

Testimony of Mark H. Gitenstein

Before

The Commission on Security and Cooperation in Europe

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Mr. chairman, members of the Commission, thank you for setting up this hearing. It is entirely appropriate for the Commission to discuss the status of anticorruption efforts in Romania. I am flattered that you invited me to appear.

I would like to introduce Corina Rebegea, a political analyst at the Center for European Policy Analysis (CEPA) here in Washington. She is the premier expert in the city on governance, transparency and anticorruption in Romania and I would like to thank her for helping me prepare this testimony.

I will focus on the areas where I have expertise from my time in Romania. I served as US Ambassador from 2009-12 and since then have served on the board of the Fondul Proprietatea (FP), the largest equity in Romania. FP is an outside minority shareholder in a number of State Owned Enterprises (SOEs) in Romania. In that capacity I have returned to Romania approximately two dozen times since ending my mandate in 2012. As a member of that board, I have concentrated on the issues of transparency, accountability and prevention of corruption in these critical SOEs. The FP is a closed end fund with a value of between 2-3 billion Euros listed on the London and Bucharest exchanges.

I will begin with a very straightforward statement with respect to the areas in which I have expertise: the National Anticorruption Directorate (DNA), the chief Romanian anticorruption prosecutor, EU monitoring of the Romanian anticorruption structures and rule of law reforms and corporate governance. Based on my experience, the fight against corruption is going remarkably well; it is apolitical, competent, independent and aggressive. It enjoys broad based support from the Romanian people as evidenced by the 500,000 Romanians who went into the street earlier this year to protest changes in the criminal code, some of which would have undermined DNA's work and the fight against corruption. In that respect it is a model for the region.

To sum up, I totally agree with President Trump in his recent letter to Romania's president Klaus Iohannis: "A key aspect of (the 20 year strategic partnership between the US and Romania) is the commitment to the rule of law and fight against corruption, and I applaud your efforts on this front."

For clarification, the National Anticorruption Directorate – DNA – is a specialized, independent prosecution office whose mandate is to investigate high-level corruption. This involves corruption crimes that are perpetrated by a clearly defined set of public officials (members of government and of parliament, judges and prosecutors, presidents of county councils, police officers, mayors, leaders of public institutions), but it also has jurisdiction over crimes in which the value of the bribe is higher than 10,000 Euros or the material damage is higher than 200,000 Euros. DNA has organizational and functional, as well as financial independence. It also has its own investigative police and specialized experts.

The DNA chief-prosecutor is appointed through a three-step procedure meant to lend both impartiality and legitimacy to the appointment. The chief-prosecutor is nominated by the Minister of Justice based on professional qualifications, then the nomination receives an opinion from the Superior Council of Magistrates (a body in charge with ensuring the independence of the judiciary) and is confirmed/appointed by the President of the country. The history of the

DNA in Romania has shown that having the right leadership in place is crucial to ensuring both the independence of the DNA investigations and the survival of the body itself.

As I'm sure you are aware, Romania was admitted to the EU in 2007 along with Bulgaria subject to a unique monitoring program known as the Cooperation and Verification Mechanism (CVM). Bulgaria and Romania are the only EU member states being monitored in this way—even after having joined the club—and this annoys officials of those countries to no end. They also claim the CVM is less of a supportive “cooperation” instrument than a political one. In recent years, its reports have actively called out politicians—and at a more institutional level, parliaments—for their lack of will to sustain rule of law reforms and fight corruption. The CVM provokes considerable controversy in Romania, but the domestic pressure it is able to apply still constitutes one of the main drivers of positive reform. Citizens in both countries see corruption and the inefficiency of the judicial system as major problems, according to a recent Eurobarometer poll on the CVM. While Bulgarians seem to have a more defeated attitude with respect to registering success in fighting corruption and organized crime, most Romanians believe there has been visible progress. A disheartening sign that citizens are still far from trusting their own governments is that Romanians and Bulgarians think EU pressure is a major stimulus for reform and should be maintained.

Pursuant to this system, experts at the European Commission have established very specific benchmarks for the court system and the prosecutorial offices in Romania and every 6 months since then have released reports analyzing progress against these benchmarks.

The benchmarks established by the European Commission for Romania are: (i) establishing an independent, impartial, and efficient system, strengthening the consistency of the judicial process, and improving transparency and accountability; (ii) establishment of an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken; (iii) professional, non-partisan investigations into allegations of high-level corruption; (iv) further measures to prevent and fight against corruption, in particular within local government.

This process and the support it received from key embassies, US, UK, Dutch and German in particular, along with the IMF deserve much of the credit for the success that Romania has enjoyed. The lion's share of the credit goes to courageous Romanian judges, prosecutors, NGO leaders and independent bloggers and journalists who have supported this effort because it allowed for previously untouchable high-level officials who were abusing their powers with impunity to finally come before the law. This is why the DNA is among the most respected institutions in Romania (with around 60% approval rating) and efforts to compromise that process provokes such a vigorous public response. Anti corruption is rapidly becoming the “third rail” of Romanian politics. Like Social Security is in the US, even critics approach undermining anticorruption with some trepidation. This is a very good thing.

I know there is concern about whether the DNA has a political agenda or is a tool of the intelligence agencies. In fact there is an entire mythology/conspiracy theory built around it, mainly by those who have come under investigation by the DNA. I recall when I was Ambassador one corrupt politician saying the “SRI (the Romanian FBI) is the locomotive and

the DNA is the caboose. We need to disable the locomotive.” The targets of corruption have been trying to do just that every since.

None of these accusations have been substantiated. I have heard this for the last 8 years and, to be frank, I am quite skeptical of the argument. I questioned my staff at the US Embassy, other Western Ambassadors, the EC staff and independent NGO analysts about these allegations. None believed that this was a serious problem. Indeed, the most accurate analysis of the situation is the CVM reports, all of which are available at this link https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

These reports consist of hundreds of pages written over the last 10 years. I read every one written since I went to Romania in 2009 and I don't recall finding any support in those reports for this assertion. On the contrary, every year the European Commission notes the progress that Romania has registered in fighting high-level corruption through the work of the DNA. The European Commission also almost yearly points out the difficulties that the DNA is facing, in particular when it comes to political attempts in the parliament to amend legislation so as to hinder anticorruption investigations or to block investigations of parliamentarians by not approving searches and arrests. So if there is an issue of politics and anticorruption it is the determined political agenda of some in Romania to discredit the effort.

The DNA has been very aggressive in pursuing politicians. The number of indictments rose from 360 in 2006 to 1271 in 2016, out of which in 2016 alone 3 ministers, 6 senators, 11 members of the Chamber of Deputies, 47 mayors, 16 magistrates, 21 directors of national companies. 870 final convictions against these defendants have been ruled by the courts in 2016, out of which one minister, 2 senators, 8 deputies, one member of the European Parliament, 5 presidents of County Councils, 9 judges, 9 mayors of municipalities, 32 directors from public authorities and SOEs.

In terms of recovering material damage (an important deterrent in the fight against corruption), the DNA has requested asset seizure of EUR 677 million. However, due to poor implementation of court sentences the actual recovery rate is very low.

Across Central and Eastern Europe—except for Romania—few high-level officials have been prosecuted or convicted for corruption. The region still faces an uphill battle to institutionalize the anticorruption fight and keep it intact from shifting political configurations. It is not surprising that sometimes when a politician is targeted his or her allies allege a political motivation. But the DNA has been quite ecumenical in its efforts and has targeted high ranking officials in every political party.

Indeed, the most political aspect of the Romanian anticorruption process is not the fault of the DNA or the courts but the Romanian constitution. It requires, unlike our own, that in order for the DNA to prosecute a member of the government who is also a member of parliament the parliament must vote, by secret ballot, to lift the target's legislative immunity. While the immunity lifting procedure is meant to only look at whether there are reasons to believe that the investigation has political, rather than legal grounds, parliamentarians often go into the substance of the case. They would analyze the evidence and process, thus substituting themselves to

judicial review. The Constitutional understanding of immunity is to protect parliamentarians for retribution based on their political activity, not from investigation into their criminal activity. In 2016 alone, DNA has requested the lifting of immunity for pretrial detention in 6 cases and for approval of the criminal investigation in 11 cases. This often makes prosecutions political as the targets allies organize to thwart the immunity vote. If the commission would like to discuss this further I'd be happy to elaborate on this issue. Ironically, its one that for me harkens back to my first job here in the Senate over 40 years ago working for Senator Sam Ervin when I worked with him on legislative immunity under our Constitution.

There have also been allegations that the DNA is out of control and is totally unaccountable. My experience is that the Romanian courts have not been shy about checking the DNA. While the DNA has a very high conviction record (around 90%) there are acquittals and in critical substantive areas the Romanian Constitutional Court has limited the role of the Romanian Intelligence Service (SRI) – which has the technical capabilities for surveillance – in wiretaps on behalf of the DNA and in limiting the use of the catch all “abuse of office” crime (the Romanian version of our “wire and mail fraud” statute). These had a significant impact on the effectiveness of the DNA although the prosecutors have come to terms with the decisions, as well they should have.

My concern with the anticorruption program in Romania is not that it's political or that it's unaccountable but that anticorruption cannot depend solely on prosecution of high level officials. While it is essential to demonstrate, especially in post Communist societies, that no one is above the law or as our framers were fond of saying “we are a government of laws, not men”, Romania will not solve its problems by throwing everyone in jail. Romania needs a much more robust program to prevent corruption that would address broader weaknesses in its regulatory, administrative and political structures and thus diminish the opportunities for corruption. This has been the focus of my work, in particular at Fondul Proprietatea, since leaving my job as Ambassador.

What I have learned at Fondul is that these legacy SOEs, the remnants of the old Communist command and control economy, are the source of much of the corruption in Romania – and in fact all over the world, as a recent OECD study reflects. These assets are inherently valuable, energy and transportation companies for example, but they are mismanaged and the lack of good governance is an invitation to corruption and old fashioned “log rolling” which characterized the countries behind the Iron Country. It is this mismanagement of the state and corruption generally that played a significant role in bringing down the wall in 1989; brought the young men and women to the streets at EuroMaidan in Kiev in 2013 and to the streets of Romania earlier this year. These increasingly westernized young Eastern Europeans simply will not put up with the old ways but they need an agenda to fight for.

That agenda needs to be more than simply locking up everybody. These highly trained young people, many of who work for western companies subject to the FCPA or the UK bribery law, know that you can do well without being corrupt. To me this agenda for better governance, especially for the rule of law and transparency is the key challenge for this area of the world and I dare say for this commission. I encourage you to review the work that Corina and I did at the Center for European Policy Analysis in the last few years. These reports (Romania's “Tipping Point”-Advancing Rule of Law, Governance and Public Leadership from 2014 and Beyond the

'Tipping Point: Anti-corruption works. Governance works better. from 2015) lay out a very clear agenda for good governance from enhancing policy and administrative capacity to corporate governance reform to greater use of equity markets to give outsiders management of these assets. These young folks recognize that these assets belong to them as Romanian citizens not to the political elites who see them as their fiefdoms in which to place political friends.

The CEPA reports make a number of specific recommendations which ought to be an element in the strategic dialogue between the US and Romania including:

- * Strengthen the ability of public institutions to fight corruption from within by coherently implementing the National Anticorruption Strategy (SNA), extending its application and fortifying its technical secretariat.
- * Increasing the transparency of parliamentary procedures, public participation and effective consultations on legislative changes that would result in slowing down or diminishing the effectiveness and independence of anticorruption investigations.
- * Ensure independent and impartial investigations through competitive and objective selections of anticorruption agents and heads of institutions system-wide.
- * Empower DNA prosecutors by introducing a unified and transparent performance appraisal system, with a clear definition of performance that goes beyond mere numerical indicators about the number of files processed or sent to court.
- * Increase ANI's (Romanian financial disclosure agency) capacity to effectively uncover conflict of interest and incompatibilities by providing the adequate staffing levels and improving inter-agency cooperation.
- * Ensuring proper implementation of pertinent legislation, including the new draft law on assets recovery, and creating streamlined procedures that allow various authorities to cooperate across all the steps of recovery, from identification to valuation and confiscation or restitution.
- * Engage in system-wide and institution-level strategic management across the justice system.
- * Introduce a business ethics code that requires an integrity conformity control for any state-owned or private business engaging in contracts with state institutions.
- * Implementing a strategic approach to public office reform. This includes standardizing processes of recruiting, training and compensating human resources in the public sector, in correlation with the Strategy for the Consolidation of Public Administration 2014-2020 and plans for reorganizing territorial-administrative units.
- * Creating a government strategy for addressing capacity and resource (budgetary and personnel) problems in small territorial-administrative units in order to eliminate inefficiencies and increase public management performance.

- * Increasing the quality – opportunity, efficiency, effectiveness – of laws and regulations by utilizing more evidence-based decision-making and impact assessments. This will introduce more rationality into decision-making and greater legal conformity and trust within society.
- * Increasing efficiency and accountability by simplifying and clarifying procedures and increasing transparency in all stages of the procurement process. The first step is to streamline e-procurement systems (including e-invoicing and publication of all contracts and reports) and increase inter-institutional cooperation.
- * Improving certainty at the level of administrative procedures by introducing clear, non-discriminatory criteria for dealing with private companies and by empowering public servants to give guidance/make decisions that are binding or that can be challenged in administrative procedures. Similarly, public actors in the procurement market need to apply uniform practices.
- * Expanding the capacity and professionalism of personnel involved in evaluation, implementation and monitoring of procurement processes and contracts through better selection criteria, better training and improved integrity standards.
- * Introducing centralized procurement for staple goods and services for groupings of smaller administrative-territorial units in order to eliminate possible conflicts of interest and make processes more efficient and uniform.
- * Build a transparent and effective strategy for managing and/or privatizing SOEs and coordinate the privatization strategy with other key areas, such as infrastructure and transportation or energy sectors.
- * Improve corporate governance by effectively implementing existing legislation and enforce oversight mechanisms that have the ability to sanction non-compliance. I am optimistic about Romania and even Ukraine and Moldova where I have also spent some time. As Dr. King used to say the “long arc of history” bends towards justice. And these young people will insist on hastening the bend of that arc. The closer we reach that ideal the sooner we will help raise the standard of living of these countries; strengthen them against populist, nationalistic, even racist antidemocratic or “illiberal” trends in the region. It is the perfect vaccine against these dangerous trends.

So from the point of view of the Commission nothing can be more important than creating in post Communist countries a governance based on law not on the political whims of men and women in power. Nothing undermines that more than corruption. The solution to excesses by prosecutors, should they exist, is an independent principled judiciary. That is beginning to emerge in Romania. We should focus on supporting that system not discrediting it.

Corina and I stand ready to help the commission in any way we can and I am happy to answer any of your questions.

I would appreciate it if the two CEPA studies, which are attached, be placed in the record of the Commission along with the CVM reports which are available at https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en.

Thank you for having me.



ROMANIA'S “TIPPING POINT”

ADVANCING THE
RULE OF LAW,
GOVERNANCE AND
PUBLIC LEADERSHIP

CEPA

JULY 2014

ROMANIA'S "TIPPING POINT"

ADVANCING THE RULE OF LAW, GOVERNANCE AND PUBLIC LEADERSHIP

Findings of the U.S.-Romania Initiative
Working Group



JULY 2014

About CEPA

The Center for European Policy Analysis (CEPA) is a non-profit, non-partisan public policy research institute dedicated to the study of Central Europe. Founded in 2005, CEPA provides a forum for scholarly research, writing and debate on key issues affecting the countries of the Central European region, their membership in the European Union and relationship with the United States.

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*Throughout their deliberations, the Working Group consulted a wide array of experts, practitioners and policymakers. The Group's members support the thrust of this report, although not necessarily every recommendation, and they are not responsible for the opinions expressed throughout this document. Institutional affiliations are given for purposes of identification only.

EXECUTIVE SUMMARY

Romania has come a long way in the last 25 years. Through revolution, economic transformation and years of reform, Romanians have overcome a legacy of repression and backwardness to become a stable European democracy and free-market economy, with membership in NATO and the European Union (EU). Never before has Romania been as prosperous, secure or free as it is in the opening decades of the 21st century. But as the country approaches the 25th anniversary of the 1989 revolution, significant obstacles remain to realizing its full political and economic potential. In fundamental areas of governance—from how Romanians choose their leaders and govern their corporations to how they fight corruption and honor contracts—the country continues to lag behind many of its Central European neighbors. In 2013, the Center for European Policy Analysis (CEPA) brought together a Working Group of leading transatlantic experts to review Romania’s progress and consider where its leaders and citizens should direct their efforts in the years ahead. The Group identified three areas of focus:

- **Rule of Law:** Romania has made great strides in the fight against corruption, but greater efforts are needed, especially in eliminating political interference in the judiciary and bolstering the government’s ability to recoup the proceeds of criminal activity.
- **Governance:** Romania’s system of public management, while improved in recent years, continues to lack the efficiency needed to adequately serve its citizens and support the nation’s economic growth potential. In particular, state-owned enterprises (SOEs) remain in need of increased transparency and exposure to the open market.
- **Public Leadership:** Generational change is bringing new Romanian leaders to the fore, but change to political structures has been slow. Reforms to party financing and decision-making processes are needed to improve how the government represents its citizens.

In all three areas, Romania has reached a “tipping point” in its post-1989 transition—a moment of latent potential that, if seized with energetic and persistent policies, could lead to measurable improvements in national economic performance, the well-being of Romania’s citizens and the resiliency and durability of its political institutions. As examples from across Romania’s neighborhood show, these changes are achievable. If its leaders remain committed to the transformation path, Romania could become a happier and wealthier country with lasting benefits to itself, its region and the broader transatlantic community.

POLICY RECOMMENDATIONS—A SNAPSHOT

In support of this vision of a Romania with lasting benefits to itself, its region and the broader transatlantic community, the Working Group makes the following policy recommendations.

On Rule of Law:

- **Strengthen “integrity institutions.”** The Romanian government should bolster the ability of public institutions to fight corruption from within their own ranks by aggressively implementing the National Anticorruption Strategy (SNA), extending its mandate and fortifying its technical secretariat.
- **Ensure independent and impartial corruption investigations.** The Romanian government should broaden its increasingly successful fight against corruption by ensuring a competitive and objective selection process for the leaders and agents of the institutions charged with this task.
- **Empower DNA prosecutors.** Romania’s leaders should introduce a unified and transparent performance appraisal system for prosecutors at the National Anticorruption Directorate (DNA). Doing so would increase the capacity of local branches, whose performance in many instances lags behind that of the national headquarters.
- **Streamline interagency cooperation on corruption.** Romanian government asset recovery policies lack coherency and coordination. By improving the collection, management and valuation of confiscated goods, state officials could enhance their ability to confiscate the spoils of corruption, sending a powerful message about the country’s ability to act effectively on its stated commitment to anti-corruption.
- **Increase ANI’s capacity.** Adequate staffing and improved interagency cooperation for the National Integrity Agency (ANI) would assist in uncovering conflicts of interest while improving data management and fostering preventive assessments of public procurement processes.
- **Strengthen judicial management.** In their ongoing quest to improve the effectiveness of the justice system, Romania’s leaders should consider simplifying court proceedings, strengthening training for judges (especially on complex commercial cases) and improving access to the collection of full-text court decisions.
- **Install a business ethics code for any company dealing with the state.** Public and private firms with state contracts should be required to implement “integrity checklists”—itemized lists enumerating ethical standards that must be met. This change should be made enforceable by the courts in an effort to strengthen regulatory oversight and prevent “conflict of interest” lawsuits in state contracting.

On Governance:

- **Bolster public-private collaboration.** Romania should look for ways to incentivize increased public-private partnerships, private grants and mixed supervisory boards to oversee public projects and services. These kinds of consultation mechanisms are well-suited to calibrating public service solutions to the needs of clients and improving their transparency.
- **Institute better benchmarking.** State officials should assess the financial arrears of local bodies like city halls and establish benchmarks for best practices in budgeting. The aim would be to identify deficiencies to improve public

spending, management of contracts and quality of goods and services.

- **Invest in people.** Good public management starts at the human level. Across state institutions and SOEs, the government should make an active effort to attract individuals who are committed to challenging and improving an ineffective status quo. Such an approach could be sustained through targeted management training and stronger professional associations to provide accreditation and ethics standards.
- **Make services more citizen-centric.** The focus of public services should be on serving Romania's citizens. In particular, this requires officials to exercise greater transparency in the oversight of budgets and public expenses. Romania can achieve this goal by implementing the same spending and reporting rules for the national budget that it employs in the disposal of EU funds.
- **Build a transparent strategy for SOE privatization.** The Romanian government should conduct and publish an audit indicating precisely how many SOEs currently exist in the country. Doing so would establish a baseline for evaluating which firms should be wholly or partially privatized. The aim should be to ensure that valuation occurs in an open fashion, free of conflicted interests or sweetheart deals.
- **Implement corporate governance principles.** Current rules provide a strong foundation for monitoring SOEs, but the large number of firms—around 1,000—creates complications. Privatizing many operations would help increase efficiency and profitability. For those that remain under state ownership, officials should ensure that the public can view all financial reporting so as to monitor company performance and efficiency.
- **Make SOE privatization consistent.** Initial public offerings (IPOs) are the most transparent way of privatizing state firms, but they require predictability of process; greater clarity for minority shareholder rights and the means (administrative or judicial) to protect them; and strengthening of Romania's capital market.
- **Build a long-term natural resources and energy strategy.** Guided by transparent and broad-based consultations with all stakeholders, this would develop the priorities, ownership and role of SOEs in particular. Such an approach should offer new estimates of the existing resource base, market forecasts, cost analyses and environmental impact assessments.

On Public Leadership:

- **Ease registration rules for political parties.** Adding more voices to government would increase citizen empowerment and allow Romanians to find a better political match for their opinions. This can be done by lowering the number of signatures required for forming a new party and eliminating the geographic distribution requirement for signatures.
- **Institute new political financing disclosures.** Parliament should require all contributions, irrespective of amount, to be included in a national public register managed by the Permanent Electoral Authority and available online. No anonymous contributions should be allowed.
- **Open parliamentary proceedings.** Most parliamentary activities should be open to the public, especially when votes are cast. Likewise, legislators should prohibit the addition of "last minute" amendments that bypass consultation and debate. They should allow at least three days for public feedback on emergency ordinances. These steps would build confidence that public opinion is valued and hidden agendas are not speeding legislation through Parliament.

INTRODUCTION

This year marks a quarter-century of democratic transition for Romania and the other states of Central and Eastern Europe (CEE). Vast changes have occurred in a remarkably short time. In less than a generation, Romania has gone from being an economically backward and politically repressed satellite state of the Soviet Union to a fully integrated member state of the EU and NATO. Politically, Romania has built a functioning, multiparty, representative democracy with frequent, peaceful transfers of power and a constitution founded on the principles of political pluralism, citizen participation and personal freedom. Geopolitically, Romania has come to enjoy a degree of physical safety unknown in its long and bloody history, with treaty commitments ensuring its territorial sovereignty from the United States and the major powers of Western Europe as part of NATO's Article 5 security guarantee. And economically, Romania has undertaken far-reaching and sometimes painful reforms to become a stable free-market economy with widespread Western investment and an annual gross domestic product (GDP) per capita that is 150 percent greater than it was at the outset of the transition.

Yet for Romania, as for much of the CEE region, many of the highest aspirations of the post-1989 era have not been fully realized. The creation of new markets and an open political process did not altogether alter the country's underlying political culture. Nor did the fact that they had incorporated the formal processes of liberal democracy automatically lead Romanians to internalize the values upon which those structures are based.¹

1 This was mainly what Rachel Kleinfeld calls "first generation rule of law interventions" and which are now met with a lot of disenchantment. For "first generation rule of law interventions," see Rachel Kleinfeld, *Advancing the Rule of Law Abroad: Next Generation Reform* (Washington, D.C.: Carnegie Endowment for International Peace, 2012), Kindle edition.

In many important areas, Romania has lagged behind its fellow post-Communist CEE transition states. The gaps that set Romania apart are visible across a wide range of indicators, from government effectiveness and legal reform to public trust in government and the administration of state-owned enterprises.² Nowhere are they more noticeable than in the area of corruption. Today, Romania scores worse on corruption by a significant margin than CEE neighbors like Poland or Slovakia. Indeed, the level of perceived corruption has essentially remained constant since the early transition years.

To a greater degree than their neighbors, Romanians also doubt the effectiveness of their government. They harbor deep misgivings about the ability of their leaders to formulate and implement public policy or provide basic public services. On the plus side, the structure of Romania's laws and institutions are comparable to those of other EU members. In fact, some Romanian laws rate even higher than those of neighboring states.³ The trouble is the large "implementation gap" between the written rules and their enforcement. This offsets the otherwise impressive gains that Romania has made in rule of law since entering the EU.⁴

Romania also continues to struggle to a greater degree than other CEE states in its handling of SOEs—a critical benchmark of reform in the post-Communist space. Owned by the government at both the national and local levels, Romanian SOEs

2 For a comprehensive rundown, see the World Bank's Worldwide Governance Indicators, which aggregate a wide range of other existing indicators. See World Bank, *Worldwide Governance Indicators*, <http://info.worldbank.org/governance/wgi/index.aspx#reports>.

