



SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

ROMANIA POLICY-MAKING AND CO-ORDINATION ASSESSMENT JULY 2004

Introduction

The year since the last report has brought a number of changes in the policy-making and co-ordination system in Romania. The changes reflect, and result from, a significant increase in the attention paid at the highest political and administrative levels to weaknesses in the system and in the commitment at these levels to improve it. This increased commitment is in itself important and welcome, and if maintained, should lead to significant concrete results in the coming years.

The main changes this year are the following:

Introduction of weekly meetings of state secretaries from all ministries: Since March 2004 weekly meetings of state secretaries, chaired by the General Secretariat of the Government (GSG), are held to prepare the sessions of the government. Such meetings have proved useful in other countries and are often recommended as a means of increasing the effectiveness of government sessions. The weekly meetings of state secretaries have also addressed the backlog in the preparation by ministries of implementation procedures following the passage of legislation, and have essentially eliminated this backlog.

Streamlining of government sessions: The regular preparatory meetings of state secretaries have had the effect of greatly reducing the number of items for discussion at government sessions, as many of the issues raised by ministries' submissions are now resolved in advance. At the same time, the Prime Minister decided to refuse to consider at these sessions any last-minute "walk-in" items brought by ministers (except in very urgent cases). These innovations have made the sessions of the government significantly shorter and more efficient.

Establishment of the Public Policies Unit (PPU): In November 2003 the Public Policies Unit (PPU) was established within the GSG by a decision of the Prime Minister. The PPU's official mission is to strengthen the government's capacity to co-ordinate the process of formulating, implementing and monitoring public policies. At the time of writing, the main focus of the work of the PPU has been the preparation and presentation of a guide on policy development for ministries and consultations with ministries on incorporating its ideas into their practices. The guide is essentially sensible, but it remains to be seen whether its guidelines will be incorporated into policy and legislation preparation procedures, and whether the GSG will develop the capacity required for enforcing these guidelines. The PPU has not yet become a part of any policy analysis and co-ordination activities within the GSG, and it is not clear if it will be charged with such responsibilities in the future.

Reorganisation of the centre of government (CoG): In March 2004, by Emergency Ordinance, the Romanian CoG was significantly reorganised, primarily through the establishment of a new body, the Chancellery of the Prime Minister. In the same month, Government Decision 405 reorganised the GSG. The Chancellery took over some of the responsibilities that had previously been held by the GSG. With respect to policy-making and co-ordination, the guiding principle in the division of responsibilities is that the Chancellery should support decisions by the Prime Minister, while the GSG should support decisions

by the government. In practice, there is significant overlap in the definition of the roles of these two bodies in the area of decision-making and monitoring, and significantly more clarification will be needed over time to prevent confusion in ministries. For example, the Ordinance establishing the Chancellery invests in the Chancellery the responsibility to “co-ordinate the public policy formulation process” (article 3 b), yet Government Decision 405 on the GSG assigns similar responsibilities to the GSG. The Public Policy Unit (PPU) is in the GSG, but its role in co-ordination (as expressed in GD 405) is insufficient to ensure appropriate preparation of documents before they reach the government.

Sigma remains concerned that the overall organisation of CoG in Romania (GSG, Chancellery, bodies supporting state ministers and ministers *délégués*) is complex and unwieldy and that its structure still requires fundamental rethinking, streamlining and clarification. The lack of coherent thinking on CoG is reflected in the plan to once again reorganise the GSG in the coming months.

Reduction in emergency ordinances: The first five months of 2004 have shown a significant reduction in the number of emergency ordinances passed by the government (from 127 in 2003 to only 35 between 1 January and 20 May 2004). The reduction in the number of emergency ordinances clearly constitutes an improvement in democratic decision-making in Romania.

It is to be noted, however, that no reduction (and possibly even some increase) of production trends has appeared for laws, government decisions, and government ordinances over the same period.

