple ministries.

On the contrary, Romania continued with an expanded Soviet-style arrangement that tends to preserve the status quo, where narrow issues are assigned to a series of central agencies expected to execute diligently pre-defined budgetary items, while effectiveness is measured in terms of inputs. Reallocations are difficult to operate, both because of the opposition of administrative staff and the lack of information about actual performance, while the policy agenda is strongly influenced by the pressures to continue existing programs. Cutting down bureaucracy is always the talk of the day, but very few public institutions are ever reformed in substance or rationalized. Most often across-the-board reductions are implemented<sup>5</sup> – even though this is the poorest remedy in a fragmented and unstable institutional structure because it does not discriminate between useful and useless agencies – just to be gradually reversed in the following period.

Among the EU countries Italy comes closer to this description. The high number of portfolios in the two countries cannot be entirely explained by the particularities of their party systems, which are indeed fragmented and produce short-lived coalition governments with numerous partners who enter the power-sharing game – although this may be a reason, of course. Finland, Hungary, or the Baltic states have been at various points ruled by coalitions and had fragmented parliaments, without the executive becoming so fluid.

Entrenched bureaucracies have learned from experience that they can always prevail in the long run by paying lip service to reforms while resisting them tacitly. They do not like coherent strategies, transparent regulations and written laws, but status quo

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<sup>3</sup> Blondel, J., and F. Muller Rommell, 1997. *Cabinets in Western Europe*. St. Martin's Press, NY.

<sup>4</sup> Campbell, C., and J. Halligan, 1992. *Leadership in the Age of Constraint: The Australian Experience*. Allen&Unwin, Sidney. And Campbell, C., 2000. 'Democratic Accountability and Models of Governance: Purchaser/Provider, Owner/Trustee'. In R. Chapman (ed) *Ethics in Public Service for the New Millennium*. Aldershot, UK.

<sup>5</sup> The last right after the Năstase cabinet took office; the initial call was for a 30% reduction in staff, but our estimates for the actual figure in central government by March 2001 revolve around 7-10% at the highest – see Ghinea C., 2001. *The Reform of the Civil Service in Romania*. Crisis Paper series, no. 2, Romanian Academic Society (SAR), Bucharest.

and daily instructions received directly from above. This was how the communist regime worked and, as many scholars noted, after it collapsed the old chain of command fell apart but the deep contempt for law and transparent action remained a constant of the daily life<sup>6</sup>. This institutional culture is self-perpetuating, both in the professional civil service and the political class. The change of generations is not going to alter the rules of the game as long as the recruitment and socialization follow the same old pattern: graduates from universities with low standards are hired through clientelistic mechanisms; performance on the job is not measured; tenure and promotion are gained exclusively through internal power struggles. The governing is most often done, more or less routinely, by an uneasy combination of old-time Communist bureaucrats, the only ones who possess the group discipline and determination to accomplish anything, and foreign donors. The average minister today focuses less on getting things done and more on developing supportive networks, because having collaborators one can trust with absolute loyalty is the obsession of all Romanian politicians and the reason why they avoid formal institutional cooperation or independent expertise.

The Romanian communist regime was much closer and repressive than its Central European counterparts, and thus did not allow the emergence of alternative elites, or a decent category of technocrats who can understand and manage policy reforms. What is more, the post-communist politics did not manage to discredit and exclude important political and economic actors linked with the previous regime, for example by passing lustration laws. The researchers of transitions consider this factor a strong predictor for slow and muddled reforms<sup>7</sup>.

Not only that Romania has many ministries and agencies, but they appear, disappear or change their attributions and subordination very often. The immediate consequence is that the institutional memory of these agencies is lost and we see little continuity in terms of programs, staff and documents that might lead in the long term to an improvement in performance. The best example here is the central economic coordination (more about it below). In the last six or seven years we have assisted to a whole game of musical chairs: the ministries of Privatization, Reform, Economy, Development and Forecast were set up, dismantled and then revived at such a pace that their employees did not have the time to realize what they were actually supposed to do. The reasons of this generalized institutional muddle are manifold. At a very basic level, there is obviously a lack of vision about the role the state should play in the process of reform. Second, defining priorities has always been a problem – when everything is a top priority that needs to be addressed on the spot, this means there are no genuine priorities and strategies, only momentary reactions to events and constraints which are exogenous to the act of governing.

### **1.3. Civil Service Issues**

But there is also a more down-to-earth explanation for this instability. When the winners of the 2000 elections began to restructure all the ministries and agencies, some changes were made just in order to get rid of civil servants who had become irremovable under the law passed in 1999. This law was part of the EU conditionality

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<sup>6</sup> Anders Åslund, 1995. 'The Case for Radical Reform', in Diamond and Plattner (eds) *Economic Reform and Democracy*, Johns Hopkins University Press, Baltimore.

