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Poor Policy Making and How to Improve It in States with Weak Institutions

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Abstract

Romania has consistently scored low in performance assessments of EU hopefuls. There is a growing consensus on what the main culprit may be; namely a lack of capacity to design, adopt and implement public policies, irrespective of their nature. The underlying factors include: a lack of data and coherent administrative procedures, distrust of state bureaucracies and among public officials, the tendency of new governments to downplay the achievements of their predecessors and spend time and effort revising laws and regulations without any form of public program assessment, and a 19th century approach to policymaking where judgments in terms of social costs and benefits are rare. Despite a political will to adopt new laws and procedures there is still a lack of incentives and implementation at the civil service or political level. The author discusses the difficulties of policy reform in such an environment, and offers recommendations for what the government, independent actors such as NGOs or the media, as well as international partners can do in order to change the situation.

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1 Poor Governance

Ever since Romania was included in comparative performance assessments that rate the transition countries, it has scored consistently poorly, usually coming towards the bottom of the table of EU hopefuls. The European Commission annual reports evaluating the progress of candidate countries put Romania in last place after Bulgaria, a country that, arguably, began the transition facing harsher adverse circumstances. There is a growing consensus within both local and foreign analysis on what the main culprit may be here, namely a lack of capacity to design, adopt and implement public policies, irrespective of their nature. This has created a sense of drift and uncertainty in Romanian society, and has demobilized many social actors that might have taken the hardships of transition as their own, had they only been given a stable environment.

This policy shortcoming has also substantially affected the pace of social development. Most inherited indicators from previous regimes in all ex-communist countries had reasonably high measurements. UNDP measures human development through a combination of education, health state and economic output indicators. If literacy rates or life expectancy change only slowly in time – and even these showed a slight decline only across the region after 1989[1] – we can say that GDP/cap figures were much more volatile, and started the '90s with a downwards trend. The lack of consistent and sustainable growth in the last decade is largely attributable to domestic policy failures. Incorrect institutional provisions, a lack of political will and a lack of implementation skills – all can be grouped under the heading *weak governance,* which explains why some countries have fared worse than others here; and Romania has definitely lagged behind in this respect. One of the most comprehensive evaluations of governing qualities had by nations of the world, run jointly by the World Bank and the Stanford University[2], only confirms via the use of quantitative data what EU, OECD and other international reports have noted beforehand: that there is a 'governance deficit' in Romania that covers many aspects of public life (Fig. 1).

Two things are of particular concern in this analysis:

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[1] The pre-1989 figures are questionable in many countries, and in Romania first of all, due to the propensity of the old regime to tamper with statistics.
[2] Kaufmann, D., A. Kraay and P. Zoido-Lobaton, 2005. *Governance Matters IV: Updated Indicators 1996-2004.* The World Bank and Stanford University,

- Romania has, for most part of the transition period, scored least among CEE nations as regards quality of governance indicators, being now relegated into the second league together with crisis-torn Balkan and CIS countries.
- Not only is the average score low – also, the quality of governance in Romania improved very little between 1998 and 2004.

No other EU candidate has experienced such a combination of unwelcome developments. When the country score as a total is broken down one can see more precisely where the problem is. While in political areas (the voice of the people/democracy, political stability) things look reasonably good, it is in policy implementation areas where the score is pulled down: i.e. as in government effectiveness proper and the control of corruption (Fig. 2). In addition, the quality of regulation notably worsened between 1998 and 2001 – and this is an important point to stress when talking about the first decade of transition in Romania: *the country has failed to follow up the political liberalization (see voice and accountability in Fig. 2) achieved in the early nineties with sound policies*.
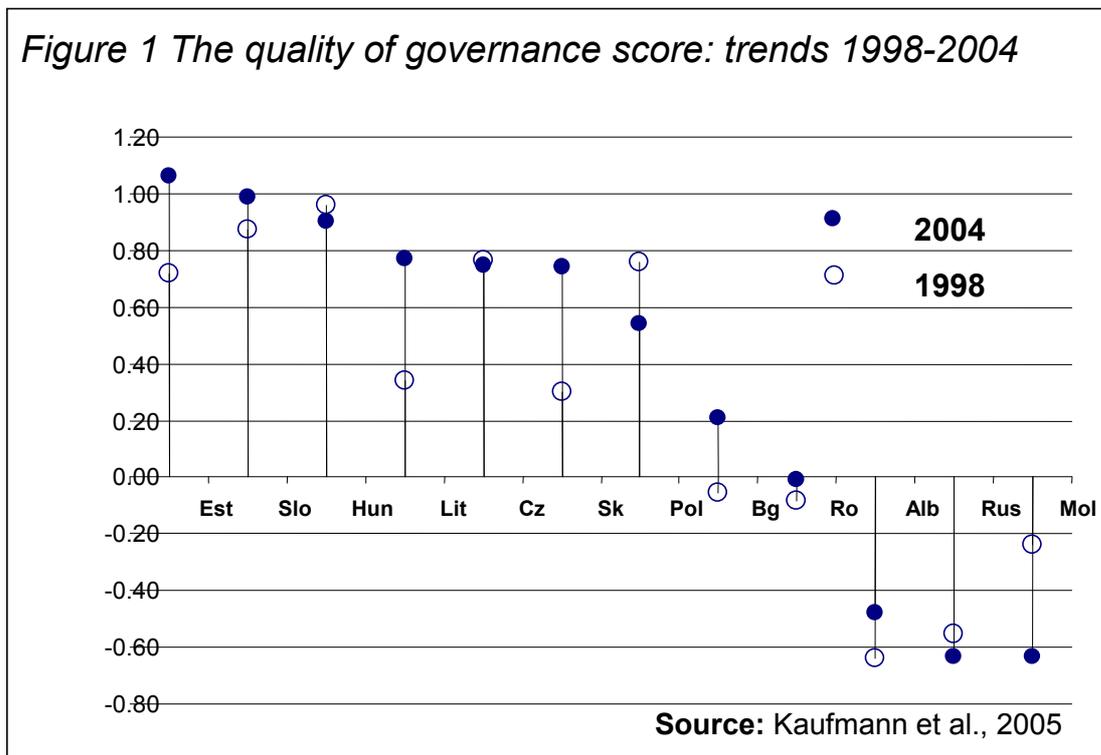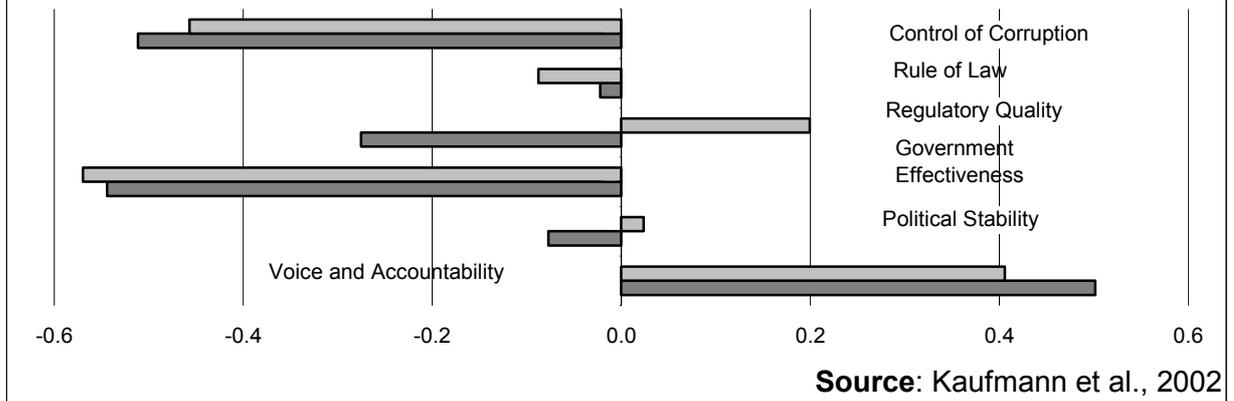

