



**TRANSPARENCY  
INTERNATIONAL  
ROMANIA**

**ASOCIATIA  
ROMANA PENTRU  
TRANSPARENTA**

# **Transparency of Decision-Making in Public Administration**

- citizens and administration guide -

Authors: Laura Stefan & Ion Georgescu  
Project coordinator: Oana Zabava



This guide was edited within the project "Governmental Transparency of the Regulatory-Making Process". The project was funded by the Organization for Economic Cooperation and Development, through the Stability Pact Anti-corruption Initiative. Transparency International Romania implemented the project in partnership with IRIS Center Romania and Media Monitoring Agency—AcademiaCatavencu.

The content of this guide does not necessarily represent the official position of either OECD or SPAI. The full responsibility for the content of this guide lies solely with Transparency International Romania.



Laura Stefan is a Bachelor of Legal Letters from Bucharest University; legal adviser for IRIS Center for Institutional Reform and the Informal Sector—Romania.

Ion Georgescu is a Bachelor of Legal Letters from Bucharest University; expert with Transparency International—Romania.

Oana Zabava is a Bachelor of Political Science from Bucharest University; Executive Director of Transparency International—Romania.

Special thanks to

Ms Adelina Vestemean, IRIS Center Romania, and Mr Mircea Toma, Media Monitoring Agency, for their assistance, support and guidance throughout the implementation of this project;

Mr Dan Jurcan, Ministry of Public Information, for the openness indicated with initiating the Transparency Bill, promoting and supporting its provisions through promulgation and enforcement;

Mr Seres Denes, Senatorial Committee for Public Administration and Territorial Management, for supporting the Transparency Bill and the amendments presented from the civil society;

Public institutions and non-governmental organizations that contributed to drafting amendments for improving the Transparency Bill—Zalau City Hall, Cluj-Napoca City Hall, Resita City Hall, Dorohoi City Hall, Association for Defending Human Rights in Romania—Helsinki Committee, Association Pro Democracy, Foundation Civic Action, Association of Romanian Municipalities, Federation of Local Authorities in Romania, Association of Romanian Cities;

Mr Dragos Seulean, Romanian Radio Broadcasting Society, for devising and broadcasting the public utility announcement "Absents are always wrong!";

Mr Dan Petrescu, World Bank Mission to Romania, for suggesting the sociological research component of this project;

Ms Oana Tiganescu, Civil Society Development Foundation, for undertaking the sociological research component of this project (see Chapter V of this guide);

Mr Laurian Tanasescu, eRomania Gateway Association, for support in promoting and disseminating the research component, as well as for hosting the electronic research tools;

Mr Dan Perjovschi, "22" weekly, for the graphic illustration of this guide;

Mr Petre Luta, for assistance in pre-testing the impact of this guide on the ordinary citizen.

We wish to thank all those who helped us in achieving the objectives of this project (in alphabetical order):

Alin Alecu, Adrian Baboi-Stroe, Emil Boc, Cristina Bortun, Christina Costa, Radu Dumitrescu, Alina Dumitrescu, Paul Enigarescu, Liana Ganea, Oana Ganea, Valentin Guguianu, Mihaela Helmis, Heidegert Hoesch, Olga Huiban, Doina Lazar, Dan Mihai, Narcisa Muraru, Mona Musca, Mariana Neacsu, Diana Neata, Anca Paduraru, Maria Petre, Diana-Cristina Sejdini, Adrian Sorescu, Manuela Stefanescu, Oana Tudor, Florin Vasiliu, Codru Vrabie, Allen Welsh, Teodora Zabava, Helga Zichner.

We also wish to thank the participants in the launching event at the Group for Social Dialogue on October 20, the organizations that responded to our questionnaire concerning NGO experience with public participation in decision-making during January 27—February 17, and the participants in the event at the Goethe Institut on February 27, when this guide has been launched, marking the finalization of this project.

English translation provided by the authors.

