

## MINIMAL MANDATORY STANDARDS FOR THE GOOD GOVERNANCE

### *Measures to enhance the public integrity and to fight against corruption ~Engagements of the Executive Authority in drawing up the Governing Programme~*

#### **Major fields of intervention:**

On the basis of both the anticorruption measures promoted by the Executive during 2009, and the political parties' electoral offers analysis, as well as on the basis of the comprehensive monitoring reports of the European Commission and of the diagnostic reports of the World Bank, GRECO, Transparency International Romania, we propose a minimal set of urgent measures in the fields of justice, public administration, public procurement, decisional transparency, and institutional capacity of the anticorruption agencies.

### 1. JUSTICE, LAW and JURISPRUDENCE

#### **1§1 The unification of the judiciary practice**

The set up of the legal framework for the unification of the judiciary practice assigned to the High Court of Cassation and Justice, through *Guidelines* and *Jurisprudence Decisions* with regard to the interpretation and the application of the legal framework, so as to establish and enforce the unitary judiciary practice in all courts and prosecutorial offices by the end of 2011. The legal provision of the annulment claim for the infringement of the unitary practice established by the High Court of Cassation and Justice which shall enter into force on 1<sup>st</sup> January 2012. The legal framework will also provide for the issuing of the guidance decisions in agreement with the decisions of the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg.

#### **1§2 The strengthening of the disciplinary jurisdictions within the judiciary system**

The enhancement of the legal framework regarding accountability of the Superior Council of Magistracy in the area of the magistrates' disciplinary sanctioning and the design of the balance mechanisms and the mechanisms for the elimination of the procedural monopoly. The adoption of minimal standards for the motivation of the solutions reached by the Council to the petitions of individuals or other interested parties, and the assurance of the publicity of the disciplinary decisions.

#### **1§3 Codification and legislative systemising**

The codification in all areas by 2012 through drafts of codes designed by the Government through consultations with the High Court of Cassation and Justice, the Legislative Council, the Social and Economic Council and the Ombudsman. The codifying will consider the areas where the same legal institutions are provided for (pensions, companies, civil society and citizens' participation, public administration, etc.), and the systemisation shall be done by the Ministry of Justice in collaboration with the Official Monitor and the Legislative Council through legal compendia covering common areas of the legal branches.

#### **1§4 Improving the quality of the act of justice**

The design and enforcement, by the Ministry of Justice in collaboration with the Superior Council of Magistracy, of the mechanisms to reduce the procedural incidents and with to solve the cases based on a substance judgment, as well as of the managerial standards to enhance the capacity of the parties involved in the judiciary to contribute to the celerity and efficacy of the acts of justice.

**1§5 Enhancing the transparency of the acts of justice**

The adoption of the Methodology regarding the standards for the motivation of the court decisions in order to ensure their quality and clarity, as well as to enhance the educational role of the court decisions and to display the relevance or irrelevance of the evidence considered by the court during the deliberations on the case.

**1§6 The increase of responsibilities for judiciary experts**

The establishment of the concrete legal framework for torts and delicts or criminal liability of judiciary experts for professional errors. The increase of the number of certifications for judiciary experts based on the needs analysis elaborated by the Government in 2009 and the actual increase of the number of experts certificated until the end of the year 2010.

**1§7 The increase of transparency and public responsibilities of the Superior Council of Magistracy**

Adopting and implementing transparency standards and publicising the activity of the Superior Council by the end of 2010. Permanent publicising of all the work documents of the SCM before the adopting of decisions, as well as the full publication of the decisions and resolutions adopted in the plenum of the Council, along with their motivation. Establishing the mechanism of partial renewal of the structure of the Council with one third every two years starting with the year following the electoral cycle, as well as the renewal of mechanisms of individual revoking of the members and the widening of the basis of representation of civil society within the frame of the Council by increasing the number of representatives to a third of the total number of members.

**1§8 Extending the eligibility and the service range in legal aid cases**

The introduction of legal aid level 1 (pre-litigation) and the set up of a reasonable and competitive system for the payment of the legal aid services. The set up of the institutional management framework through the setting up of the Legal Aid National Council related to the Ministry of Justice, and of the territorial legal aid centres.