Figure 1 The quality of governance score: trends 1998-2004

Source: Kaufmann et al., 2005

Figure 2 *The quality of governance in Romania: developments between 1998 and 2001*

Control of Corruption

Rule of Law

Regulatory Quality

Government Effectiveness

Political Stability

Voice and Accountability

-0.6   -0.4   -0.2   0.0   0.2   0.4   0.6

Source: Kaufmann et al., 2002

When something eventually becomes implemented and functions, there are usually two reasons why this happens. First of all, because external conditionality was strong and detailed enough to keep things on the right track. Such is the case with certain measures resorted to, to stabilize and liberalize the Romanian economy, something adopted largely in two waves: 1997-98, and after 2001, largely under pressure from the EU. Or, second, when a bad crisis suddenly occurs and *forces* the implementation of a solution that has already been long debated (and lobbied for by local actors) without any political decision having been reached. Arguably, this is how some of the most important policy achievements of the last few years have come about: the passing of the FOIA law pushed forward by a consortium of NGOs in 2001, local budgets' reform, and the cleaning up and strengthening of the financial sector after a series of bank and mutual fund collapses (which brought the country close to a state of default in 1999). More recently, under strong pressure from the Romanian public a very strict law dealing with the disclosing of personal assets and interests was put in place in connection with dignitaries and civil servants. In some instances a combination of external conditionality and crisis-driven measures would lead to action - as was the case with the issue of orphans: strong pressure from Brussels and Strasbourg to do something about Romania's gloomy orphanages plus a string of scandals related to international adoptions forced the government into action and a more modern system of foster care was eventually implemented.

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The problem is that these two factors can only work in *some* policy areas. An external or crisis-motivated push may not function with the same efficiency in *other* areas of economic or social policy, where standardized ways of operating do not exist (as they do in banking or local finance, for example). Here, domestic expertise is necessary in order to be able to filter and adapt locally a pool of internationally-recognized, best practices. If the Romanian policy-making community continues to be weak and non-committed, things will not change for the better. Right now, there are obvious problems in this respect, starting from the very design of the policy cycle.

2 The Missing Policies Model

In principle, a robust policy design rests on a rational model of policy-making (define the problem, identify and evaluate alternative solutions, choose the optimal one based on explicit criteria, implement it and collect feed back). However, the situation in Romania reminds one of that of pre-modern states, when a lack of data and coherent administrative procedures made large portions of the society "invisible" to top public officials[3]. Evolution towards a modern public sector implied a systematic effort to centralize information, categorize and handle data for policy purposes – hence to "read" the society accurately. Yet attempts to develop rational policies using modern state bureaucracies may be resisted by citizens if there is distrust among them and among public officials; the former may suspect that every attempt to make social transactions more "readable" via the use of recorded data and a measuring of social processes will lead to more state interference and control, which is regarded as evil. In other words, citizens' trust in public institutions is not only a result of previous experiences with state intervention – it is also a factor that affects the very *capacity* of these institutions to design and then implement public policies. Without measures aimed at enhancing the people's level of trust in state institutions, therefore, it is hard to escape this trap created by pre-modernity.

After 1989, there has been little progress in this respect in Romania, although the need for effective and rational public policies is now recognized by all mainstream actors. The consequences are clear. During communist times both *politics* and *policies,* in the modern, democratic meaning of the terms, were absent. Two simultaneous

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[3] JC Scott, 1998, 1998. *Seeing Like a State*, Yale Univ. Press – quoted in Leslie Pal, 2002. "Public Policy Analysis", in Mungiu-Pippidi, Alina, and S. Ioniță (eds) *Politici Publice: Teorie şi Practică.* Polirom, Iaşi,

developments were supposed to take place in the public sphere after the fall of the communist regime, starting from this zero-base situation: the emergence of democratic politics, and development of the design and implementation capacities inherent in public policy. In reality, the evolution of the two axes was uneven (Fig. 3)[4], for, after 1989 we can argue that Romania has remained stuck in the upper-left quadrant.

The fall of the old regime caused a rapid move towards political pluralism in the early '90s – though the same development failed to occur on the policies axis. If we agree with the distinction that *politics is about getting elected, while policy is about what you do afterwards*, we can conclude that the main interest has been focused on electoral campaigns, alliances and splits, positioning and re-positioning, and courting the media. All of the modest steps towards professionalization in public life have occurred almost exclusively in these areas. The idea that running for office should also involve competition among programs and policy packages has still not dawned on Romanian politicians, however; and, since *campaigning* is the only proven skill of the political class, it begins shortly after one round of elections are over - consuming financial and intellectual resources which, in "normal times", would be (at least partially) invested in policies. Moreover, every new cabinet has a tendency to downplay the achievements of its predecessors and then spends time and effort re-writing and revising a substantial amount of laws and regulations without running any form of public program assessment alongside this.