<sup>7</sup> Nelson, J., 1995. 'Linkages Between Politics and Economics', in Diamond and Plattner (eds) *Economic Reform and Democracy*, Johns Hopkins University Press, Baltimore.



when Romania was invited to start the negotiation process at the Helsinki summit in late 1999. Its purpose was to insulate the public officials from political pressure and institute a civil service with a European-style discipline, professionalism and *esprit de corps*. It is debatable whether this was a realistic or even desirable goal, given the current situation in the public administration. Maybe a better idea would have been to adopt a more liberal model where the politicization of the top civil service is openly recognized as inevitable, and thus officialize and regulate by law a practice which is anyway well-entrenched and tacitly accepted. But once a law was adopted, the governments were expected to be at least more careful in dealing with the civil service. Instead, the 2001 institutional reshuffle was done in defiance of the spirit of the law: by simply changing their names the new administration has “reorganized” many institutions and thus purged the public sector of those unwanted civil servants who were hired under the previous administration by passing an exam.

There is a certain taste for ambiguity in Romania which goes beyond the way laws are interpreted and enforced. The institutional structure is also relatively tolerant of uncertainties and overlaps, which reflects the incapacity of the political process to reach clear decisions (more about this in section 2). One can find arrangements in which second-tier institutions established in various political eras or shaped after the prescriptions of various donors come together in a complex and unworkable whole. The administration is made up of layers of organizations that emerge, gradually exfoliate and fall into irrelevance together with their political sponsors, but for some reason still hang around even when their attributions were reassigned to other structures.

In such an unstable environment, the life of civil servants is tough and resembles very little the one of their Western counterparts. The combined action of uncertainty and low payment creates a civil service who is not only less professional than the one in developed countries, but also much more heterogeneous. The majority of its members are old petty apparatchiks or new dropouts from the private sector. Frustrated by their low income but unsure enough of their own skills to cling to their existing jobs, they perform daily routines, play bureaucratic power-games and yield to political pressure coming from above.

On the other hand, a bolder strategy is pursued by a small number of people, especially at higher echelons, who regard a stage in the civil service as an investment in their professional CV, political career, or a step towards a more lucrative job in the private sector or with a foreign organization. Some of them may even be educated in the West and thus constitute nuclei of competence in their immediate environment, but their tenure tends to be short and their impact on the overall performance of their institutions unsure. These are the persons whom the typical Western donor meet and talk to, and hence the widespread impression that the situation in the public sector is better than it really is. There may be differences in the level of professionalization and stability between institutions, of course. It has been noted before that the central banks and finance ministries in developing countries, for example, are the first to develop “linkage elites” who speak the conceptual language of their Western colleagues<sup>8</sup>. However, their numbers are yet too small to alter the overall picture of the civil service: a mass of disgruntled and ineffective staff punctured with small and transient groups who understand and try to push the reforms forward.

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<sup>8</sup> Nelson, J., *Op. cit.*

Actually, as many foreign consultants on twinning programs have noted, there is no civil service as such in Romania. All there is a collection of sectoral and opaque bureaucracies, run on a mismatch of sector-specific arrangements around which powerful vested interests have solidified in time. There is no unified structure to run this army of people and no integrity to its body, and even its conceptual limits are fuzzy. Many government institutions and agencies employ public-interest arguments in order to create special rules applicable only to their situation, or manage to get tacitly accepted practices that deviate from the general norm. Job descriptions are unclear, performance on the job is not measured in order to be rewarded – and the very concept of performance measurement is still strange to top public managers. This establishment is not only unmanageable, but even hard to understand, and the government has shown little appetite for tackling the core of the problem so far. The effort to develop a database and a system of indicators to assess the situation has been going on for some years, with donors' help. However, the Agency of Civil Servants is reluctant to even develop measurements of output and outcome, partly because nobody has done this before, partly out of fear to step on somebody's toes.

Briefly put, loyalty to the boss and the institution is the only thing that pays-off, so it is the only trait which tends to be selected naturally. Overstaffing may coexist with understaffing, often within the same institution, but it is hard to identify from outside what the situation is and force changes in the right direction. There are no reliable estimates available of the costs of this “civil service” to society, hiring and firing practices, salary rules and levels. A simple question like “how much does X earn per year” is difficult to answer, and even perceived as improper or slightly offensive, since every agency devises its own arrangement of bonuses and off-the-book compensations that would rather not discuss in public. As a result, it is difficult to develop a system to manage the “civil service” more predictably, or introduce modern motivational elements such as career schemes and training-related promotions. Ultimately, the idea of political independence of administration is still a novelty, the assumption being that parties winning elections will apportion all things public among themselves.

Some things could be accomplished especially in the first stages of reform, with measures requiring some technical capacity of design, but little administrative capacity of implementation, and thus likely to be promoted quickly by a small circle of senior officials with political support (early price and trade liberalization, dismantlement of old regulatory mechanisms, macrostabilization)<sup>9</sup>. They had more to do with the state *getting out* of various social sectors and freeing private entrepreneurship. Obviously, the quality of bureaucracy was less important in these cases.

But as post-communist reforms enter the second stage, where more complex public systems involving many stakeholders should be changed while continuing to function (such as education, health, social protection, tax collection, law enforcement) the coherence and professionalism of bureaucracy becomes a crucial factor. In Romania, while the reforms of type one were more or less successfully pressed upon bureaucracies by the linkage elites and political leaders, the attempts to implement reforms of type two led to bureaucratic sabotage and open backlashes against the initiators. Moreover, when arbitrary and politically-driven purges of the civil service occur, like the one mentioned before, the people who make up the small pockets of

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<sup>9</sup> Nelson, J., *Op. cit.*

expertise are the first to disappear from the public institutions – either because they were the most visibly associated with the political sponsors of reforms or because they are the most professionally mobile anyway.