**1§9 The set up pf the Public Centre for Resources at judiciary level**

The set up of the National Institute for Justice Policies, autonomous and related to the Ministry of Justice, for the research, documentation, analysis and underlying of the public policies in the justice field and connected areas with a specialised approach for the public and private law, and the management of justice. The measure shall be adopted in 2010 and included in the 2011 state budget.

## **2. PUBLIC ADMINISTRATION**

**2§1 The standardisation of the administrative procedures within the central public administration and the unification of the organisational structures**

Adopting, in the first half of the year 2010, the Administrative Code, which will include, among others, norms regarding the symmetrical organisation of the administrative structures, ensuring thus the uniformity and the identity of the administrative structures and substructures on the same level (local administration, central administration, autonomous authorities or representative structures for the regional level). In 2010, the

Administrative Procedural Code will be adopted, through which the administration will be less bureaucratic and the discretionary power will be eliminated from the decisional process through the standardization and unification of the administrative procedures and the establishment of the criteria for ensuring the predictability of the administrative act.

**2§2 The introduction of the periodical mechanism for evaluating all the public policies' impact**

Adopting and implementing, through Public Policies Unit of the General Secretariat of the Government, a system of indicators for analysing the public policies in order to monitor and evaluate their impact upon the performance of the public administration on a local and a central level, having as a deadline the year 2010. The impact studies will be carried on by independent evaluators based upon a public procurement procedure organized by the Public Policies Unit.

**2§3 The introduction of an unitary system for the management of quality within the structures of the local and central administration**

In order to increase the efficiency of the public administration at a central and local level, during 2010, the standards for the management of quality within the public administration will be elaborated. Starting with 2010, all the authorities and all the public institutions will implement the management of quality in order to obtain the certification. In this sense, it will be organized and will be functional a Unity for Standards within the General Secretariat of the Government with a role in conferring the logistical, the monitoring, and the centralisation support for implementing the management of quality.

**2§4 The annual evaluation of the corruption vulnerabilities of the authorities and of the public institutions**

Adapting in 2010 and implementing in 2011 the European good practices regarding a) the preventive investigation of the vulnerable areas within the public institutions, b) the examination of the internal capacity of combating the structural/managerial deficiencies that favour the corrupted decisions' emergence, and c) the reform of the internal structures, of the working procedures, and of the human resources selection, with the goal of strengthening the capacity of the public institutions to resist corruption. The results of the annual evaluations will be considered for gradually adjusting the systems for the management of quality, the evaluating criteria for the public policies' impact, and, accordingly, the administrative and organisational procedures and structures.

**2§5 Increasing the independence of the internal public auditors**

The transformation of the Central Unit for the Harmonization of the Internal Public Audit in an autonomous authority invested with attributions of administering the careers of the internal public auditors constituted in the Table of the Internal Public Auditors, by the year 2011, and the establishment of The Audit Committees for the authorities and institutions of the central and local public administration with the scope of increasing the independence and objectivity of the internal public auditors. The establishment, starting with 2011, of the mechanism of assigning randomly by turn the internal public auditors every three years.

### **3. PUBLIC PROCUREMENT**

**3§1 The adoption of the integrity pacts by all contracting authorities**

The adoption of the legal provisions with regard to the integrity pacts standards in the public procurement process and public private partnerships, as pacts adopted by the contracting authorities, tenderers and the third party (the social witness), followed by the implementation and constant

assessment of the way the integrity pacts are abided by, in accordance with the methodology used internationally. The secondary regulations for public procurement shall be adopted by the government within the first semester of 2010.

### **3§2 The introduction of bonus mechanisms for the tenderers who adopted the business ethics and integrity principles**

In order to support the tenderers who adopt and implement the business integrity standards, incentive based mechanisms shall be introduced by amending the current legislation regarding public procurement, so as to motivate other potential bidders and to ensure the public integrity in this sector. Establishing the bonus quota within the technical offer score for the tenderers who are certified with regards to the integrity standards.

### **3§3 The payment of the procured goods and services based on the independent certification of the fulfilment of the contractual obligations**

By the end of 2010, the independent certification for the payment of the procured goods and services will be introduced. Independent auditors shall be selected in accordance with the technical specifications within the terms of reference in the tender dossier, through public procurement procedures. Following the certification, and based on the report provided by the independent auditor, the payment of the services and goods provided through public procurement will be done. The independent auditor shall be selected through competitive mechanisms, and the average fee for such will be of 1%, and no more than 5% of the contract.