Figure 3 Incomplete development of the public sphere after 1989
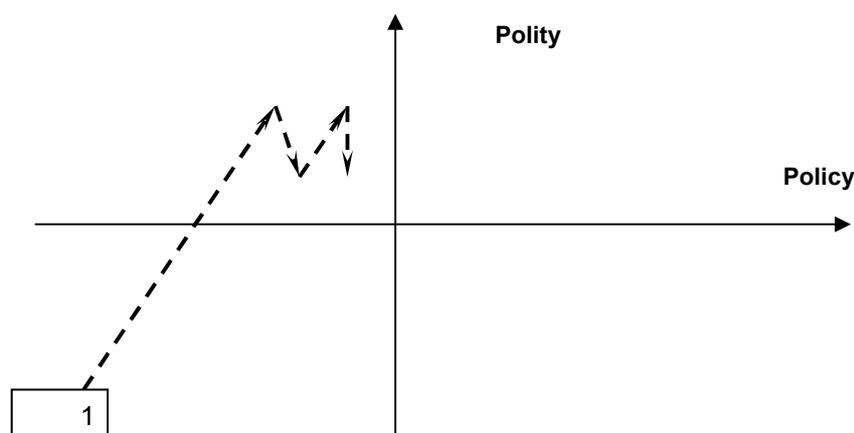
Romania.
[4] Following a suggestion by Dorel Sandor, 1999. "Politics versus Policies: How to Succeed in Blocking Reforms", in Rühl and Dăianu, *Economic Transition in Romania: Past, Present and Future*. Cerope, Bucharest.

One thing that politicians and their advisors have learned to do in the last decade is to use and discuss/learn from opinion polls. This is indeed a useful skill in a modern democracy since poll data, if used properly, can be a precious source of feedback regarding policies. Nevertheless, given an absence of other types of skills and products, an over-reliance on polls reinforces the false impression had by politicians that the governing process is only about triangulating and influencing public opinion. This is a natural bias for East European elites, groupings made up largely of intellectuals with a soft spot for expressing themselves in public and acquiring the celebrity status associated with this. The whole notion of reform as a list of identifiable steps and procedures, characterized by an implementation effort, measurable outcomes and a certain level of efficiency still remains rare - and not only among politicians but also for much of the public. And so does the idea that *all* policy cycle components are worth studying, not only the initial big idea.

A very important mental barrier that holds back institutionalization of professional analyses is the lack of understanding of the nature of trade-offs in policy decision-making. In real life, nothing comes without a cost; well-meant policies have unintended consequences, while some of them may be unpleasant. Good policy researchers always try to make their analysis as inclusive as possible when balancing the costs and benefits of proposed public procedures and ways of moving.

The Romanian policy community, irrespective of its professional background, has not yet assimilated this fundamental notion of trade-offs - which is small wonder: socio-human or engineering subjects were (and still are) taught in universities with the same disregard for situations where choices *must* be made between conflicting values that all have legitimacy. People still have the impression that optimal solutions are unique and can be determined by the best experts in the field using the right technical instruments. Whilst one cannot realistically expect a minister to possess the analytical objectivity of an academic in evaluating his/her pet project, independent experts should know better… Unfortunately, think tank members often advance their agendas in the same blindfolded way of a government official, assuming that incompetence or personal enmity will be the only sources of disagreement. Moreover, for such persons, too, policies are mostly about message and a positioning in the public space - rather than about outcomes.

The "missing policies model" shown above poses serious problems for the state of social development in Romania. Inconsistent governance creates uncertainties for all social actors, public and private, and shortens their perceptions of time horizons - with all the consequences that follow on from this: a reduced level of trust, proliferation of 'hit-and-run' transactions, a difficult balancing up of factors promoting the public interest. It has been said that bad policies can be less damaging than no policies at all. This may not actually be true in many cases - but it does illustrate the feelings of many Romanian citizens today, after more than one decade of a protracted transition: that anything is better than a perceived policy drift, i.e. when no party is able to point to a clear course of action. This mood, even if not fully justified in reality, explains why so many voters have defected from the democratic camp and have begun to vote in an 'anti-system' way! What is certain, though, is that policy incompetence and/or political class lack of interest is leaving society in a sub-optimal state - where people's welfare is lower than it could otherwise be.

3 Administrative Problems

The Romanian policy community embraces an obsolete, 19th century approach to policymaking, something being centered mainly in the drafting and passing of legislation. A policy is good or legitimate when it follows the letter of the law – and vice versa. Judgments in terms of social costs and benefits are very rare. This legalistic view leaves little room for feasibility assessments in terms of social outcomes, collecting feedback or making a study of implementation mechanisms. What little memory exists regarding past policy experiences is never made explicit (in the form of books, working papers, public lectures, university courses, etc): it survives as a tacit knowledge had by public servants who happened to be involved in the process at some point or other. And as central government agencies are notably numerous and unstable – i.e. appearing, changing their structure and falling into oblivion every few years - institutional memory is not something that can be perpetuated[5]. This, again, is consistent with the other pre-modern features of Romanian public administration, namely as regards:

- Low capacity to communicate across time and institutions
- A closeness vis-à-vis independent experts and public opinion

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[5] Ioniță, Sorin, 2002. "Expandable Government: Institutional Flaws of the Central Administration in Romania", in Mungiu-Pippidi, Alina, and S. Ioniță (eds) *Public Policies: Theory and Practice.* Polirom Publishing House, Iaşi, Romania.

- Learning exclusively by *doing*, typically in one agency; as a result, there is very little ability had by operators to verbalize and generalize experiences - as well as little capacity to adapt to changing circumstances
- A propensity to secrecy; by default, information should be kept secret because it constitutes the only comparative advantage had by an otherwise dispensable bureaucrat.

A combination of political uncertainty and low payment – insufficient as regards sustaining a decent level of living, even at modest Romanian standards – creates a civil service which is not only less professional than those of developed countries - also, it is increasingly displaying a tendency towards *duality*. The majority of its members are old petty apparatchiks - or new dropouts from the private sector. Frustrated by their low income but unsure of their own skills to cling to their existing jobs, they duly execute daily routines, play bureaucratic power-games and yield to political pressures coming from above.

