



SIGMA

Support for Improvement in Governance and Management

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ROMANIA POLICY-MAKING AND CO-ORDINATION ASSESSMENT JUNE 2005

Introduction

The parliamentary elections of November 2004 resulted in the victory of a coalition of opposition parties. Building on the reforms engaged by previous governments, the newly appointed government has shown a strong commitment to reforming public administration, and this political will has already resulted in a number of important changes in the area of policy-making and co-ordination.

The main changes this year are the following:

Amendment of the Law on the Methodology for the Preparation of Normative Acts: Government Decision 50/2005, adopted on 13 January 2005, makes it compulsory for all ministries to associate the Ministry of Justice in the preparation of normative acts at the very beginning of the process, as well as all other ministries concerned by the project.

In addition, the preparatory meeting of state secretaries, introduced in March 2004, now serves as a filter for government meetings, where any potential disputes remaining after the inter-ministerial consultation process can be settled and where it is verified that all aspects of the projects have been sufficiently analysed.

Reorganisation of the centre of government (CoG): In the General Secretariat of the Government (GSG), the Public Policy Unit (PPU) has been transformed into a directorate. The Chancellery of the Prime Minister has been reorganised into nine sectoral departments headed by state counsellors and co-ordinated by a state secretary under the authority of the Chancellor. The 26 agencies previously reporting directly to the Prime Minister are now placed under the oversight of their relevant state counsellor. Attached to the Chancellery is also the office of the “ministre délégué” for the control of the implementation of internationally financed programmes and of the *acquis communautaire*.

In addition, Government Decision 117/2005 established the Inter-Ministerial Committee for Public Policy Co-ordination Reform, in charge of further clarifying the competencies between the Chancellery and the GSG. It is proposed to create a limited number of permanent inter-ministerial committees in lieu of the 110 existing committees, many of which are not functioning. New procedures for the preparation of normative acts are in preparation, and their adoption is scheduled for September 2005.

Sigma welcomes these measures as a much-needed clarification, especially with regard to the role of the Chancellery, although overlaps remain and further streamlining should result from the inter-ministerial committee. A clear distinction should be made between the “notary” and logistical functions of the centre of government – which should be attributed to the GSG along with the organisation of government co-ordination – while the advisory functions related to the substance of public policies should belong to the Chancellery. Furthermore, the recent reorganisation is a source of concern insofar as it maintains, and even strengthens, the responsibility of the Chancellery for the oversight of 26 agencies, whereas most of these agencies have competencies that should place

them under the authority of line ministries. This oversight function of the Chancellery is a source of confusion and overlaps between ministries and the centre of government. State counsellors should dedicate their time to advising the Prime Minister and the government on public policies, and should not be burdened with operational tasks. Furthermore, oversight of these agencies could put the Prime Minister in a difficult political situation as he is accountable for them.

Improvement and development of informal working methods: The most striking change this year may not be in the actual decisions taken, but rather in a change of style. This change is manifest in the following ways: a more systematic implementation of laws that already existed but were often ignored or respected only formally, such as the Law on Transparency; the development of informal, but extensive, consultations with all internal, as well as external, stakeholders; and the development of delegations of authority down the hierarchy line. This new attitude actually anticipates the new rules for inter-ministerial co-ordination to be adopted in September 2005, and is certainly a good omen for their implementation.

Similarly, greater care is being taken of improving relations between the executive and legislative branches, as can be seen through a more frequent presence of ministers themselves to answer the oral questions of MPs. The Prime Minister himself sometimes attends sessions of parliament, which never happened before.

Slowdown in the production of normative acts: As a positive outcome of the change of methods, the pace of production of normative acts is slowing down. From 1 January until 21 April 2005, a total of 406 normative acts were produced, compared with 696 for the same period in 2004, and 101 draft laws – regular draft laws as well as draft laws approving ordinary and emergency ordinances – were submitted to parliament, compared with 148 in 2004. The number of emergency ordinances decreased from 70 to 52. This rate of use of what should be an exceptional procedure is too high on the eve of EU accession. Apart from the simple fact that this evades democratic policy-making, it exposes the politico-administrative system to a high risk of State capture.

The Department for Relations with the Parliament now dedicates a small permanent group to the critical examination of emergency ordinances proposed by the government. The need for such an ordinance has to be substantiated in a report, which is subsequently published in the *Official Gazette* along with the ordinance itself.