3 A notable example is the Romanian legislation in the field of control of conflicts of interests and incompatibilities.

4 According to the Global Integrity Report, "Scorecard: Romania 2010," <https://www.globalintegrity.org/global/the-global-integrity-report-2010/romania/>.

seem to be stuck in an earlier time of the country's transition—a period when limited domestic capital, underdeveloped capital markets, low incentives for investment and a strong state role in the economy were the norms. Today Romania's SOEs remain a source of inefficiency, if not waste, in the management of public funds. Under one metric used by the World Bank, Romania's transition era will not be considered complete until the more archaic characteristics of its SOEs (whether old, "restructured" or new) are gone.⁵ With nearly 1,000 of these entities still in existence, Romania's transition process remains a work in progress. Not surprisingly under these circumstances, Romanians have continued to show a low degree of trust in their institutions and political parties. While by no means unique to Romania (a similar pattern is visible across the CEE region), such a fundamental absence of trust for a relatively young polity like Romania represents a formidable obstacle to establishing the popular legitimacy of the system that was created in the heady days following the fall of communism.

These realities suggest that Romania has not yet "closed the book" on its transition era. Clearly, the accomplishments that the country has achieved over the past several years in creating and consolidating new values and institutions have been historic, and deserve recognition. But as Romania approaches the 25-year mark of the 1989 revolution, there is an urgent need to consolidate the hard-won gains that Romanians have achieved so far while paving the way for a next-generation, post-transition consolidation strategy. If Romania is to complete this process and secure the deepening of its role in the European integration project, then political leaders and citizens alike will have to grapple head-on with stubborn impediments like corruption, effective governance and the administration of SOEs. If neglected, persistent underperformance

in these areas could impair the country's ability to keep pace with other European countries as well as realize its own considerable human, economic and geopolitical potential. Choosing this path would take a heavy toll on Romanian innovation and economic competitiveness, in particular.

If these areas are going to be significantly improved, then they must become the explicit focal points of public policy, even if doing so means raising subjects that are occasionally painful to discuss. To this end, improvements in adherence to democratic values, the functioning of institutions, economic performance and serving citizens offer the greatest potential to increasing the happiness, liberty, wealth and confidence of Romanians as a modern European nation, potential regional leader and indispensable U.S. ally.

⁵ In a 2002 study, the World Bank was calling upon transition states to focus on policies that encourage entry for new firms, thus creating jobs and economic growth, but also on discipline and hard-budget constraints for large state-owned enterprises in order to avoid fiscal and banking crises and to level the economic playing field. See World Bank, *Transition: The First Ten Years. Analysis and Lessons for Eastern Europe and the Former Soviet Union* (Washington, D.C.: International Bank for Reconstruction and Development/World Bank, 2002), <http://siteresources.worldbank.org/ECAEXT/Resources/complete.pdf>.

THE APPROACH

To help foster this discussion, the Center for European Policy Analysis (CEPA) formed a Working Group of senior experts from the United States and Europe to assess the progress that Romania has made in consolidating democracy over the past 25 years and to identify where the most significant and actionable opportunities exist for accelerating that process. In building this project, the Working Group has been mindful of the fact that much work has already been done on the subject of Romanian institutional reform in the past by a wide array of actors from both the public and private sectors, including the World Bank, European Commission, European Bank for Reconstruction and Development (EBRD) and the International Monetary Fund (IMF).

Most of these efforts have been comprehensive in nature, usually involving an annually updated set of benchmarks that track change across a wide swath of public institutions and reform areas. Such approaches are valuable, but lend themselves to “soup-to-nuts” lists of recommendations that often lack a deeper understanding of domestic and cultural dynamics. Some are more effective than others in communicating where scarce policymaking time and attention should be devoted and what can afford to be de-prioritized for a later day.

Surveying these efforts, the Working Group decided to take a different approach. The Group's goal was to “go deep rather than wide”—to identify, based on the best available data, the smallest number of public policy areas in which change would produce the greatest measurable impact for the Romanian people and economy. To do this, the Group developed a three-part approach. First, it narrowed the focus to high-impact areas—what it calls **Transformative Areas**—that are likely to have the greatest return on investment from a policymaking standpoint. When considering options, the Group asked itself three questions:

1. Is this area a structural component of the Romanian state (i.e., is it part of the foundation of Romanian democracy, as opposed to a temporary public policy)?
2. Is it measurably underperforming (i.e., on the basis of other CEE examples, should it already have been dealt with)?
3. Would changes here, if successful, have spillover effects for other areas of policy (i.e., does the area touch on multiple features of the wider democratic system)?

In applying these criteria, the Group ruled out a number of vital areas of Romanian public policy, including education, health care, energy security and many others. While (in most cases) underperforming in some important way, the Group decided that those areas had a lower spillover potential and were largely “derivative”—that is, they depended on success in other foundational areas of governance. Similarly, it ruled out several “upstream” areas of focus, including constitutional reform, the basic structure of the economy and property rights. While important and more structural in nature than those listed earlier, the Group felt that progress in these areas was already relatively sound and that they would detract attention from more important issues.

Through this process, the Group was able to narrow its focus to three Transformative Areas: (1) **Rule of Law**, (2) **Governance** and (3) **Public Leadership**. In all three, there was a sound analytical rationale, on the basis of data accumulated from years of study, to assert that change was needed, that making the change would be healthy for the foundation of long-term democracy and that improvements in the near term would act as drivers to structural adjustment across the full spectrum of the Romanian public policy system.

Second, within each of these Transformative Areas the Group sought to further narrow the focus to

aspects where renewed attention was most likely to pay off. The organizing question for Working Group members became, “Where can pressure be applied to keep Romania moving in the right direction and how can agents of change be best utilized in the process?” Rather than creating a generic checklist, the Group sought to identify specific functional areas—**Pressure Points**—where action would be likely to yield real results in the *near term*. To qualify as a pressure point, the Group decided, an area had to meet five criteria:

1. **Public support:** A social consensus among the Romanian public has built up around the need for reform in this area.
2. **Measurability:** Progress in this area can be ascertained using metrics.
3. **Achievability:** There is a track record of Romanian policy taking some kind of action in this area; renewed effort would build on momentum rather than attempting to create it from scratch (i.e., the effort premium is relatively low).
4. **Models of success:** Examples exist from Romania and from other CEE transition countries showing that addressing this area was a catalyst to change.
5. **Impact potential:** Successful action in this area would be likely to generate positive spillover in other areas—e.g., performance of the Romanian economy, citizen trust and well-being, etc.

Applying these criteria, the Working Group agreed on the following Pressure Points:

Transformative Area	Pressure Points
Rule of Law	<ul style="list-style-type: none"> • Integrity in the public sector • Assets recovery • Impact on clients
Governance	<ul style="list-style-type: none"> • Public management and public services provision • Management of state-owned assets • Energy sector management
Public Leadership	<ul style="list-style-type: none"> • Forming political parties • Party financing • Parliamentary proceedings and lawmaking

Third, once these areas of focus had been selected, the Working Group sought to establish a basis on which to evaluate potential solutions. To remove subjectivity and group bias from the process as much as possible, the Working Group agreed that it would be worthwhile to operate from a broad set of principles that could be applied to each proposed recommendation before including it in the report. They favored solutions that:

1. Push decisions to the private sector or local level where possible.
2. Are known to work in a similar context, whether from something that is being done in Romania or something that worked in other transition countries.
3. Are measurable—e.g., a data system is built, a training program is implemented, etc.
4. Can be self-replicating, usually as a result of investment in people, rather than in systems or institutions per se, as agents of change.

In producing recommendations based on these principles, the Working Group focused on the process of making optimal policy choices, implementing them and increasing incentives to change. They avoided engaging in yet another attempt to produce a “grand strategy” for Romanian reform, since numerous such attempts have been tried repeatedly in the past. Also, they avoided the temptation to “over-quantify” results.

This is not to say that quantitative benchmarks are unimportant—on the contrary. However, when it comes to propelling Romania’s course on the pathway to reform, the Group believes that the “right way forward” is generally known. Twenty-five years of data from a range of international public and private sources have clearly shown where change is needed and where it is most likely to succeed. For anyone who is willing to spend time with the data, the reality is quite clear. The problem is not the need for new data but the need for understanding how to use the existing data effectively—where exactly to begin, what to prioritize and what can be safely de-prioritized. This requires a clear set of metrics for issue selection, which became a major focus of the Group’s effort. The Group reached the conclusion that Romania as a nation has reached a “tipping point”—a moment at which the accumulated positive change of more

than two decades has positioned the country to move beyond the remedial early stages of transition and achieve deeper consolidation of democracy. At such a moment, the application of public pressure to a few specific points of policy could yield disproportionately large and beneficial results.

To this end, Group members paid particularly close attention to identifying the reform strategies that have helped to achieve breakthroughs in the trajectories of other post-Communist states in the CEE region. They looked for ways to model Romania's remaining reform needs along the lines of those successful efforts. Finally, the Group used its combined findings from the steadily narrowing focus above—Transformative Areas, Pressure Points and Principles for Change—to create an **Action Roadmap** for helping Romania achieve a higher quality of life for its citizens, a better business climate and a better regional standing among EU states. That roadmap and specific policy options are represented below.

Part of this roadmap is the creation of the *Think Romania Network*. The experts involved in the Working Group process will continue to be active in supporting reform efforts in Romania through regular dialogue and assessment of progress beyond this first reporting stage. They will continue to analyze the areas where pressure for change still needs to be applied and will consolidate a virtual space of policy debate where U.S. and Romanian experts and activists can incubate policy options for Romania's future development.

One final note. In the period since the Working Group was launched, the Ukrainian crisis erupted just beyond Romania's borders, making the discussion about reform and transatlantic engagement more important than ever. The mass protests in Kyiv's Maidan Square and the subsequent Russian annexation of Crimea offer a trenchant reminder of what failed transitions and missed reform opportunities can ultimately produce. Events in Ukraine sprang from a multitude of complex drivers and factors. Nevertheless, the role of corruption, underperforming governance, rent-seeking, a lack of accountability and a divide between the needs of citizens and those of their leaders played roles in shaping the course of developments. Conversely, the Ukraine crisis demonstrates just how much progress has occurred

in neighboring countries like Romania and other post-communist EU states. The pressures that civil society and government leaders face inside the EU's borders are measurably different from those that Ukraine's leaders must resolve. Nevertheless, events in Ukraine underscore the imperative of completing national reforms. Because Ukraine failed to do so, European prosperity, peace and security are now at risk. If ever there was a time to redouble efforts to address the unfinished business of Romania's transformation to a mature democracy, it is now.

THE CONTEXT: ROMANIAN DEMOCRACY AT 25

Any examination of Romania's reform process must begin with recognition of the historic strides that the country has made in the two-and-a-half decades of post-communism. Economically, Romania finds itself in a very favorable position in 2014. This is thanks to the many opportunities for GDP growth and entrepreneurial development that previous reforms have created. Macroeconomic indicators have been positive over the past two years—a trend that is forecast to continue. According to the European Bank for Reconstruction and Development, Romania's GDP will grow by 2.6 percent in 2014 and by an additional 2.8 percent in 2015. This makes Romania's economy one of the fastest-growing in the CEE region. At the same time, Romania is on track to post its lowest budget deficit since the beginning of the economic crisis.

Other positive signs of progress on the reform agenda include checks exercised by the justice system on the branches of government, as well as increasingly prominent examples of effective local public management. These are hopeful developments, since they underscore that Romania is still making measurable progress on reform despite some significant setbacks.⁶ Likewise, rule of law in the country has made important advances. State institutions are governed by more effective checks and balances; judicial bodies are able to conduct independent investigations of potential wrongdoing; and fertile ground exists to increase public trust in government.

⁶ This is the case of recent decisions of the High Court of Cassation and Justice in high-level corruption files in particular, under investigation or finalized, which demonstrates that justice is following its course. As recently as 2011, delays and procedural gimmicks in most of these files made the resolution of the cases somewhat unlikely. Also, important decisions such as those regarding the insolvency legislation or the administrative decentralization were passed by the Constitutional Court in the past year.

At the political level, elections continue to provide voters the chance to change their government and, just like any other EU state, transitions from one ruling party or governing coalition to the next are a normal affair. Putting these concepts into practice was no small task. It resulted from a focused, multiyear national project to meet the criteria for EU membership and to implement the necessary changes to Romanian economic, legal and political norms. These advances should not be discounted. On the contrary, they offer a significant degree of optimism for the future—and a strong basis on which to accelerate reforms.

Even so, this otherwise positive outlook is hampered by several negative factors, including the heightened volatility and instability of national governments, public mistrust of policy, economic risks stemming from the prominent role of the government in the economy and a lack of modernization in the state administrative apparatus. A combination of these factors has helped to produce a notable level of apathy or outright cynicism among many Romanian citizens.⁷ All of these undesirable factors could slow progress toward positive reform in Romania. The following sections provide a discussion of persistent challenges, their causes and the policy options available to address them. These reflect the Working Group's discussions and preferences in each of the three foundational pressure areas—rule of law, governance and public leadership.

⁷ According to opinion polls by the Romanian Institute for Evaluation and Strategy, in October 2013 77 percent of Romanians thought the country is moving in the wrong direction (http://www.ires.com.ro/uploads/articole/ires_raport-de-cercetare_functiunea-justitiei-in-romania.pdf), while in March 2014 only 72 percent were of the same opinion (http://www.ires.com.ro/uploads/articole/ires-agenda_publica_24-26_martie-2014.pdf).

Romanian Rule of Law: Irreversibility of Reform?

Despite considerable progress, rule of law in Romania continues to be a major area of concern and it is unknown how sustainable reforms will be in the future. One notable paradox of the legal reform process in Romania is that the country's institutions and existing legislation are entirely comparable to European peers. It is in the management of its justice system as well as in legal, political and administrative actions where Romania falls behind. As a result, Romania's overall regulatory framework is weakened by inconsistencies in framing and implementing legislation. These gaps include a lack of regulatory impact assessments, sudden changes in legislation and a breakdown in overseeing the quality of legal documents. Bodies that should exercise this kind of oversight over new legislation, such as the Legislative Council or policy coordination units within the executive branch, are toothless instruments.

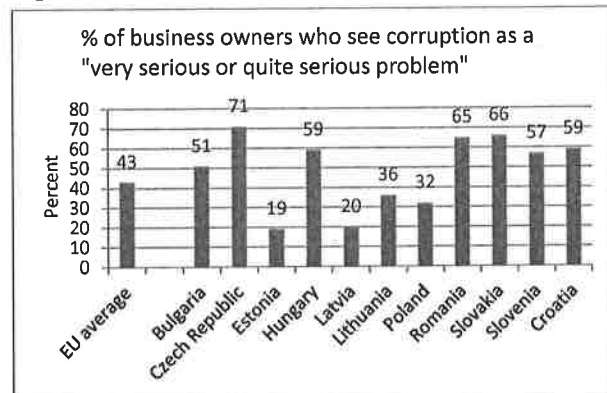
The stability and predictability of laws are generally claimed to be very problematic by both clients of the justice system and judges or even legislators.⁸ In particular, the lack of effective consultations with various stakeholders, from citizens and NGOs to businesses or other public or private bodies, or the absence of a tracking mechanism for inputs to new laws, creates the perception of a legal system that is arcane or unresponsive.⁹ This has a spillover

⁸ The Fiscal Council recognizes that Romania has transgressed many of the fiscal rules it had set for itself and also failed to create that space of predictability for business agents to set their expectations accordingly. The same oversight body decries the absence of impact studies and of reasonable time to publicly analyze and discuss modifications to the Fiscal Code, which in 2013 has been modified no less than 50 times (<http://www.consiliulfiscal.ro/publicatii-opinii-2013.pdf>).

⁹ Civil justice in Romania ranks 34 out of 99 countries, while the criminal justice system ranks 29 out of 99 in the World Justice Project Rule of Law Index 2014. On a more positive note, Romania performs best in the dimensions of security (although less well than it did in the previous evaluation) and respect for fundamental rights (ranking second among upper-middle-income countries). The due process of law indicator receives a score of only 0.62, whereby 1 is the highest possible, but indicators such as those associated with open government (transparency and access to information) and regulatory enforcement receive the lowest scores (<http://data.worldjusticeproject.org/#/index/ROM>).

effect in business; loopholes in legislation create vulnerabilities and fuel the perception that the only way to navigate such a system is by bribery. When asked whether corruption constitutes an impediment to doing business in Romania, 65 percent of respondents from the business community said yes—twice the percentage for Poland and more than three times the percentages for Latvia and Estonia (see Figure 1, below).

Figure 1. Perception of Corruption in Business



Source of data: 2014 Eurobarometer and EU Anti-corruption Report 014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm.

A notable driver of rule of law reform in recent years has been the EU's Cooperation and Verification Mechanism (CVM). By assessing progress in dealing with corruption and justice reform, the CVM has become one of the major catalysts for change (see Text Box 1, page 11). Going forward, close CVM monitoring might still be the strongest mechanism for Romania, since it forces institutions to deliver on reform and show results. Nonetheless, overreliance on the EU could be sub-optimal in the long run. As experiences in other transition CEE countries show, additional domestic pressure by citizens can be equally beneficial. Rather than being propelled by Brussels, rule of law is often most effectively addressed by voters or civil society. Ideally, groups and individuals would build support for rule of law reforms from the bottom up and create "internal ownership" of the process. Since the European Commission's CVM reports consistently underscore lack of political will as an impediment to further reform, demand for such progress from voters could motivate lawmakers to ensure the implementation of existing legislation and democratic norms.

Text Box 1

The Cooperation and Verification Mechanism

The Cooperation and Verification Mechanism was established in December 2006, right before Romania's entry into the European Union, **to address specific benchmarks in judicial reform and the fight against corruption**. The European Commission decided to establish the CVM to ensure further progress in areas where problems still existed. Bulgaria is the only other country in the EU for which such a mechanism exists to track and stimulate progress on outstanding issues.

The Commission also stipulated the possibility of implementing sanctions (including nonrecognition of court decisions and, in the case of Bulgaria, cutting European funds) but also of offering further support and expertise. Various observers have noted that the CVM has focused more on the monitoring and verification aspect and less on cooperation.

However, in the seven years since EU accession and with 12 reporting cycles completed, the CVM has played a tremendous role in supporting reforms and reformers in the Romanian justice system. The mechanism has not only kept decision-makers in check, noting both slippages and progress, but has also given more leverage to internal actors, mainly from civil society, to press for continuing reform in the justice field. In recent years CVM reports have broadened their scope by addressing institutional and technical issues, as well as issues of political will, emphasizing the importance of political agency in further supporting reforms.

The benchmarks for Romania are:

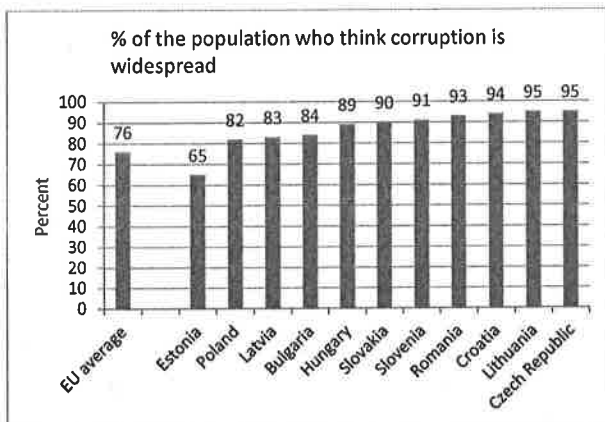
- Ensure a more transparent, and efficient judicial process, notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
- Establish an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions based on which dissuasive sanctions can be imposed.
- Building on progress already made, continue to conduct professional, nonpartisan investigations into allegations of high-level corruption.
- Take further measures to prevent and fight against corruption, in particular within local government.¹

While there have been mixed feelings about the CVM's effectiveness, mainly in Brussels, the reversibility of reforms among CEE countries led the EU Commission to create several instruments that can address rule of law infringements in all EU member states. These include the first **EU Anti-Corruption Report** and the **Justice Scoreboard**, a comparative tool in civil, commercial and administrative law, soon to be applied to criminal law, that assesses the quality and independence of judiciaries in the EU. Further, the first EU Anti-corruption report shows that not only Romania and Bulgaria but also well-established democracies in the EU are not free of corruption, hence the need for constant work to strengthen the fight against corruption.

¹ European Commission, "Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption," December 13, 2006, http://ec.europa.eu/enlargement/pdf/romania/ro_accompanying_measures_1206_en.pdf.

Among all new EU members from the CEE region, corruption remains the most problematic area (see Figure 2, below).¹⁰ The crisis in Ukraine has intensified international scrutiny of this problem, as many analysts have pointed to the extremely damaging ramifications of captive states and corrupt officials. When it comes to Romania's public

Figure 2. Perception of Corruption in CEE



Source of data: 2014 Eurobarometer and EU Anti-corruption Report 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm.

institutions, a promising step in mainstreaming integrity in public administration is the 2013-2015 National Anticorruption Strategy. This provides for mechanisms to deal with integrity breaches at a management level by offering a framework for assessing corruption risk and preventing corrupt practices from occurring, while also readjusting management practices if corruption has occurred. In this way, Romania is beginning to take a more proactive approach to corruption. It is a welcome step in Romania's long struggle with this corrosive practice.

Recent court sentences in high-level corruption cases are also important achievements. They indicate that the regulatory framework for combating corrupt activity is mostly in place and that the country's main institutions for this purpose—ANI and DNA—remain instrumental in

¹⁰ Anecdotal information from <http://www.pi-atadespaga.ro>, a website that allows Romanians to list the amount of bribes they paid, the region and sector, estimates the average bribe to be 260 euros. The average pension in 2013 was of 190 euros, while the minimum wage was 180 euros.

building integrity in the public sector.¹¹ The work undertaken by these bodies is a reminder that fighting corruption is a means to increasing the quality and fairness of public services and thus boosting citizens' confidence in their government and public institutions (see Text Box 2, page 13, and Text Box 3, page 14.) At the level of everyday citizens, support for anti-corruption efforts is remarkably strong (see Figure 3, page 13).

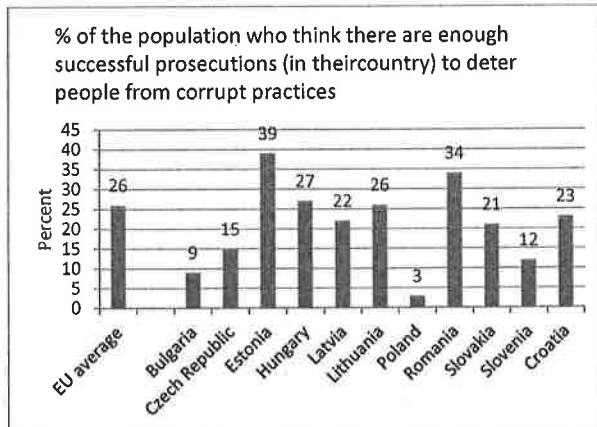
Take for example popular views of the National Anticorruption Directorate. Public trust in this body has increased by almost 10 percentage points since February 2012.¹² A similar trend is seen in the case of the National Integrity Agency. In total, these figures show that integrity and anti-corruption are issues of rising importance for Romanian citizens. This is a welcome development—one that creates fertile ground for citizens to demand more integrity from their public institutions and officials.

An equally important dimension of Romania's fight against corruption is the confiscation of the ill-gotten gains of corrupt practices. This is a key element for deterring criminal activity and an important mechanism for returning to state coffers assets that are accumulated through corruption-related offenses. The gains from this effort are both financial and symbolic (in a rather restorative

¹¹ The EU Anticorruption Report of February 2014 shows that Romania has most of the necessary mechanisms in place to prevent, discover and punish corruption, conflict of interest and other related offenses. See, European Commission, "Report from the Commission to the Council and the European Parliament. EU Anti-Corruption Report," February 3, 2014. http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf. While much work still needs to be done to ensure the continuity of this positive track record, Romania is in a better position than other countries in Europe that are still defining the legal framework in such matters as disclosure and publicity of assets and declarations of conflict of interest. An interesting model that ANI was also exploring is the Latvian Zero Declaration Law by which all residents of Latvia need to declare all assets worth more than \$18,500.

¹² See, for instance, the INSCOP polls from 2013 or, more recently, from March 2014 (<http://www.inscop.ro/wp-content/uploads/2014/03/INSCOP-martie-2014.-incredere-institutii.pdf>). DNA approval ratings grew from 36 percent in February 2012 to 47 percent in July 2013 and then dropped to 45 percent in March 2014. Its scores surpass those of the government, the presidency and the Parliament.

Figure 3. Effectiveness of Anti-Corruption Prosecutions



Source of data: 2014 Eurobarometer and EU Anti-corruption Report 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm.

way). In the view of Romania's international partners, expert observers and—increasingly—the government and its citizens, asset recovery is an important pressure point for sustaining national anti-corruption efforts. Along these lines, the European Parliament's directive of February 2014 creates similar opportunities for Romania, since it deals with extended and third-party confiscations. This directive will force all EU countries to implement unitary standards and rules in this field.

Finally, the creation of Romania's Assets Recovery Office (ARO) in 2011 is another positive development and has the potential to further expand the country's capacity for dealing with criminal proceeds, particularly when it comes to corruption. Unfortunately, ARO does not have a complete database of criminal court rulings and actual enforcement. The head of the office was estimating that, based on indictments by prosecutors, the total cost of criminality in Romania amounts to 2 billion euros (approximately \$3.6 billion) per year, while the amount actually seized through court orders totals 1.2 billion euros per year. However, less than 10 percent of the total assets confiscated are in fact utilized.¹³

¹³ Expert Forum, "Eficienta, integritatea si transparenta sistemului de achizitii publice din Romania", Bucharest, March 2014, <http://expertforum.ro/wp-content/uploads/2014/01/Raport-conferinta.pdf>.