Conversely, a very different strategy is pursued by a small number of people, too, especially in the higher echelons, who regard time spent in the civil service as something for their CV, for their political career, or as a step towards a more lucrative job in the private sector or with an international organization. Or, they could be driven by a less virtuous motivation... Some of them may have been educated in the West and thus constitute nuclei of competence within their immediate environment, though their tenure will tend to be short - and there will be no long-term impact made on the overall performance of the involved institution. These are the persons with whom the typical Western donor will meet and talk - hence the widespread impression that the public sector situation is better than it really is; for there may be differences in the level of professionalization and stability between institutions. It has been noted before that the central banks and finance ministries of developing countries, or the Ministries for EU Integration in the CEE, for example, are the first to develop "linkage elites", i.e. who speak the conceptual language of Western colleagues. However, their numbers are as yet too small to alter the overall picture of the civil service: a mass of disgruntled and ineffective staff, punctured with small and transient groupings who do understand and try to push reforms forward. Again, giving this dual structure of the Romanian civil service, even Western advisors have a hard time interacting successfully with it. Professional communication and mobility between the two sectors tends therefore to be low.

Some things can be accomplished (especially in the first stages of transition): non-controversial measures requiring little administrative capacity with regard to

implementation, which are likely to be promoted quickly by a small circle of senior officials with political support and not much help needed from outside government (the setting up of - basic - democratic institutions, early prices and trade liberalization, the dismantling of old regulatory mechanisms). Yet as post-communist reforms entered the second stage, where more complex public systems involving many stakeholders would need to be changed, the bureaucracy's coherence becomes crucial - and inputs from independent knowledge centers may be decisive. In Romania, while the reforms of type one were more or less successfully pressed upon "normal" bureaucracies by the linkage elites and political leaders, attempts to implement type two reforms led to bureaucratic sabotage and open fighting back against initiators. What is more, when arbitrary and politically-driven purges of the civil service occur, like the one mentioned earlier, people who make up the small pockets of expertise are the first to disappear from public institutions – either because they were most visibly associated with the political sponsors of reforms or because they are the most professionally mobile anyway.

Entrenched bureaucracies have learned from experience that they can always prevail in the long run by paying lip service to reforms while resisting them in a tacit way. They do not like coherent strategies, transparent regulations and written laws – they prefer the status quo, and daily instructions received by phone from above. This was how the communist regime worked; and after its collapse the old chain of command fell apart, though a deep contempt for law and transparency of action remained a 'constant' in involved persons' daily activities. Such an institutional culture is self-perpetuating in the civil service, the political class and in society at large. A change of generations is not going to alter the rules of the game as long as recruitment and socialization follow the same old pattern: graduates from universities with low standards[6] are hired through clientelistic mechanisms; performance when on the job is not measured; tenure and promotion are gained via power struggles.

In general, the average Romanian minister has little understanding of the difficulty and complexity of the tasks he or she faces, or he/she simply judges them impossible to accomplish. Thus they focus 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 local politicians - and this is the reason why they avoid formal

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[6] A problem still underestimated by Western donors and analysts, who are more familiar with other parts of the developing world where, in spite of social problems and inequality, well-educated elites exist and managerial skills are up to Western standards. In spite of the progress of the last decade we are still not in this situation in Romania.

institutional cooperation or independent expertise. In other words, policymaking is reduced to nothing more than politics by other means. And when politics becomes very personalized or personality-based, fragmented and pre-modern - as the next section explains - turf wars becomes the rule all across the public sector.

4 Elites' Habits and Values: "Amoral Familism"

A consistent layer of values and attitudes prevalent in society serves to stress the previously-outlined structural flaws. Personal allegiances are more important than anything else, even the rational self-interest of actors. As a result, the environment becomes more unpredictable than it would otherwise be. Leaders are supposed to be promoters of their protégés; and clan-based loyalties take precedence over public duties for salaried public officials. Such behavior can be found not only in the central government but also in local administration, the political opposition, academia and social life in general, i.e. so it permeates most of the country's elites. Classic studies of Mezzogiorno in Italy call this complex of attitudes "amoral familism": when extended kin-based associations form close networks of interests and develop a particularistic ethics centered solely upon the group's survival[7]. This central objective of perpetuity and enrichment of the in-group supersedes any other general value or norm the society may have, which then become non-applicable to such a group's members. At best, they may be only used temporarily, as instruments for advancing the family's goals – as happens sometimes with the anti-corruption measures.

Since Romanian society, like others in the Balkans, still holds onto such pre-modern traits, its members are neither very keen to compete openly nor are they accustomed to the pro-growth dynamics of modernity. Social transactions are regarded as a zero-sum game; a group's gain must have been brought about at the expense of others. This may be a rational attitude for traditional, static societies, where resources are limited and the only questions of public interest have to do with redistribution; the maximization game in these circumstances will not be understood in absolute but in *relative* terms – and what may be considered acceptable in the end is when everybody loses something, but one's own group loses less than the others. Yet such a worldview is non-beneficial in the new circumstances, where a positive spiral of growth is possible and the professional success of out-groups should not be regarded as a threat, but as a source of generalized wealth.

Designing and implementing welfare-enhancing public policies in this environment – meaning packages of consistent and uniform general rules that are applicable to everyone – is always a challenge.

In Romania, this secular, institutional under-development has been combined with the inheritance of a particular type of totalitarian regime: "sultanistic communism", as transitologists have aptly characterized the Ceausescu-type, unique blend of Soviet-style bureaucracy and Balkan-style arbitrariness and clannish behavior. The ruling class of the Ceausescu years was made up of a number of territorial families, ones fighting for power. Even the formal rules of the communist regime were not consistently enforced. Instead, it was an open secret that the competition among groups consisted of applying skills and one's power to bend the rules of the game to one's own advantage. Rent-seeking was a generally accepted principle inherent in the organizing of public life, and all individuals down the social ladder were trying - with more or less success - to replicate strategies made use of by the top echelons. Naturally, the habit of selective enforcement of rules, depending on one's social position, has not been able to disappear without trace in just one decade – indeed it has become one of the main problems of today.

After 1990, the newly-appeared political parties were, typically, made up of small groups of people with little or no idea about what the task of ruling a country meant. Governing was most often done, more or less routinely, by an uneasy combination of old-time Communist bureaucrats (the only persons possessing a group discipline via which to accomplish anything) and foreign donors. The emerging civil society, while facing more or less the same problems as the rest of the society, has tried to find a place for itself in this equation. As the Romanian communist regime was much closer and repressive than its Central European counterparts, it did not allow the emergence of an alternative elite - or even a decent category of technocrats who could understand and manage policy. In a belated response to such a situation, many civil society organizations appeared in the early '90s and tried to make up, with their radicalism, for the missing dissidence before 1989 – they were, so to speak, intellectuals organizing themselves to oppose a dead tyrant. This was one more factor that held back the appearance of modern, professionally-based think tanks; while the effect on post-communist politics was also weak, since these persons did not succeed in discrediting or excluding important political and economic actors that were linked with the previous regime.