Printed at AFIR Publishing, Ltd. Bucharest

Editing: Antoaneta Costache

Circulation : 600 copies

Bucharest, February 2003

Contacts:

Asociatia Romana pt. Transparenta  
Transparency International Romania  
Blvd. Eroii Sanitari nr. 15, apt. 2  
cod 762451, Sector 5, Bucuresti  
tel/fax: +4(021) 411-5500  
office@transparency.org.ro  
www.transparency.org.ro

IRIS Center  
Romania  
Str. Londra nr. 25, etaj 1  
sector 1, Bucuresti  
tel/fax: +4(021) 231-3293  
office@iriscenter.ro  
www.iriscenter.ro

Agentia de Monitorizare a Presei  
Str. Ion Campineanu nr. 20A  
Bl. 18A, sc. A, etaj 2, apt. 8  
sector 1, Bucuresti  
tel/fax: +4(021) 315-2313  
office@mma.ro  
www.mma.ro

© Copyright

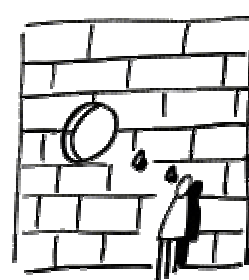
All rights reserved to Transparency International—Romania (TI-Romania).

This publication, or parts thereof, may be reproduced only with the prior consent of TI-Romania.

**CONTENTS**

|   |           |
|---|-----------|
| <b>I. Introduction</b>  | <b>5</b>  |
| <b>II. Presentation of the Transparency Law</b>   | <b>7</b>  |
| <b>III. Recommendations for Public Administration Bodies</b>                                    | <b>13</b> |
| <b>IV. Recommendations for Citizens and NGOs</b>  | <b>20</b> |
| <b>v. NGO Experience, Availability and Potential to Implement the Transparency Law</b>          | <b>32</b> |
| <b>APPENDIX. Law 52/2003 regarding transparency of decision-making in public administration</b> | <b>43</b> |





## I. Introduction

### Why is Transparency Important?

The executive creates the outstanding majority of the Romanian norms and regulations currently in force. Besides norms issued directly through ordinances and emergency ordinances, the Government initiates, and ministries or other institutions of the public administration elaborate, most of the laws adopted in Parliament. In order to apply laws and ordinances, the Government, the ministries, other state institutions at either central or local level ceaselessly issue a large number of normative acts.<sup>1</sup> This whole body of legislative pieces appears and gets frequently modified without involving all interested parties, regardless of whether they are interested in the upcoming enforcement of the norms or their activities fall under the respective legal provisions.

Lack of decisional transparency, coupled with other deficiencies of the regulatory-making process, weakens trust in the force and importance of normative acts. Lack of consultation causes frequent modification or substitution of norms. In other words, increased legal instability fails to ensure the necessary security and/or predictability of the Romanian legal framework. Substantial implementation of the transparency principle would reinforce trust in laws and regulations, since they would be debated with the interested parties (stakeholders). Trust in the legal framework will effect a higher degree of compliance with rule-of-law, and would impact positively on the economic development and the maintenance of cooperative relations between governmental bodies and civil society.

### European Perspectives on Transparency in Romania

The Regular Report on Romania's Progress towards Accession, published by the European Commission on October 9, 2002 acknowledges improvements in the consultative processes launched by public authorities during the previous year, but finds them still inadequate. In spite of the dialogue between Government and business community representatives being launched with respect to horizontal measures aimed at improving the business environment, only a limited progress is recorded, as yet, in tackling specific regulations. The Report refers to negotiations with trade unions, as being a good precedent, while pointing out the quasi-absence of owners' representatives from negotiations. As consultations with non-governmental organizations goes, the case of the Free Access to Information Law (544/2001) is referred as a success, together with other consultations concerning regulations on national minorities and child protection. The report notes however that these are only exceptions and the general rule is rather not to involve civil society in decision-making.

### The Process of Regulating Transparency

In November 2000 IRIS Center Romania launched the project "Transparency in the activity of public administration", proposing that "sunshine law" principles be introduced to the regulatory-making process. The project addressed both central and local public administration and tackled both administrative normative acts and administrative individual acts.