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 Ordinances that reorganised the General Secretariat of the government (GSG) immediately after the elections of 2000 (292/2000, modified by law 255/2001 and by Government Decision 405 of 2004) and by the Law on the Organisation and the Functioning of Government (90/2001). Government Decision 50/2005 made it compulsory for ministries initiating the preparation of a normative act to co-ordinate with all concerned institutions as from the beginning of the process, and in any case to involve the Ministry of Justice in the drafting. The new rules appear to have been followed and, at least in some ministries, to have been supplemented by informal consultation with internal and external stakeholders.

The Chancellery is being reorganised in order to improve its capacity to provide advice to the Prime Minister on policy substance. However, strategic management remains weak and fragmented. The Prime Minister and senior centre of government (CoG) officials are aware of this weakness, and the Public Policy Unit (PPU) in the GSG is concentrating on strengthening strategic planning capacities in line ministries, in co-operation with the policy units that are being created or enlarged. Although the decision to give priority to line ministries in the building of strategic planning capacities is sound, attention should be given to building such a capacity in CoG as well, specifically in the Chancellery.

The Methodology for the Preparation of Normative Acts sets out a logical and sequenced preparation process for draft laws, which has been improved by adding to the formal process of consultation and review in the days preceding approval by the Council of Ministers an obligation to co-ordinate with other ministries at the beginning of the drafting process. Further improvements are expected from the new rules for inter-ministerial co-ordination, to be adopted in September 2005. The government now needs to give priority to the strengthening of strategic planning and policy advice capacity in line ministries as well as in the centre of government.

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 minister initiating consultation decides which other ministries should be consulted. The Ministry of Justice is consulted on legal implications and the Ministry of Finance on financial cost. The Ministry of Justice is now involved in the drafting process from its inception, and consultations take place at an earlier stage and are therefore less formal. The weekly preparatory meeting of state secretaries serves as a filter that can send back to the initiating ministry any draft requiring further consultation, thus creating an incentive not to ignore potentially interested ministries. The preparatory meeting of state secretaries no longer examines last-minute drafts. The new rules for public policy formulation – expected in September 2005 – should require consultations with the private sector and civil society, with the results of these consultations being presented with the documentation of the draft legislation.

The Ministry of Finance remains in a weak position with respect to assessing and forecasting the costs of proposals by ministries, especially in terms of the impact on revenues of changes in the taxation system. Staff resources for these activities within the Ministry of Finance remain weak, and 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 recognition within the government of the inadequacy of the methodology for addressing cross-ministry and cross-sector issues, and especially of the inefficiency of the current system of some 110 inter-ministerial committees, which have been created on an ad-hoc basis and often do not function in practice. The Inter-Ministerial Committee for Public Policy Co-ordination Reform is currently elaborating a project in which these committees would be streamlined down into ten permanent committees in charge of inter-ministerial co-ordination for the drafting of normative acts and the follow-up on their implementation. These committees would meet once a month, be assisted by permanent staff from the GSG and ministries, and be authorised to create working groups. The deputy prime ministers would be involved in the meetings.

Co-operation between ministries and consultations on the substance of policy and legal documents have greatly improved as a result of better-enforced discipline and a generally more open attitude towards consultation. The guidelines prepared by the PPU are being progressively implemented. The reduction in the number of inter-ministerial committees and the rationalisation of their working methods, as well as their responsibility for following up on the implementation of policies, is a very 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 and the European Commission.

3. Agenda Planning

A four-year legislative programme is complemented by an annual one and by quarterly programmes monitored by the Department for Relations with the Parliament, together with a quarterly report (including monthly deadlines for all draft laws) to the Council of Ministers and information to parliament. In addition, the government is to report

annually to parliament on the implementation of the four-year legislative programme. It seems that the pressure on ministries to organise their work according to legislative programmes has increased, although the government agenda is still prepared on the basis of the drafts arriving 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. However, procedures for the elaboration of public policies, envisaged for adoption in September 2005, should include new rules designed to facilitate the prioritisation of issues subject to discussion through a stronger linkage between the government programme and legislative activity.

As noted above, the institution of weekly preparatory meetings of senior ministry officials and the decision to bar last-minute items from being placed on the government agenda – or on the agenda of the preparatory meeting – have greatly improved the capability of the GSG to plan the weekly government session and to ensure focus on those issues requiring discussion. These issues are now examined in part two of the agenda, and draft legislation that meets a consensus among concerned ministries is adopted in part one. As a consequence, a government meeting now lasts only two to three hours instead of the 12 hours that used to be commonplace before the introduction of preparatory meetings.

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 of strategic management at the political level.