One important second-generation reform is that of the civil service itself. Here what was lacking was not only implementation capacity in the system, but a firm commitment at the top too. If this is to be successful the cabinet leadership should be willing to spend some political capital on painful decisions – which include staff reductions, but not only. Delegating the unpleasant task of restructuring the whole body of public administration to junior ministers is not going to work, as they cannot reform the departments run by their powerful senior colleagues.

## **2. PROBLEMS OF COORDINATION**

### **2.1. Dispersion of coordination responsibilities at the cabinet level**

The above-mentioned problems appear particularly acute if we analyze the coordination ministries, where the proliferation of institutions and instability are the norm and the apportionment of responsibilities depends heavily on the person who occupies the top office at a particular moment. By contrast, the cabinets in the other CEE countries tend to be characterized by three traits. First, a strong PM with stable political base in the legislative and functions of inter-agency coordination which are defined more formally. Second, there is a clear assignment of responsibilities in matters of economic policy, whether the PM or a super-ministry of the Economy is in charge. Usually this arrangement makes the Ministry of Industry and Trade redundant. When MIT exists, however, like in the Czech Republic or Finland, there are no other parallel structures to dilute its responsibilities and certain continuity in terms of institutions and policies is assured. Finally, no other special institutions for coordination and administrative reform exist other than the PM's office and the Chancellery. Separate Ministries of Public Function, Institutional Reform or even Relations with the Parliament are unheard of. These too are Franco-Italian specialties adopted in Romania in spite of their questionable usefulness – even in their countries of origin it is hard to see what difference they have made since their inception more than a decade ago. They have also been dropped in Romania at the 2003 reshuffle, but the public administration reform and policy coordination are still passed around in search for their proper 'location' instead of being regarded as what they really are: cross-cutting functions of government which have to be in-built into its structure and supported from the very top, not items to be assigned to line ministries.

Bureaucratic expansion and fluidity in the area of economic co-ordination, though not the only sources of problems, contributed substantially to the delay of economic reforms in the last ten years. We have seen a merry-go-round of agencies of Privatization, Development, ministries of Reform, Privatization, Industry and Trade (with or without Trade, recently transferred to the Foreign Affairs), Economic coordination, all of them more or less at odds with the premiers, the Finance Ministry and the State Ownership Fund (the quasi-ministry responsible for privatization). When things went reasonably well, this happened in spite of the formal government structures rather than because of them. During the 2000 center-right government the economic policy was firmly controlled by the premier and its circle of advisers, usually young and Western-educated economists. The Ministry of Economy was a ghost structure set up to placate the senior Christian Democrats, the main force of the coalition at that moment, when their party lost the office of prime-minister. Such

arrangements cannot be stable in the long run, however, especially since prime ministers may have different professional backgrounds or policy priorities.

For a better co-ordination with the legislative, the executive had re-established in 2001 the Ministry for the Relation with the Parliament, another Franco-Italian institutional borrowing adopted only by the Czech Republic and Slovakia. But it had also created special positions of secretary of state in all the line and economic ministries, with the specific task of representing the agencies in Parliament and improving the communication between the executive and legislative. Since the Secretariat General was already charged with the daily operations of the cabinet and the circulation of documents between the branches of the government, the managing structure resulted was a complex 3-D matrix raising co-ordination problems even in organizations with more resources and experience. After only a few years of functioning the Ministry for the Relation with the Parliament was abolished in 2003, with the understanding that the Ministry of European Integration is mandated to screen all the EU-relevant legislation anyway.

As it happens when institutions proliferate and overlap uncontrollably, there are crucial tasks that fall in-between and create permanent problems. This is the case with the regional development policies, whether they are financed from the budget, through World Bank loans or, as it is increasingly the case, through various grants from the European Union. The management of development programs has never been assigned clearly to a specific agency, and hence fierce battles occur between ministries whenever a new program appears. In 1996 a network of 8 Regional Development Agencies (ADR) was set up, with each ADR based in one of the 8 regions of development<sup>10</sup> defined by the government, plus a National Agency of Regional Development (ANDR) that was supposed to function as the hub of the network. The whole structure had the mission to consolidate itself and gradually train its staff so that it can manage the big programs EU usually implements in the candidate countries. After five years of running in with smaller components of the EU assistance, when the first sizable chunk of financing finally arrived in 1999 – the seven-year Sapard program of rural development – the whole structure was entirely by-passed by the very same central government that had set it up. The Ministries of Finance, Foreign Affairs and Agriculture tried to outmaneuver each other and take over the management of Sapard, and at no point was there any chance that ANDR could be involved. Agriculture won eventually, in spite of the fact that it had failed spectacularly with SPP, a pilot program one hundred times smaller than Sapard it had run through its territorial branches in 1998-99. The Ministry of Agriculture is one of the biggest and the most unreformed bureaucracies in Romania today, with antiquated procedures based on executing detailed budgetary items, aging staff and an institutional culture reminding of the Soviet bureaucracy in the Brejnev era. The local level cronyism and its image as a backwater tend to drive away the few talents that may happen to be in its apparatus. Under these circumstances, entrusting it with the management of a multi-year program requiring territorial delegation of responsibilities, flexibility, program budgeting and the assessment of proposals coming from private agents is a wild bet<sup>11</sup>.