Text Box 2

The National Anti-Corruption Directorate (DNA)

The National Anti-Corruption Directorate is a **specialized prosecution office** that investigates high-level corruption cases. DNA remains a model of institutional resilience under unfavorable circumstances, especially when confronted with recurrent attempts to curtail its functions. In July 2013 public approval ratings for DNA reached an unprecedented 47.7 percent (45.3 according to another survey in March 2014¹), despite repeated denigration of its activity by certain media. DNA maintained its good track record of nonpartisan investigations despite difficulties in appointing its new leadership in 2013 and other attempts of intimidation through public declarations or attempts to remove more active prosecutors.

The latest activity report for 2013 shows impressive increases—in the number of condemnations (almost tripled as compared with 2011, from 298 to 1,051), the number of high-level politicians indicted for corruption, the amount of assets proposed for confiscation—and fewer acquittals. Most indictments concerned persons holding public office (303 in 2013), followed by business people (245). The strategic priorities for DNA's 2014 activity include confiscations and assets recovery, an area in which Romania has already made some progress (since 2010 the DNA requested prejudices of \$272.44 million in its indictments) and which will be instrumental for showing true commitment to fighting crime and corruption and restoring benefits to society.

¹ INSCOP, "Increderea in institutii," March 2014. The DNA has higher approval ratings than any executive institution (higher even than the mayor's) or social institution except for the Orthodox Church, with a 62.3 percent approval rating, and the universities, with a 46 percent rating. The DNA ranks higher than the media (32.5 percent) and NGOs (30.6 percent).

Text Box 3**The National Integrity Agency (ANI)**

The National Integrity Agency is an **independent anti-corruption institution** (with its management and annual reports endorsed by the Romanian Senate) dealing with the prevention and sanctioning of conflicts of interests, incompatibilities and unjustified wealth in public office. Established in 2007, ANI has an interesting track record in institutional resilience—it has survived several legislative attempts to cripple or even completely annul its activity yet has managed to pursue high-level politicians and officials of the Romanian state. ANI's efficiency can be measured both in monetary revenues and in the degree of penetrability of integrity practices in public institutions and general social confidence in the work of integrity bodies.

Before ANI existed, no unjustified wealth had been confiscated. Almost six years into ANI's history, 60 unjustified wealth cases with a total value of over 12 million euros (\$16.35 million) have been investigated and sent to court. Five of those cases got a final court decision, while for two of them approximately one million euros went back to the state budget. Furthermore, in the period 2007-2013, 5,500 administrative fines were applied, which raised 800,000 euros (\$1,089,760) for the state budget. If all this money goes back to the budget and the 11,000,000 euros (\$15 million) received from the EU cohesion funds is added, then ANI will have more than covered its cumulative budget allocated by the state in the past seven years.

Besides confiscations, ANI made possible a whole range of other integrity-enforcing measures unheard of before and praised by the EU and similar foreign bodies: full publication of 4 million declarations of interest and wealth (viewed by thousands of users monthly); sanctions of public officials for non-compliance with integrity legislation and even dismissal of parliamentarians and members of the government; and increased compliance and responsibility in dealing with integrity breaches in public office.

The activity of the agency has also become more visible and important for citizens, who now rank it among the top trusted institutions. Opinion polls from February and December 2013 show that the agency receives scores of about 40 percent, well above the scores of such institutions as the Parliament, government or presidency.

Governance: Recurring Barriers

Improving the capacity of public administration goes a long way toward addressing trouble spots in a country's reform process. As far back as 1991, the World Bank identified public administration modernization as a high priority for post-communist reform. Decades later, the public sector is still in need of improvement. In 2011, the World Bank carried out functional reviews of 12 Romanian public institutions, which provide operational recommendations that the government translates into action plans. This examination revealed major weaknesses in the administrative capacity of these bodies: lack of accountability for results; low enforcement of public

policies; inadequate separation of roles among institutions; a lack of sectorwide strategies that go beyond single institutions; a poor organizational structure; and a high degree of politicization of the public administration. Furthermore, issues such as the transparency and efficiency of the public procurement processes, public contracting, privatizations and investment opportunities have been in the spotlight for a long time. Yet these trouble spots still exist.

Unfortunately, Romanian citizens have few avenues for discovering how much progress the government has made in improving known deficiencies. This is because very little public information is available on whether the government is following up on external recommendations from bodies like the

World Bank or measuring the impact of reform plans. Even progress is difficult to spot given the **same lack of transparency** that impedes public administration in the first place. This is mainly due to a managerial inability to organize and make use of public information in a meaningful way. Reporting on the application of laws regulating access to public information and participation in decision-making has remained problematic despite repeated efforts and projects to address the issue. At the citizen level, the day-to-day operations of businesses, as well as the lives of private individuals, are made more difficult by bureaucratic red tape, unpredictable regulatory changes, and wasted time and money due to administrative inefficiencies or corruption. Poor data management and a lack of integrated computer systems aggravate this trend. Conversely, streamlining and digitizing the public's interactions with government would help to reduce the opportunities for corruption while simultaneously elevating effective governance in Romania. "Computers don't take bribes," as the saying goes – and for good reason. For Romanian businesses and citizens who must interact with the country's bureaucratic complexities, improvements in the realm of electronic database management and greater online access to state services would be a welcomed change (see **Text Box 4, this page**).

One symptom of **weak administrative capacity** has also been the country's relatively poor track record of using EU funding to sustain public investments and projects. Despite significant increases in Romania's ability to absorb European cohesion funds (up to a 30 percent rate by the end of 2013), the country still has the lowest absorption rate in the EU (see **Figure 4, page 16**). Also, there is still a strong need for streamlining access to funding and for better project implementation, especially in light of perceptions that public spending creates an ideal environment for corruption.¹⁴ European funds have been a driver of change and economic growth in other countries, such as Poland, and

¹⁴ For instance, more than 8 in 10 (84 percent) of Romanians think public money is spent inefficiently, while almost 9 in 10 Romanians believe that public procurement is not a clean, honest process (according to a survey by the Romanian Public Policy Institute in fall 2013). See Institute for Public Policy, "Achizitii publice sustenabile pentru eficientizarea investitiilor in Romania," Bucharest, October 28, 2013.

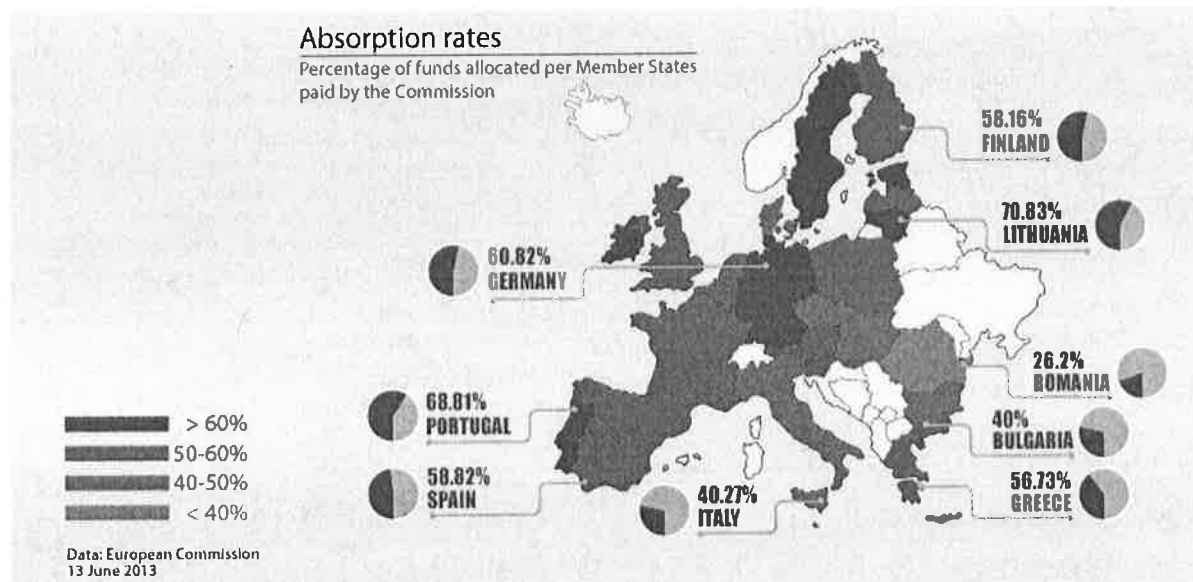
Text Box 4 **E-government in Estonia**

Estonia offers an incredible example of **integrated data management**. According to e-Estonia, the electronic government portal or "digital society," 2,800 online services are available through the portal—from electronic voting, to paying taxes, registering a new business, applying for social benefits or even getting a medical prescription. Up to **97 percent** of all public services for citizens and **99 percent** of services for business people are handled in a single internet-based environment.¹ The system is intuitive and easy to use and gets up to 10,000 users a day. The process started in 2004 with new legislation and policies and has been consistently carried through up to the present day. The website even has a page of do's and don'ts for implementing such a project, which might be of interest to other governments.

¹ See <http://e-estonia.com/components/state-e-services-portal>.

thus expectations for Romania are high (see **Text Box 5, page 17**). The pressure to use EU money efficiently elicits a broader discussion about the ability of central and local government to think strategically, reform procurement and contracting processes and manage projects with complex reporting mechanisms. Creative solutions in the field of public-private partnerships also remain an underutilized platform for public goods delivery.

There is also an underperforming organizational culture, a lack of understanding of what competitiveness and customer focus should mean for the public sector and a documented inability or disinterest to promote merit. There is also a general lack of incentives for talented and committed individuals to join the public sector. Changing the culture of public institutions is not an easy undertaking and it requires time. It is however not impossible and, as the track record of integrity institutions has shown, consistent commitment to reform, external and internal pressure and positive reinforcement pay off in both their outcomes and the way citizens perceive their activity. At a

Figure 4. Absorption Rates of EU Funds

Source: Inside Europe, [http://insideurope.eu/sites/default/files/field/attachment/absorptions_rates_info_13jun%20\(9\)_0.jpg](http://insideurope.eu/sites/default/files/field/attachment/absorptions_rates_info_13jun%20(9)_0.jpg).

minimum, the goal of this effort should be to make Romania a safer, cheaper, better place in which to live and invest.

State-owned enterprises

The quality of public governance is also reflected in a second area where unfinished reform from the communist era persists, and where continued pressure needs to be applied: state-owned enterprises. The deficient corporate culture of SOEs hampers investment prospects, creates burdens on the state budget and underperforms in delivering the public goods or services that some of these firms are supposed to provide to citizens. For this reason, SOE reform—or outright privatization—would generate revenue for the state budget while limiting the state's role in the economy. By changing the way that Romanians think about their SOEs, officials could likewise encourage new growth among private actors in the marketplace—instead of state-sponsored ones—while stimulating competitiveness and transparency in the overall business sector.

Clearly, impediments to this approach are substantial. As some commentators have noted, SOEs are “the greediest and most unproductive

sacred cows of the ex-communist world.”¹⁵ In the case of Romania, the government still retains ownership over sizable sections of the economy. A remnant of the old regime, this status quo has persisted after 25 years of post-Communism.

Unfortunately, the management of Romania's SOEs has made them relatively poor performers in the business world. With few exceptions, these companies incur losses to the state budget instead of filling government coffers or spreading economic prosperity.¹⁶ While other EU states have developed models for decreasing the size or number of their SOEs, SOEs in Romania still account for 9 percent of national GDP output and employ 10 percent of the workforce.

By comparison, the share of SOE employment is 3.5 percent in Western Europe, nearly 6 percent in the Baltics and 6.5 percent in nearby Czech Republic and Slovakia. Instead, Romania is classed with countries in the southern flank of the EU, such as

¹⁵ “Make us clean, but not yet,” *The Economist*, September 14, 2010, <http://www.economist.com/blogs/easternapproaches/2010/09/lithuania>.

¹⁶ International Monetary Fund, “IMF Country Report No. 12/291,” October 2012, <https://www.imf.org/external/pubs/ft/scr/2012/cr12291.pdf>.

Text Box 5 Poland's infrastructure investment

Poland's experience with respect to the **absorption of funds from Brussels** during the EU's 2004-06 budget cycle was similar to Romania's. At the end of 2005, Poland's absorption rate stood at about 18.5 percent of the total funds available due to a lack of administrative capacity, technical impediments and trouble with human resources.¹ Yet after 2005, Poland drastically improved its absorption capacity. The efficient disposal of these funds—through harmonization with EU legislation, increased public-private cooperation, institutional reform in the areas of public procurement and road construction, as well as streamlined, improved coordination between different state agencies—has helped to propel Poland's economic performance, mainly through infrastructure development.

The EU-sponsored infrastructure program in Poland from 2007 to 2013 was the EU's largest-ever development program in a single member state, reaching \$75 billion. The scope of projects was expansive, covering rail, port and other infrastructure. The economic impact was impressive, adding over 3 percent to Poland's GDP per year.² When combined with public spending from Polish taxpayers, the total amount of financing is estimated to have been \$139 billion.

Although it is difficult to quantify the effects of these funds precisely, the overall effect of EU funding on Poland has been dramatic. Since 2006 Poland's GDP has increased more than 30 percent in inflation-adjusted growth; according to Poland's Regional Development Ministry, over half of this expansion is directly attributable to EU structural funds.³ Between 2007 and 2013, Poland expanded its main highway system by 2.5 times and significantly improved the quality of its roads;⁴ as a result, Poles save approximately \$2 billion a year thanks to faster transport. Finally, in the years 2007–2012 Poland was the leader among European countries in highway construction, boasting a 106 percent increase in the number of motorway kilometers and a 230 percent increase in the network of expressways. Poland will receive even more funds for highway construction under the EU's 2014-2020 budget; totaling at least \$105 billion, this infusion will be a significant stimulus to the national economy.⁵

1 European Parliament Budgetary Support Unit, "Budget Affairs," 2007, <http://www.europarl.europa.eu/document/activities/cont/200712/20071213ATT15448/20071213ATT15448EN.pdf>.

2 World Bank Figures, <http://www.worldbank.org/en/country/poland/overview>.

3 Marcin Goettig and Christian Lowe, "Make or break for Poland as EU cash floods in," September 29, 2013, <http://www.reuters.com/article/2013/09/29/us-poland-eu-funds-idUSBRE98S03220130929>.

4 Hungary still remains the champion in road building. Hungary adopted strategies to modernize its transportation infrastructure much earlier than other CEE countries and now enjoys a well-developed road system. Its highway density is more than 3 times the EU-25 average (91km/1000km²) in 2013. From 1990 to 2013, EU funding, some PPP financing and national funds combined to modernize Hungary's infrastructure system. Yet PPP and failed projects also led to many bipartisan government battles over public spending and private investment for highways over this time. Nevertheless, PPP projects have contributed significantly to modernizing Hungary's highway system and continue to play an integral role in Hungary's construction sector.

5 Economist Intelligence Unit, March 2014, <http://country.eiu.com/>.

Bulgaria, Croatia and Slovenia, which struggle with a prominent SOE sector. In this part of the EU, SOEs tend to generate high debts relative to national GDP, lower business efficiency and set up greater obstacles to the implementation of corporate governance reform.

One area that seems to be improving is that of SOE arrears. These account for 96 percent of overdue public-sector debts. Even so, programs by the European Commission and IMF have been effective at lowering the past-due amounts of SOEs, both through structural or corporate governance reforms and through privatization.¹⁷ Where the privatization process has begun through stock exchange listings, or even by increasing the private share of holdings in these companies, the results have been extremely encouraging. This is because such programs tend to create income from the selling of shares and the generation of associated dividends.

Given their size relative to the overall economy, SOEs have again become a focus for agreements between Romania and international financial institutions. The IMF has specifically noted that a key element of Romania's development rests on increasing the quality of services in the energy and transportation sectors. Businesses in these areas of the economy are largely under state ownership. They subsequently represent areas where liberalization and privatization have been slow, and where management is inefficient or unprofitable.

As Romanians look ahead to the next period of their national development, they would benefit by eliminating outdated vestiges of the old regime like SOEs. This means following the example of other post-communist neighbors in the EU, countries that have already reversed the underperformance of SOEs.¹⁸

17 The downside is that, in Romania, SOEs were still above 2 percent of GDP (as of May 2013). See European Commission, "Overall assessment of the two balance-of-payments assistance programmes for Romania, 2009-2013," http://www.case-research.eu/sites/default/files/Privatization%20in%20Central%20and%20Eastern%20Europe%202013-05-13_prezentation.pdf.

18 One such example is Lithuania, which used the momentum of the economic crisis to implement critical reforms in the SOE sector, starting with evaluating the companies and improving transparency and corporate governance more generally.

One solution for SOE reform in Romania could be found in capital markets. A reformed capital market in Romania would encourage more transactions, including of SOE shares, and improve investor confidence. However, legal and institutional barriers, sometimes combined with political cronyism, as the IMF has also pointed out, prevent Romania from developing a 21st century financial market.¹⁹

The equity transactions in Romania still lag in implementing necessary reforms that would bring the country more in line with other European markets or peer markets in CEE. This would involve creating a more solid, transparent and predictable regulatory infrastructure that eliminates barriers and red tape, streamlines procedures and access and makes it less arduous for investors to engage in transactions on the Romanian capital market. The Romanian stock exchange remains one of the most expensive in the region, and taxes and fees that must be paid by investors remain complicated and unclear. A well-developed capital market has the potential to create a more sustainable basis for economic growth as opposed to merely seeking budget revenues that respond to short-term concerns. As such, SOE and capital market reform represent two areas where a modest investment of effort could yield a disproportionately large impact on Romanian prosperity.

In the end, it is Romania's citizens who pay the ultimate cost of inefficiency. If these inefficiencies were corrected, the Romanian public would reap two significant benefits: First through the smaller burden that underperforming SOEs would place on official budgets; and second from the added time and financial resources that authorities could direct at truly improving services for citizens.

The energy sector

In like fashion, the discussion about the profitability and efficiency of the state as an economic actor

19 A recent study by a Romanian private company dealing with insolvency cases lists private equity and crisis management expertise as "saving solutions" for the risks affecting too many of the companies that are principal contributors to Romania's economic rebound. See, Transylvania Insolvency House, "3% dintre companiile active au impact major în economie, conform specialiștilor Casei de Insolvență Transilvania," March 27, 2014. <http://www.citr.ro/ro-RO/Presa/ViewPressRelease?pressReleaseld=51>.

has led to public concerns about the management of the energy sector. To this end, Romania faces a dilemma that is common in transition countries: There is a strong *negative* correlation between the availability of natural resources and public governance. In countries that enjoy a plentiful supply of resources, public governance tends to be worse.

The energy sector in Romania is a case in point. This portion of the economy is prone to the formation of monopolies and tends to exercise considerable power over political elites. These qualitative perceptions of the energy sector are backed up by World Bank evaluations, which have shown how extended and detrimental rent-seeking has emerged. Some of these problems are only now beginning to be uncovered and combated.

If there is a positive side to the deficiencies in Romania's SOEs, it is that the natural resource sector could finance itself if properly managed. Unlike other areas where Romanian decision-makers will need to devote their efforts, like health and education, investments in the energy sector in particular might not need to come from taxpayers. Partly for this reason, the energy sector of the economy is one of the five priorities for the current government's National Plan for Strategic Investments (together with mineral resources, infrastructure, agriculture and industry).

Another positive sign is that the Romanian government has made market liberalization one of the biggest priorities of its energy strategy.²⁰ This includes a push to improve the efficiency, competitiveness and transparency of large SOEs in the energy field, a step that is in line with the requirements of international agencies such as the IMF, the EBRD and the European Commission.

Today, Romania is better positioned to leverage its relative energy independence for the public good, especially when compared to other countries in the region. This is true of traditional hydrocarbons like oil and is equally apparent in the drive to develop renewable fuel sources. Romania has the third-largest gas reserve in the EU; and less than 30 percent of its gas consumption depends on imports. Unless changes are made, this otherwise

positive outlook could turn negative in the future. For example, Romania's gas resources are estimated to drop to 77 billion cubic meters (bcm) in 2020 (down from 134 bcm in 2011), while oil reserves are estimated to decrease to 28 million tons by 2020 (down from 60 million tons in 2011).

One avenue through which change could come to the energy sector is in the field of renewable fuels. According to a study released by Ernst & Young, Romania ranks 13th (among 40 countries) when it comes to the attractiveness of renewable energy investments.²¹ In light of the overall energy and geostrategic challenges that Central European countries face, Romania will need to have a strong strategy to prepare for this transition.

In the past, greater public awareness about the different components of the energy sector, and how those segments are governed, led to waves of dissatisfaction among citizens and opinion leaders over the lack of transparency and public consultation on strategies, policies, regulations and contracts in the energy field. Since so much of the hydrocarbon sector is influenced by the government (53 percent of the energy and gas sector is now controlled by SOEs²²), considerations of Romania's energy future invariably introduce a political overlay onto the public debate.

Public Leadership: Growing Inertia

Political leadership has been a constant concern among Romanians because it directly translates into the perceived poor policy performance of state bodies and SOEs. This particularly relevant aspect has been inadequately addressed in previous reform attempts.²³

21 Ernst & Young, "Renewable Energy Country Attractiveness Indices," quoted by *Business24.ro*, February 26, 2013, <http://www.business24.ro/energie/energie-regenerabila/energie-regenerabila-romania-e-printre-cele-mai-atractive-tari-din-lume-pentru-investitii-1525661>.

22 International Monetary Fund, "IMF Country Report No. 12/291," October 2012. <https://www.imf.org/external/pubs/ft/scr/2012/cr12291.pdf>

23 Assessing the fate of rule of law interventions that the United States has led in many emerging democracies, Rachel Kleinfeld talks about putting politics back in its central position as a driver of change—mainly when it comes to rule of law reform—and the importance of professional cultures (within rule of law, journalism or

20 Consultations for a new energy sector strategy for 2014-2035 are currently under way.

The leadership factor can encompass many things. For the purposes of this report, and in the discussions of Working Group experts, the concept was a touchstone for effective governance, integrity and accountability among Romanian officials. These issues emerged most prominently in the wake of the economic crisis, a period when the political landscape in Romania was more turbulent. In addition to several government reshuffles, the country witnessed the impeachment of the president, hotly contested electoral campaigns, the modification of the constitution and several controversial legislative decisions (such as attempts to introduce a new amnesty law and to modify provisions on corruption under the new Criminal Code). These events took their toll on average citizens. By October 2013, for example, 77 percent of Romanians thought the country was moving in the wrong direction.²⁴

Since the economic crisis, developments in Romania have showed an increasing disconnect between decision-makers and their constituents. In fact, a growing number of Romanians feel disenfranchised from taking part in the political process.²⁵ Street protests were one result of this trend. And while the reaction of NGOs and opinion leaders to these demonstrations shows an awakening of civil society, the overall sentiment of the Romanian public is

politics), internal self-regulation and horizontal accountability that can support or impede rule of law development. Kleinfeld, *Advancing the Rule of Law Abroad*.

24 Romanian Institute for Evaluation and Strategy, "Perceptii privind functionarea justitiei in Romania," October 2013, http://www.ires.com.ro/uploads/articole/ires_raport-de-cercetare_functiunea-justitiei-in-romania.pdf. In March 2014, only 72 percent were of the same opinion (http://www.ires.com.ro/uploads/articole/ires-agenda_publica_24-26_martie-2014.pdf). Interestingly, in the World Bank's 2013 Country Survey in Romania, 68 percent of the respondents—mainly people from the government, NGOs, consultants, etc.—thought Romania was going in the right direction. See World Bank, Romania Country Survey FY 2013, <http://microdata.worldbank.org/index.php/catalog/1898>.

25 It will be interesting to observe the implications of this sense of disenfranchisement for future developments in Romanian civil society. To use the terminology of the Belgian philosopher Chantal Mouffe, out of the three possible options—withdrawal from (occupy type of movements) vs. engagement with/exodus from vs. transformational strategy—the first two seem most probable and are also the most problematic, especially in the context of recent protests in Romania.

"anti-political." Helping to drive this attitude is a lack of transparency in the political processes, as well as an inability by decision-makers to understand and implement clear accountability principles.

Consequently, governing institutions are declining in public approval ratings, with political parties having the lowest levels of trust of all (11.7 percent). Indeed, the most trusted public executive institution among Romanians today is the local mayor's office (at 42.1 percent), and the most trusted social institution is the Orthodox Church (62.3 percent).²⁶

One particular application of principles of transparency and accountability is the issue of parliamentary immunity. While meant to protect the expression of political opinion, parliamentary immunity is frequently used to shield politicians from criminal investigations. Both internal reformers and the European Commission in its reports under the CVM have raised concerns about it but with little impact on how parliamentarians choose to interpret the Constitution and existing legislation, thus politicizing investigations and court proceedings.

The renewal of the political class—a topic that has been at the center of the public debate in Romania during the entire transition period—was a clear aspiration of protesters during the quasi-occupy movement in early 2012, and then again during demonstrations in late 2013. When shaping the configuration of their society in the years to come, Romanians would benefit by addressing issues like the funding of parties, the murky connections between politicians and businesspersons the ideal configuration of the electoral system and, perhaps most importantly, the general apathy of the average citizen.²⁷ This also means expanding the role of citizen-oriented political processes.