Management of the agenda for government sessions has improved as a result of the weekly preparatory meetings of state secretaries and the decision to prohibit last-minute items, in either government sessions or preparatory meetings, 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 for 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 is able to resolve issues and to return to ministries any items that need additional work or consultation.

The capacity to resolve conflicts below the level of ministers has increased significantly, and this in turn has greatly improved the efficiency of government sessions, reducing their duration to only two to three hours. 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, when appropriate, specifying implementation deadlines and reporting requirements. The Department for Relations with the Parliament follows items as they proceed to legislation in parliament, and co-ordinates the government response to proposed amendments and to written or oral questions by members of parliament. The ministry is developing a useful co-

ordination role, but its impact on the overall planning of government business is still insufficient to ensure that work planning is consistent with annual and quarterly programmes.

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 EU 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 still in the process of adjusting to the creation of the Chancellery of the Prime Minister and of the Public Policy Unit (PPU), now established as a directorate of the GSG. The Inter-Ministerial Committee for Public Policy Co-ordination Reform is reviewing for further clarification the remaining redundancies and overlaps in responsibilities of the Chancellery and the GSG. At present, the good personal relations between the Secretary General of the Government and the Head of the Chancellery seem to be sufficient to avoid conflicts, but a formal delineation of their respective roles is obviously needed. The envisaged reform of streamlining down to five to seven inter-ministerial standing committees should also contribute to enhancing policy co-ordination mechanisms. The project under preparation should assign responsibility for the development of policy analysis capacity to the technical secretariats of inter-ministerial standing committees and their working groups.

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, now established as a directorate of the GSG. Substantive policy co-ordination has also been affected by the ongoing process of reform of the whole system of policy co-ordination mechanisms through the streamlining and reorganisation of inter-ministerial standing committees and the drafting of new rules of co-ordination. At this stage, it is difficult to make a clear judgement of the changes that are envisaged, although most of them seem to be going in the right direction.

6. Central Strategic Capacity

The General Secretariat of the Government has no capacity to assist the government in setting strategic priorities and to link 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 (under the authority of a *ministre délégué*) and of the work of the Executive Committee on European Integration, which is supported by a permanent secretariat within the Chancellery. The development of strategic capacity at the centre of government is on the agenda of the Inter-Ministerial Committee for Public Policy Co-ordination Reform. It is not possible for the mission to determine, at this stage of preparation, how the issue will be concretely addressed.

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. The whole system is currently being reviewed, with the objectives of increasing this capacity and linking more effectively the legal activity of the government with its strategic documents. However, the main aspects of the reform under preparation are still unclear, especially with regard to the respective roles of the PPU, the Chancellery, and the envisaged inter-ministerial standing committees and their technical secretariats or working groups.

7. Co-ordination of European Affairs

The structure for co-ordinating EU affairs has remained stable. The Executive Committee on European Integration, chaired by the Prime Minister, has continued to operate effectively and since September 2004 has been supported by the Permanent Secretariat for European Affairs, established as a department within the Chancellery and staffed with 33 positions. 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 60 professional staff, continues to work effectively with the rest of the structure. The ministry has representatives in the government mission in Brussels and in the Romanian embassy in 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 European Integration, comprised of 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 remains strong. An appropriate structure is in place for co-ordinating European integration activities, and this structure has remained stable since the change of government. The system is becoming professionalised and is functioning well, but there is still work to be done for the continuing management of European affairs after accession.

8. Involvement of the Council of Ministers in Budget Decisions

The 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. A draft circular on programme budgeting is being prepared in the Ministry of Finance (MoF).

The 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 by the MoF. A draft budget, prepared by MoF staff, is discussed bilaterally at state secretary level and, if there is no agreement, further discussions are held 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 public policy formulation procedures under preparation should ensure that cost-benefit analyses are included in the documentation prepared by ministries in support of their policy proposals. An evaluation of the impact of these proposals on the budget will take into consideration the necessity to respect the government's priorities. In addition, a uniform standard for impact assessment should be introduced.

The process for collective involvement of the government in budget preparation remains adequate. However, budgetary impact assessment capacities will need to be reinforced.

9. Production and Impact Assessment of Normative Acts

Ministers' discussion of strategic and policy issues 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 and economic costs. Attention to the feasibility of implementation is limited. The capacity in ministries to carryout in-depth analysis is very limited, but the PPU is now charged with helping ministries to establish policy units.

There appears to be an important improvement in the activities of ministries in consulting outside interests, as well as an increased awareness – and in some cases the conviction – that such consultations can contribute to improving the quality of policy proposals and to 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 objectives of these consultations are 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.