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[7] Banfield, Edward, 1958. *The Moral Basis of a Backward Society*. NY: Free Press.

Transition researchers see this as a strong predictor of slow reforms and non-consistent policies[8].

Pre-modern attitudes towards public affairs do not necessarily mean that one has to be poorly educated or anti-Western. Actually, the correlation is weak between clannish behavior and membership to the old regime's ruling class. The new, post '89 elites, who speak the language of modernity when put in an official setting, can still be discretionary and clannish in private. Indeed, such a disconnection between official, Westernized discourse abroad and actual behavior at home in all things that really matter has a long history in Romania. 19th century *boyars* sent their sons to French and German universities and adopted Western customs in order to be able to preserve their power of patronage in new circumstances – anticipating the idea of the Sicilian writer di Lampedusa that "everything has to change in order to stay the same"[9]. Social theorists have even explained along these lines why, before Communism, to be an official, a state employee or a lawyer was much more common among the national bourgeoisie than to become an industrialist or merchant: because, as a reflection of pervasive rent-seeking, political entrepreneurship was much more lucrative than economic entrepreneurship.

This also shows why foreign assistance is many times ineffective in these states, and is seldom able to alter the ways of the locals. First, it is no longer an exogenous factor: playing on its interests and provoking specific reactions from the international community has become a component of local politicking[10]. Identifying "bad guys" or culprits with regard to non- or simulated reforms ignores the structural faults of these societies - and also personalizes forces that are deeply entrenched in society. Second, pumping resources through assistance programs without prior analysis of local conditions and networks of influence often ends up not by changing the rules of the local game but, on the contrary, raising the stakes and consolidating existent power groups. Local elites are tempted to appeal to the international community's interests with regard to maintaining local stability (as is the case with the European Union), thus emphasizing the presumably destabilizing effects of reduced assistance or tougher conditionality.

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[8] Nelson, Joan, 1995. 'Linkages Between Politics and Economics', in Diamond and Plattner (eds) *Economic Reform and Democracy*, Johns Hopkins University Press, Baltimore.
[9] "Occore che cambi tutto perche non cambi niente", in Tomasi di Lampedusa, 1958. *Il gattopardo*. This also explains why 'diplomacy' has been an occupation held in high esteem in our society and is quite professionally practiced: because the better you are at it, the more you are able to increase the distance between *pays légal* and *pays réel*, have fictions accepted by the powerful foreign partners that you depend upon, and the more you maximize in-group benefits.
[10] van Meurs, W., 2001. *Risk Reporting 2001/2002 Southeastern Europe.* Bertelsmann Stiftung.

5 Policy-making Problems

Some political will now exists to adopt new laws and procedures that are able to facilitate technocratic policy selection. Much of this seems to have been driven by the carrots and sticks associated with EU accession. Yet the main problem has always remained the same: a lack of incentives and implementation, at either the political level or in the civil service, geared to strengthening investment programs and budgeting systems so as to ensure that allocations are made according to appropriate criteria, i.e. criteria that emphasize the consistency of individual projects with high priority national and sector-based objectives. There appears to be a pervasive perception that policy choices remain highly politicized, with ministers who are most powerful and assertive getting the largest allocations as well as the largest allocations of local counterpart funds concerning aid-financed projects. Once entrenched at the top, such a system is reproduced at lower tiers of government. At present (albeit with some notable exceptions), there seems to be limited demand for improved resource allocation efficiency in the budget process taken as a whole.

The flawed policy process here, this being probably the most crucial (and ignored) source of poor governance, is characterized by there being few public consultations, hasty decision-making and poor implementation capacities. If at all, public debates and identification of crucial trade-offs occur *after* policies have been (or are supposed to be) implemented, not before; and this creates uncertainty, confusion 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 one hand - and social realities on the other. Such a flawed decision-making pattern confirms the worst expectations of citizens, as it is very permeable to rent-seeking and typically leads to a selective enforcement of rules.

Briefly put, corruption – broadly defined so as to include rent-seeking, state capture, deliberate misallocation of public funds and an exchange of favors that can also take non-monetary forms – is only a by-product of this flawed policy-making process. This being so, there is currently little incentive for citizens to participate in making decisions, as long as policies are muddled, inconsistent and ultimately non-binding. Important public actions in society occur mostly by default, via formal laws and regulations being enforced selectively, after different groups have struggled for the best possible

arrangement (that is, the best blend of rules applicable in their case). What we have is a vicious circle of weak and distrusted institutions and a non-participating citizenry.

There is nothing new or peculiar when it comes to transition countries 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 adopted in developing countries, Marilee Grindle argued that one of their obvious characteristics is that the focus of participation and conflict occurs primarily at either the implementation or the output stages[11]. 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 capable of aggregating 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 any policy process as illegitimate, or at least as non-efficient. Trapped between weak representation and discouraged participation, citizens/groups are thereby forced to engage with the policy process by presenting *individual* demands. So "factions, patron-client linkages, ethnic ties and personal coalitions"[12] are the most common mechanisms via which to access public goods and services.

Mutatis mutandis, the analysis is instructive when translated into a post-communist area of operations. Communism has left behind a tradition of policy-making which does not encourage broad or open consultations, the considering and costing-out of alternative courses of action, or a balancing up of trade-offs. Instead, the agenda is set within a close circle of technocrats and is approved by key political players (who may or may not be the same as those making up the official political hierarchy). Formal policy laid out at the top is merely a basis for perpetual negotiations – vertical and horizontal[13] – undertaken by public administration and the political system occurring during the implementation stage. Substantial deviations from the original goals are tolerated

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[11] Grindle, M., 1980. "Introduction", in M. Grindle (ed) *Politics and Policy Implementation in the Third World.* Princeton Univ. Press.
[12] *Op. cit.*, p. 18.
[13] We use here 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.

depending on the informal degree of power of each actor involved. Formal policies do exist, as do other official norms and regulations - but they tend to be more or less fictional, with, many times, public institutions being the first to ignore them.

When such a system is well-entrenched, policies are (i) numerous and volatile, and (ii) designed without regard to feasibility of implementation, as they are not meant to be consistently implemented anyway but to be used instrumentally, that is, as weapons in power struggles among groups. As said, interests are balanced out not during the process of persons' reaching a decision, but in the implementation process - and the most valuable asset in this process is a person's control over enforcement mechanisms. Horizontal accountability bodies – nominally independent institutions, such as the administrative judicial system/public auditors – are thus weak and politicized. This situation comes close to what has been described in development literature as weak governance, and it is arguably an entrenched reality in many transition countries, particularly in those of South-Eastern Europe.