A factor that leads many individuals to stay on the sidelines of public life is that Romania has one of the most restrictive political markets in CEE. This

26 INSCOP Research, "Increderea in institutii," March 2014. <http://www.inscop.ro/wp-content/uploads/2014/03/INSCOP-martie-2014.-incredere-institutii.pdf>.

27 The EBRD's report on transition countries from 2013 shows through regression analysis that countries with proportional electoral systems tend to have on average better economic institutions. See EBRD, "Transition Report 2013."

means that entrance barriers for new parties and independent candidates, as well as for organizations representing minorities such as the Roma community, are high. In Romania, the requirement for new parties is 25,000 signatures, which must come from at least 18 of the 41 counties of Romania with no less than 700 signatures per county.²⁸ For parties and organizations representing minorities, 20,000 signatures are required from at least 15 counties with no less than 300 signatures per county.²⁹

No other country in Central and Eastern Europe is as restrictive about new political parties. In the Czech Republic and Poland, establishing a political party requires the signature of 1,000 citizens and no territorial distribution, while in most of Central and Eastern Europe the numbers are even smaller. As a ratio to the total population, Poland is the least restrictive in terms of number of signatures required. For these reasons the Working Group considered the ease of forming new parties and the accessibility of the political market to be essential pressure points for democratic consolidation in Romania.

Conversely, the political status quo allows established parties to reinforce patronage networks at the regional and local levels. It also saps the democratic aspirations of some members of Romanian society who might otherwise wish to act outside of established parties. For this reason, existing restrictions on the entry of new political actors, as well as nontransparent funding of existing ones, increase the sentiment of disenfranchisement among many Romanian citizens. Internal decisions by political parties regarding their leaders, personnel, principles or criteria for **political performance** cannot be changed in the short run without attitudinal and behavioral changes. For such changes to take place, political parties need

to develop and apply long-term strategies, with a focus on human resource management and the creation of a professional cadre of party staff. Likewise, political parties should develop methods for more effective outreach to supporters and for sustained dialogue with constituents outside of the campaign season. Further, political parties and civil society must work together rather than perceive each other as enemies, without of course giving up the watchdog role that civil-society organizations must play.

²⁸ According to Law 14/2003.

²⁹ Furthermore, to compete in elections, everyone—both independents and political parties—must pay a “registration fee.” This fee is reimbursed to the political parties or political groupings that manage to obtain at least 2 percent of the national vote. However, independent candidates must obtain 20 percent of the vote cast in the uninominal college where they compete as candidates. Such restrictions serve as a disincentive for any individuals looking to compete outside of the party structure.

RECOMMENDATIONS

One thing that became clear in the Working Group's discussions was that Romania knows how to move forward. The 25-year experience of transition in Romania and in CEE offers a clear spectrum of outstanding reform issues, but also a good set of best practices and policy approaches. The fact that these reforms have not been completed yet is the result of a mix of factors, among which a powerful one is the lack of bold action to break established, detrimental patterns of governance or vested interests.

The Working Group analyzed these remaining challenges to Romania's modernization through the lenses of pressure points and optimal policy responses. The policy recommendations presented below favor a more inclusive and empowering economic and political system. In the end this citizen-centric approach to public management would result in more transparency, greater integrity and higher levels of accountability.

Rule of Law: Building on Progress

To support achievements and ensure pressure for reform is maintained, the Working Group discussed the series of policy options and recommendations presented below. Their implementation calls for renewed commitment from both political and civic leaders to consolidate the path to reform.

Pressure Point 1: Integrity in the public sector

Strengthen the ability of public institutions to fight corruption from within. This can be done by coherently implementing the National Anticorruption Strategy, extending its application and fortifying its technical secretariat. The framework of the SNA provides a different approach to monitoring and preventing corruption in the public sector by trying to mainstream integrity in management practices, thus moving focus from

a punitive to a more preventative approach to integrity in the public sector. It is too soon to assess the true impact of the SNA, and too few, although encouraging, reports have been produced under its mechanisms. It thus needs to be extended beyond its 2015 term in order to show progress and translate into a de facto decrease in corruption.³⁰ Moreover, the technical secretariat in charge with implementing the SNA should benefit from an increased budget and more qualified personnel to undertake the monitoring and training functions. One other crucial issue at the intersection of integrity promotion and good public management is the promotion of horizontal accountability through professional associations in different branches of the public sector; these associations need to become more active and regulate their professions from within by setting performance and ethical standards and exercising peer pressure. The SNA can also provide the framework for such assessments.

Ensure independent and impartial investigations.

This can be done through competitive and objective selections of anti-corruption agents and heads of institutions systemwide. The experience in Romania so far has proven that individuals who lead integrity bodies and other justice system institutions at any particular time are crucial to their organization's audacity, operational independence and industriousness. The process of selection should not be left to chance or momentary political whims, but consecrated in clear legal provisions. The three-step procedure for selecting the heads of the General Prosecutor's Office and DNA, with initial

³⁰ According to the first SNA report, 91 percent of public institutions had adhered to the National Anticorruption Strategy reporting mechanisms. National Anti-corruption Strategy, "Centralizare raportari SNA unitati administrative-teritoriale 2012 si semestrul I 2013," <http://sna.just.ro/Datedeschise/SeturidateSNA/Seturidate2013/Administra%C5%A3iepublic%C4%83local%C4%83.aspx>

nominations by the Ministry of Justice, consultative opinion by the Superior Council of Magistrates and motivated appointment (or rejection of nomination) by the president of the country, need to be based on clear criteria and selection guides.³¹ It also requires that all three institutions uphold these criteria in a transparent manner to fend off any allegation of political intervention. This will ensure the institutional and operational independence of integrity bodies and prevent allegations of political bargains.

Empower DNA prosecutors. This can be done by introducing a unified and transparent performance appraisal system, with a clear definition of performance that goes beyond numerical indicators about the number of files processed or sent to court. DNA, as well as the judiciary more broadly conceived, needs internal strategic management tools. This will produce better standards in recruiting and in assessing performance and impact. By setting consistent standards, a performance appraisal system will also increase the operational and institutional capacity of local branches, which still lags behind the performance of the central branch. A clear definition of performance will also help avoid both victimization and the creation of heroes in the public mind, as well as dismantle political speculations. In its history, DNA has shown how overexposure can help, especially with increasing approval ratings among citizens, but can also harm an institution, by subjecting it to the fire of political discourse.³²

Increase ANI's capacity to uncover conflict of interest. This can be done by providing adequate staffing levels and improving interagency

cooperation. ANI is already involved in two projects dealing with data management and preventive assessments of public procurement processes, but could have a deeper involvement if, instead of political attempts to curtail its attributions, it received better legislative support from the Parliament. The European Commission has noted, for instance, that the experience gained by ANI so far can be used to identify gaps in legislation and also inform professional ethics codes (such as in the case of parliamentarians).

Pressure Point 2: Assets recovery

Improve interagency cooperation in recovering, managing and valuing assets from criminal activities. This can be done by creating integrated and coherent assets recovery policies and data management systems. Prosecutors and courts on the one hand and executive agencies on the other, mainly the ANAF (National Agency of Fiscal Administration), need a consistent framework for their activity with particular emphasis on access to relevant data and the ability to execute court orders and make use of confiscated goods. This requires both policy effort by the government and capacity building within particular agencies to improve assessment, collection and management and valuation of confiscated goods beyond the level of legislative reforms in force as of 2012.

Pressure Point 3: Impact on clients

Engage in institution-level strategic management across the justice system. Apart from anti-corruption efforts, improving judicial management³³ is one key unaccomplished reform that will have a tremendous impact on business development

³¹ The November 2011 "Anti-Corruption Authority Standards" of European Partners Against Corruption (to which Romania has adhered) enumerate the application of standards and principles of efficiency, transparency and objective criteria such as merit, equity and aptitude when selecting anti-corruption personnel at all levels. The document also mentions the necessity to allow for enough time in office that the respective agency is not bound or influenced in any way by the electoral cycle.

³² Drago Kos, former president of GRECO (the Group of States against Corruption of the Council of Europe), noted in 2008 that certain anti-corruption agencies have become so successful and thus respected internationally that they begin having difficulties in their own countries. See "Anti-Corruption Authority Standards," 2011.

³³ The OECD shows that government effectiveness, regulatory quality and the integrity of public administration (all World Bank governance indicators) are positively correlated statistically with a significant reduction in litigation. Increases in litigation obviously result in increases in trial length. In the CEE region, litigation rates in the Slovak Republic, Poland and Slovenia are closer to those of countries seen as best performers (from a world sample) primarily due to high investment in computerization of courts and case-flow management techniques. Organization for Economic Cooperation and Development, "What Makes Civil Justice Effective?" Policy Note No. 18, June 2013, <http://www.oecd.org/eco/growth/Civil%20Justice%20Policy%20Note.pdf>.

and the general satisfaction of clients of the justice system. The absence of a systemwide, agreed-upon strategy that sets out concrete steps and makes use of the independent evaluations performed so far is a symptom thereof. Strategic management for the justice system would translate into better personnel and case management; streamlining court proceedings and making them less vulnerable to abuse by parties³⁴; introducing e-justice, etc. The Ministry of Justice and the Superior Council of Magistrates need to work together in designing such a strategy and in implementing strategic management practices at all levels of the justice system.³⁵ Further training for judges in how to deal with complicated commercial cases is necessary,³⁶ as are judicial guidelines from the High Court in order to introduce more predictability in dealing with the courts. A remaining problem is the lack of access to the entire collection of full-text court decisions, which precludes accountability,

34 For instance, one major issue is that of insolvency and it received special attention under the plan of measures for the second half of 2012 of the Judicial Inspection (according to Superior Council of Magistrates Decision 634 of the Plenum from July 10, 2012) with a strong emphasis on lengthy proceedings. However, the justice system is not the only party responsible when it comes to such cases. In many circumstances—that of insolvency and the recent failure at the end of 2013 to pass a new Insolvency Code—it is the legislative or the executive branches that are unable to ensure the necessary legal infrastructure.

35 Previous attempts to define Romania's judicial system as a public service and more oriented toward its clients in terms of both governance and service delivery have been halted. The concept of "bottom-up justice" is core to the understanding of rule of law in Europe and is defined "as the amount of fairness that people experience and perceive when they take steps to solve disputes and grievances." See The Hague Institute for the Internalization of Law (HiIL), Concept Paper "Monitoring and Evaluation of the Rule of Law and Justice in the EU: Status Quo and the Way Ahead?," 2012

36 The existence of specialized commercial courts has proven very effective in other countries. In Romania, while three commercial courts already exist, there was no assessment of their performance. In the absence of such evaluations (cost and time of processing files, opportunity and impact study, etc.), we can only wait and see whether the creation of a new Commercial Court in Bucharest (as provided by the new Civil Procedure Code) will ease and make the resolution of commercial cases more efficient.

predictability and qualitative improvements in court decisions.

Introduce a business ethics code that requires integrity checklists for any company dealing with state institutions. Such a procedure is likely to ease the selection of private contractors and avoid eventual lawsuits for ethical issues (such as conflict of interest), provided that effective recourse and a functional oversight authority are also created. While different businesses can cooperate in creating a self-regulating code of ethics, the government needs to amend procurement and contracting legislation to allow for the enforcement of these principles. In a more preventative vein, involving private businesses in addressing integrity issues when dealing with state authorities and contracting would have the benefit of better control and more buy-in and trust. This idea has been discussed by both NGOs and the business community as part of a new understanding of business ethics in Romania, but it needs clear legal backup and implementation norms that can be enforceable in court.

Governance: Breaking the Roadblocks

To address the complex challenges in governance, the Working Group approached good governance at several levels and proposed solutions that look at how government operations can be made more efficient and focused on "steering, rather than rowing."³⁷ The experts also assessed how citizens and other actors in society (not-for-profit and for-

37 This famous dictum about the role of the government under the so-called New Public Management theory was laid out by David Osborne and Ted Gaebler in their 1992 book, *Reinventing Government*. The authors presented eight principles for reinventing government: (1) catalytic government: steering rather than rowing; (2) community-owned government: empowering rather than serving; (3) competitive government: injecting competition into service delivery; (4) mission-driven government: transforming rule-driven organizations; (5) results-oriented government: funding outcomes, not inputs; (6) customer-driven government: meeting the needs of the customer; (7) decentralized government: from hierarchy to participation and teamwork; (8) market-oriented government: leveraging change through the market. See David Osborne and Ted Gaebler, *Reinventing Government* (New York: Penguin, 1993).

profit alike) can contribute to the betterment of public policymaking. The preferred policy options that resulted are presented below.

Pressure Point 1: Public management and public services

Increase collaboration between public institutions and private and social sectors. This can be done through public-private partnerships (PPPs), private grants and mixed supervisory boards. This engagement in designing, implementing and monitoring good practices at local and central administration levels can be achieved by effectively implementing existing public consultation mechanisms. It could also use more creative approaches such as voluntary boards³⁸ to offer policy solutions with direct application to services they most make recourse to—for example, integrated data management systems, issuance of permits, transparency and publicity of regulations, paying taxes. At the local level, such boards could be initiated by local authorities, could include both citizens and local businesses and could oversee specific investment projects (such as infrastructure or natural resources exploitation).

This is only one option for public-private cooperation that could lead to better serving citizens. So far PPPs have been a rather restrictive category in Romania as the administration lacks the technical ability to manage such contracts or understand the extent to which public-private solutions can be utilized. The laws regulating PPPs and public financing should thus be modified to allow more creative solutions in funding projects and delivering public services, especially at the local level (see **Text Box 6, page 26**). One possibility that goes beyond mere contracting or concessions is creating private awards for the best strategic plans, good management practices, efficient provision

³⁸ Similar initiatives have had a timid start in monitoring and evaluating the implementation of the Open Government Partnership, but the experience of other countries in implementing action plans under the OGP can provide inspiration on how to improve this process of consultation and oversight in Romania. The Business People Association's criticism of the government's decision to impose new taxes on special construction—triggered mainly by lack of adequate consultations—is a good example of why the business community should stay involved in issues that go beyond pure bottom-line concerns.

of public goods, etc. Awards could be allocated in a public competition so as to encourage public institutions to work harder.

Build a peer benchmarking system to improve governance performance. A study should be conducted of all public institutions, starting with city halls and local administration and going up to the central level, to assess which has the most arrears³⁹ and why, as well as what their budgetary situation is. A similar study or inventory of basic public goods and services would also be instrumental in creating more uniform criteria for public spending, management of contracts and assessing project impact. The study would also help identify best practices and their sources so that the model can be replicated from one institution to another. The Romanian government does not need to invent such an evaluation toolkit, as different regional organizations (such as the Council of Europe) have already designed benchmarking tools for public administration. Implementing these tools regularly and adapting them with every cycle of reporting would hold all local administration to the same standards of quality, thus improving their ability to show impact and progress. As Romanians clearly indicate they trust their local elected officials more than they do the central government, the latter should focus more on empowering local administration, providing policy support and pilot good practices (see **Text Box 7, page 27**).

Romania also needs more streamlining of the existing plans and management authorities and better use of e-government services and of data management (use of e-government among citizens and businesses in Romania lags behind most other countries in Europe according to Europe 2020 indicators), as well as increased inter-operability of different agencies and bodies. Millions of euros (especially from EU funds) have been invested in national and municipal integrated data systems, but the results have been suboptimal.

Invest in people and foster professionalism in the public sector. Good public management starts with finding the right people who are competent

³⁹ The audit of the Romanian Court of Accounts for 2012 revealed arrears of 840.2 million RON ("New Romanian Leu") (roughly \$254 million) at the level of local administrative units. See the Romanian Court of Accounts, "Raportul public pe anul 2012," December 2013.

Text Box 6**Public-private solutions for the health system**

One area where different solutions to **improve public services** have been tried is the public health system. More recently, hospitals have become a fertile field for testing different public-private arrangements, from donations via affiliated foundations to PPPs. Although there are few examples, a good case of efficient management comes from Arad, where the hospital saw great progress after the Arad County Council took over its administration. At the end of 2013, the hospital had no debts and reported investments of seven million euros for already-finished or still-ongoing rehabilitation and modernization projects.¹ The county council managed a different range of activities: from modernizing whole sections and access points to buying new buildings for additional medical departments and new equipment;² cofinancing three European-funded projects;³ and receiving donations from NGOs.⁴ Also in 2013, the Arad County Council, together with the Emergency Clinical Hospital of Arad and a private medical company from Timișoara,⁵ founded a cardiology department inside the hospital, built and run by the company itself (with an investment of about one million euros for equipment and renovations).⁶ The space was rented by the Arad County Council while the company covers cardiac emergencies for the hospital's patients for free (the rest being covered by state insurance).⁷

1 Sandra Stoler, "Spitalul Județean încheie anul fără datorii și cu investiții de milioane de euro," *Glasul Aradului*, December 23, 2013, <http://glsa.ro/arad/stiri-informatii-administratie-social-arad/132606-spitalul-judetean-incheie-anul-fara-datorii-si-cu-investitii-de-milioane-de-euro.html#sthash.ylnXveoU.dpbs>.

2 Claudia Untaru, "Spitalul Județean Arad a fost dotat cu un aparat pentru depistarea precoce a cancerului colorectal și gastric," *Adevarul*, December 6, 2013, http://adevarul.ro/locale/arad/arad-depistare-cancer-judetean-1_52a18167c7b855ff567d9f21/index.html.

3 Arad County Hospital, <http://www.scjarad.ro/index.php/component/content/article/80-proiecte/75-proiecte-europene>.

4 Claudia Untaru, "Donație de aproximativ 10.000 euro, la Spitalul Clinic Județean de Urgență Arad," *Adevarul*, June 16, 2013, http://adevarul.ro/locale/arad/donatie-aproximativ-10000-euro-spitalul-clinic-judetean-urgenta-arad-1_51bd705fc7b855ff5697f13e/index.html.

5 "Cardiolife a deschis la Arad una dintre cele mai moderne secții de cardiologie intervențională din România," *Medicalmanager.ro*, December 11, 2013, <http://www.medicalmanager.ro/articol.php?id=15886>.

6 Sandra Stoler, "La Spitalul Județean va fi dat în funcțiune Compartimentul de Cardiologie Intervențională," *Glasul Aradului*, November 7, 2013, <http://glsa.ro/arad/articole-recomandate/126846-la-spitalul-judetean-va-fi-dat-in-functiune-compartimentul-de-cardiologie-interventionala.html#sthash.keR-CHzap.dpbs>.

7 "Din lipsa de finantari bugetare, Spitalul Judetean Arad va avea o sectie private de cardiologie," *Protv.ro*, November 27, 2012, <http://stirileprotv.ro/stiri/arad/din-lipsa-de-finantari-bugetare-spitalul-judetean-arad-va-avea-o-sectie-privata-de-cardiologie.html>.

and bold enough to challenge the status quo. Integrity remains an overall concern for the public system at all levels⁴⁰ but so do basic professionalism

40 Most conflict of interest and incompatibility cases that ANI is investigating involve local public officials (141 local elected officials from 2008 to 2013, with a total estimated prejudice in 51 criminal cases of conflicts of interest of 21 million euros). Also, as of January 2014, one-fifth of Romania's 41 county council presidents had been investigated or tried for corruption or corruption-related offenses. See Victor Cozmei, "8 din 41: Care

and preparation for the job. Problems range from elected local councilors to career public servants and contractual staff, while performance management is currently an unknown concept for Romanian public administration.

sunt sefii de Consilii Judetene urmariti penal sau judecati pentru coruptie," *Hotnews.ro*, January 15, 2014, <http://anticoruptie.hotnews.ro/stiri-anticoruptie-16415356-8-din-41-care-sunt-sefii-consilii-judetene-urmariti-penal-sau-judecati-pentru-coruptie.htm>.

Text Box 7**Local development in Padureni**

Padureni is an example of successful rural development in a rather destitute area of Vaslui county in Romania. It is an example of efficient use of public funds, plus the ability to attract sources of funding other than budgetary ones, successfully implement projects and make a community happy.¹ The commune's development strategy, made public on its official website, has as its first priority improving the living standards for its 4,400 citizens. From a political point of view, this is also a success story of **managerial performance meeting political performance.**

The mayor of the commune, who has been in office since 1990, has given new understanding to what is meant by public services, especially for a rural area. His community benefits from renovated roads, running water and sewerage, its own garbage collection service, parks, cultural centers, medical centers and a day center for disadvantaged children. The investments were made possible through different sources of funding, mainly from abroad (the EU and others). The mayor has also turned the commune into the touristic center of the county by building a pool and surrounding recreation area, which is now more than self-sustainable, covering the initial public funds investment and producing profits. The pool was in fact built at the request of constituents and on land donated by them, which demonstrates both community engagement and responsiveness. Similarly, the town hall has invested in cultural centers that host music festivals and other events dedicated mainly to youth. The commune also invested in IT laboratories for school children.

The mayor—who initiated all of these projects inspired by a trip abroad before the fall of the communist regime—has other ongoing plans for which he has managed to secure funding and public support. His longevity in office and vision are an inspiration for local public management in Romania, especially given that the community is located in one of the poorest regions in Europe, with very low standards of living and economic activity (the lowest GDP among all Romanian counties in 2012 and among the lowest predicted average salaries in 2014). Padureni is also an example of how commercial activities can supplement local budgets, which generally are dependent on central government allocations.

1 The story was featured by online media in December 2013. See <http://www.hotnews.ro/stiri-esential-16110993-cel-mai-frumos-sat-din-gaura-neagra-europei.htm>.

Improving the job performance of public servants should be done not only through reform of the public function, but mainly through solid strategic management practices and targeted public management training.⁴¹ Management training programs and organizational culture-change programs can begin with different pilot projects at both the central level—with agencies like those supervising or regulating important domains such as public procurement, road construction and energy resources—and the local administration level, mainly with local councils and city halls that affect

41 The Working Group has calculated that to adequately cover public employees throughout the country, training events could take place in the next three years. Fifty independent experts can be hired (using mainly grants and outside donors) to deliver training to a total of 50,000 public officials per year.

citizens directly.⁴² Training programs should also be complemented by efforts from civil society to encourage stronger professional associations that would exercise peer pressure and fulfill an entire range of functions from training to accreditation to ethics control.⁴³

42 Such programs have begun to take place in Romania, although it is unclear if there is a strategy to replicate them or make use of lessons learned. The Competition Council has benefited from World Bank expertise in a project (mainly funded from the European Social Fund) to enhance its administrative capacity and its role in promoting fair competition. See Competition Council press release as of June 2012, http://www.consiliulconcurentei.ro/uploads/docs/items/id7451/semnare_banca_mon-diala.pdf.

43 One creative initiative a few years ago involved a Czech civil-society organization called "Pink Panther," which implemented an undercover project to map and

Make services more citizen-centric and transparent. This can be done, for example, by altering the allocation and monitoring of public funds. For members of the Working Group, making public services more citizen-centric had a strong transparency component. One major issue in this field remains the openness and administration of public budgets and expenses, marked by integrity breaches and low performance. Principles for public spending should become uniform and be the same for both European funds and national budget funds in terms of rules and oversight. Implementing the same spending and reporting rules for both EU and domestic budgets will create less confusion and more professionalism and transparency in public funding, as the EU requires. Building on existing good practices of successfully implemented projects and accumulated expertise, the government needs to adopt a new system of principles for allocating and monitoring public funds, including monitoring committees and external audits that look into legal and financial matters as well as into certain financial decisions by public institutions. Building on the good monitoring practices of the Fiscal Council and the Court of Accounts, the Ministry for European Funds and the Ministry of Finance could spearhead such a reform project.

Pressure Point 2: Management of state-owned assets

Treat SOEs more as commercial actors in a market and less as state institutions. The option most favored by the Working Group was that privatizations and initial public offerings need to continue. Other regional models—some not involving privatizations—have also been considered, with some of the experts noting that privatization is only one option for dealing with SOEs. Furthermore, privatizations will achieve their purpose if a number of conditions are fulfilled, starting with transparent and predictable markets, independent regulators and institutions with a good track record of integrity and performance involved

in the process. The experience of transition in CEE shows that privatizing big companies in unprepared markets can create oligarchs rather than a free market. The Baltic and Scandinavian cases show that privatization is not necessarily always the best solution (see **Text Box 8, page 29**). On the other hand, Poland is an example where privatization was the preferred solution for ensuring competitiveness, economic growth and eliminating inefficiencies in SOE management. Reforms in Poland's SOE sector started early on, mainly by cutting subsidies and implementing structural reforms, improved management and efficiency and a no-bailout policy. Given the large impact of SOEs on the Romanian economy and delivery of public services, as well as their perceived inefficiency and reputation for bad management,⁴⁴ the Group thought this is an area where simple policy and managerial solutions are most likely to render best outcomes. Recent dual listings are a case in point (see **Text Box 9, page 30**). Romania has tried both stock exchange privatizations and the non-listing path (through auctions or public offers), with the latter option generally more preferred for privatizations and investments of strategic importance for the economy or for certain public or social goals.