As a recent development, the Economic and Social Council has been revived, through the appointment of new members (it is composed of some 20 representatives of unions, employers, NGOs and selected ministries) and a systematic consultation on draft legislation, which takes place every Tuesday, i.e. the day before the preparatory meeting of state secretaries. Its opinion is now included in the documentation sent to the government meeting.

Despite important improvements, resulting mainly from the development of more informal consultation mechanisms upstream of the policy proposal process and from a more effective enforcement of procedures, the Romanian system for preparing, consulting, reviewing, co-ordinating and approving policies and normative acts is characterised by weak analytical capacity. The general improvement in consultation and co-ordination mechanisms has already led to a significant decrease in the production of normative acts, and eventually there should be an improvement in the overall quality of normative acts. However, the accumulated volume of low-quality and often contradictory legislation is a source of concern, and the system cannot guarantee that contradictory legislation will be avoided in the future, leading to difficulties in implementation and to enforcement deficit.

Impact assessment is weak and often non-existent, but awareness of this issue is growing. Consultation with outside interests is improving and the pace of production of normative acts is decreasing. However, the accumulated volume of low-quality legislation requires that action be taken in order to identify and eliminate – and avoid in the future – contradictions and duplication of legislation.

10. Summary and Next Steps

The beginning of 2005 was marked by a significant change in the Romanian Government's work methods and style, characterised by both a greater respect for the rules of consultation previously established and the use of more informal methods of dialogue and interaction within the government and with civil society. More importantly, the government is showing a strong awareness of the necessity to associate all stakeholders in the policy-making process and a genuine commitment to improving its strategic capacities. These developments appear to be very positive, although it is premature to properly assess their effectiveness and sustainability. Similarly, the new rules of procedure under preparation have not yet been sufficiently defined to allow Sigma to formulate a judgement.

However, much remains to be done. The overall system supporting decision-making is still weak and fragmented. The recent reorganisation of the Chancellery of the Prime Minister has attributed to this institution the oversight of many specialised agencies, thus creating the risk of duplication of responsibilities between ministries and the Chancellery. These agencies should rather be placed under the oversight of the relevant line ministries.

Policy preparation within ministries is weak, although progress can be observed in the early consultation of external stakeholders, and the PPU is beginning to help line ministries to establish or strengthen policy units. The new rules of procedure envisaged for adoption in September 2005 and the guidelines prepared by the PPU might help, if they are properly enforced by the GSG.

The overproduction of normative acts has slowed down significantly, especially with regard to emergency ordinances, for which the Department for Relations with the Parliament now plays the role of an efficient gatekeeper. However, a considerable accumulated volume of poor quality legislation needs to be addressed. The number of emergency ordinances remains very high at the eve of EU accession.

It is necessary of course for the government to keep up with the actions already undertaken, namely the adoption of new rules of procedure for the preparation of normative acts, further clarification of roles and functions between the GSG and the Chancellery, streamlining of inter-ministerial committees into a small number of standing committees, and the establishment of strategic policy-making capacities in line ministries. All of the above actions had been recommended in previous Sigma assessment reports. In addition, the Romanian authorities should undertake the following actions:

- The government should review the present list of agencies placed under the oversight authority of the Chancellery, with the objective of placing under the authority of the relevant line ministries those agencies that do not have a clear cross-sector and inter-ministerial nature.
- The Chancellery should focus on policy advice to the government and to the Prime Minister, eliminating functions that duplicate those of the GSG or of line ministries. In this respect, the Chancellery should strengthen its cross-sector strategic policy-making and policy evaluation capacities and develop its role in the co-ordination of policy development in ministries and government agencies, while the GSG should focus on the material and technical organisation of – and support to – this co-ordination.
- The Romanian authorities should strengthen the Ministry of Finance’s capacity to evaluate the medium-term and long-term economic and budgetary costs of policies, so that the ministry is able to provide the government with counter-expertise on the evaluations made by ministries when proposing new policies.
- To address the issue of the volume of low-quality legislation accumulated during the years of excessive normative production, the Romanian Government should mandate a project to codify the entire legal corpus. Codification helps to identify and eliminate redundant or contradictory legislation, facilitates the preparation of new legislation, and provides the government – as well as citizens – with a clear and comprehensive view of applicable laws and regulations by integrating the whole corpus of legislation pertaining to a specific sector into a single document. This huge and technically complicated task could benefit from significant donor assistance.