1. Coherence of the Policy-Making Framework

The main instruments governing policy-making and co-ordination are the Law on the Methodology for the Preparation of Normative Acts, adopted by parliament in March 2000 (24/2000), and the subsequent Government Decision on the Procedures for Submitting Drafts of Normative Acts (555/2001). This regulation was supplemented by the Emergency Ordinance that reorganised the General Secretariat of the Government (GSG) immediately after the elections (292/2000) (modified by law 255/2001 and by Government Decision 405 of 2004), and by the Law on the Organisation and Functioning of Government (90/2001). The methodology is generally followed in terms of its formal requirements (number of days for consultations, number of days for submission to the Legislative Council, etc.). At the same time, the preparation of material by ministries, the review of their policy substance by CoG, and strategic management remain weak and fragmented. The Prime Minister and senior CoG officials have recognised these weaknesses, and some of the steps noted above are meant to address them. In particular, the guidelines for ministries prepared by the PPU, if implemented and enforced, would contribute to correcting the deficiencies in the development of policy substance.

The Methodology for the Preparation of Normative Acts sets out a logical and sequenced preparation process for draft laws, but the rules are observed for the most part in a formal fashion and are not uniformly enforced by CoG. There are weaknesses in the rules themselves, especially with regard to the compressed timetable for consultation and review. The present methodology needs to be improved in a number of respects, and the government needs to place high priority on implementing and enforcing better analytical and more consultative preparation of the policy basis for legal documents.

2. Inter-Ministerial Consultation on Policy Proposals

The ministry proposing a normative act has primary responsibility for consulting other relevant ministries and central offices. The Ministry of Justice is consulted on legal implications and the Ministry of Finance on financial cost. The minister initiating consultation decides which other ministries should be consulted, and concerned ministries are not always consulted. Consultations deal with fully drafted acts and are thus normally formal, rather than substantive, consultation. The Ministry of Finance is in a weak position with respect to assessing and forecasting the costs of proposals by ministries. Staff resources for these activities within the Ministry of Finance have been reduced and the responsibility for cost forecasting is seen to lie with the experts of the proposing ministry. Ministries are expected to forecast budget costs for three future years. Capacity for such forecasting varies significantly among ministries, but is generally seen as

insufficient. There is some evidence, however, of a growing awareness in ministries of the value of consultations and of the possibility that an open exchange of information might lead to better proposals.

There is recognition within the government of the inadequacy of the methodology for addressing cross-ministry and cross-sectoral issues. To deal with this weakness, there has been a tendency to form a large number of inter-ministerial committees at the secretary of state level. While this approach has advantages, it appears to be used in an ad hoc fashion, leading to a great multiplication of such committees, many of which do not function in practice. Some state secretaries were members of so many of these committees that they claimed to have lost count. To begin to address this problem, the GSG (PPU) conducted a diagnosis of the committees, councils and other structures with no legal status established at the central public administration level. As a result of this diagnosis, the government decided on 1 April 2004 to streamline the system by abolishing half of the 115 existing organisations of this type.

Co-operation between ministries and consultations regarding the substance of policy and legal documents continue to be largely formal and weak. The guidelines prepared by the PPU, if implemented and enforced – and if supplemented by improved capacity in ministries – would greatly assist in improving the situation. The reduction in the number of cross-ministry bodies is a positive step. The improvement of inter-ministerial consultations is foreseen as one of the objectives of the technical assistance currently contemplated jointly by the World Bank, DfID, and the Commission.

3. Agenda Planning

A Government Programme for the entire mandate specifies a sequence of actions with deadlines attached. An annual legislative programme, prepared and monitored by the Department for Relations with Parliament, intends to guide ministries in the preparation of normative acts for approval by government sessions. However, the legislative programme bears only partial resemblance to the actual work of ministries and to the items presented to the Government, so that in practice the government agenda is prepared mostly on the basis of whatever arrives from ministries in any given week.

There appears to be no management of the government agenda in the medium term, i.e. for the period from three to five weeks ahead of the government session.

As noted above in the introduction, the institution of the weekly preparatory meeting of senior ministry officials and the decision of the Prime Minister to stem the tide of last-minute items on the government agenda have greatly improved the capability of the GSG to plan the weekly government session and to ensure focus on those issues that require discussion.