Build a transparent and effective strategy for managing and/or privatizing SOEs. The government needs a comprehensive strategy for dealing with SOEs. For this it is necessary to perform an analysis of all existing SOEs (at both the central and local levels), including financial and governance information, compiled in a publicly available database so that any interested party can track progress and assess efficiency. For companies servicing areas of special importance for strategic interests, public goods provision or economic development, a "partnership vocabulary" (or strategic privatizations) might be more useful instead of pure privatization. This would require the state to maintain a solid minority of shares and identify and attract strategic partners who are willing to invest in SOEs, commit resources to train staff, build a company further and reinvest profits

uncover corrupt practices in public administration, as well as assess corruption risks. See European Research Center for Anti-Corruption and State-Building, http://www.againstcorruption.eu/anti-corruption-projects/anti_corruption_toolbox/selected-projects/ and <http://www.ruzovypanter.cz/>.

44 There is a general saying among Romanians that the most profitable type of business is that with the State. This means both that the economy still relies a lot on private businesses supplying or buying various goods and services to the state and that, if played well, it can be a source of easy money.

Text Box 8**The Lithuanian approach to SOEs**

Lithuania did not privatize any significant company at the start of the SOE reform program in 2010. Rather, the reform agenda included **improving management and corporate governance**. During three years of reform, Lithuania has implemented policy changes in how ministries operate toward companies and how government deals with ministries and companies. In 2010, Lithuania's prime minister, Andrius Kubilius, estimated that if the government ran its public-sector businesses as efficiently as Sweden or Finland did, revenues would be up to 1.5-2.5 percent of GDP. Three years later, 150 million euros (\$204 million) were returned to the state budget in dividends, the exact amount needed to raise pensions back to the pre-crisis level.¹

Most reform efforts were dedicated to ensuring that companies perform better so as to be able to announce a roadmap for privatization in three years—defining the dividend policy and committing to keeping to it, then executing it. Among these efforts:

- Enforcing transparency guidelines, which made it mandatory for SOEs to report quarterly and annual results, while a special team published consolidated reports.
- Enforcing ownership guidelines that made clear how companies are to be governed: boards are responsible for delivering results based on strategic plans; shareholders should not interfere in daily operations; boards must have defined competencies and at least one-third of board members must be independent; boards have to be appointed by an appointment committee of three ministers, rather than one.
- Mandating that management plans for larger enterprises have to be agreed to by the government.
- Establishing a governance center (composed of six people) for preparing quarterly and annual consolidated reports and making them available to the media.
- Strengthening the ownership function in general: the government retains ownership and knows much more about companies, but cannot interfere in their daily operations.

This reform process improved not only corporate governance, but also the SOEs' financial performance. More importantly, the SOEs became more transparent and their operations clearer to the public.

¹ Luka Oreskovic, "Privatization Alternatives From the Baltics: Part 2", *Moscow Times*, June 5, 2013, <http://www.themoscowtimes.com//article/privatization-alternatives-from-the-baltics-part-2/481222.html#ixzz2jzGlqjWn>.

in Romania. It would further require setting up financing of special obligations (the social functions of SOEs) in a transparent manner, so companies would be adequately compensated for these services and citizens adequately served. Where privatization is the preferred option, carefully built privatization committees and clear rules need to be set out. This of course requires objective and transparent criteria for appointments and open and competitive selection of advisers and consultants, as well as strengthening SOE corporate governance.

Improve corporate governance. This can be done by implementing existing legislation (Government Emergency Ordinance 109/2011 incorporates most OECD Guidelines on SOEs) and enforcing oversight mechanisms that can sanction noncompliance. The Working Group members discussed the ways in which enforcement of existing rules can be ensured, either by creating a new oversight body or by utilizing existing capabilities at the level of the Fiscal Council, Competition Council or Court of Accounts. Rather than concentrating power in one body, the experts proposed solutions that include publication

Text Box 9 Good Omens for Romgaz

Romgaz was called the “**pearl of the crown**” by a media article in fall 2013 when the IPO brought above-expectations profits: \$520 million for a 15 percent stake. The state retains 70 percent of the stock, while another 15 percent is held by institutional and individual shareholders. It was the biggest IPO in Romania to date and the first privatization with a dual listing on both the Bucharest and London stock exchanges.¹ Romgaz is the biggest producer and supplier of natural gas in Romania (5.776 bcm in 2010). In 2010, Romgaz delivered 46 percent of the 13.97 bcm of gas consumed in Romania that year—82.84 percent of which was domestic gas.²

1 However, the “donation” Romgaz paid to the government in 2010 while at the same time a minority shareholder of the company was overlooked is a major red flag that undermines investors’ trust in the government commitment to protect minority shareholders’ interests.

2 See the Romgaz website, <http://www.romgaz.ro/en/activities/trade.html?type=%3BResponse.Write%28287630581954%204196403186331128%29id%3D6920>.

of all management and financial data and several monitoring sources (including the institutions mentioned above) and international independent audits and accounting standards. Due to the large number of SOEs, it is essential, however, that there be a body that gathers reporting documents on all SOEs’ portfolios, split by industries, and ensures they become public and available for comparisons of performance, efficiency or progress.⁴⁵ Again,

45 If poor performance becomes visible, momentum can be created to drive the motivation of political establishments to start improving the situation. However, there is also a question of how the political factor will actually intervene in these companies. As some businesspersons we interviewed have suggested, allowing corporate governance legislation to be properly implemented and non-interference in business decisions by politicians are also matters of political will. So far, the results have been mixed: generally, while at the level of the boards some professional, independent members have been selected based on a competitive HR selection process,

the Lithuanian and Polish approaches to managing SOEs place particular emphasis on transparency as a tool for public accountability and improved business practices. The rationale behind corporate governance reform and increasing the efficiency of SOEs is to serve the interests of Romanian citizens, who are the ultimate shareholders. It is the citizens who bear the risks and the costs associated with poor management, inefficiency and the resulting poor quality of services. Instead of investing in better public goods and services, the government needs to dedicate resources to saving underperforming SOEs from bankruptcy or, even worse, covering up corruption.

Stimulate investment in SOEs through effective IPOs and capital market liberalization. Privatization processes need to be carefully prepared by allowing enough time for assessments and submission of offers and disclosure of governance practices and financial information. Initial public offerings are the most transparent way of privatizing SOEs but require consistency and predictability. Simplifying IPOs and eliminating unnecessary formalities would also have a major impact on the ability of domestic investors, such as pension funds, to be active participants in the capital market (see **Text Box 10, page 31**). Accountability can also be enforced through a more flexible system of incentives. One solution is to give managers the option to hold shares or pay them premiums and bonuses for successfully executed privatizations. Similarly, incentives should be created in a transparent way for public officials in charge of privatizations in order to minimize corruption risks. On the other hand, sanctions, such as fines or even annulling contracts signed in breach of the regulations, should be enforced by the oversight authority. Not least, a crucial role in enforcing transparency and accountability is a clear definition of the rights of minority shareholders and their options for legal recourse (administrative or judicial) in case their rights are violated. Consistent dividend policies and efficient corporate governance will ensure that investors will pay a fair price for the enterprises and that questions of ownership surviving from the Communist era are now being solved.

results are rather disappointing when it comes to executive management.

Text Box 10**Profitability of privatizations in Poland**

Poland's Privatization Plan for 2012-2013 included 300 SOEs. In 2012, the Polish state gained more than \$3 billion in privatization revenues and more than \$2.5 billion in dividends, which in aggregate could almost cover the 2012 contribution of Poland's Social Insurance Institution to two of the country's various pension funds (the Labor Fund and the Bridging Pensions Fund). The figures for 2013 were almost \$1.5 billion in privatization revenues and more than \$2 billion in dividends—a total of 0.7 percent of Poland's GDP in 2012 (\$489.8 billion).

Privatizations went beyond the objective of maximizing returns in that they were conceived **to support modernization and to increase the competitiveness of the Polish economy**, improve efficiency in implementing public policies by reducing risks associated with the management of public finances, and also promote Warsaw as a regional financial center in CEE. Strategies and types of privatizations followed these objectives in a coherent and integrated manner, coordinating different development strategies for different sectors. Depending on the sector, several targeted privatization strategies have been pursued, such as free-of-charge transfers of shares of companies in the transport sector to local governments.

Revenues from privatizations are allocated to special funds, including for unemployment prevention, and are seen to help build financial stability and long-term development. On the other hand, 47 entities remain under state supervision given their cultural or economic importance (including the defense, oil, media and shipping industries). Of note, financial information regarding SOEs, including the status of privatization and revenues, is publicly available on the website of the Polish Ministry of Treasury, an important step in making a rather inaccessible domain transparent to the public.

Pressure Point 3: Energy sector governance

Enforce a coherent and transparent legal framework and effective competition in a free energy market. Romania's energy resources place the country at the core of the discussion regarding its regional geopolitical and economic potential, especially given the implications of recent events in Ukraine. To make the best use of its potential, Romania needs to focus foremost on building a new long-term natural resources and energy strategy, using transparent and broad-based consultations with all stakeholders. The strategy should include development priorities and alternative or unconventional sources, issues of ownership and the role of SOEs in the field, the impact on the local environment, supervision and control, as well as the interconnectedness with regional markets. The capacities of the National Agency for Mineral Resources and of the National Agency for Energy Regulation need to be enhanced to provide more transparent, politically independent and nondiscriminatory services.

Secondly, the government needs to speed efforts to modernize SOEs in the energy field through professional and independent management. This

will increase the prospects for investor interest and will support the gradual liberalization of the energy market. Recent stock exchange listings of companies like Romgaz and Nuclearelectrica show that investors are incentivized both by the attractiveness of natural resources and by the transparency and predictability brought about by regulation of the financial markets. Further IPOs in the energy/natural resources sector need to be carefully planned so that they do not compete against each other. Not least, more transparent and clear rules about utilizing the profits obtained through selling of shares are crucial for maintaining the attractiveness of companies. While dividends and profits are important, showing that the Romanian state can be an effective administrator and smart seller can send a strong message of confidence to investors and citizens (see **Text Box 11, page 32**).

Public Leadership: Promoting Healthy Habits

The success of Romania's transformation process depends to a great extent on the quality of its public leadership, at both the political and the administrative level, and the ability of that

Text Box 11**The Privatization of Petrom ten years on**

Petrom is one of the biggest state-owned companies—with 93.04 percent state ownership¹ before privatization—that were **successfully privatized** in Romania, especially in the energy sector. It was the most important integrated oil and gas operator and producer in the country and among the most important of its kind in Central and Eastern Europe. The decision to privatize was a result of a common diagnostic used by the EU and IMF for Romanian SOEs: lack of competitiveness, transparency and investments; huge financial losses, overdue debts, arrears and small profits compared to actual capabilities; corruption among company employees regarding contracts with suppliers and third parties.

To close the Energy chapter and complete the EU accession files, Romanian authorities had to set and agree upon all formalities to privatize Petrom with the EU, IMF and World Bank. These institutions supported Romania in amending its legislation to make the privatization possible. After an international tender was held to choose the consultants and analyst to help during the process (company's evaluation), the Austrian company OMV Group bought 51.01 percent of the company's shares in 2004. The final transaction was worth 1.5 billion euros (\$2 billion).² Besides the 51.01 percent owned by OMV, 20.64 percent of company shares are held by the Ministry of Economy, 18.99% by Fondul Proprietatea and 9.35 percent by other legal entities and individuals.³

In 2006, because of concerns that the privatization process was unfair and unlawful,

1 "Inquiry Commission of the Senate, Romanian Parliament, with regards to the legal conditions of SNP Petrom's privatization," 2008, <http://nastase.files.wordpress.com/2011/01/raport-senat-petrom.pdf>.

2 "OMV cere statului 91 mil. lei pentru ecologizare," *Business 24*, May 1, 2011, <http://www.business24.ro/petrom/stiri-petrom/omv-cere-statului-91-mil-lei-pentru-ecologizare-1490051>

3 See http://www.petrom.com/portal/01/petromcom/petromcom/Petrom/Despre_Petrom/Organizare/Structura_actionariat.

an inquiry commission was set up by the Romanian Senate to investigate the conditions under which the privatization took place. The commission concluded that all laws had been respected, but it recommended increasing the royalties and creating a special fund so that rising gas prices would not be fully supported by consumers. The commission also suggested that the company's overall value had been underestimated and thus so was the selling price.⁴ In recent years, the dissatisfactions regarding Petrom stem from the small royalties paid (between 3.5 and 13.5 percent); the agreement on the level of royalties expires in 2014 and is the subject of current talks between Petrom and the government.

Petrom's success refers mostly to outcomes of privatization: investments in innovating its infrastructure and sites, and profits of more than 5 billion euros (\$6.8 billion) since 2004. Petrom is the biggest contributor to the state budget, accounting for approximately 2.3 billion euros (\$3.1 billion) in 2013, or around 11 percent of the non-consolidated state budget for the year.⁵ Its post-privatization financial track record is stunning. In 2004, when the company was bought by OMV, Petrom registered losses of 216 million euros (\$294 million); in 2005, it was already seeing profits of 314 million euros (\$427.27 million) and had investments of 247.6 million euros (\$337.28 million).⁶ Gross value for dividends paid to Petrom's shareholders increased by almost 400 percent compared to the year 2000.⁷ For 2013, Petrom declared its intention to reinvest more than one billion euros, equivalent to its record profits registered in that year.⁸

4 "Inquiry Commission of the Senate," pp. 6-9.

5 "Petrom Investor Presentation," May 2014, http://www.petrom.com/SecurityServlet/secure?cid=1255738709586&lang=ro&swa_id=640899574406.3444&swa_site=wps.vp.petromcom

6 Petrom, "Annual report 2008," p. 10, <http://petrom.webstyler.ro/2008/raport-anual-iframe/pdf/ro/brosura.pdf>.

7 Calculus based on data available on Petrom's website, http://www.petrom.com/portal/01/petromcom/petromcom/Petrom/Investor_Relations/OMV_Petrom_Share/Share_chart and http://www.petrom.com/portal/01/petromcom/petromcom/Petrom/Investor_Relations/OMV_Petrom_Share/Dividends/Historical_Dividends.

8 Petrom, "Annual report 2012," p. 10, <http://petromraport2012.webstyler.ro/ro/prezentarea-companiei?p=10>.

leadership to build broad legitimacy within society. Even more important is the ability of Romanian citizens and civil society to nurture activists and leaders who will push for reform, engage in policy debates and hold government officials accountable, thus constructing a truly democratic civic culture.⁴⁶

Seen as an overarching challenge by the members of the Working Group, political leadership affects all of the transformation areas discussed. None of the reforms examined in this report can become reality unless the way in which Romanians understand the role of politicians and institutions changes. The legal changes presented below have the potential to alter the structure in which parties operate and introduce more avenues for citizens to exercise accountability.

Pressure Point 1: Forming political parties

Alter rules on registering new political parties.

This can be done by lowering the number of signatures necessary and eliminating the geographical distribution requirement for signatures. While there is no clear standard in Europe and while motivations for instituting barriers to the formation of new parties vary, the rule governing political party formation is particularly important for local elections, minority groups and smaller, regional or even local parties. Relaxing the registration conditions might bring political forces closer to their constituents—by giving constituents more control over their candidates and representatives, while also incentivizing established parties to reassess their appeal to their constituents—and also decrease citizens' and voters' strong dependency on the state. Regional examples offer solutions with respect to incentives (lower registration bar) and disincentives (obligation to return financial endowment by the state if failing to win a seat in parliament, as in Slovakia or the Czech Republic), allowing citizens to better find a political match for their interests (see **Text Box 12, this page**).

⁴⁶ As Larry Diamond observed, the consolidation of democracy actually means a shift in political culture and a realization of the fact that the fundamental problem provoking setbacks in democracies is bad governance. See, Larry Diamond, "The Democratic Rollback. The Resurgence of the Predatory State", *Foreign Affairs*, March/April 2008

Text Box 12

Local and regional parties in the Czech Republic

Local and regional parties are allowed and are very numerous in the Czech Republic. While many are extremist, several legitimate parties also exist, such as the Mayors and Independents Party (STAN), a strictly local party that aligns itself electorally at the national level with TOP09 (the Tradition Responsibility Prosperity Party). The party competes separately in local government elections. In the 2010 local elections, STAN won 1,243 councilor seats, making it the sixth-largest party on local councils.

Pressure Point 2: Transparency of party financing

Adopt new rules on political party financing based on transparency of sources. The 2014 European Anticorruption Report shows party funding to be an important element of the integrity and transparency of political processes. The Working Group discussed at length how transparency in party funding affects trust and fairness in dealing with the public interest and how reforming that system can help eliminate the unhealthy ties between businesspersons and politicians. All contributions, irrespective of the amount, need to be included in a national public register managed by the Permanent Electoral Authority and available online so that funding can be openly monitored (see **Text Box 13, page 34**). No anonymous contributions should be allowed. Independent evaluations show that political party spending during elections has been much higher than the sums officially declared in the past decade.⁴⁷

Although the gap between official and unofficial spending is narrowing, a gross disparity still exists between official bookkeeping and unofficial party practices. Eliminating barriers to political parties' access to independent (domestic or foreign) funding

⁴⁷ Sergiu Gherghina, Mihail Chiru and Fernando Casal-Bértoa, "State Resources and Pocket Money: Shortcuts for Party Funding in Romania," Working Paper Series on the Legal Regulation of Political Parties, No. 8, July 2011.

Text Box 13
The Latvian Corruption Prevention and Combating Bureau (KNAB)

Created in 2002, KNAB is an independent public institution in charge of investigating corruption. Its attributions present an interesting **mix of anti-corruption investigations and political party integrity**. One of the most remarkable areas in which KNAB has had success is regulating campaign financing and political party funding more generally. This happened largely by accident: in 2002, the legal statutes for KNAB were being drafted just as the election commission passed on taking responsibility for enforcing campaign finance and KNAB was given the role instead. By law, KNAB checks if a political party has received an illegal donation or violated limitations of financing, received an anonymous donation or violated limitations of pre-election expenditure amounts, and holds administratively liable any responsible person. Parties have to submit an annual financial declaration and an election income and expenditure declaration to KNAB, and KNAB can ask political parties to return to the state budget any funding acquired illegally.

KNAB's party finance division represents only 5 percent of the bureau's staff but it investigated thousands of donor lists and issued 135 administrative sanctions during its first five years.¹ During 2003-08 KNAB surveyed 1,700 public officials suspected of conflicts of interest and handed out 380 sanctions and 200 warnings.² It prompted the suspension of 20 political parties with its investigative work and fined the party of the prime minister \$1.9 million for financing violations despite the party having won the elections. Its effect on the Latvian political class has been dramatic. In the April 2010 parliamentary elections, the share of seats won by oligarch-associated parties dropped from 51 percent to 30 percent.³ In the September 2011 elections, one of the three oligarch parties running won 13 percent of the parliamentary seats and the other two won none.

KNAB's legal experts then pushed the new parliament to pass new legislation that includes the criminalization of campaign finance violations; the curtailment of secret-ballot parliamentary votes; judicial reforms to expedite trials; whistle blower protection; and lifting of parliamentary immunity for administrative offenses. KNAB also introduced public financing of the electoral campaigns of eligible parties and candidates.

By 2011 more than 100 criminal cases investigated by KNAB had been adjudicated, involving 150 individuals,⁴ and 87 percent of the time the defendants were found guilty. But despite its successes, KNAB still has not been able to convict a senior political leader.

¹ Gabriel Kuris, "Surmounting State Capture: Latvia's Anti-Corruption Agency Spurs Reforms, 2002-2011," October 2012, p. 12.

² Ibid.

³ Gabriel Kuris, "Outfoxing the Oligarchs in Latvia," *Foreign Policy*, May 6, 2013.

⁴ Kuris, "Surmounting State Capture," p. 17.

(from private donors or government agencies) could also positively influence professionalism and transparency in party finances. Funding allocations, either state or private, should be earmarked to certain project components and monitored accordingly. This solution has been implemented in other CEE countries and can incentivize political party personnel to improve management and project development skills, as well as those related to professional, transparent and fair reporting.

These modifications can produce a "corporate culture" change within political parties, improving the level of performance citizens can expect from their elected representatives.

Pressure Point 3: Parliamentary proceedings and lawmaking

Extend the application of transparency principles. This can be accomplished by improving access to public information and participation in decision-

making with regard to parliamentary proceedings and government ordinances (emergency and regular ones alike). Parliamentary committees should ensure proper implementation of transparency rules concerning their sessions and voting. Last-minute amendments to legislation should not be allowed so as to avoid bypassing transparent consultation and debates. For emergency ordinances—except in the case of extreme emergencies, such as natural disasters—at least three days should be allowed for interested parties and regular citizens to gather information or send comments. This will allow the government to reconsider whether the issue is indeed urgent and will help prevent unexpected, unlawful or unconstitutional decisions. As the Venice Commission also notes in its March 2014 opinion, the Parliament needs to reduce the time allowed it to approve emergency ordinances, eliminate the tacit approval procedure and ensure the political independence of the Office of the Ombudsman. The ombudsman is the only institution

that can challenge emergency ordinances at the constitutional court and thus its independence is crucial to prevent abuse of the emergency regime. Revising the regime of emergency ordinances will build confidence among different constituencies that their opinions are sought and valued and that no hidden agenda motivates a rush to decision. For the business sector in particular, ensuring predictability and effective consultation is a key issue, and in recent years the business community has been quick to react to breaches of these principles.⁴⁸ Courts and magistrates are also affected by imprecision and lack of transparency in lawmaking.

48 In Lithuania, for example, all business-related legislation comes into force on either May 1 or November 1 and must be adopted at least three months before the coming-into-force deadline to allow enough time for companies to prepare for changes.

WHY MAINTAINING PRESSURE FOR REFORM MATTERS

Not all areas of reform require a complete makeover in order to be effective. In many cases, only a regulatory or institutional adjustment would be needed. In others, it is merely a case of fully implementing existing rules. Many of the reforms proposed in this report, in particular in the field of economic governance and political reform, took place in other CEE countries far earlier in their transition. As those cases show, implementing reforms such as those listed above would translate into significant and measurable improvements in national wealth and economic well-being. Governance scores, as well as economic indicators (such as GDP per capita, economic growth or FDI) display the performance gap and the correlation quite clearly. Multiple studies illustrate the connection between good governance and improved economic performance.⁴⁹ Strong institutions have been shown to matter for economic growth, especially in incipient democracies, because they determine incentives and constraints for different players in a society.⁵⁰

49 See, for example, Daniel Kaufmann, Aart Kraay, and Pablo Zoido-Lobaton, "Governance Matters," World Bank, 2000, <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-2196>. Their empirical results using World Bank governance indicators and income and GDP per capita for 178 countries show that improved governance betters development outcomes. According to some researchers, a one-standard-deviation increase in governance scores can mean between a two-and-a-half and a four-fold increase in per capita incomes. See Robert J. Barro, "Determinants of Economic Growth: A Cross-Country Empirical Study," NBER Working Paper No. 5698, 1996, <http://www.iedm.org/uploaded/pdf/robertjbarro.pdf>.

50 See Carlos Pereira and Vladimir Teles, "Political Institutions, Economic Growth, and Democracy: The Substitute Effect," <http://www.brookings.edu/research/opinions/2011/01/19-political-institutions-pereira>. The authors also note that "[n]ew democracies, on the other hand, need the effective and ostensive presence of political institutions. As a consequence, their impact on economic performance is more visible and necessary. The consolidation of democracy therefore downplays the

importance of political institutions in relation to economic performance: once democracy is consolidated, and favorable institutional conditions for investments are provided, the importance of the political variable loses intensity."

The countries included in **Figure 5 (page 37)** began their transitions from relatively similar levels of economic performance, but then diverged quite considerably. The data on GDP per capita is consistent (and the ranking is identical) with World Bank governance indicators and their evolution for each country over time.⁵² The most striking

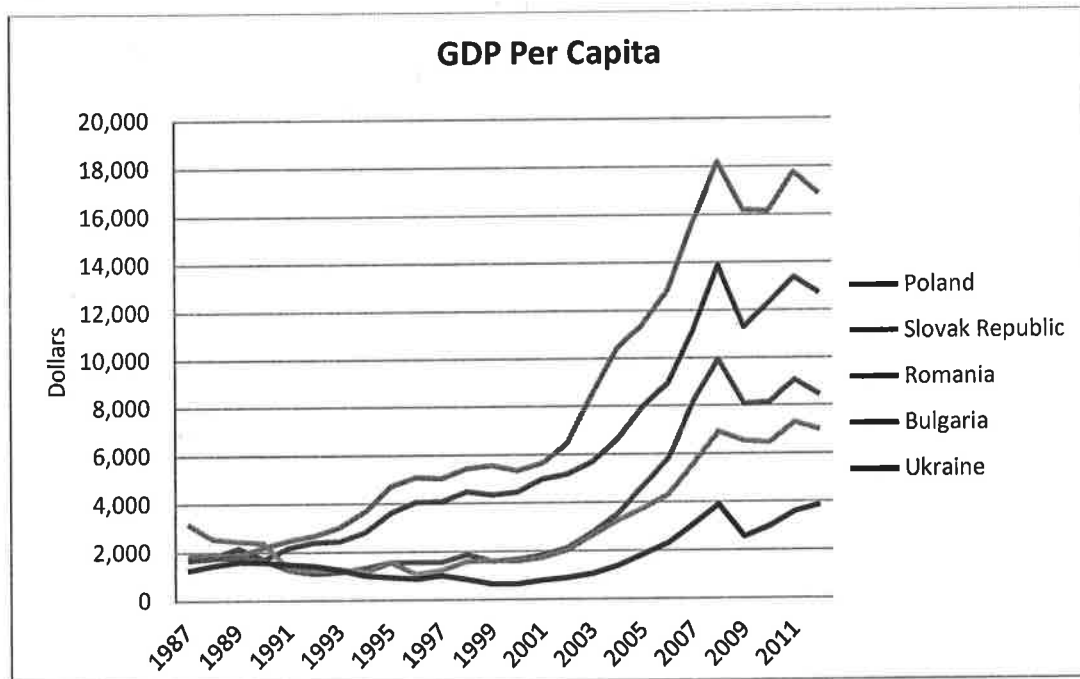
importance of political institutions in relation to economic performance: once democracy is consolidated, and favorable institutional conditions for investments are provided, the importance of the political variable loses intensity."