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<sup>10</sup> EU-type, NUTS2 regions.

<sup>11</sup> In an uncharacteristic burst, even the minister of Agriculture lost his temper once and declared that there is nobody in the whole ministry who is able to write or manage programs.

## 2. 2. Policies: a decision-making process that does not make decisions

In fact, although the current Romanian cabinet is perceived from abroad as more coherent and competent than the previous ones, this image has little support in reality. No substantial reforms were initiated after the 2000 elections, either sectoral or cross-cutting, though in principle the task should be easier now under a one-party government. The top actors, primarily the Prime Minister and the Secretary General of the cabinet, have failed to reform the protracted decision-making process, which is actually hard to call a “process” at all. Usually the choice in crucial policy areas is not made, but “happens” as a result of conflicting pressures from the numerous agencies and lobby groups which constitute the government. Explicit strategies are missing, key options, broad policy principles and trade-offs are never discussed.

It may be that they are not understood, since the ministries or the cabinet in its entirety do not have functioning policy-analysis units, and distrust any advice from the independent experts (in short supply anyway). Or, there may be no time to analyze and understand anything, the cabinet being constantly under the pressure of adopting the EU *acquis* – or ambushed by bureaucratic entrepreneurs with hundreds of drafts of laws, decisions, and norms dealing with narrow or trivial issues. There is no real delegation of authority at the lower level, and no competent upper-level bureaucracy able to process, integrate information, and present broad policy options to decision-makers. As a result there is no functioning information filter between lower and upper levels, and the decision becomes unpredictable, crisis-driven and many times irrelevant. Recent innovations, such as the weekly videoconference of the cabinet with county prefects and local government representatives, may be promoting some sense of openness and responsiveness in the system. But on the other hand it only aggravates the mentioned shortcomings by increasing the ah-hoc nature of governance. When a lot of time on cabinet sessions is spent on irrelevant details, crucial choices either pass unnoticed or are obscured on purpose (to avoid divisions, public criticism, etc). When this happens, the hard decisions are only postponed, and therefore taken implicitly by the bureaucracy in the process of implementation. This is why many times the secondary legislation (administrative norms) that follows a law is more important than the law itself – actually, *they make law*.

Instead of being short, focused and reaching clear decisions, Romanian cabinet meetings are long and have unpredictable agendas. The famous weekly sessions under the center-right coalition of 1996-2000 could last 12-14 hours in a row, with ministers and advisors coming in and out and trying to outmaneuver each other by sneaking memorandums or drafts into the PM's folder. The situation has somehow improved since, but there is still a sense that there are too many items on the agenda and no useful mechanisms to screen and integrate proposals before they reach the plenum – so that, for example, the ministers of Culture, Education, Foreign Affairs, etc. do not waste hours waiting their turn while important but obscure technical details of the tax reform are pondered by the few cabinet members who deal with them. Ministers still do not receive a complete agenda in advance so that they can be briefed by their advisors on the main points to be discussed.

As mentioned above, this type of cabinet is rather a forum where the coalition parties' representatives (or factions of the same party, as it has been the case in the last years) struggle informally for influence, while the premier acts more as a mediator than a champion of a specific policy agenda. Thus, on the trade-off between technical effectiveness and political representativeness which is characteristic for cabinet

governments<sup>12</sup>, the Romanian executive stands much closer to the latter end of the continuum. To complicate matters further, there are important actors who apply their veto on policies from outside government, using informal means<sup>13</sup>. A good example for this was the proposal to abolish the progressive personal income tax and shift to a flat tax, put forward in the summer of 2003. Although both the Prime Minister (and head of the ruling party) and the Minister of Finance were endorsing it, and so formally there was no obstacle to implementing it, the reform was killed by the opposition of President Iliescu and his close allies in the ruling party who exert a lot of informal control.

Ministries and central agencies do not cooperate or exchange information significantly, and as a result cross-sectoral issues cannot be identified and dealt with. There are no policy documents circulated and discussed within the government, and largely no sense that there should be such a process. There is no policy unit at the central level that may help the cabinet produce and follow a coherent agenda. And it will be difficult to establish one since the powerful ministries, correctly regarding this move as a threat to their monopoly on relevant policy information and freedom of movement, are likely to block the initiative.

The formal requirement of inter-ministerial consultation apply to legal drafts only – which many times are poorly written, unclear about objective and means, and keep changing at source while they are being discussed in other institutions. The lack of policy documents, white books and other consultation papers written in plain language, publicized and discussed broadly was often singled out as one of the most important, yet overlooked, governance flaws in Romania<sup>14</sup>. They should form the basis of strategic decision-making, while laws should only be subsequent instruments to implement decisions once these are made. Instead, what happens is that ill-considered laws originating in various ministries avoid hard policy choices through loopholes, omissions, vague legal language. When the law gets passed, the key policy issues are either decided in haste, sometimes implicitly, in the secondary legislation (norms of implementation), in a process which is purely bureaucratic and unaccountable; or never addressed just to resurface in the process of implementation, so that everybody gets confused, agencies begin to apply the law discretionary, and the government rushes to pass another law to deal the aspects in question, which introduces additional problems – and so the treadmill goes on.