The agenda for meetings of the Executive Committee on European Integration (chaired by the Prime Minister) is decided one month in advance to allow for the preparation of material. This committee makes important policy and strategic decisions. Since it is not burdened with the approval of legal drafts (normative acts and government decisions), it has become the main focus for strategic management at the political level.

Management of the agenda for government sessions has improved as a result of the weekly preparatory meeting of state secretaries and the decision of the Prime Minister to not allow last-minute items, except in urgent cases. The process of agreeing the weekly agenda remains mechanical and depends largely on what arrives from ministries. There is little top-down and no medium-term agenda management of the government session, but this type of management does exist for the Executive Committee on European Integration.

4. Dispute Resolution Mechanisms

The mechanism for formal decision-making is the weekly meeting of the government. This meeting is now greatly assisted by the weekly meeting of state secretaries (all of whom are political appointees), which resolves many of the issues and identifies for the government those items requiring further

discussion and conflict resolution. The preparatory meeting has been able to resolve some issues and return some items to ministries for further work.

The capacity to resolve conflicts below the level of ministers has increased significantly, greatly improving the efficiency of government sessions, and reducing their duration by more than half. The link between policy development and government decision-making continues to be weak.

5. Central Co-ordination Capacity

The General Secretariat of the Government (GSG) has the capacity for administrative and logistical management of government business and the capacity for legal review of documents. The staff of the GSG record government decisions and notify ministers, identifying who is responsible for any action and, where appropriate, specifying implementation deadlines and reporting requirements. The Department for Relations with Parliament follows items as they proceed to legislation, and co-ordinates the government response to proposed amendments. The department is developing a useful co-ordination role, but its impact on the overall planning of government business is insufficient to ensure orderly work planning.

With respect to monitoring, the GSG has the capacity for formal monitoring of the tasks resulting from government decisions, and it has a computerised system for follow-up and notification of ministries regarding missed deadlines. It should be noted, however, that the computerised information system assesses only whether particular tasks have been achieved on schedule and not the quality of implementation or the effectiveness of the policy. Moreover, the monitoring of some of the most important commitments of the government [e.g. promises to the EC, PAL (Programmatic Adjustment Loan from the World Bank), and certain aspects of the accession negotiations] is now carried out in the Chancellery of the Prime Minister. The Chancellery is currently in the process of developing monitoring procedures for the public policy process. It is not yet clear how the total monitoring activity will be managed.

In terms of policy co-ordination capacity, the system is in the process of adjusting to recent changes, especially the creation of the Chancellery of the Prime Minister and of the PPU. It is entirely unclear what will in fact emerge from this process. Detailed structural/functional analysis of the two bodies is beyond the scope of this assessment, but a juxtaposition of the Emergency Ordinance that establishes the Chancellery with Government Decision 405 (on the GSG) suggests that there is a great risk of duplication and confusion, as similar tasks seem to be assigned to both bodies. As is often the case in Romania, new organisations are created to perform needed tasks without necessarily abolishing or reorganising existing bodies. At the moment, co-operation between the top leadership of the Chancellery and of the GSG appears to enable the new system to work smoothly. However, it is likely that this system is not sustainable beyond the parliamentary elections this fall (November 2004). The immediate post-election period would be a good time to look at the entire system of central policy co-ordination and to attempt to establish it on more efficient and logical principles. Hopefully the envisaged joint technical assistance of the World Bank, the Commission, and DfID will assist in this redesign.

There is a central capacity to provide logistical and legal support to the government, as well as a certain amount of monitoring support. Support to the government and to the Prime Minister in the area of substantive policy co-ordination is in a state of flux, due to the reorganisation that created the Chancellery of the Prime Minister and the PPU. This reorganisation has some positive elements, especially with respect to greater focus on strategic co-ordination, but there continues to be a lack of policy capacity at CoG to ensure that decisions are based on high quality analysis and open sharing of information. The management of the two parts of CoG – the GSG and the Chancellery – is facing the challenge of maximising their joint effectiveness and ensuring the sustainability of the structures that were put in place in March 2004. In the medium term, the overall structure, distribution of tasks, and management of CoG are likely to need readjustment.