51 The Heritage Foundation's "Economic Freedom Index 2014" shows that the high performance of the top-ten freest economies is due to high performance in areas like rule of law, limited government, regulatory efficiency and open markets. A compelling historical analysis of the difference between the most and least prosperous societies is offered by James Robinson and Daron Acemoglu in "Why Nations Fail." The crucial distinction is between inclusive and extractive institutions and elites. The more inclusive the economic and political structures are, the more prosperous and free citizens become. Studies support the thesis that democratic, inclusive political and economic institutions will positively reflect in better outcomes in such areas as life expectancy, GDP per capita or education and health indicators. See James Robinson and Daron Acemoglu, *Why Nations Fail* (New York: Crown Publishers, 2012), Kindle edition.

Also see Agnès Bénassy-Quéré, Maylis Coupet, and Thierry Mayer, "Institutional Determinants of Foreign Direct Investment," CEPII Working Paper No 2005-05, http://www.cepii.fr/PDF_PUB/wp/2005/wp2005-05.pdf.

52 World Bank, "Worldwide Governance Indicators," <http://info.worldbank.org/governance/wgi/index.aspx#reports>.

Figure 5. GDP per Capita in CEE



Source of data: World Bank, <http://data.worldbank.org/country>.

example is the difference in GDP between Poland and Ukraine. The successful interplay between governance reform and economic performance also depends to a great extent on the willingness and ability of elites to implement the right policies. In the transition area this dynamic affected the trajectories of post-communist countries differently, placing them in clusters (from high to low performers). Countries where leaders fully enacted transition policies performed better over the long term than did states where the reform agenda faltered. In this way, the experience of Romania's neighbors points to both the hard (economic) and soft (reputational or trust) benefits of embracing top-to-bottom change in a society. One secret to success in any reform process is the presence of strong and effective state institutions. This is why so many of the recommendations in this report are tailored to facilitating that outcome in Romania. Likewise, many of the reforms proposed in this report are drawn from the successful example of Romania's neighbors.

Countries like Poland, Hungary and the Czech Republic were able to implement structural reforms and break with the socialist model more quickly than others, including Romania and Bulgaria, which

were grouped by both academics and various multilateral organizations including the World Bank with other less-well-performing post-soviet countries.⁵³ Governance and economic indicators for the first group place these countries at a clear advantage over their neighbors. While Romania has benefited greatly from EU integration, some of its needed reforms still resemble early transition reforms. In their 2013 Transition Report, EBRD experts expressed concerns that the convergence transition countries with Western models of democracy and growth might be at risk. Assuming an absence of reform, most countries would continue converging, but far more slowly than over the past decade.⁵⁴ This constitutes a clear warning about the importance of continuing institutional reforms, which in turn support innovation and sustained economic growth.

One concrete example of how good policies affect prosperity comes from SOEs. Effective corporate

⁵³ See, for instance, the 2002 World Bank report *Transition: The First Ten Years* on the first ten years of transition.

⁵⁴ European Bank for Reconstruction and Development, "Transition Report 2013," <http://www.ebrd.com/downloads/research/transition/tr13.pdf>.

governance motivates investors to pay up to a 30 percent premium (depending on the region; European premiums vary from 18 percent in the UK and Switzerland to 22 percent in Italy) for SOEs in comparison with companies that have the same financial results but lack corporate governance. This sends a strong signal about the economic gains of good corporate governance and the importance of reforming SOEs.⁵⁵

Also relevant is the signal the government is sending to both domestic and international investors. CEOs of companies active in Romania see the government as the most important stakeholder for their businesses after their clients and competitors, and list issues like the quality of infrastructure and regulations as problems they expect the government to address more effectively. They are also far more concerned with corruption than their European and global peers are.⁵⁶ This indicates that general improvements in the way the government is going about its functions are as important as, if not more important than, mere pro-business measures (e.g., relating to taxes, fiscal facilities).

Not least, for reforms to become reality, political leadership and sustained commitment are crucial. Romania need only look at its own track record in the area of rule of law to understand how support for reform or even mere abstention from hampering it can affect internal governance, international reputation and citizens' trust. Justice reform and strengthening integrity in particular improve citizens' trust at home and a country's reputation abroad (as shown in surveys regarding DNA discussed earlier in this report). DNA and ANI are now seen as institutional models in Europe. As corruption is still regarded as one of the main problems marring Romania's public system, supporting further reform in this area is crucial from a public image and a business perspective. In fact, at the onset of rule of law assistance programs, judicial reform projects (such as those conducted by the World Bank and USAID) were aimed at enhancing economic performance and development, and the

results were encouraging. Continuing on the path of reform and building on positive macroeconomic prospects (among the highest growth rates in the EU) will create further impetus for Romania to become a key economy in the region (much like Poland and Hungary are considered today by the EBRD) and make its efforts to promote pro-market policies, growth and better standards of living for its citizens more credible.

⁵⁵ The McKinsey Quarterly 2000 Number 4: Asia Revalued.

⁵⁶ See Price Waterhouse Coopers, "Added Value Through Interconnectivity. Key Findings for Romania from the 16th Annual Global CEO Survey 2013" (www.pwc.ro/ceosurvey2013)

IMPLICATIONS FOR EU AND U.S. ENGAGEMENT IN ROMANIA

The Working Group placed primary emphasis on the role of Romanian citizens, civil society and policymakers in further reforming governance and taking ownership of the reform process in their country. However, the EU and the United States can and should remain involved. Key economic and quality of life indicators show steady improvements across the region as a result of Euro-Atlantic integration. Mainstream public discourse in Romania also remains Western-oriented. External monitoring and assistance have introduced incentives (reputational, political, financial) at all levels of CEE societies that have triggered significant reforms. Post-accession engagement has been less meaningful, however, as the appetite for a hands-on approach has faded on both the donor and recipient sides. The Group agreed therefore that EU and U.S. support and pressure (exercised through funding, diplomacy and business practices) need to be reinvented to ensure the irreversibility of the reforms and the progress achieved.

The post-communist history of both Romania and other countries in the region clearly indicates the role of external actors in promoting reform. This happened thanks to financial aid, expertise, investment and diplomatic efforts, but mostly by motivating local elites to engage in reform and modernization efforts, mainly in preparation for NATO and EU integration.

It is at the level of incentives that the EU and the United States need to remain most engaged, even though the setting has become more problematic in the absence of such strong prospects as Euro-Atlantic integration. The year 2014 does, however, seem to be a critical juncture not only because of the historic anniversaries of the fall of the Iron Curtain and NATO and EU accessions, but also because of the new security challenges in Europe after events in Ukraine. These challenges will put in

perspective not only geopolitics and alliances, but also the governance and economic solidity of the CEE countries and Europe in general.

This opens a historic opportunity for Romania to build on its geostrategic position, its pro-Western orientation, its low dependency on outside energy sources and its economic growth to be a model of successful transition in the region. Having experienced one of the most repressive communist regimes, a violent revolution and a staggered transition to democracy, Romania could play a more important role in supporting EU and U.S. efforts in developing democratic institutions and governance in other countries and regions.

From a top-down perspective, Western partners still retain considerable reputational and political-financial means to affect domestic reform. Similarly, supporting bottom-up initiatives by continuing to engage with civil society organizations and increasing their organizational capacity is still relevant. Even beyond funding, there is still a need for involvement and backing for NGOs. The U.S.-run programs for civil society development were very effective, and their absence today has left a void.

At the same time, Romania is still quite receptive to pressure and expertise coming from various multilateral international or regional organizations, and this still constitutes great leverage for domestic reformists. Romania's Western partners should:

- Ensure the maintenance of strong diplomatic ties and an open dialogue on issues of good governance that are still problematic. Peer pressure has proved instrumental in many cases in Romania's recent history and it can still be used effectively to reinforce common values. Progress made and local agents of change, at both the political and civil society level, should continue to be recognized and commended.

- Create opportunities for common regional projects such as energy interconnectors and common markets, as well as more integrated regional security systems. Such projects would motivate partners in CEE to implement broad reforms, with spillover to other sectors of the economy.
- Engage more think tanks in debates and informing legislation and public policy. This will help broaden trans-Atlantic linkages, ensure a constructive flow of expertise, and promote a more collaborative model of the relationship between policy analysts in the nonprofit sector and political decision makers, an approach that remains underdeveloped in Romania. Engaging and activating alumni networks from various exchange or leadership development programs could also be effective in forging collaborative links and continuing pressure for reform.
- Engage the business community interested in investing in Romania in upholding high ethical standards, thus contributing to domestic efforts to improve the country's governance system and general economic conditions.
- Co-opt Romanian experts at both the governmental and civil society level in programs for promoting democracy and rule of law in other regions of the world. Romania has accumulated considerable expertise in this field, and this outward-looking effort would help inform and consolidate the need to uphold the same high standards at home as those advocated for abroad.

CONCLUSIONS

The Working Group process fostered a greater understanding among U.S., EU and Romanian participants that continuous engagement, pressure and support for reform is still needed on everything from policy action plans to facilitating a more relevant policy debate within Romanian civil society. It also brought to light certain chokepoints that had emerged within the country blocking the reform process. In overcoming such impediments, Group participants subsequently put forward a set of actionable solutions, creating the preconditions for designing the country's post-transition strategy. The analysis focused on the three main areas—rule of law, governance and public leadership—where progress has been insufficient or has seen setbacks. These areas were deemed foundational for establishing democratic institutions and free market economies in CEE during the transitional period.

Public management, SOE reform and rule of law sections focused more on targeted and concrete policy solutions. The report tried to address the sustainability and resilience of agents of change (such as the integrity institutions) or the ability to implement good policies (as in the case of SOEs). Management of the energy sector became even more important as this report was being developed due to changes in the geopolitical arena. The analysis emphasizes the importance of strategic thinking and of transparency and good management, as well as the centrality of the energy sector for Romania's future development and role as a regional leader.

Without a stable infrastructure in place at the governance, rule of law and political levels, forward-looking strategies cannot achieve full impact. The Working Group has looked at these areas in connection with how reforms can be sustained both politically and through civil society pressure. Throughout the Group's discussions, the question

of leadership has been crucial. The performance of political institutions depends to a great extent on the quality of political personnel and even more on their willingness to promote and sustain reform. It also depends on civic activism. Romanian civil society organizations are already very active and have fought for many of the reforms now in place, so there is reason for optimism in this area. In fact, the role of civil society leaders and reform-minded policy thinkers, politicians and public servants cannot be overemphasized. The transfer of pressure for reform by international partners to pressure by internal agents of change has not been completed, but that process is under way and there is a real opportunity for local agents of change to own more of the reform process.

Not least, as this report was being written, the tragic events escalating in Ukraine put the developmental role of NATO and EU accession, and all the reforms they have triggered, into clearer perspective. The members of the Working Group emphasized many times during their deliberations the need for continued U.S. engagement in CEE and in Romania in particular. Even at the outset, the Group's discussions touched upon the role that Romania could play in the region. It is time for a more committed stance on reform so that Romania can use its accumulated gains and current opportunities as a tipping point for its domestic development and a growing regional role.

In support of committed reform efforts, a sustained trans-Atlantic dialogue will be maintained with the creation of an informal *Think Romania Network*. Building on the platform created through the Working Group process, this network will continue to assess Romania's progress in key areas of modernization and development. Based on the experience of the Working Group process, the *Think Romania Network* will conduct

regular conversations that can help inform the public agenda and civic activism in Romania and increase the visibility of reforms and reform-minded individuals and organizations, as well as find new projects to advance the trans-Atlantic linkages. It will be able to track progress in the

areas investigated in this report, generate ideas and mobilize expertise. The *Think Romania Network* will thus be the first initiative to bridge the U.S. and Romanian policy communities in areas that promote common democratic values and the different facets of the trans-Atlantic partnership.

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BEYOND THE "TIPPING POINT:"

Anti-corruption works.
Governance works better.

U.S.-Romania Initiative
Governance Working Group

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THE ISSUE

The past two or so years will be remembered by Romanians as the years in which the fight for integrity in the public sector gained unprecedented impetus.¹ Against the broader context of the security crisis in Eastern Europe, the spike in anti-corruption investigations – and the earthquake it produced in many institutions – has the true potential to become a turning point for Romania's system of governance. Fighting corruption remains crucial for Romania, and the penal side of it will probably become a textbook case for many other countries that are trying to implement anti-corruption reforms. However, criminal prosecutions will not be enough to bring a reset in public values regarding corruption. The administrative scaffolding that supports an efficient and corruption-free state has not kept up with citizens' expectations regarding a system of governance that both prevents corruption and ensures effective public service delivery.²

Introduction

What is clear for Romanian citizens and what also comes through various international reports (such as those from the European Union, World Economic Forum and the World Bank) is that, although it impedes the country's development and competitiveness as well as its credibility, corruption is probably not the biggest problem for Romania.³ Rather, corruption is the symptom of a weak governance system and poor administrative capacity. That is not to say that integrity should not be of concern in Romania, but that there is a continuum between integrity, the quality of regulations, policies and laws, professionalism and competence, and political responsibility and accountability. Dealing with corruption only will not address the deeper problems that citizens and business people face in their daily interactions with public institutions.

As corruption feeds on the weaknesses of the Romanian governance system, the main challenges are to be found in the legal and institutional infrastructure as well as in the quality of human resources in the public sector. An unpredictable and inconsistent regulatory framework, low levels of professionalism, responsibility and accountability, and lack of transparency and participation are still major obstacles that create ample opportunities for various manifestations of corruption and sap the country's potential for development.

The mid- to long-term approach

Continuing to monitor the key policy areas that Romania needs to focus on, the **CEPA Romanian Governance Working Group** has taken a more integrative, long-term approach. While rule of law and the fight against corruption need to remain a focal point for analysts and policymakers, institutions in this area continue to deliver results. However, more attention needs to be directed toward fixing the supporting institutions and governance mechanisms. As such, with the purpose of strengthening both the integrity and the capacity and quality of public institutions, the Working Group has separated the issues in two categories: (1) the short-term, anti-corruption approach that deals with maintaining and improving existing punitive mechanisms; and (2) the long-term, governance approach that looks toward the consolidation of an institutional infrastructure conducive to more integrity and efficient interactions between private actors and state institutions.

The former goal has to do with effectively addressing present-day efforts to root out existing corrupt networks by supporting the work of integrity institutions and the justice system.

This requires continued focus on professional and independent appointments, stability of the legal framework, financial and organizational support for bodies that have a role in combatting corruption, and maintaining a good track record under the Cooperation and Verification Mechanism (CVM), among other issues. It also envisages the proper implementation of the National Anticorruption Strategy (SNA) and the Strategy for the Development of the Judiciary.

In the latter approach, the emphasis is on creating a predictable pattern of interacting with government bodies and representatives that prevents abuse or corruption from occurring. This points to a system that relies on a stable regulatory framework, well-functioning institutions, professional personnel in public offices, and effective oversight from administrative bodies. Such an approach that targets the underpinnings of integrity and efficiency in Romania's public sector is expected to increase the quality of governance in Romania and of its output to Romanian society. It will also strengthen the resilience of the country's democratic institutions in a geopolitical context that challenges the hard-won gains of democratic transitions in Central and Eastern Europe (CEE).⁴

CEPA's Romanian Governance Working Group therefore decided to propose a strategy that responds to both the symptoms of weak governance and the major vulnerabilities that hamper the effectiveness of Romania's government and create opportunities for corruption. Thus this report outlines policy options in five main areas where vulnerabilities persist and in which integrity and good public management are conditional upon each other: (1) deterring corruption, (2) public office reform, (3) regulatory quality, (4) public procurement and (5) oversight efforts. These should be considered immediate priorities for Romanian decision-makers but also as investments in the long-term project of institutionalizing a more efficient and corruption-free state administration.

Finally, the analysis and recommendations build on the transformative areas and pressure points that the CEPA Romania Working Group identified in their July 2014 report, *Romania's Tipping Point*. Some of those areas have received attention and progress is visible – as in the case of political party legislation reform – while others have not been treated with the sense of urgency and determination they require. The regional context, as well as an increased appetite for reform that the recent presidential elections elicited within Romanian society, give a strategic dimension to the discussion about integrity and democratic governance.

The policy proposals constitute various facets of a strategy to increase the quality of Romania's system of governance and are mainly directed toward policy practitioners and analysts dedicated to making the Romanian system of governance stronger.

Failure to address these long-standing problems will not only perpetuate reliance on the work of anti-corruption prosecutors for matters that are sourced in administrative procedures; it will also affect Romania's development in the long run. A weak governance system will make Romania a less credible place for investors, both domestic and foreign, thus diminishing opportunities for long-term growth. The country will continue to provide poor-quality public services, such as education and health. It will lead to greater deterioration of the legitimacy of public institutions and leaders and make Romanians trust their government even less. It will prevent Romania from exercising a stronger regional role as a model of successful democratic transition.

Building a strong anti-corruption infrastructure

Policy domain **Detering Corruption**

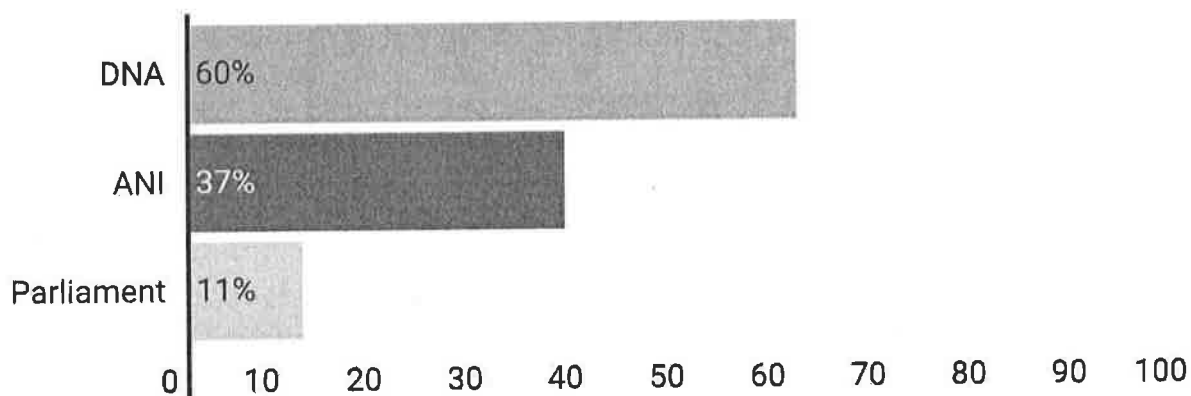
Keeping good institutions at work by:

➤ Increasing the transparency of parliamentary procedures, public participation and effective consultations on legislative changes that would result in slowing down or diminishing the effectiveness and independence of anti-corruption investigations.

➤ Mainstreaming integrity in public management practices; this needs to remain a focus of the government through continuous implementation and evaluation of the effectiveness of the National Anti-corruption Strategy.

The two bodies that are most known for their strides in fighting corruption in Romania – the National Integrity Agency (ANI) and the National Anticorruption Directorate (DNA) – have proved their effectiveness. This has been recognized in the most recent European Commission report under the Cooperation and Verification Mechanism as well as by public opinion approval ratings for the two institutions.⁵ The ANI and DNA have become two of the most respected public institutions in Romania, which is an important achievement for a society that has been battling the scourge of corruption for more than a decade and in which fundamental institutions are not generally held in high regard by the population.

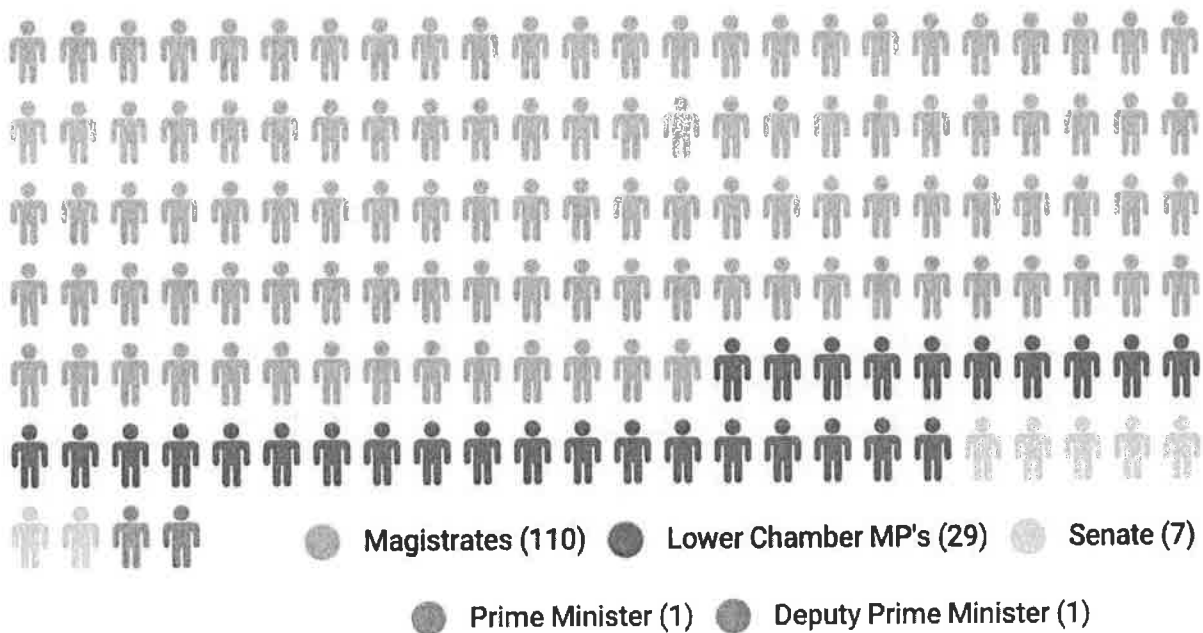
Trust in government institutions (2015)



Source: INSCOP

In terms of effectiveness, the numbers are quite striking: according to the DNA head prosecutor, the DNA has indicted 48 politicians since 2007 (one prime minister, one deputy prime minister, eight ministers, 29 members of the lower Chamber of the Romanian parliament and seven members of the Senate).⁶ Therefore it comes as no surprise that Parliament and political parties receive the lowest confidence ratings among Romanian citizens, while the DNA and the justice system are improving their scores. Citizens need to believe in the ability of their justice system to enforce the laws, and in the past few years the institutions of the justice system (from integrity bodies to courts of law) are beginning to deliver results.

DNA prosecutions since 2007



Source: National Anticorruption Directorate

To maintain this record of accomplishment, however, more support is needed from the legislative and executive bodies. This support is merely manifested through ensuring a stable and predictable legislative framework that does not impede anti-corruption efforts and ensures that judges and prosecutors can perform their duties independently. During the past few years, the legal framework affecting in particular the application of criminal law in Romania has faced many challenges, including important provisions struck down by the Constitutional Court.

In the immediate term, continuing the implementation of the National Anticorruption Strategy is one key element in this approach. The current implementation cycle for the strategy runs out this year, but the work is far from completed. The strategy needs to be prolonged or renewed with updates and improvements as a result of a serious audit and impact analysis. However, this evaluation should not be used to stall implementation of the strategy, thus creating huge time gaps between strategies, as has happened in the past.

The punitive law-enforcement mechanism is thus only one piece of the puzzle, and its relevance should, at least in theory, decrease as administrative mechanisms are set in place to prevent future deviant behaviors.

One important benefit that implementing the strategy can bring is to use the assessments and conclusions to inform decisions and reforms in public management structures. This aspect of policy-learning (addressed later in this report) should constitute a goal for action to prevent corruption.