Even foreign donors have come to realize the problem and increasingly ask the Romanian authorities to allow more time for debates and discuss the key issue openly, in order to increase the quality of acts and regulations. However, this is easier said than done, since there is no clear counterpart on the domestic side in charge with this issue. No focus for coordinating policies has emerged so far, and the civil service has no experience in costing out laws, evaluating their broader social impact and assisting the decision-makers with such expertise. The Secretariat General of the government, the natural location of this function, “*has no capacity for substantial policy coordination*” and in general “*there is little quantitative and qualitative monitoring of policy implementation*”<sup>15</sup>. Instead, apart from its duty to handle the agenda and

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<sup>12</sup> Blondel, J, and Müller-Rommel (eds.), 1993. *Governing Together*. London. Macmillan

<sup>13</sup> Such as the Romanian president, who is required by law to be “above party politics”. In fact both presidents in the last decade and a half maintained close links with the parties that had backed them in elections.

<sup>14</sup> *Romania: Policy-Making and Co-ordination Assessment*. Sigma program, 2002.

<sup>15</sup> *EU Commission Country Report: Romania*, November 2003, pg. 16.

documents of the cabinet meetings, the SG is regarded as a crisis unit of the cabinet which in the last years has been charged with everything, from finding a solution to the problem of abandoned children to coordinating the efforts of prefects in case of flood or heavy snowfall. Like in the area of civil service reform, there is little chance that such policy-coordination capacity will be developed as long as the top political leadership does not realize its importance and is willing to spend some political capital on fixing the problem.

In fact, there is nothing new or peculiar to Romania in having erratic and opaque policies, an unclear agenda at the top, little public consultation, poor coordination, and a weak civil service overstepping its mandate when making crucial decisions by default in the implementation process. In a book on policies in developing countries, Marilee Grindle argues that one of their obvious characteristics is that the focus of participation and conflict occurs primarily at the implementation or the output stage<sup>16</sup>. This contrasts with the experience of the US or Western Europe where the focus rests instead on the input or policy-making stage. She identifies two reasons for this difference. First of all, in developing countries there are few organizational structures able of aggregating the demands and representing the interests of broad categories of citizens. When such structures do exist, they tend to be controlled by elite groups. Second, national leaders with influence over the allocation of policy goods tend to discourage citizen participation in the policy process as illegitimate, or at least inefficient. Trapped between weak representation and discouraged participation, citizens/groups are forced to engage with the policy process by presenting individual demands. Therefore "factions, patron-client linkages, ethnic ties and personal coalitions"<sup>17</sup> are the most common mechanisms to access public goods and services.

*Mutatis mutandis*, the analysis is instructive when translated into the post-communist space. Communism has left behind a tradition of policy making which does not encourage broad and open consultations, considering and costing-out alternative courses of action, or balancing trade-offs. Instead, the agenda is set in a close circle of technocrats and approved by the key political players (who may or may not coincide with the official political hierarchy). However, the formal policy set from the top is merely a basis for perpetual negotiations – vertical and horizontal<sup>18</sup> – in the public administration and the political system occurring during the implementation stage. Substantial deviations from the original goals are tolerated depending on the informal power of each actor involved. Strategic policies do exist, as well as other official norms and regulations, but they tend to be more or less fictional, many times the public institutions being the first to ignore them. We can call this ***the model of governing by default*** – when in an environment of poor coordination from the top and unreliable public administration policies happen more often than are made deliberately, and there is a considerable difference between the formal institutional framework and informal norms which apply in reality.

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<sup>16</sup> Grindle, M., 1980. "Introduction", in M. Grindle (ed) *Politics and Policy Implementation in the Third World*. Princeton Univ. Press.

<sup>17</sup> *Op. cit.*, p. 18.

<sup>18</sup> We use here the terminology employed by Janos Kornai in his description of the Communist regime as perfectly unpredictable, where the official plan was in fact only a loose guideline and what happened in practice was the result of power games and negotiations – Kornai J, 1992. *The Socialist System. The Political Economy of Communism*. Princeton Univ. Press.