6. Central Strategic Capacity

The General Secretariat of the Government has no capacity to assist the government in setting strategic priorities and linking these strategies to the regular work of the government. The Chancellery of the Prime Minister is now charged with strategic co-ordination tasks, especially the strategic management of PAL and of the work of the Executive Committee on European Integration, which is now also supported by a permanent secretariat within the Chancellery. (We are not able to determine the outcome and the future, if any, of the UNDP project to develop strategic capacity within the presidential administration, which was reported in last year's assessment.)

There is some strategic capacity within the Chancellery of the Prime Minister, but no strategic or policy advisory capacity in the General Secretariat of the Government. As in the case of policy co-ordination, the division of responsibilities between the two parts of CoG in this area should be looked at carefully to ensure an effective overall strategic support for the Prime Minister and for the government over time.

7. Co-ordination of European Affairs

The structure for co-ordinating EU affairs has remained stable and is continuing to improve its capacity. The Executive Committee on European Integration, chaired by the Prime Minister, continues to operate effectively and has recently been given the support of a permanent secretariat within the Chancellery of the Prime Minister. The committee meets every week to address issues of political and strategic importance and to provide political direction. Discussions and legal decisions regarding specific issues related to European integration take place in the government session. At the administrative level, the Ministry of European Integration, with over 60 professional staff, continues to work effectively with the rest of the structure. The ministry has been strengthened by a decision of the government to add representatives of the ministry to its mission in Brussels and in the embassy of the country holding the EU presidency. All ministries have European integration units headed by a secretary of state. The Minister of European Integration chairs the Inter-Ministerial Committee for EI, comprising the responsible secretaries of state from ministries. This committee meets once every two weeks and discusses all issues before they reach the meeting of the government.

Political leadership of the European integration process has been strengthened. An appropriate structure is in place for co-ordinating European integration activities, which has remained stable in the past couple of years. The system is becoming professionalized and is functioning well, but there is still work to be done.

8. Involvement of the Council of Ministers in Budget Decisions

The Organic Public Finance Law requiring multi-year programme budgeting entered into force in January 2003. In terms of the collective involvement of the government in making budget decisions, the new law is not expected to have major consequences. The Ministry of Finance (MoF) prepares a general framework, including a deficit target, in line with the requirements of the IMF. Within this framework, ministers submit their budget proposals, followed by a compilation and adjustment of these requests at the technical level in the MoF. A draft budget, prepared by MoF staff, is discussed bilaterally at state secretary level and then, if there is no agreement, bilaterally between the Minister of Finance and the relevant minister. The revised draft (showing either agreement or disagreement) then goes to the government session for resolution.

The process for collective involvement of the government in budget preparation remains adequate.

9. Production and Impact Assessment of Normative Acts

Ministers' discussion of strategic and policy issues and of proposed legal drafts is not based, as a rule, on careful analysis of different policy options in terms of their impacts (economic, social or environmental).

Only budget costs of proposals are estimated, not social or economic costs. Attention to the feasibility of implementation is limited. The capacity in ministries to carry out in-depth analysis is very limited.

There appears to be some improvement in the activities of ministries to consult outside interests, as well as a growing realisation that such consultations can contribute to improving the quality of policy proposals and ensuring that they can be implemented. Each line ministry has special committees responsible for consulting civil society representatives (unions and other non-governmental organisations). The role of these consultations is to improve the efficiency of line ministries' activity by identifying possible solutions for solving policy problems and to involve civil society in the decision-making process. Besides these committees, line ministries consult and collaborate on a regular basis with research institutes and think tanks, whose expertise contributes significantly to improving the quality of policy solutions issued by line ministries. Since June 2001 there has been a government requirement to consult local authorities on all matters that may affect them.