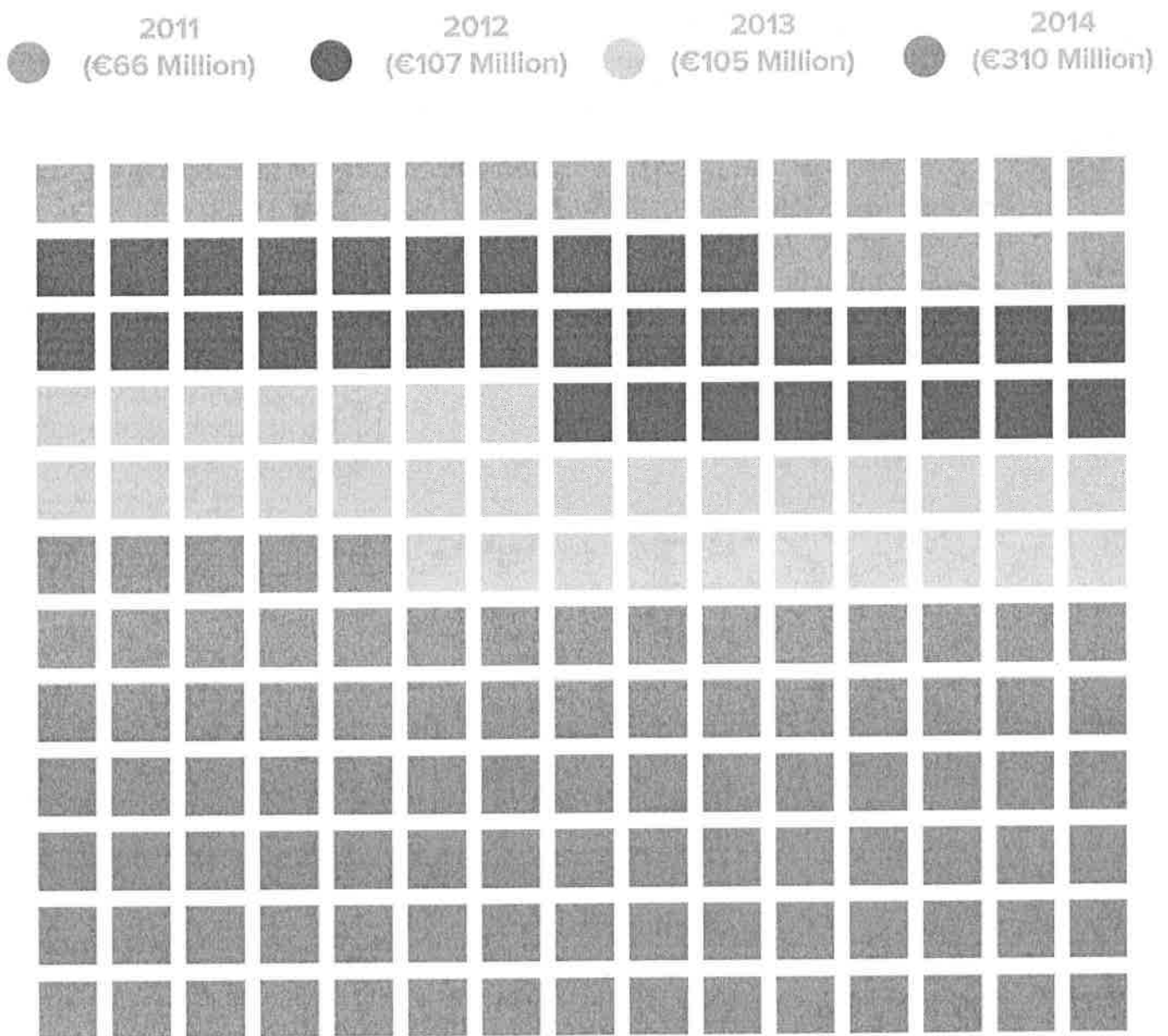
Making corruption unprofitable by:

- Ensuring proper implementation of pertinent legislation, including the new draft law on asset recovery, and creating streamlined procedures that allow various authorities to cooperate across all the steps of recovery, from identification to valuation and confiscation or restitution.
- Creating a compendium of good practices from existing court decisions and their corresponding administrative steps to documenting various aspects of asset recovery, their timing during civil or criminal proceedings and their impact.

The fight against corruption needs to become more costly for corrupt individuals and more profitable for the state and Romanian citizens. This requires strict implementation of existing legislation on asset recovery and better coordination between all state agencies that can contribute to the identification, seizure and valuation of ill-gotten goods that a court has ordered to be confiscated. An analysis by Global Financial Integrity estimates a total of \$6.4 trillion of illicit financial flows involving Romania from 2002 to 2011.⁷ The National Agency for Fiscal Administration (ANAF), the main body in charge of recovering the proceeds of crime, has been accused of inefficiency and is now part of a complex World Bank program to restructure its organization and functioning.

However, ANAF itself is complaining about the lack of procedures, timeliness and efficacy and in general about the lack of cooperation from other bodies (from local tax administrations to courts and cadaster offices) in carrying out confiscations.⁸ At the beginning of 2015, the head prosecutor of the DNA attested that only 10 percent of the total amount that should have been confiscated as a result of final court decisions in corruption cases had actually been collected. There are, however, encouraging signs on the recovery front: the amount requested for confiscation or reparations rose significantly in 2014 to 310 million euros, as compared with 105 million in 2013, 107 million in 2012 and almost 66 million in 2011.⁹

Funds requested to be confiscated



Figures are to scale. Source: National Anticorruption Directorate

EU-wide, the asset recovery rates are rather small.¹⁰ The Ministry of Justice has just created a new agency to be in charge of seized asset (including the creation of a comprehensive database to keep track of ill-gotten goods), and Romanian authorities are becoming more hopeful that the recovery rate will increase significantly. **Extended confiscations** have not become a common practice in Romania, despite existing legislation, including a European directive on this dating from 2014. As recent reports show, measures other than criminal confiscation – which is the more traditional understanding for asset recovery – have become more common in a variety of jurisdictions.¹¹ These include settlements, reparation and restitution and have not been sufficiently explored by Romanian policymakers as faster, alternative ways of using asset recovery to combat corruption and diminish its return on investment. Switzerland, the United Kingdom and the United States are considered role models for recovering stolen assets, a success that is due to solid policies, laws and institutional frameworks, which Romania does not have at the moment. Equally important is a high-level commitment to such policies, coordination between stakeholders and equipping implementing authorities with the resources necessary to carry out their tasks.

Not least, making data and statistical information available is crucial both for evaluation purposes and public information. Apart from the public opinion benefits, effective laws and institutions along with factual evidence about asset recovery can have a deterrent effect on criminals looking to exploit gaps and vulnerabilities to launder their corrupt proceeds.

The fight against corruption will not bear fruit in the long run unless a strong supportive structure – composed of professional public servants, effective administration and impartial implementation of laws and regulations – is in place. On the contrary, the absence of broader and deeper reforms will only perpetuate the culture of hesitancy and mismanagement driven by fear and many times by incompetence.

Analyzing the cases that anti-corruption prosecutors have worked on so far could provide extremely useful insights about where vulnerabilities lie. This information can help structure necessary governance reforms to prevent illegal behaviors and introduce preventative administrative mechanisms. What is immediately obvious is that the most problematic areas have to do with contracting and public procurement (many of which deal with road construction or rehabilitation) and with the lack of administrative mechanisms to ensure proper implementation, coordination and professionalism in dealing with such complex issues.¹²

Building a strong governance system

Policy domain **Enacting public office reform by:**

- Implementing a strategic approach to public office reform. This includes standardizing processes of recruiting, training and compensating human resources in the public sector, in correlation with the Strategy for the Consolidation of Public Administration 2014-2020 and plans for reorganizing territorial-administrative units.
- Creating a government strategy for addressing capacity and resource (budgetary and personnel) problems in small territorial-administrative units in order to eliminate inefficiencies and increase public management performance.

Few effective steps have been taken to reform public office at both the central and local government levels and thus improve the performance of public institutions.

Fostering the professionalism and improving the performance of public employees – whether high officials, regular public servants or contractual personnel – is hindered by one major problem recognized in the expert literature: “runaway bureaucracy.” It means that when the parties in power change, new leaders seek to secure the most important administrative positions to make sure their agenda is implemented.¹³ In Romania this phenomenon is very pervasive, leading to problems of organizational memory, unpredictability and lack of competence. The business community has often complained about this issue as an extra burden when dealing with state authorities. The problem also captures those situations in which integrity is sacrificed so that public offices are held by political cronies who can then perform or facilitate unethical or illegal actions. On the other hand, when it comes to smaller localities, limited financial and human resources take a heavy toll on the delivery of public services and maintaining proper standards of integrity.¹⁴

Major challenges at the level of local government and governance include poor financial compensation and professional training for the human resources and lack of standardized administrative and budgetary procedures, *which would ease both day-to-day public management and servicing citizens.*

All of these challenges have been noted in the Romanian government's new Strategy for the Consolidation of Public Administration 2014-2020, approved in November 2014.¹⁵ A working group for the implementation of the strategy was created at the beginning of 2015 and is currently active in addressing the above-mentioned problems.

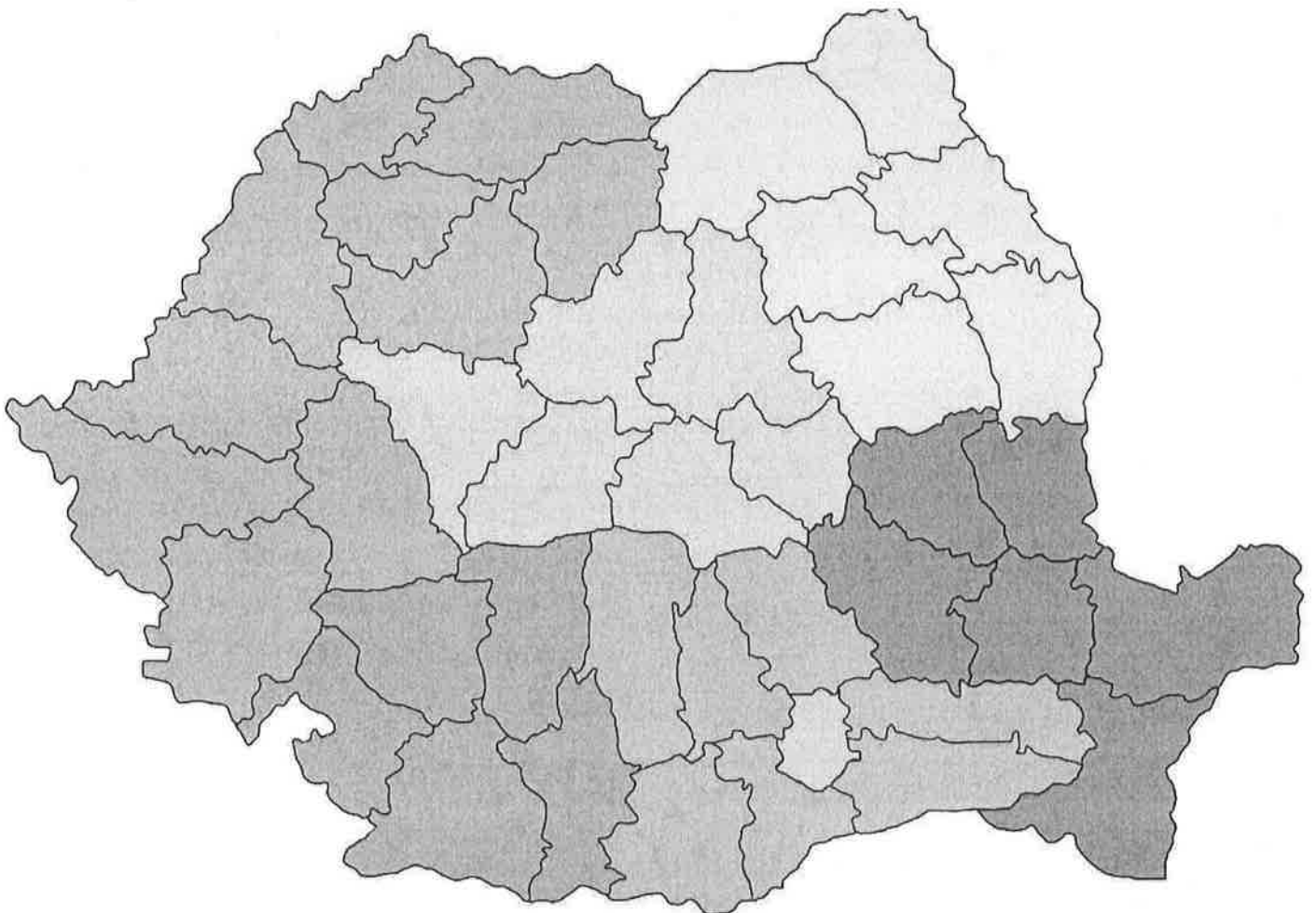
In implementing the new strategy, the government would benefit greatly from having an estimate of what it takes to improve administrative procedures and capacity, particularly when it comes to human resources. To accomplish this, first the National Agency for Public Servants (ANFP), in cooperation with the Ministry of Public Finance, would have to provide an analysis of human resources in the public sector, evaluating the needs, the various categories and their opportunity (where problems exist, for instance, with secondments or "execution public servants"), as well as their budgetary impact. A second important step to that end would be an impact evaluation of projects funded through EU programs for strengthening administrative capacity to show where and how success was achieved and at what cost.

Furthermore, the ANFP should be able to address a variety of issues and standardize processes for both career public servants and contractual personnel in areas like training, professionalism and career management (including selection and appointments); clear definition of the mandate; and integrity, transparency and accountability. Even if some steps have been taken mainly in central government institutions or agencies, the lack of administrative and financial capacity at the local level will remain a major liability in the absence of a systematized and strategic approach.¹⁶

Reforms of such breadth and scope will also have to be thought out in conjunction with the anticipated decentralization reform and a redrawing of Romania's territorial-administrative units. Organizational capacity, personnel management and financial sustainability are currently affected by the high degree of centralization and dependency on the central government. On the other hand, there is also a challenge of massive fragmentation at the level of smaller territorial-administrative units, which would benefit more from either merging or congregating in some areas of public services delivery. This should solve at least some of the problems in terms of personnel and budgetary execution.

One last aspect has to do with the nexus between political office and public management. Particularly at the local level, public management suffers from the lack of experience of elected officials combined with the shortage of personnel or their lack of professionalism. While the performance of elected officials is supposed to be judged through voting, local public management and integrity would be greatly improved if more attention were given to training for those new on the job.

Romania's territorial-administrative units



Policy domain **Building a predictable and sound regulatory framework by:**

➤ Increasing the quality – opportunity, efficiency, effectiveness – of laws and regulations by utilizing more evidence-based decision-making and impact assessments. This will introduce more rationality into decision-making and greater legal conformity and trust within society.

➤ Ensuring proper consultation, participation and transparency by engaging both stakeholders and public bodies that can anticipate and address problems as well as exercise accountability. In particular, parliamentary committees should avail themselves of this option to better inform and ground the lawmaking processes.

The regulatory framework remains an area where major vulnerabilities have not yet been properly addressed. Citizens and business actors alike are concerned with transparency and stability, which are crucial for legal certainty, predictability and risk calculations. Apart from government effectiveness, the quality of the regulatory framework is also strongly correlated with corruption.¹⁷ Emergency ordinances, the lack of (rigorous) impact studies in policymaking and lawmaking, and the absence of institutional cooperation between various bodies with lawmaking and policymaking responsibilities are possibly the biggest challenges for Romania's regulatory framework at the moment. Fully 82 percent of Romanian entrepreneurs have identified instability of the regulatory framework as a negative influence on their company's business, while 58 percent think they are negatively affected by useless and expensive legal provisions.¹⁸



Palace of the Parliament, Bucharest

Regulatory quality is therefore an imperative for Romania's future economic development, not only by creating a more business-friendly environment but also by fixing market failures and responding to global trends and challenges.¹⁹ Any immediate intervention should target and focus on three main areas: (1) ensuring ex-ante oversight and accountability for any piece of legislation or public policy; (2) implementing the Regulatory Impact Assessment (RIA) that the World Bank has started to pilot in some Romanian central government institutions by providing coaching on RIA methodology and strengthening; and (3) further applying evidence- and knowledge-based policymaking.

As far as accountability for passing laws is concerned, an important first step would be effectively using existing institutional checks and balances. In particular, with respect to emergency ordinances the role of the ombudsman is extremely important. Starting in 2012, Romania has seen an important debate regarding the role that a politically independent ombudsman should play, but there has been very little response from the executive and legislative bodies. The Constitutional Court also exercises important levers of control over both the legislative and executive branches of government, and the appointment of highly respected legal professionals for the position of Constitutional Justice is tantamount. Both of these institutions, however, have a post-factum role in fixing problematic legal provisions.

A more anticipatory effort would involve the regulatory bodies that can intervene before or during the decision-making processes (such as the Fiscal Council, the Legislative Council, the Economic and Social Council), as well as public policy units within various ministries and the center of government – a body that would supposedly act as a quality-control mechanism for regulatory production. No comprehensive study has been done on the administrative capacity of the public policy units so it remains unclear whether they exist only on paper or have real influence in their respective ministries. Strengthening their role as well as the capacity to coordinate their efforts before any proposal becomes law and to sign off on public policies is imperative. Ideally, the public policy units should form a community of practice to methodologically lead the evidence-based policymaking of line ministries. Even so, high-level political commitment is needed, as the bottom-up demand for rigorous policy analysis in the Romanian administration is hindered by short-term vision and prioritization, mostly influenced by political urgencies.

This in turn affects the way in which bills and policy proposals are prepared. Ensuring better communication and feedback from the institutions that apply the laws and regulations in their daily practice would also be beneficial for law- and policymakers, as they can signal dysfunctions. Also, proper consultations with various stakeholders and using evidence to support law and policies will ensure more integrity, impartiality and a more solid foundation for the regulatory framework in Romania. The lack of effective consultation and participation in law- or policymaking becomes striking when major

decisions are not even run by the rank and file of political parties, which have various positions in local public administration. These local members could become an important sounding board for decisions that will in the end impact the quality of the public services they have to deliver to citizens.

Citizen groups and business coalitions regularly complain about the lack of transparency, the hastiness with which certain decisions are made and the lack of adequate consultation. Even when these elements are met, it is difficult to track whether and in what way inputs and feedback have had an effect on the decision-making process. Extending the period for public consultations from 10 days to 30 days – which is the minimum standard and norm of good practice at the international level – to allow stakeholders to submit analyses and recommendations would address, at least in part, transparency and participation concerns.²⁰ There is also ample room for improvement concerning the need to have up-to-date, correct and open-access data on which to build when talking about policy options.

Thus the government of Romania should build on existing capacities and improve the Regulatory Impact Assessment system by, first, conducting RIA on government priorities, starting with the Government Work Annual Plan. The government should understand that a regulatory quality review filter must be created at the center of government. Primarily, the role should be to focus on big-ticket legislation with high economic and social impact. Second, decision-making processes, both in the development and final decision stages, need to be founded on strongly documented and clearly written substantiation notes that incorporate in their methodology a consultation process at the level of problem definition and policy options and solutions envisaged with the relevant stakeholders. It is at this level that evidence and studies and consultation mechanisms are required to substantiate various policy proposals

Since this issue was on Romania's creditors' agenda, the government did pass Government Emergency Ordinance 88/2013 and, later on, Law 25/2014 on adopting fiscal-budgetary measures that included "prioritizing important public investment projects" by adopting a set of criteria for the evaluation and selection of such projects (including pre-feasibility reports, substantiation notes and technical and economic memoirs). It also built a reporting system whereby the budgets and financial situations of local public authorities are to be verified, monitored, reported and controlled by the Finance Ministry in order to limit waste of public money and the degree of indebtedness of public bodies. An evaluation report for this initiative is not available, but as the Foreign Investors Council noted in December 2014, the legislative instruments exist although their actual implementation is "unclear."²¹ The Romanian government has also started to apply some of these requirements under the First and, now, Second Action Plan on some measures of good governance in the economy.²² Under the action plan the number of emergency ordinances, according to the Romanian government, decreased by 19 percent in 2014 in comparison with 2013. This is a good sign, but more time and

dedicated action need to be allocated to implementing the measures in the action plan to produce lasting effects in practice.

Evidence-based policymaking has hardly been an issue of debate in Romania. In other parts of the world, using evidence is believed to help policymakers achieve substantially better results by selecting, funding and operating programs more strategically.²³ Evidence-based policymaking uses a variety of qualitative and quantitative instruments to gather information on government-run programs and their results at all levels. Unfortunately, such instruments are almost nonexistent in the thinking about policy in Romania, although they would help structure and justify policies and add legitimacy to decision-making at the technical and management levels.

This practice is not new. The World Bank has provided the government with technical assistance for the use of RIA in recent years, thus supporting the technical capacity-building of the central administration. However, these initiatives have not been complemented by adherence at the political level to increasing the use of RIA, at least for high-impact policies. More commitment on behalf of legislators and policymakers is required to ensure a shift in mentality in Romania concerning evidence-based policymaking.²⁴

Policy domain **Improving public contracting and procurement by:**

- Increasing efficiency and accountability by simplifying and clarifying procedures and increasing transparency in all stages of the procurement process. The first step is to streamline e-procurement systems (including e-invoicing and publication of all contracts and reports) and increase inter-institutional cooperation.
- Improving certainty at the level of administrative procedures by introducing clear, non-discriminatory criteria for dealing with private companies and by empowering public servants to give guidance/make decisions that are binding or that can be challenged in administrative procedures. Similarly, public actors in the procurement market need to apply uniform practices.
- Expanding the capacity and professionalism of personnel involved in evaluation, implementation and monitoring of procurement processes and contracts through better selection criteria, better training and improved integrity standards.
- Introducing centralized procurement for staple goods and services for groupings of smaller administrative-territorial units in order to eliminate possible conflicts of interest and make processes more efficient and uniform.

Public procurement remains one of the most complex public policy domains in Romania.

Multiple vulnerabilities have been signaled since Romania sought to bring its legislation in line with that of the EU in preparation for and then upon accession. But the responses are still inadequate and have left room for inefficiency, political clientelism and fraud.²⁵ Most of the vulnerabilities are generated by the legislative framework, including lack of predictability and institutional capacity and thus the poor quality of competition.²⁶ A recent examination of particularistic links in the Romanian construction sector indicates that 19.4 percent (1 out of 5 contracts) of all public procurement transactions with a value above 1 million euros that occurred during 2007-2013 show signs of a biased distribution of public funds, i.e., the winning companies were either political party donors or enjoyed political connections. In addition, an agency-capture analysis of this sector indicated that corruption risks in public procurement are more frequent at the local level and in state-owned enterprises (SOEs). Essentially, this means that politically connected firms managed to “monopolize” one out of 10 contracting authorities active in the construction sector.²⁷ EU-funded contracts, in contrast to those funded via the state budget, are less prone to corruption because there is stricter oversight.²⁸

On the one hand, the multitude of legislative or regulatory changes and the lack of transparency in decision-making have created high instability. On the other hand, the interpretation and implementation of legal provisions have often introduced unnecessary complexity and red tape. Preferential treatment of certain bidders, excessive or irrelevant requirements, manipulation of price offers or adding supplementary elements to signed contracts have all been noted as major vulnerabilities – including in the case law of the Romanian Council for Solving Petitions (CNSC), the administrative body that deals with complaints regarding procurement.²⁹ These vulnerabilities are reinforced by the weak technical capacity and lack of expertise of the bodies that organize the procurement processes and should be in charge of supervising the implementation of the projects. Not least, the current Electronic System of Public Procurement (SEAP) suffers from several technical shortcomings and does not provide for an open data platform, which further impedes transparency and analytical efforts. As a recent analysis pointed out, the instruments presently at the state’s disposal are not conducive toward extensive analyses of corruption risks or statistical evaluations.³⁰

While many of these issues are regulatory and administrative, so far there has been an overreliance on the criminal law side of monitoring contracts between public institutions and private companies. The case law of anti-corruption agencies is illustrative in this regard. Furthermore, magistrates have a hard time assessing “criminal intent” in fraud or corruption cases, introducing a new layer of unpredictability and the possibility of dissipating responsibility (or diverting it from those who are truly in charge). This is due in part to legislative changes that have led to a “delegation of responsibility” by decision-makers to their subordinates.³¹

In practice, most problems start with administrative issues: regulations are interpreted differently by different agencies and for different companies; public servants do not have the authority to offer guidance in procurement/contracting; feedback from cases processed by courts or by oversight authorities is not incorporated into policy- or lawmaking; oversight bodies have limited capacities to spot and offer coherent solutions to problems. This makes business with the state riskier and far more litigious than it should be. The newly created body in charge of public procurement should offer some solutions but it is too soon to assess its expected impact.

The new procurement strategy and legislation should also reflect on the problem of administrative fragmentation noted above. Local administrations face various challenges in organizing fair and professional bidding processes. Increasing their capacity to do that might be more costly than designing a system that unifies certain procurement processes – mainly for staple goods and services – in one central point, most likely at the county level. But a better-designed centralized procurement system would reduce the pressure on local public authorities and would ensure better value for contracted services or goods.

The new EU directives on public procurement and contracting, which are supposed to be transposed by Romanian legislators by 2016, are expected to bring more order and predictability to the process. Similarly, an integrated data management system that would be connected with the SEAP – called PREVENT and implemented by the ANI – is in the works and promises to eliminate any potential conflict of interest even before participation in the bidding process. Romanian authorities will have to ensure the necessary financial and administrative resources for the adequate functioning of PREVENT, as well as the new electronic procurement system (SICAP), which will be managed by the Agency for Romania's Digital Agenda (AADR).