Currently existing, formal and informal public administrative institutions support ongoing corruption. Public sector corruption in Romania not only consists in using public position for personal gain - it encompasses the widespread infringing of the norms of non-personal involvement and fairness (which should be characteristic of a modern, public service) to the advantage of more powerful groups. Institutional reforms during the transition period did not target this discretion specifically, as civil service reform acts prompted by the European Commission include practically no reward or punishment system to thereby promote a change in administrative culture. However, building transparent institutions and a balanced political system in which no group is able to 'privatize' the administration is the only solution for a problem of poor governance.

The political will and management commitment needed to make policy choice more technocratic, i.e. more geared to the strategic importance and economic rate of return of projects, varies greatly across sectors and subsectors - i.e. the demand for technocratic as opposed to politicized or ad hoc project/program choice at the national level itself varies a lot, but with no strong top-down set of requirements from the highest political levels. Also, incentives to strengthen good public management are generally weak and/or distorted. As in any country, line ministers and other senior political appointees do not appear receptive to new technical approaches that might serve to undermine their own objectives. Thus, at least in some areas, the incentives to staff to identify /prepare /propose high-return projects and to prevent bad programs are not great. Briefly put,

constraints with regard to better policy management and evaluation lie mainly on the demand side, both at the national and local levels. The problem is not so much a lack of capacity as something that needs to be defined in terms of personnel possessing an adequate technical training, i.e. on the supply side. Such capacities may well exist here and there, though there may be a lack of requirement to use such capacities, i.e. so only good policies are chosen in the first place. The conclusion is that the poor incentives represent the most important challenge at this stage.

A good test for the quality of the policy process would be to see whether there is in place an adequate strategic framework to guide the line ministries in deciding what program areas to consider in preparing and proposing projects for the budget – which, in general, is the key area where clashing priorities and trade-offs need to be settled. A key challenge for public expenditure management is, of course, how to prioritize competing claims for scarce resources, especially financial resources and implementation capacities, in accordance with national objectives and strategies that should "drive" sectoral and subsectoral objectives and strategies. Individual projects are just tactical instruments that need to be defined within the context of appropriate national and sector-based strategies. The basic answer to this question is that, by and large, Romania lacks a strategic framework for programming and budgeting. The links between policy making, planning and budgeting remain weak, and there is a weak capacity at the center (for example, in the Ministry of Finance) to assess the appropriateness of proposals coming from line ministries against overall strategic policy objectives. There appears to be an ad hoc rather than cohesive and comprehensive approach to management. Monitoring, whether for consistency with policy or on actual outcomes and outputs vis a vis targeted outcome and outputs, is also deficient.

There is no functional institutional platform to aggregate different sector-based policy measures, although this has been identified many times as a priority - and a lot of technical assistance was devoted to its creation. The inter-ministerial committees of the cabinet function erratically, failing to address cross-sectoral issues in a systematic way. Because they are very numerous and fluid, they are not perceived as important by their supposed institutional members, so, many times, junior staff with no decision-making power are delegated to take part. Also, the General Secretariat of the Government (a permanent body with ministerial status) is in charge of daily management of the cabinet's agenda, yet it does not perceive the screening, reviewing or analyzing the individual proposals coming from line ministries as part of its operations. Furthermore, it acts only

as a dispatcher of legal documents sent to ministries for consultation, but it does not go on to deal with broader, policy documents. As a result, these are absent from the government's agenda, which consist almost exclusively of bits of legislation or, at best, compilations put together by individual ministries.

The only mechanism for formal decision-making across sectors remains the weekly cabinet meeting. This meeting is overburdened due to a lack of preliminary screening and delegation - and this can create bottlenecks. For example, in 2003 the government endorsed 2,050 normative acts, at a rate of 40-50 per session. Since no forum for resolving conflicts before they reach the government meeting exists, these sessions can be very long. There is also the risk that some important implications or trade-offs are overlooked, which contributes to the existing tendency to regard laws as only "general guidelines" for action, so that they can then be adjusted informally, in accordance with reality and in an ad hoc manner, case by case, in the process of implementation.

The role of the EU as a catalyst for better policy coordination has been uneven: it has worked in some sectors, but much less for the government overall. As a requirement in this process, the Romanian government has produced a National Development Plan (NDP) for 2004-06, and another one is under preparation for the period 2007-13, along with companion Sectoral Operational Plans (SOPs)[14]. These are standard instruments that should be developed by all candidate countries. It might be assumed, therefore, that such NDPs and the SOPs attached to them would form national and sector-based strategies functioning as frameworks for priority-setting at both national, sectoral and sub-national levels - and, in turn, as a guide to preparation of the budget as a whole. The reality is, however, that current domestic policies are made and implemented absolutely independently of the NDP, which is not up to now used to setting priorities - and it is unclear if and when these diverging priorities and methodologies will merge. Instead of being a comprehensive national strategy where the EU intervenes with financial help in some of its chapters, the NDP is, at present, an instrument for programming EU Structural and Cohesion funds; and there is clearly a rush to produce new projects to 'fill in the boxes' agreed with Brussels. There is little communication or coordination between persons in charge of resource allocation planning for the NDP and those in the line ministries.

The sheer amount of the foreign assistance available in the last decade – which has steadily increased, and will increase even more after 2007 – was, in a way, a strain on the

capacities of the public sector. The limited strategic capacity that existed in institutions was fully absorbed into the process of programming and running EU projects, and the same happened with the limited financial resources not consumed in current operations. In consequence, the strategic agenda seems at times to be entirely taken up with the task of dealing with foreign assistance (coming primarily from the EU), and the main policy 'target' of authorities becomes a funds' absorption rate. Authorities struggle constantly with their own limited capacities and budgets in order to be able to consume everything that is allocated, this being a process that is not easy to manage - and which is bound to become even more difficult as the size of Romanian assistance increases over time.

A divide is appearing between public institutions as a result of these developments: on one hand, those performing regular tasks which consume a lot of resources but are not eligible for foreign funding (social assistance, education, health, but also "routine" jobs in other sectors); and, on the other, "innovative" tasks (mainly investments, in eligible sectors) which qualify for extra funding. To the extent that the two categories are communicating less and less, are following different programming procedures and are being administered by different offices, the likelihood of policy integration decreases. This divide many times overlaps with – and reinforces – the duality of the civil service (as mentioned above, in section 3): a small number of good professionals at the top, who tend to cluster where the 'real action' is (eligible sectors, working on projects); and a mass of bureaucrats administering the rest.