Presented to central administration, the subsequent draft Bill stipulated, with respect to normative administrative acts, the establishment of certain procedures to ensure public participation in the process of their adoption. Thus, public administration should have assumed the tasks of publishing the normative acts prior to their adoption, of receiving written comments and/or suggestions for modification, and of organizing public hearings upon request. The draft Bill also proposed to enlarge the existing right of legislative initiative and provided for procedures that would have admitted cost-benefit analyses of the proposed regulations.

<sup>1</sup> During 2001, for instance, the Romanian Parliament adopted 796 laws, while the Government adopted 88 ordinances and 195 emergency ordinances. Also during 2001 were adopted 1366 Government Decisions, whereof 1320 published in the Official Gazette. Ministries and other institutions of central public administration adopted 729 Orders that were also published in the Official Gazette. These data were obtained through a query on the legislative database of LEGE4.

At central level IRIS Center Romania organized numerous meetings and workshops with the participation of public institutions, business sector and NGO representatives, in order to obtain pertinent comments on the draft Bill. IRIS consultations involved: the Ministry of Public Information, the Ministry of Development and Prognosis, the Ministry of Foreign Affairs, the Ministry of Public Administration, the Ministry of Small and Medium-sized Enterprises and of Cooperation, and the Ministry of Tourism.

In December 2001 IRIS Center began consultations with the Ministry of Public Information regarding the elaboration of a Bill on transparency of decision-making in public administration. Following consultations, the Ministry of Public Information started to draft its own Bill regarding public participation in the elaboration of administrative normative acts and ensuring openness of meetings organized by public authorities. MIP publicized the Bill on the occasion of a press conference organized on April 16, 2002. On April 22, MIP and IRIS Center organized a public debate on the governmental Bill. The debate hosted representatives of political parties, NGOs, and the business sector, as well as some public institutions.

In addition to the amendments initiated during the debates, IRIS Center Romania and Transparency International Romania transmitted a series of suggestions for improving the governmental Bill. Furthermore, IRIS Center and Transparency International lobbied in support of those amendments throughout the legislative procedure, in both Chambers of the Romanian Parliament. Many of the proposed amendments<sup>2</sup> were the result of a series of consultations with civil society and local public administration.

### **Current Involvement Civil Society in Decision-Making**

In October 2002 Transparency International Romania, in partnership with IRIS Center Romania and Media Monitoring Agency "Academia Catavencu", completed a preliminary study concerning the practice of consultations between public administration and civil society, prior to transparency of decision-making being regulated.<sup>3</sup> The preliminary conclusions revealed the following problems concerning civil society participation in consultation processes:

- There is no coherent or consistent approach on behalf of the administration with respect to consulting and involving civil society in the decision-making process, regardless of whether the adoption of normative acts is at stake;
- Although cooperation between public institutions and non-governmental organizations represented a success in some instances, the rule is lack of transparency;
- Institutions which prefer opacity justify their stance through restrictive or abusive legal interpretations, that reflect the secrecy culture of Romanian public administration;
- Non-governmental participation in decision-making processes was the result of the NGOs' initiative. Such initiatives were successful only with few public institutions, whose openness was due to certain individuals in the top management;
- Dialogue between authorities and civil society is accepted in principle, rather than called for in concrete decisions;
- Consultation techniques are at their beginning; hence, hesitation is characteristic, even if already been practiced. State institutions seem more interested in such techniques as an end, rather than the means. Practical aspects that ensure their success are not taken into consideration, and contributions from the process are ignored when establishing the final version of the act.

### **The Purpose of this Guide**

Whether you are a public servant, elected official, NGO activist or regular citizen, the guide will introduce you to what *transparency of decision-making* is, and to how it should be implemented in the context of Romanian public administration. If you are citizen or NGO activist, the guide will get you prepared to influence, according to your own concerns, views and/or interests, the policies and decisions made at central and local administrations. If you are a public servant or elected official, the guide will assist you in organizing the institutional and procedural framework about you, in order to encourage, and benefit from, the contributions of civil society in your decision-making.