That will also require redefining some of the concepts of incompatibility and conflict of interest as well as increasing coordination between different authorities. With this, a clear and impartial legal procedure needs to be paired with a more streamlined and efficient procurement procedure. In the short run, three immediate and interlinked actions are required: (1) prevent the abusive challenges to contract awards that block the procurement processes by streamlining and clarifying procedures and rules; (2) ensure that selection criteria follow the principle of "best value," rather than simply lowest price, and introduce cost standardization; (3) establish an inter-institutional unit aimed at providing a uniform interpretation of not only the rules and procedures but also the case law.³² To achieve these goals, various legal provisions (such as provisions on public finances) that have a bearing on different parts of the procurement processes should also be synchronized to avoid non-uniform application of rules and criteria and to close loopholes that could lead to fraud or corruption. Most recently, the Romanian government signed a memorandum of understanding with the U.S. Trade and Development Agency under the Global Procurement Initiative, which will support efforts to create a better procurement strategy and ensure the proper understanding and application of "best-value" procurement.³³

Various other proposals to improve procurement and contracting have already been made, but a strategic approach should also correlate procurement with other administrative processes. To support transparency as well as a more competitive and open bidding process, a new web portal containing all annual procurement plans, easily searchable using CPV codes (CPV, or Common Procurement Vocabulary, is an EU single classification system for public procurement) and by geographic proximity, is necessary. Also necessary is ensuring its interconnectedness with various global and national databases so as to spot conflicts of interest before the contract award phase. In accordance with Law 25/2014 mentioned above, annual investment plans need to be correlated with budgetary planning so as to anticipate potential expenses or risks in project implementation and ensure predictability at all stages of the procurement and project execution processes. Reports about the implementation of procurement plans and spending should also be made available online for transparency and accountability purposes. Also, business associations, and in particular small and medium enterprises (SMEs), need to be more engaged in consultations with public authorities. In the end, the final beneficiaries of public contracts are Romania's citizens and they need to understand and trust these processes.³⁴ Effective consultations might require a constant monitoring mechanism that involves all stakeholders – contracting authorities, businesses, civil society – and is active throughout the implementation and contract completion phases, not only during the awarding procedure. A promising mechanism would be the so-called Integrity Pacts piloted by the Directorate-General for Regional and Urban Policy (DG REGIO) throughout the EU starting with 2015.

Policy domain **Improving the quality of governance through better oversight by:**

- Strengthening the role, independence and capacity of oversight bodies in order to promote integrity and efficiency in delivering public service and to improve policy-learning.
- Creating a supervisory body to ensure the effective implementation of corporate governance principles and legal provisions in SOEs; establish performance indicators and criteria for the selection of board members; and monitor these enterprises' financial reports, their management plans and their performance.
- Enforcing cooperation protocols between various institutions and authorities in order to flag problems across a wider spectrum of policy domains and better address both administrative and criminal law issues. Capacity-building funds should be used to create a common curriculum for various agencies for cross-cutting themes, such as competition, public procurement, performance management and regulatory impact assessment methodologies.

Regulatory quality, including the capacity of regulatory bodies, still constitutes a problem in Romania, but policy implementation and compliance enforcement are in fact even bigger challenges. As mentioned above in the case of procurement and contracting procedures, administrative loopholes or implementation gaps tend to be interpreted as corruption, when administrative solutions would be better fitted. There are a number of institutions whose mandate is to ensure compliance and effective implementation of policies, but few of them have managed to become effective control bodies and only after far-reaching reforms – such as the Fiscal Supervisory Authority (FSA) and the Romanian Competition Council (RCC), the latter having undergone complete organization enhancement planning. The recommendations for such an audacious organizational reshaping were provided by a team of World Bank experts.³⁵

These authorities have a tremendous role to play in enhancing public sector performance by promoting principles of good governance, transparency and accountability through their reports and messaging to decision-makers. Also, a well-performing management culture within these bodies can serve as an example for other organizations that come under their oversight. It is also true that given the relative autonomy of such agencies, salary scales encourage low staff turnover and the consolidation of needed staff skills within these institutions, thus creating the basis for professional inspection and regulatory functions for the markets.

Moreover, strengthening the oversight and control bodies could also provide for a feedback loop for law- and policymakers and regulators, by signaling loopholes and inconsistencies in rules. Their role should go beyond deterrence and include advocacy with various government bodies. This has happened in the case of the National Integrity Council (to some extent) and the RCC. As of July 2015, the role of the RCC as a champion for regulatory impact assessment of policies that might affect competition has increased. The RCC can now issue advisory opinions and approval not only for normative proposals but also for public policy proposals. The central and local authorities are now obliged to ask the RCC's opinions when they initiate normative proposals that might have a potential distortive effect on competition. The RCC can even impose measures to eliminate such distortions.³⁶

Similarly, a body that has considerable potential from a *policy-learning* perspective is the supreme audit authority, the Romanian Court of Accounts (RCA), which is mainly in charge of checking public spending at the level of public administration bodies. Its reports have been widely cited to prove various problems confronting Romanian public administration, mainly when it comes to contracts and budgetary execution.

However, the RCA does not look into the opportunity of budget decisions, and its performance evaluations are not fully and properly implemented. Also, there is often lack of follow-up to the assessment or recommendations that the oversight authorities produce or no preventative aspect to them. The RCA could benefit greatly from

strengthening its audit function, which goes beyond mere compliance or financial statements control, and thus its corrective function and impact.

This points to the necessity of making the opinions or conclusions of such oversight authorities binding for public bodies. While the FSA and the RCC have the power to impose fines or take other administrative measures, the RCA is basically an information-gathering mechanism. With a more qualitative approach to the control and audit function, the findings of such institutions can also be utilized to provide adequate and reliable results and enhance the use of evidence and impact evaluation to inform laws and policy decisions. A model of a supervisory risk-based approach should be implemented in the RCA, and more auditing skills provided to the inspectors in the field. Anecdotal evidence shows that the RCA plays the role of coercion without understanding the opportunity of certain expenses or project costs, while its role of prevention and advocacy for good practices for efficient budgetary spending is often forgotten. A World Bank-led program similar to that implemented for the RCC would strengthen the capacity and credibility of the RCA.³⁷

There is also opportunity for an educational mandate for these bodies that can be performed through advocacy and reaching out to various stakeholders. The most likely beneficiaries of the work of oversight and control bodies, besides institutions that come under their jurisdiction, would be members of government and Parliament. The important value added that effective control and oversight bodies can bring to decision-makers is thus policy-learning. In terms of strengthening not just efficiency but also integrity in the public sector, building on knowledge from past experiences in implementing various policies would replace party-political calculus with sober, professional assessments.

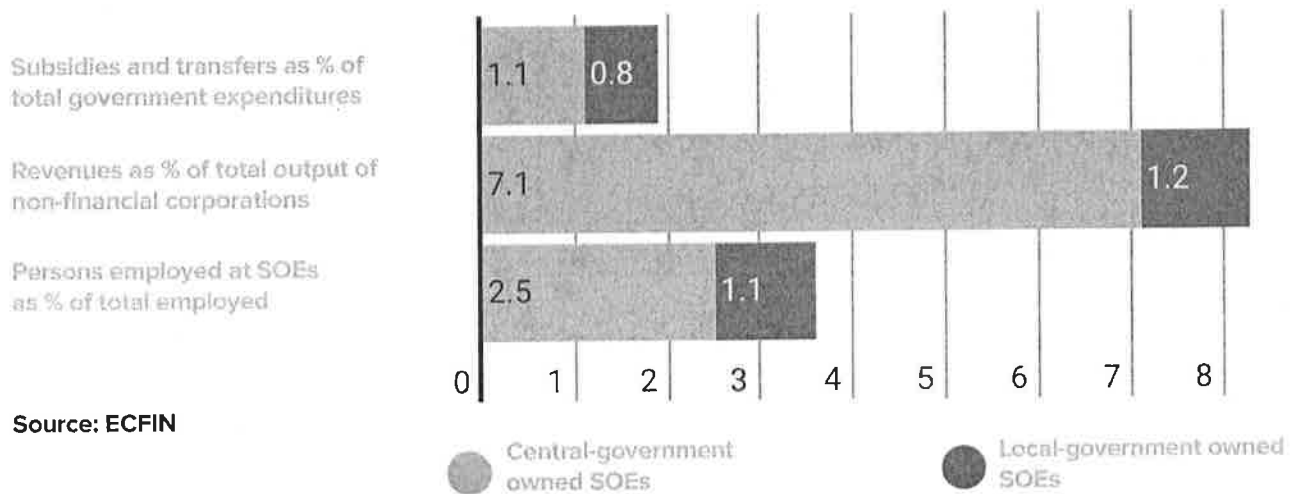
Cooperation and coordination between various authorities and bodies would make oversight and remedial actions more effective, but this remains an underdeveloped area. This points to the need for enhanced collaboration between agencies on specific topics and generally more streamlined procedures, as well as interoperable electronic databases. While protocols typically exist between agencies, they are largely not used.³⁸

Last, while existing oversight and control bodies need to be made more effective, there are areas where new ones are needed. One particular area where better oversight would have an immediate impact is state-owned enterprises. In terms of integrity but also good governance principles, the SOE sector remains a liability for Romania's stride toward an efficient market economy. Romania has the largest number of SOEs within the EU, followed by Poland, as well as the largest SOE sector comprising GDP share, employment and role in the overall economy.

SOEs in general generate 8 percent of total output of non-financial corporations and employ close to 4 percent of the Romanian workforce. According to the Ministry of Public Finances, approximately 240 active SOEs are affiliated with central government

institutions and around 1,200 are affiliated with local governments. Energy and transportation are where SOEs play their dominant role. Despite a few success stories about how privatization through stock exchange listings has triggered economic profit as well as beneficial corporate governance reforms, the SOE sector remains largely inefficient and lacking in terms of vision and governance.³⁹

Importance of SOEs in the Romanian economy (2013)



Two main challenges confront the SOE sector: political interference and lack of accountability. In turn, these are the cumulative effect of a lack of definition of the SOE's role in the Romanian economy, assessment of their performance, a strategic view of their future and an adequate implementation of corporate governance principles. Moreover, legislation and policies affecting this sector, as in many other areas, are not properly implemented and lack adequate oversight. The recently established inter-ministerial committee that is supposed to oversee the monitoring, implementation and evaluation of the corporate governance Emergency Ordinance 109/2011 does not entirely respond to the need to separate regulatory and policy functions from ownership and day-to-day management operations. There is little information as to whether the committee has started working and what its impact is expected to be.

Other countries have managed to create more proficient, independent bodies to monitor corporate governance and thus improve performance of the SOE sector. According to World Bank and OECD guidelines, ownership arrangements vary from country to country, but a centralized model can be found to different extents in Finland, Turkey, Hungary and Poland.⁴⁰ Romania is trying to follow an advisory dual-ownership model (with a central unit located in the Ministry of Finance), but would benefit greatly from the creation of an independent agency that would be in charge of implementation of corporate governance principles, monitoring economic performance and achievement of goals, analyzing and publicizing annual reports, and ensuring the transparency of activities and public accountability. The agency would be an independent body, with its own budget, working under the authority of the Romanian government or Parliament. This oversight body would thus minimize political interference, create greater coherence in applying corporate governance standards and achieve greater responsibility and accountability.

Conclusion

This report has focused on the interrelationship between integrity and effectiveness in public governance. As evidence from both practice and various international studies shows, poor governance makes room for corruption, while corruption reinforces poor governance. In Romania, the apparent success of the fight against corruption has the potential to make the country a role model for its regional peers.

The five policy domains of focus in the governance area for the medium and long term proposed in this document, together with continuation of efforts to deter corruption, draw attention not only to existing vulnerabilities. They show the main elements of a governance strategy that would help Romania move beyond the transitional phase, when considerable foreign assistance and oversight was needed to keep the country's leaders in check. In the regional and geopolitical context, effectively implementing Romania's governance agenda can no longer be an aspiration. Its citizens need to reap the benefits of 25 years of transition and efforts to consolidate a democratic, well-governed and prosperous state.

In 2011, Romania and the United States signed the Joint Declaration on Strategic Partnership for the 21st Century, which became a central vector in Romania's foreign policy, particularly after the country completed the major projects of NATO and EU accession.⁴¹ One of the areas of "strengthened cooperation" is that of democracy, rule of law, human rights and good governance, mostly as far as cooperation in exporting these values to countries of the Eastern Partnership is concerned. This is the stage that Romania is now poised to enter as a mature member of the NATO and EU communities.

Summary of policy recommendations

1. Deter corruption by:

Keeping good institutions at work

- Increasing the transparency of parliamentary procedures, public participation and effective consultations on legislative changes that would result in slowing down or diminishing the effectiveness and independence of anti-corruption investigations.
- Mainstreaming integrity in public management practices; this needs to remain a focus of the government through continuous implementation and evaluation of the effectiveness of the National Anti-corruption Strategy.

Making corruption unprofitable

- Ensuring proper implementation of pertinent legislation, including the new draft law on asset recovery, and creating streamlined procedures that allow various authorities to cooperate across all the steps of recovery, from identification to valuation and confiscation or restitution.
- Creating a compendium of good practices from existing court decisions and their corresponding administrative steps to document various aspects of asset recovery, their timing during civil or criminal proceedings and their impact.

2. Enact public office reform by:

- Strategically approaching public office reform by standardizing processes of recruiting, training and compensating human resources in the public sector, in correlation with the Strategy for the Consolidation of Public Administration 2014-2020 and plans for reorganizing territorial-administrative units.
- Creating a strategy for addressing capacity and resource (budgetary and personnel) problems in small territorial-administrative units in order to eliminate inefficiencies and increase public management performance.

3. Build a predictable and sound regulatory framework by:

- Increasing the quality – usefulness, efficiency, effectiveness – of laws and regulations by utilizing more evidence-based decision-making and impact assessments. This will introduce more rationality in decision-making and greater legal compliance and trust within society.
- Ensuring proper consultation, participation and transparency by engaging both stakeholders and public bodies that can anticipate and address problems as well as exercise accountability. In particular, parliamentary committees should avail themselves of this option to better inform and ground the lawmaking processes.

4. Improve public contracting and procurement by:

- Increasing efficiency and accountability by simplifying and clarifying procedures and increasing transparency in all stages of the procurement process. The first step is to streamline e-procurement systems (including e-invoicing and publication of all contracts and reports) and increase inter-institutional cooperation.
- Improving certainty at the level of administrative procedures by introducing clear, non-discriminatory criteria for dealing with private companies and by empowering public servants to give guidance/make decisions that are binding or that can be challenged in administrative procedures. Similarly, public actors in the procurement market need to apply uniform practices.
- Increasing the capacity and professionalism of personnel involved in evaluation, implementation and monitoring of procurement processes and contracts through better selection criteria, better training and improved integrity standards.
- Introducing centralized procurement for staple goods and services for groupings of smaller administrative-territorial units in order to eliminate possible conflicts of interest and make processes more efficient and uniform.

5. Improve the quality of governance through better oversight by:

- ① Strengthening the role, independence and capacity of oversight bodies in order to promote integrity and efficiency in delivering public service and to improve policy-learning.
- ② Creating a supervisory body to ensure the effective implementation of corporate governance principles and legal provisions in SOEs; establish performance indicators and criteria for the selection of board members; and monitor these enterprises' financial reports, their management plans and their performance.
- ③ Enforcing cooperation protocols between various institutions and authorities in order to flag problems across a wider spectrum of policy domains and better address both administrative and criminal law issues. Capacity-building funds should be used to create a common curriculum for various agencies for cross-cutting themes, such as competition, public procurement, performance management and regulatory impact assessment methodologies.

Endnotes

1. Integrity is understood as the opposite of corruption. It is widely used in literature to denote fairness or impartiality in the work of government institutions, as well as a tool to conceptualize corruption prevention mechanisms. Transparency International, for instance, regularly assesses "national integrity systems" (<https://www.transparency.org/whatwedo/nis>), while Global Integrity issues integrity reports (<https://www.globalintegrity.org/global/report-2011/>).
2. Governance is broadly defined as the institutions and processes by which authority is exercised in a country (<http://info.worldbank.org/governance/wgi/index.aspx#faq>). A frequently used term is "good governance," which is an umbrella term for many different concepts, from citizen participation in decision-making and transparency, to rule of law and accountability.
3. One interesting example comes from the World Justice Project. Among all indicators of the World Justice Project Index, the lowest scores are given to categories like corruption, open government and enforcement of regulations. <http://data.worldjusticeproject.org/#/groups/ROM>
4. The direct relationship between citizens' satisfaction with democracies and the functioning of the national system of governance has also been proven quantitatively. A study by Dahlberg and Holmberg from 2013 showed that the better the quality of governance – understood as impartial, professional, effective and based on the rule of law – the more citizens appreciate how their democracy is working. Stefan Dahlberg and Sören Holmberg, "Democracy and Bureaucracy: How their Quality Matters for Popular Satisfaction," *West European Politics* 37, No. 3 (2014), pp. 515-537. <http://dx.doi.org/10.1080/01402382.2013.830468>
5. See the survey by the opinion research institute INSCOP, September 2015. <http://www.inscop.ro/wp-content/uploads/2015/09/INSCOP-09.2015-%C3%8ENCREDERE-INSTITU%C8%9All.pdf>
6. Also, 110 magistrates have been indicted, out of which 56 have already been convicted. See the speech by Laura Codruta Kovesi, head prosecutor of the National Anticorruption Directorate, at the European Parliament hearing, April 14, 2015. <http://www.pna.ro/comunicat.xhtml?id=6205>
7. Dev Kar and Brian LeBlanc, "Illicit Financial Flows from Developing Countries: 2002-2011," December 2013. http://iff.gfintegrity.org/iff2013/Illicit_Financial_Flows_from_Developing_Countries_2002-2011-LowRes.pdf
8. See ANAF press release of April 8, 2015 regarding their activity and enforcement of court orders for confiscations in 2014.
9. The data were provided by the DNA.
10. European Commission Staff Working Paper, "Impact Assessment [on the freezing and confiscation of proceeds of crime in the European Union]," 2012, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/1_en_impact_assesment_part1_v4_en.pdf#zoom=100

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11. See OECD, <http://www.oecd.org/dac/governance-peace/governance/docs/Hard%20Facts%20Stolen%20Asset%20Recovery.pdf>. The report covers only OECD member states and the issues of trans-border financial flows.

12. This vulnerability was also recently noted in a white paper on competitiveness published by the French Chamber of Commerce and Industry in Bucharest. http://media.hotnews.ro/media_server1/document-2015-05-7-20086134-0-carte-a-alba-competitivitatii.pdf

13. See Carl Dahlström, Victor Lapuente and Jan Teorell, "The Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption," *Political Research Quarterly* 65, No. 3 (September 2012), pp. 656-668. http://www.jstor.org/stable/41635262?seq=1#page_scan_tab_contents. The authors also talk about a "separation of interests mechanism" that should seek to introduce different and separate lines of accountability so as to diminish the opportunity for collusion between politicians and bureaucrats.

14. For example, in small communities with very limited personnel in local administration, constituting public procurement commissions without breaching conflict of interest norms is almost impossible.

15. The 2014 Bertelsmann Stiftung Transformation Index notes that the dynamic between central and local government is characterized by attempts by the central government to prevent more policy flexibility at the local level, on the one hand, and by clientelistic and wasteful decisions at the local level, on the other hand. <http://www.bti-project.org/reports/country-reports/ecse/rou/index.nc>

16. In terms of integrity, a recent study shows that of the persons convicted for corruption, 23.8 percent were employed in local public administration and 19.4 percent in central administration; 37.1 percent came from the public sector. http://media.hotnews.ro/media_server1/document-2015-04-20-19969676-0-studiul-experiente-directe-fenomenul-coruptiei-ale-persoanelor-condamnate.pdf

17. World Bank Institute, "Worldwide governance indicators." <http://info.worldbank.org/governance/wgi/index.aspx>

18. According to a study of 500 Romanian businesses commissioned by the Romanian Chamber of Commerce and Industry, March 2015. <http://ccir.ro/2015/04/21/ccir-launched-the-study-about-the-business-environments-perception-regarding-the-economy/>

19. A recent McKinsey analysis identifies regulation, together with incentives and information (in particular big data management) as a key factor in ensuring government efficiency and effectiveness in producing socially desirable outcomes. McKinsey & Company, "How do you govern a disrupted world?" May 2015. http://www.mckinsey.com/insights/strategy/how_do_you_govern_a_disrupted_world?cid=other-eml-alt-mgi-mck-oth-1505

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20. Law no. 52/2003 for transparency in decision-making requires a 30-day notice for any new legislative proposal and "at least 10 days" for any interested party to submit suggestions or opinions before the proposal is voted into law.
21. The council's main recommendations were to pay special attention to state-owned enterprises and to extend the "public investments' delivery unit" model to other sectors (such as infrastructure) besides the initial four (fiscal management, public procurement, energy and jobs for youth). http://cursdeguvernare.ro/wp-content/uploads/2014/12/FIC_PIM-event-dec-2014.pdf
22. <http://gov.ro/en/government/cabinet-meeting/implementation-of-measures-of-good-governance-in-the-economy>
23. See Pew-MacArthur Result First Initiative, "Evidence-Based Policymaking. A Guide for Effective Government," November 2014. Also, for the U.S. context see Jeffrey B. Libman, "Building on Recent Advances in Evidence-Based Policymaking," Brookings Institution, April 2013.
24. The European Commission also notes the persistent weaknesses in public administration in Romania, in particular when it comes to implementing concrete measures to improve the regulatory framework to the benefit of economic actors and citizens. http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_romania_en.pdf
25. For instance, a recent report of the European Anti-fraud Office (OLAF) shows that Romania is the number one country in the EU in terms of how many investigations into the use of EU funds were conducted in 2014 (more than Hungary, Bulgaria and the Czech Republic combined). http://ec.europa.eu/anti_fraud/documents/reports-olaf/2014/olaf_report_2014_en.pdf
26. A similar assessment was made by the European Commission in the January 2015 technical report accompanying the Commission's report to the European Parliament and Council on progress in Romania under the Cooperation and Verification Mechanism. http://ec.europa.eu/cvm/docs/swd_2015_8_en.pdf
27. Madalina Doroftei and Valentina Dimulescu, "Romanian public procurement in the construction sector. Corruption risks and particularistic links", in Alina Mungiu Pippidi, ed., "Country policy reports on institutions in public procurement for the infrastructure sector," ANTICORRP – Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption, EU Grant agreement number 290529, June 2015, p. 49. <http://anticorpp.eu/wp-content/uploads/2015/06/D8.1.5-Romania.pdf>
28. In this sense, only 1 out of 7 EU-financed contracts, whereas 1 out of 4 nationally funded contracts were won via single bidding (a corruption risk indicator). Furthermore, the number of contracts won can be statistically explained in 44 percent of the cases via single bidding and the existence of a political connection. *Ibid*, p. 50.

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29. In 2014 alone, the CNSC registered 3,753 petitions, 65.52 percent of which had to do with the result of the award procedure, while the rest involved the documents for participating in the award procedure.
30. Doroftei and Dimulescu, "Romanian public procurement in the construction sector," p. 50.
31. Law 215/2001 regarding public administration was modified in early 2014 to allow mayors and county council presidents to delegate their attributions to various people in the organizations they are leading (not just their deputies) or to the heads of institutions that provide public services at local level.
32. In an analysis of the public procurement system from 2013, the Institute for Public Policies (IPP) found that in 2012 bidding taking place through SEAP accounted for 15 billion euro, while that outside of SEAP was around 5 to 10 billion. Of all contracts, 97 percent were attributed according to the "smallest price" principle. <http://www.ipp.ro/wp-content/uploads/2014/07/ipp-studiu-sustenabilitate-achizi355i1.pdf>
33. http://www.ustda.gov/news/pressreleases/2015/MENAEERomania/PR-USTDA-Expands-Global-Procurement-Initiative-to-Romania_061715/Press-Release-USTDA-Expands-Global-Procurement-Initiative-to-Romania_061715.asp
34. The same IPP study shows that 84 percent of people surveyed believe that public funds (including EU funds) are spent inefficiently, and that 88 percent believe that contracts are not won through fair proceedings.
35. "The RCC can be seen as an example of a Romanian public organization which is striving, within the constraints of an unduly rigid and outmoded general public administration, to improve its performance, focus on results, pilot various administrative initiatives, increase the value provided to taxpayers, and in general run its affairs in line with modern management principles." <https://openknowledge.worldbank.org/bitstream/handle/10986/12281/NonAsciiFileName0.pdf?sequence=1>
36. See Government Emergency Ordinance 31/2015. <http://www.universuljuridic.ro/oug-31-2015-pentru-modificarea-legii-concurentei-nr-21-1996-si-pentru-completarea-art-1-din-oug-83-2014-privind-salarizarea-personalului-platit-din-fonduri-publice-in-anul-2015/>

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37. The RCC was the beneficiary of a World Bank program targeting the institution's core functions – from the legal and policy framework to improving the daily operations and performance of the RCC. The program was also aimed at integrating competition principles into Romania's public administration (whole-of-government approach). The report outlining the program and its results is forthcoming (World Bank, "Transforming Romania's Competition Architecture to Make Markets Work," 2015.) and could be a source of inspiration for a similar effort regarding the Court of Accounts.

38. For example, bid-rigging cases involve actions from ANRMAR (National Authority for Public Procurement Regulation and Monitoring), the RCC and the Prosecutor's Office, so a system of flags should exist between them in order to deter and fight bid rigging. Most cases are also linked to corruption, and reciprocity should exist between prosecutors and the RCC. (Many prosecutors find out about competition problems while investigating economic and corruption crimes, but do not inform the RCC – and vice versa). In any case, this should not happen ad hoc but on the basis of established rules and protocols.

39. See Country Focus http://ec.europa.eu/economy_finance/publications/country_focus/

40. See World Bank Group, Corporate Governance for State-Owned Enterprises: A Toolkit, 2014. <https://openknowledge.worldbank.org/bitstream/handle/10986/20390/9781464802225.pdf?sequence=1>. See also OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2005. <http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf>

41. <http://www.state.gov/p/eur/rls/or/172241.htm>

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