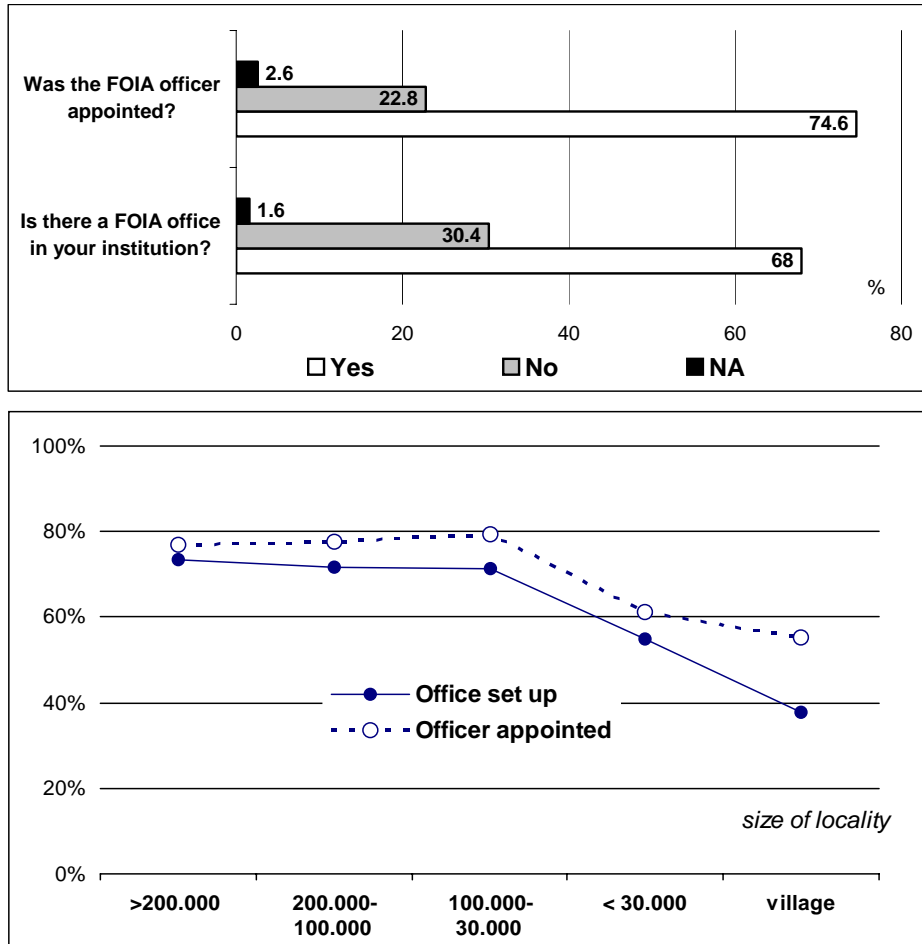
### 3. CASE STUDIES

The two examples below serve as illustrations of various instances when government policies fail, at various points of their implementation cycle. They can be read as tests of the capacity of the Romanian governing system to design and pursue a coherent course of action.

#### 3.1. Test A: The case of the Freedom of Information Act (FOIA)<sup>19</sup>

The Romanian FOIA was passed in 2001 and its subsequent implementation has attracted a lot of public attention and free publicity from the media, as well as many capacity-building resources from the donor community. Conditions are therefore met to make it a relevant case study: one year after, was the law actually implemented and the targets the government has set for itself met? We surveyed a representative sample of 500 public institutions from 96 localities, with a methodology combining questionnaires, in-site visits and mock requests in order to assess both the formal compliance with the law and the more demanding aspects related to its implementation.

**Fig. 3. Formal compliance with FOIA by law provision and size of locality**

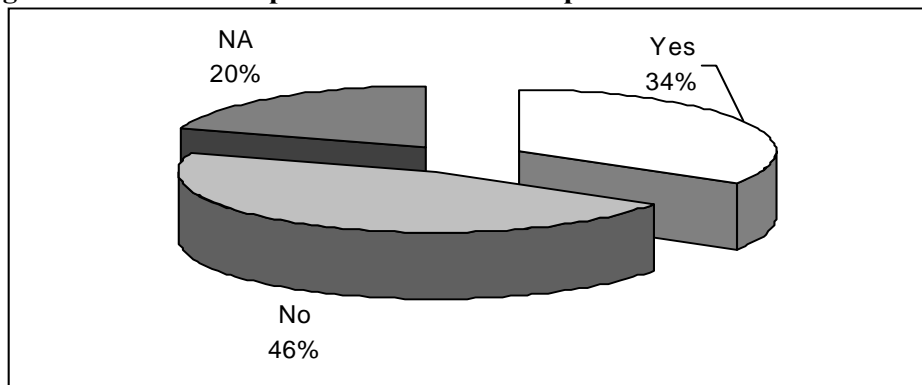


<sup>19</sup> Based on a study conducted by the Romanian Academic Society (SAR) in 2002; see *Transparency in the Romanian Public Administration*, policy papers series, [www.sar.org.ro](http://www.sar.org.ro)



Results point to the ordinary formal compliance: three quarters of the sample designated a person in charge, and over two thirds created a special office to deal with FOIA issues (Fig. 3). Figures are – unsurprisingly – considerably lower in rural than urban areas. Going more in depth, the law requires that each institution must produce and made available *ex officio* a list of documents of public interest. SAR checked on the existence of such a list, which is crucial in order to orient citizens, NGOs and the media on the kind of information produced by the agency. It is also important if a case is contested in court, as the law allows. The results are presented in Fig. 4: the list was available in far fewer institutions, about a third of the total.