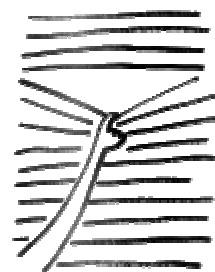
### **The Contents of this Guide**

The legal reading of the Transparency Law provides a detailed explanation of the legal provisions contained in the text. The section dedicated to public administration consists of a set of recommendations addressed to those concerned with the implementation of the Transparency Law. The section dedicated to citizens explains in a friendly and accessible manner when, how and why a citizen or NGO should participate in decision-making. The sociological research with respect to NGO capacity and potential for participation in decision-making emphasizes the civil society's weaknesses and strengths upon which one might build capacity for increased influence of public policies.

---

<sup>2</sup> See <http://www.transparency.org.ro/Proj%20details/amendamente.htm>

<sup>3</sup> See <http://www.transparency.org.ro/Proj%20details/raport%20preliminar%20de%20evaluare.htm>



## II. Presentation of the Transparency Law

### What is the transparency law?

The transparency law ensures the opening of the central public administration activity to the citizens through two important mechanisms:

1. Participation of the public to the drafting of regulations;
2. Participation of the public to the decision making process.

### What the transparency law is not?

The transparency law must not be mistaken with the law regarding access to public information or with direct democracy. Unlike the law 544/2001, which allows the citizens' access to public information managed by public institutions, the transparency law offers to citizens the possibility to take part actively in the process of regulation drafting, through suggestions addressed to public administrative authorities.

Also, unlike direct democracy, the transparency law does not give citizens the right to take a final decision concerning future regulations. Such role will continue to be exercised by public administrative authorities, which will decide whether or not they would include within the drafts of future regulations information or suggestions coming from citizens, non-governmental organizations or from the business community.

### To whom is the transparency law addressed?

The transparency law implies cooperation between two partners: public administration and persons to whom the regulations adopted by the administration will apply (citizens, non-governmental organizations and business communities). Besides the public administration and public institutions, the law refers to public services, although such bodies have no direct attributions in the process of drafting future regulations.

### What does the law imply?

The authorities of the central and local public administration have the obligation to make public the drafts of future regulations before their adoption. Pursuant to this phase, the addressees of the future regulations, natural persons or legal entities, may send their suggestions and recommendations concerning the regulations that they were presented with. The authorities that initiate the regulation will analyze the said suggestions and decide whether they will be included in the text of the future regulation. Concerning the participation of the public to the process of adopting a decision, the Law provides the possibility of the interested persons to take part and to express their point of view within the meetings of the above-mentioned bodies.

### What are the benefits of this law?

For the public administration:

- Obtains free information concerning the activity which will be affected by the future regulation;
- Explains the need for the proposed regulations;
- Prevents the problems that could occur during the implementation process due to the lack of awareness of addressees' towards the future regulation;
- Prevents the problems that could occur during the implementation process due to wording deficiencies;
- Earns the public's trust.

For the addressees of the future regulation:

- They acknowledge the drafts regulations proposed by the public administration;
- They get a chance to express their point of view with respect to such drafts;
- They have the time to adapt their activities to the requirements of the future regulations.

## CHAPTER I – General Provisions

### Article 1 – General framework

Article 1 sets forth the institutions impacted by this law: the authorities of the central and local administration, as well as the public institutions using public financial resources. These provisions must be correlated with the supplementary information within article 4, which defines the notions of “authorities of the central public administration” and “authorities of the local public administration”. (See article 4).

One of the main elements introduced by this article is the observation that the provisions of the law must be interpreted as determining the minimum standards imposed on the public administration and on the public institutions in their relations with natural persons or legal entities. Such observation leads to the conclusion that the authorities of the public administration that intend to establish higher standards of transparency in their relations with citizens may do so without breaching this law. This observation reflects a reality of the Romanian administrative practice, wherefrom many examples can be cited, showing that many administrative authorities apply citizen participation procedures before they adopt an important act. The law intends to determine the minimum standards applicable to all authorities of the central or local public administration, ensuring, in the same time, the possibility for the most progressive authorities to surpass such standards.