6 Agenda for Reforming the Policy Process

Under such complex circumstances, approaching policy reform head-on is no easy task; for, as in most governments (like Romania's), there is no clear institutional focus for this type of intervention. In spite of the significant attention and resources lately being devoted to streamlining this process, a clear mechanism for policy-making has still not emerged - and important decisions continue to be made in an ad-hoc, almost experimental manner. Sector-based agencies and lobby groups are resistant to introducing generally-applicable, horizontal procedures, while the government's agenda is fatally driven by emergency interventions and crisis-solving. Moreover, it may be difficult to tackle the problems in all sectors at once, even when the strategic

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[14] To coincide with the EU budget cycle.

shortcomings are similar, due to the varying timetables and feelings of urgency across sectors (for example, those helped and those not helped by foreign funds – see previous paragraph).

In addition, we should not start with unrealistic expectations about the completely rational nature of any policy process, even in advanced democracies. Most governments have loosely defined and often inconsistent objectives that result from the process by which they were formulated. In coalition bargaining, it is often impossible to obtain a consensus on anything more than broad statements of principle, i.e. so accuracy and specificity must be sacrificed. Furthermore, a compromise reached in such negotiations would not hold up if the costs and tradeoffs involved were made explicit[15]. An objective ex-ante examination of the feasibility of policies is thus extremely difficult to do in government as analysis serving to highlight costs and tradeoffs may threaten the political consensus – and the same logic may apply to ex-post assessments and feedback. However, if a policy process which is perfectly rational and objective is not possible to achieve in reality anywhere in the world, the flaws of the one currently existing in Romania are by comparison so obvious that some steps towards this normative model will definitely increase its efficiency[16].

Given all the objective difficulties mentioned, what can local reformers do, in cooperation with international donors and other local or foreign advisors, in order to change the situation? How can they uproot the entrenched groups with a stake in perpetuating the *missing policies model* described in this report, those characterized by muddled strategies, opaque resource allocations and the selective enforcement of rules? What can reformers do to make a shift from where negotiations are made among interest groups at the *implementation* stage to creating a focus at the *formulation* stage of policies, thus breaking the vicious circle of weak/ineffective policies – low level of public participation and accountability? These are important questions because, in practice, they all boil down to one simple, but crucial one: how can the historical process of fully modernizing these states and societies be accelerated? A number of general principles can be referred to for orienting the actions of governments, local independent policy analysts or international actors. At the very basic level, one useful way of thinking about how to approach issues related to capacities development for better policy management

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[15] David Glover, Policy Researchers and Policy Makers: Never the Twain Shall Meet?
[16] Very much like in physics: even though ideal models do not exist in reality, they are still a good guide for analysis and action.

in countries similar to Romania is along the lines suggested by Shah[17]. New practices have been slow to become "owned", adopted and put in practice so far beyond the superficial level that was strictly necessary to respond to conditionality attached to broader processes to which the country was committed (EU integration, IMF monitoring, etc). This was the case, for example, with the performance-based budget reforms. In such situations we need to distinguish among:

- ability or technical capacity issues that are likely to arise;
- authority issues;
- acceptance issues.

Within this framework, the fundamental point of this report, supported by the arguments of previous sections[18], is that constraints on improving of policy management are to be found firstly in terms of low acceptance (of the legitimacy of new, objective criteria and transparency); secondly, in terms of low *authority* (meaning that nobody knows who exactly is in charge of prioritization across sectors, for example) and only thirdly in terms of low technical *ability* in institutions. Historically, both the communist legacy (over-extended, technically capable state, but with fluid institutions and negotiable rules) and the unfinished modernization before Communism (no Weberian, impersonal bureaucracy in place) played a role here.

The direct implication here is that the main problem in the country's system is not knowledge, but incentives. If this is so, it is unlikely to be fixed by providing technical assistance to institutions (training, exchanges, seconding programs, institutional twinning, new equipment). If at all, capacity building should go hand in hand with serious efforts to increase the system's accountability. This does not mean that all civil servants are equally able and efficient; on the contrary, as was mentioned above, the civil service displays a pronounced duality (see sec. 3). Yet the way to deal with the problem is not merely by training the bottom half of the bureaucracy – it is to find a way to measure their performance, make results public and build pressure for change within the system. For example, when reforming the policy-making process most effort should go not into laying down detailed rules and guidelines about how powerful ministers should run their sectors (which those affected usually tend to ignore) but into splitting the field of policy-making

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[17] Shah, A. (1998), Balance, Accountability, and Responsiveness: Lessons about Decentralization. World Bank.
[18] Via the conclusions of this research paper, which will explore the influence of party membership on financial transfers at the sub-national level.

into relevant areas and stages, while finding the most powerful "natural" incentives via which officials can change their behavior in each area.

Prioritization in public programs is fundamentally a political process; it follows on here that a strong need for efficiency in resource use at the political level is the most important condition for obtaining such efficiency. As said above, a demand for good policy identification and evaluation capabilities is more important than the supply of people trained in technical skills such as cost-benefit analyses or budgeting skills. If a strong requirement is present – and the first openings must be made at the political level – the supply can be generated fairly rapidly, especially in ex-communist countries, with their well-educated manpower. But if the demand is lacking, then the supply will be irrelevant. This is an important thing to note for reformers in this region.

By promoting transparency and efficiency, reformers make their societies more "readable", as a crucial prerequisite for sound public policy; and the vicious circle of distrust between citizens and state (mentioned above) will be broken. Even in societies dominated by *amoral familism* (see footnote 7), most citizens know intuitively that having a bureaucracy that is unfair and personalized imposes a tax on everyone's welfare. If things change, the competition for rent-seeking which tends to take place when policies are being implemented – getting preferential treatment, usually by obtaining a special way of proceeding or individual exemptions under a general policy – may be replaced by a different type of competition, one for shaping policies at the stage of formulation. While the latter is no perfect guarantee against rent-seeking, it usually tends to be more visible, i.e. transparent, and involves more numerous and comprehensive constituencies. Thus, a practice that might be labeled today as "grand corruption" could be reduced, in favor of the legitimate practice of balancing up social interests.