**Fig. 4. Substantial compliance with the FOIA provisions**



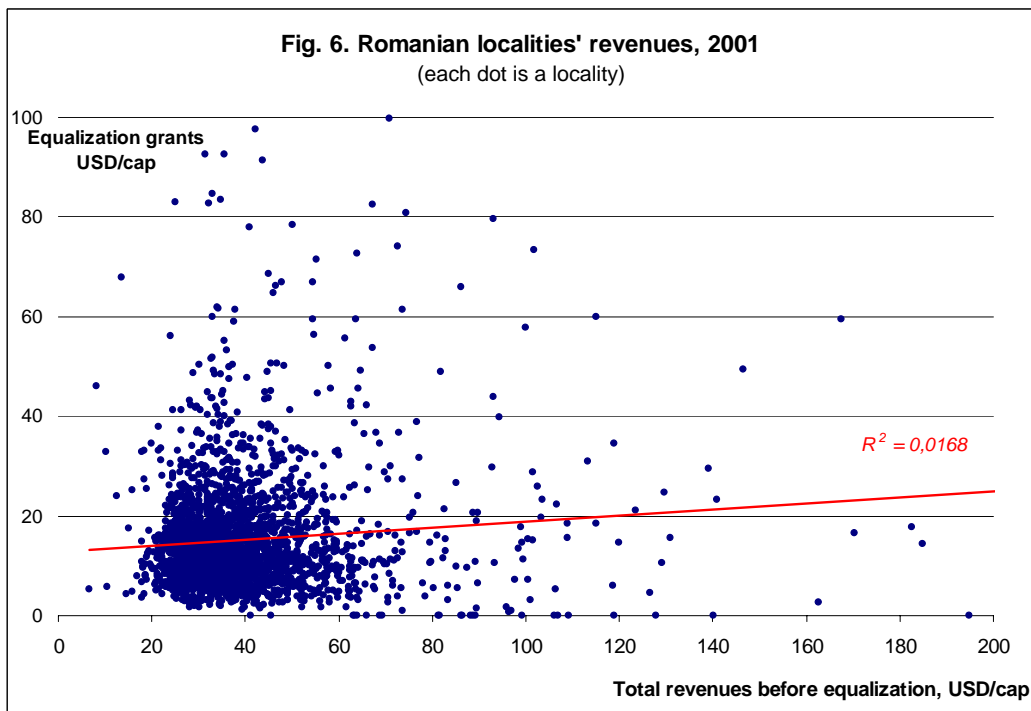
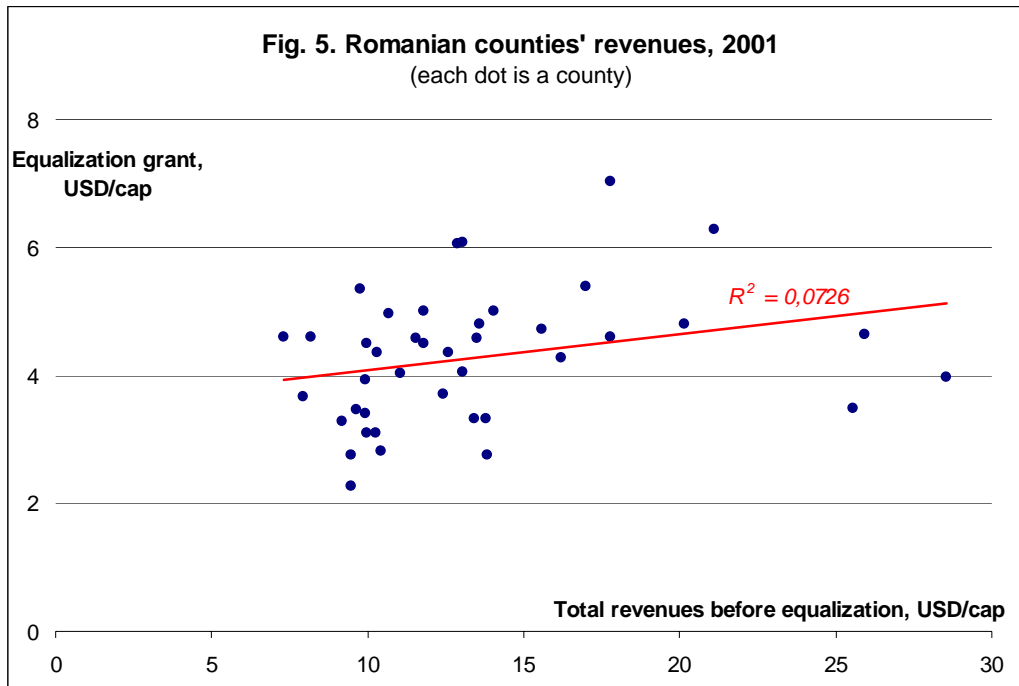
However, when our operators asked to actually see the list, only 16% of agencies could produce one. We did not check if the list was accurate and complete. The essential fact is that 16% only were able to meet the minimal requirements of the Freedom of Information Act: preparing an inventory of information which can be disclosed to the public. One year after FOIA was enacted the evidence does therefore show that it was implemented formally and superficially in 2/3 of the agencies surveyed, but the first substantial step was undertaken in only 16% of the public administration. The case may be illustrative for the fate of the *acquis*, which even after passing the obstacle of Parliament may face a similar fate.

### **3.2. Test B: The case of the financial transfers for the local governments (equalization grants)**

With the advance of decentralization in the last decade, the local autonomy has increased in Romania and local governments were able to develop a basis of own revenues in order to finance their independent functions. But their actual capacity to raise revenues varies substantially from one unit to another, depending mainly on the local level of development. For example, the counties' own revenues per inhabitant in 2001 ranged more than 1:3 from the poorest to the most well-off county; if anything, the disparities are even higher among localities, the second tier of local government.