The second paragraph of article 1 determines the main goals of the law: to increase the responsibility of the public administration towards the citizens; to stimulate the active participation of citizens to the process of decision-making and drafting normative acts; to increase the level of transparency for the entire public administration.

### Article 2 – Principles

In order to achieve the goals provided in article 1 paragraph 2, the law determines some principles: the citizens’ prior information about public interest matters, the citizens’ consultation with respect to drafts normative acts and the citizens’ active participation to the process of decision-making and drafting normative acts. These principles are at the basis of the detailed procedures presented in the next chapters.

### Article 3 – Definitions

In order to avoid the risks of a different interpretation given to its provisions, the law defines, in article 3, the terms and procedures used thereafter. The relevant notions are: normative act, decision-making, drafting normative acts, recommendation, transparency obligation, legally constituted association, minutes, order of priority, public meeting. Some definitions were necessary in order to explain the meaning of notions recently introduced in the Romanian legal terminology – for instance, the transparency obligation – while others are the result of a need to mark the difference from the usual sense of a word for terms used in the transparency law. In the same context, it should be noted that the provisions of article 3 must be interpreted in correlation with those of other normative acts, already in force – for example, legally constituted association.

**Citizens** are all Romanian citizens, as provided in the Constitution and in the law regarding Citizenship no.21/1991. The rights provided in the transparency law may be exercised *as of the date when the Romanian citizenship is obtained*, notwithstanding the race, nationality, ethnicity, language, religion, sex, opinions, political views, wealth or social origin. The text’s actual form provides that foreign citizens and stateless persons, including those residing in Romania, cannot use the mechanisms created by this law. Nevertheless, such persons may use legally constituted associations in order to benefit of the rights provided in this law.

In the transparency law, **legally constituted associations** are “any civic organizations, trade unions and employers’ associations, as well as any other associative group of civic representation”. The following might be considered examples of legally constituted associations:

- Any non-governmental organization constituted upon Government Ordinance no.26/2000 regarding associations and foundations or upon the previous relevant law (Law “Marzescu” no.21/1924). They include, for instance, the employers’ organizations, the landlords’ associations etc.
- Trade unions, confederations and labor associations provided by the Trade Unions Law no.54/1991;
- Other associations recognized by the law, as the Chambers of Commerce or the legal entities created according to the procedures of the Romanian Social Development Fund.
- Sports associations that are no legal entities, but are established on the basis of the Sports Law no. 69/2000



#### **Article 4 – Public authorities impacted by this law**

Article 4 of the law mentions public administrative authorities, excluding the legislative—the Parliament—and the judiciary. Letters a) and b) of this article bring some supplementary information concerning the notion of central and local administrative authorities.

The central administrative authorities include the ministries (not the Government), other public administration bodies subordinated to the Government or to the ministries, the decentralized public services and the autonomous administrative authorities. Some notes are in order in relation to these institutions:

- The Government is not mentioned in this list, although the initial text of the draft Bill mentioned it. The rationale held that any act adopted by the Government is the result of a ministerial proposal, which implies that the transparency obligation is incumbent with the initiating authority. To conclude, although the Government is not explicitly mentioned in the law, its acts will be submitted to public debating carried out by the initiating authority.
- The reference to decentralized public services is excessive because such institutions have no prerogatives in adopting normative acts.
- The mention reference to autonomous administrative authorities is welcome because it implies the possibility to make the activity of such institutions more transparent with respect to the adoption of normative acts having impact on a large category of natural persons and legal entities.

The local public administrative authorities include: county councils, local councils, city halls, public institutions and services serving a local or county interest. The observations above regarding public services remain equally valid for this paragraph.