Everyone can benefit in the long run if the policy-making environment is opened up to this second type of competition among interest groups, which is the "right sort" of competition. It can reduce rents and improve the overall quality of institutions. When the number of trading partners increases, a natural demand for better institutions appears - even in societies with a high degree of state 'capture', i.e. as good institutions are necessary to manage the risk that comes from dealing with numerous and unknown individuals who do not belong to one's in-group. Greater risk and greater opportunities thus act together to break the entrenched networks of interest, from outside and from inside. Evidence from empirical studies shows, for example, that openness in trade is correlated with efficient public goods provision, lower corruption, effective government

policies and a strengthened rule of law. The same may be true for the market of ideas and policy analysis.

Measuring the effects of policies is crucial for accountability and for strengthening the weakest link of the policy cycle in the region: getting feedback from implementation and using it to adjust programs. Nothing focuses the attention more of public players than someone 'keeping the score' on what they do. In other words, what is not measured does not improve. Arguably, it is rare when such a policy circle actually closes at the feedback point in countries like Romania (the reasons being discussed above): first and foremost, no incentives are forthcoming prompting an institutionalizing of feedback (and when assessments *are* done, there are no incentives pushing persons to give them attention and act); and, occasionally, there is simply a lack of capacity. Governments should understand that they are able to avoid almost entirely the capacity problem by putting all the information they have in the public domain. The "expert public" (think tanks, journalists) will pick it up and do such evaluations at zero cost to the budget and, hopefully, with an increasing quality over time). They will also disseminate lessons to the rest of the public, and thus generate a strong political signal for *real* change.

Governments committed to reform should voluntarily engage in such 'transparentization' exercises since, if one is a reform champion fighting the inertia of the administration, it is both conceptually and practically easier to disclose the information you may have (of mixed quality, scattered across institutions, collected in uncoordinated ways, etc) than to set up a public body to aggregate, analyze and use it to inform the policy process. This also solves the problem of follow up on well-meant reforms where they may disappear into oblivion after a while or never get to be implemented in substance as they need to rely on permanent investments in terms of attention and resources from the government[19]. When an independent constituency is created to keep the reform alive, this problem is avoided. Governments which are not committed to reforms should be subject to public pressure to become so.

A feasible action plan for reforming the policy process in such environments via an operationalizing of the principles outlined above should involve all social partners, including the government and its international partners.

First, the Government should:

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[19] Tisne and Smilov, 2004. From the Ground Up. Assessing the Record of Anticorruption Assistance in Southeastern Europe. Policy Studies Series, CEU Press, Budapest.

- Admit that it has a problem with the policy process and recognize its real nature (skewed rules of the game, opacity and a lack of incentives, a dual bureaucracy); with some help from outside, this can be done;
- Be willing to spend some political capital on a crucial task that cannot be fixed by merely throwing (donors') money at it, and when it cannot be delegated to junior ministers or technical advisors; the top political level must be involved, and be *seen* to be involved;
- In terms of what exactly must be done, accept to open up its own internal processes, wherever possible, in order to create incentives for change and a real drive for action in the administration;

Independent actors (think tanks, NGOs, media) should:

- Regard themselves not only as sources of expertise but, more importantly, as *enablers* – agents working to change the political environment in which public officials operate, by measuring the effects of policies, making results public, and unleashing the natural pressure of the public to support change; this may at times mean confrontation - not only friendly advice;
- Identifying good performers and poor performers, and morally rewarding the first; across-the-board criticism ("nothing works") is not going to change the situation but only encourage the adverse selection of poor performers in the public sector;
- Ultimately, the public should be able to distinguish among poor policy performances - and penalize them politically, as this is the only thing that elected officials are likely to see and understand.

International partners should:

- Dedicate a small portion of their efforts to building up transparency and accountability mechanisms so as to assess what is going on in key areas of government (i.e. not "information offices" funded by specific donors and attached to institutions but, rather, tools via which to make transparent the inner functioning of the public sector, primarily in decision-making and resource allocation processes);
- Avoid strengthening the existing tendency of government to keep important or controversial decisions away from the public eye by adding their own layer of rules dealing with confidentiality; and all programs evaluations should be made public by definition.
- Avoid worsening the dual-bureaucracy problem, where a few adept and well-paid civil servants are absorbed into running government programs and projects financed with foreign funds (primarily, EU funds) while important policy areas that are not assisted (social welfare, pensions, education, and health to some extent) will gradually drop as regards importance.

Practical instruments with which to implement such an accountability agenda via transparency could be:

- The adopting of Freedom of Information Acts and Decisional Transparency Acts ("sunshine laws"), whilst making reasonable efforts to enforce them. Engaging social partners in a sincere effort to monitor just *how* these rules are implemented; and rewarding the performers - and punishing the laggards.
- As a rule, all public procurement contracts and their annexes, once they have been signed, will be published. There is no better (or cheaper) way of monitoring the

integrity of a procurement system, which is a major source of problems at all levels of government.

- Registering and publishing (on a website) the votes of all individual MPs with regard to each bill submitted to the Parliament for debate. Without such a thing, all discussions about regulating lobbying groups, reforming parties or the electoral system will be pointless.
- Publishing *ex officio* all declarations of assets and the interests of dignitaries and top civil servants; and creating such declaration forms where they do not exist, whilst also making them mandatory.
- Institutionalizing the ex-ante budget auditors, and making such audits public for all relevant public institutions during a budget preparation time cycle.
- Informing the public and opening up the budgetary process to outsiders, with no restrictions; of course, very few people will really participate here - though *some* will, and these are likely to be from among the "expert public", which will guarantee the dissemination of information considered relevant; moreover, openness in itself will act as a deterrent on irregular practices[20].
- Financial transfers for local governments: using automatic, formula-based allocation rules as much as possible to increase predictability and avoid clientelism at the local level; supplementing this with competitions for grants overseen by outside boards[21].

This paper (and research project) has argued that the most powerful instrument for reforming policy-making processes and improving governance is accountability through transparency. Reformers, whether inside or outside government, should identify a number of important policy domains where problems are obvious, and try to find the best ways to intervene by prompting public interest and access, which can then create moral pressure for change – which, in turn, is the only thing that top officials will pay attention to. If we agree that politicians and civil servants are rational individuals who respond to challenges and incentives they face, accountability via transparency is the only workable way of increasing the political costs of poor performance - and of rewarding the good - in societies possessing weak institutions.

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[20] The *Citizens' Budget Guide*, due in February, is an example of an instrument that can be used in this process.
[21] The research paper due in March will document this problem in more detail, and present a set of conclusions relevant for policy action in this area.