Following the international standard practice, a system of financial transfers was created in 1998-99 to partially compensate these disparities and ensure all local governments have a minimum of resources to perform their basic functions. It is called the *equalization grants system* and, though in reality it is a complex arrangement of money transfers with many stages and components, it is based on the simple principle of a pool of money to be distributed in inverse proportion with the financial strength of the local governments, following a formula specified in the Annual State Budget Law.

Compliance with this redistributive, “Robin Hood principle” should be very easy to verify in practice, were it not for the deliberate obscurity in which the system is kept. Nevertheless, SAR has managed to collect and assemble data on local budgets execution in order to check if the basic policy objective – to transfer some money from rich to poor local governments – is actually met. Unsurprisingly, it turns out that it is not, either at the county (Fig. 5) or locality level (Fig. 6). In both cases there is no significant correlation between the wealth of the local government unit and the size of the (presumably) equalization grant it gets. Many rich units receive more money per capita than the poor ones – which is to say that instead of reducing inequalities this policy slightly magnifies them.



The explanations for why this happens are manifold, and merely listing them offers a good X-ray of the functioning of the Romanian public sector in matters of financial allocation: the formula mandated by law is not applied, especially at the sub-county level, where the leadership of the county councils use the funds in a discretionary manner in order to build political clientele; the county prefects, whose main constitutional attribution is to check the legality of the local councils' decisions, have never challenged in courts this illegal behavior of the counties; the central government lacks the political will to step in and discipline its local party bosses; as a result, incentives to behave responsibly and make fiscal efforts at the local level are destroyed, and instead everybody focuses on rent-seeking and case-by-case deals with the upper tiers of government; and lack of access to relevant information in a meaningful format makes difficult for independent observers to notice and document such policy flaws.

## CONCLUSIONS

The two case studies depict contrasting experiences. The first is an example of policy which was assumed, passed and put into practice without assessing the costs and trade-offs the implementing agents will be confronted with. For many reasons, the government was determined to push through an act which was perceived as progressive, or at least to be seen to do its best in this direction. The problems they encountered were (i) poor *ex-ante* planning for what was going to be a major change affecting every public institution in Romania, and (ii) a genuine shortage of capacity to implement its provisions consistently across the public administration, as the survey shows. The flaws of the civil service discussed in previous sections make it very difficult for such broad initiatives to succeed.

The second case sheds light on a different, but complementary set of shortcomings. Technical implementation of the provisions of the law governing money allocations is not a problem here. With political will and proper coordination, the matter can be sorted out with little administrative costs. Instead, the real problems are (i) the lack of mechanisms to assess the effects of a policy *ex post* and give feed back to decision-makers, and especially (ii) the fact that no central ministry wants to be in charge with this sensitive issue (Finance and Public Administration have been playing back-and-forth with it for many years).

The reason why nobody wants this hot potato in their lap is that they will have to confront a key problem of governance in Romania – arguably, *the* key problem. As breaking the rules of the equalization grants system is currently the only way to solve expeditiously and with minimal effort a host of issues left unaddressed (financing infrastructure at the local level, intervening in case of emergencies, co-financing international investments, determining local governments to cooperate), fixing the system would require a lot of effort to analyze and rationalize a complex policy area – in this case, decentralization. It is much easier to preserve the status quo and tolerate deviations from the rule in order to solve individual crises, rather than embark upon such a monumental effort of policy consultation and redesigning. The weak institutional framework – administrative fragmentation at the top, poor overall coordination, unprofessional and politicized civil service – described above has a lot to do with it. And the circle closes when well-connected stakeholders, for example, those at the local level, start exploiting the new, ad-hoc rules of the game to their own advantage. This is a clear illustration of the situation mentioned by Grindle in section

2.2. above, when a lack of institutionalized feedback and broad participation in designing policies lead to their delegitimation and various actors seeking case-by-case solutions to their problems.

What is common in the two examples is the large gap between the formal norms and the real practice, mentioned at the beginning of this paper as one of the most obvious indicators of governance failure in Romania. For many reasons – lack of capacity, lack of motivation, political interest – laws and policies are not consistently enforced. Instead, a different set of informal norms emerge which guide the actual behavior of all agents involved<sup>20</sup>. In fact, there is a vicious circle here: a fragmented policy-making body generates no broad and coherent policies, but many pieces of legislation which are not necessarily consistent with each other; implementation is erratic and no feed back sent up by the bureaucracy; the enforcement is done selectively by the central authority – and it cannot be otherwise, since deviations are so many – often based on criteria developed outside the legal domain, such as the right political connections. As things stand, it is unlikely that the vicious circle can be broken by a large cabinet with variable geometry and poor internal coordination, the main mission of which is not to generate and monitor policies but to function as an arena where power groups meet to reach compromises.

These are traits shared to some extent by the whole CEE region, but the Romanian system of administration looks an unusually accurate embodiment of the problems discussed in previous sections, which can be summarized by what we have defined in this paper as *the model of governance by default*. Our contention is that, in spite of the frequent organizational changes of the public sector in the last years, the core of this model of governing based on weak institutions was left untouched in Romania. This explains the low scores of the country on most of the good governance indicators mentioned in the introduction: accountability, effectiveness, regulatory quality, rule of law, or control of corruption.

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<sup>20</sup> The rules about how to break the rules, as informal norms are sometimes defined.