## **4. INCREASING TRANSPARENCY WITHIN THE DECISION MAKING PROCESS**

### **4§1. Increasing the standard of motivating the administrative decision**

The establishment of the requirement to introduce the motivation of ex-ante administrative decision starting with 2010, after the adoption of the Administrative Procedural Code. With regard to routine administrative operations, a set of criteria and standard motivations will be settled, while for specific activities, a series of methodological regulations will provide for the commitment to individually motivate administrative decisions. The internal public audit will verify whether the regulations on motivation and rationale of the opportunity criteria with regard to decisions that had been adopted by public administration or subordinated institutions are respected or not. The condition that provides for the motivation of the administrative acts or decisions adopted by the public administration stands for a validity condition.

### **4§2. Reducing the use of emergency decision-making mechanism**

The establishment of implementation criteria for the emergency decision-making mechanism, starting the investment term with the purpose of reducing the use of such measures and ensure a planned decisional process. The respective criteria will be decided by the Government with the consultation of the Ombudsman and the Legislative Council and will be adopted by means of decision of the Government in the first 6 months from the investment terms.

### **4§3 The establishment of social pacts at the level of all ministries and governmental agencies as a permanent consultative mechanism**

The adoption and implementation by the end of 2010 of a set of measures to regulate the constitution of permanent consultative mechanisms – social pacts – with the consultation of main interested factors in drawing public policy and administration of public affairs specific to each ministerial domain. The creation of such committees will be realized by means of ministerial order. The objectives of the Permanent Consultation Councils are: a). improve transparency within the decision-making process and b). the efficiency and efficacy during the implementation of governing programme.

### **4§4 The identification and evaluation of the risk and vulnerabilities to corruption in the process of elaborating normative acts**

With a view to ensure the commitment to prevention and fight against corruption engagements, the Government will establish and adopt during the first three months from the investiture, the methodology for identifying and evaluating the risks with regard to corruption during the elaboration of administrative acts as a compulsory stage before normative acts being notified. The notice from the Prim Minister has a conformity value.

## **5. STRENGTHENING THE INSTITUTIONAL CAPACITY OF THE ANTICORRUPTION AGENCIES**

### **5§1 The National Anticorruption Agency**

In order to consolidate the institutional capacity of the National Anticorruption Agency, it will be established the necessary framework for bringing into being an integrated database to be including all the data categories found in the administration of the public institutions (revenue office, population's keeping, chambers of labour, the registry of commerce, NAPS). In this sense, the necessary legislative and budgetary measures will be adopted. The integrated database will be operational starting with the second half of 2010.

### **5§2 The National Anticorruption Directorate**

The National Anticorruption Directorate will establish a set of individualising the offence and the offender, adequate in order to establish the penalty request in front of the court and to increase the celerity in investigating the high level corruption cases. Strengthening the sanctioning mechanism will be accompanied in 2010 by the centralisation of the instrumented cases and by an internal policy for informing and advertising the manner to instrument and judge the corruption cases, in order to enhance the efficacy and the objectivity of the measures in this sense. The Ministry of Justice, in collaboration with the Chief Prosecutor of the National Anticorruption Directorate, will elaborate the strategy for setting the priorities and the objective criteria for establishing the criminal policy of the state in the field of fighting against corruption, until the half of the year 2010.

### **5§3 The General Anticorruption Directorate**

Turning the *Strategic committee for the support and evaluation of the General Anticorruption Directorate* (consultative organism with attributions in monitoring, analysing, and evaluating, composed by representatives of the Ministry of Internal Affairs and Administrative Reform and of the civil society) into an operational one, in order to provide a just and objective evaluation of the General Anticorruption Directorate's activity, accordingly to maintain the Observatory subcommittee, as a monitoring instrument at the Strategic Committee's hand. Expanding the General Anticorruption Directorate's competences upon the internal affairs and the public administration areas, by completing the material competence and by supplementing the necessary resources.

### **5§4 The Court of Accounts**

Improving its public relations policy and the active promotion of the partnership with the civil society's organizations and with the press.

***For the measures schematically presented above, Transparency International Romania expresses its availability to offer free technical assistance in developing all the necessary public policies, by involving international stakeholders.***