Despite some minor improvements, the Romanian system for preparing, consulting, reviewing, co-ordinating and approving policies and normative acts is characterised by weak analytical and co-ordination capacity and frequent disregard of procedures. As a result, there is an overproduction of generally low quality and contradictory policies and legislation, leading to difficulties in implementation and to enforcement deficit.

Impact assessment is weak and often non-existent. Consultation with outside interests is improving. Some of these issues are addressed in the new guide for ministries prepared by the PPU, but given the current state of affairs, the impact of the guide is likely to be negligible.

10. Summary and Next Steps

During the past year, there has been a significant focus at the highest political and administrative levels on the need to improve the policy-making and co-ordination system, and some significant steps have been taken to do so. Some of these steps appear to have led to immediate improvements, in particular the weekly preparatory meetings of senior officials, the significant reduction in items reaching the government session without at least some prior processing by the GSG, and the decision to reduce by half the number of cross-ministry bodies. The reduction in the number of emergency ordinances is also significant. Other steps have yet to bear fruit. The work of the PPU on developing policy development guidelines for ministries is potentially beneficial, but it remains to be seen whether – and how – it will be incorporated into the decision-making system. There are no signs that these guidelines are being given much attention, and no progress has been made in strengthening the role of the PPU as a potential player in the co-ordination system.

Despite the above-mentioned improvements, the overall system supporting decision-making remains weak and fragmented, and the government's management of its policy and legislative output is insufficient to consistently ensure the good quality of drafts. The creation of the Chancellery of the Prime Minister, while responding to some very real constitutional and practical needs, risks to further fragment CoG, especially in the areas of policy co-ordination and strategic planning and management. The tendency to add organisational pieces to the system or to move pieces of the system around, without looking at the consequences to the system as a whole, seems to continue unchecked, with risks to both the coherence of CoG and the long-term sustainability of its structure.

Policy preparation within ministries is weak, and co-ordination between ministries poor. Laws are often prepared without regard to implementation or to budgetary, economic or social costs. A major change in institutional and cultural approaches would be needed to remedy these weaknesses. The guidelines prepared by the PPU might help, but they would need to be formally incorporated into the system and enforced by the GSG. Without fundamental changes it will be difficult for the country to adopt and implement the *acquis* or to prepare adequately for EU membership.

The current overproduction of normative acts negatively affects the legal certainty of the Romanian legal order and the capacity of the authorities to implement legislation. This situation is basically the result of a

disorganised and inefficient government decision-making system. In order to achieve the standards of policy-making and co-ordination compatible with the demands of EU membership, the following actions are now urgent:

- The Romanian authorities should mandate a comprehensive and detailed critical review of the government decision-making system and of the structure, role and functions of the administrative and political support for this system, especially the GSG and the Chancellery of the Prime Minister. The review should be comprehensive, producing an overall proposal for CoG that shows how all required functions are to be performed and distributed between the two parts of CoG. The review should be followed by consultations with the Romanian authorities, culminating in a formal government decision on a “blueprint” for the structure and functions of CoG, division of responsibilities between the GSG and the Chancellery, and the process for implementing agreed reforms.
- Once agreement has been reached on the overall structure, all laws, ordinances and decisions relevant to the structure of CoG should be replaced by a coherent, consistent, and unified legislative base.
- The government should then commit time and resources to implementing the recommendations of the review.
- As part of the reform of the decision-making system, the government should mandate a reassessment of the Law on Normative Acts and GD 255/2001 on the Procedures for Submitting Drafts of Normative Acts, and proceed to amend them as necessary.
- Consideration should be given to adopting the PPU’s Policy Preparation Guide in a formal fashion, including a reference in a revised Law on Normative Acts and the requirement that its guidelines be enforced by CoG.
- The Romanian authorities should mandate a project to codify the entire Romanian legal corpus. As this is a huge task, it would be a good candidate for significant donor assistance.
- The government should improve enforcement of the requirement that ministries assess – in collaboration with outside groups – the economic and social consequences of draft laws.
- In all of the above actions, the Romanian authorities – at the highest political and administrative level – should co-operate closely and actively with donors interested in working jointly to assist in the strengthening of policy-making and co-ordination in Romania.