#### **Article 5 – Exceptions**

This article determines in a limitative manner the situations considered as exceptions to this law. Before passing to the in-depth analysis of provisions in this article, some notes are in order with respect to its wording.

The wording of this article's introduction is defective with respect to the application of an identical treatment to the processes of drafting legal acts, on the one hand, and to public meetings, on the other. If the secrecy requirements are justified for public meetings where personal data are being used, the same thing does not bear on the process of drafting normative acts wherein personal data will never be integrated as such. The solution would be to treat separately the exceptions regarding the drafting of normative acts and those referring to public meetings.

The requirement to ensure secrecy with respect to drafting normative acts appears unreasonable, if we consider that such acts will be published after their adoption. In these circumstances, the secrecy of the future regulations cannot be invoked, since the very reason of the publication is to make the regulation accessible to the public. Such arguments could, however, be invoked in case of those regulations that may not be published in the Official Gazette, according to article 107 paragraph 4 of the Romanian Constitution—military regulations.

As a general note, this article uses very vague terms, being susceptible of generating difficulties in enforcing the law.

### **CHAPTER II – Procedures Concerning Citizens' and Legally Constituted Associations' Participation in Processes of Drafting Normative Acts and Decision-Making**

In the structure of this regulation, chapter II plays the substantial role, comprising the essential provisions of the law. The difference stated in the title between the process of drafting normative acts and the process of decision-making corresponds to the two sections of this chapter, each targeting one of the issues.

#### *SECTION 1 – Provisions Concerning Participation in the Process of Drafting Normative Acts*

This section of the law is composed of a single article, which determines the mechanisms whereby citizens may participate in the process of drafting normative acts. The first paragraphs of article 6 refer to the public's information with respect to draft Bills through an announcement. The announcement shall contain: an explanatory note, an exposition of the reasons requiring the adoption of the normative act, a report of approval stating the necessity of adopting the respective normative act, the complete text of the draft normative act, as well as the deadline, the place and modality whereby interested persons may send their written comments. The announcement shall be made public at least 30 days before the submission of the proposed regulation to analysis, approval and adoption.

Besides the general information, addressed to a non-differentiated target-group, the law also provides specific means of information specifically targeted on certain groups of

interests. As a general method of information, the law provides the posting of the future regulation on its website or in a place that is accessible to the public, as well as the transmission of the said draft regulation to the media. About this last means of information, note that, by providing the obligation to send such drafts to the media, the law does not require the actual appearance of the said drafts in the press.

The direct information method consists of the public authorities' obligation to transmit the draft normative acts to all those who have required in writing to be informed. Concerning the draft normative acts with impact on the business environment, the law includes a preferential right for the business community and other legally constituted associations, providing that such groups shall be informed even in absence of a written request in this sense. From the wording of this article follows the conclusion that the above-mentioned information actions are cumulative.

Pursuant to the obligation to inform the citizens about their intention to draft regulations, public authorities also have the obligation to make available to citizens at least 10 days, included in the larger period of minimum 30 days, during which they may send suggestions and comments concerning the proposed regulations. The person in charge of relations with civil society shall coordinate the reception of the said suggestions and comments.

If a legally constituted association or another public authority requires in writing that public debates concerning the future act be organized, the initiating authority must organize such debates. The announcement concerning the debates shall be made at most 10 days before their taking place and shall include the date and place of the meeting.

The relevant comments received in writing or as a result of speeches delivered during public debates shall be introduced in the future regulation's text before being transmitted to analysis and approval. The public authority has the exclusive power of deciding which comments qualify as relevant.

Paragraph 9 of article 6 provides that emergency regulations shall not be submitted to the above-mentioned procedure. It is the case of exceptional situations that require immediate action in order to avoid serious damages to public interests. Notions such as "emergency" shall be interpreted in practice, but note that unjustifiably large interpretations are susceptible of generating abuses.

## *SECTION 2 – Provisions Concerning Participation in the Process of Decision-Making*

The provisions of this section offer a unitary treatment of the public's participation in the meetings held by public institutions. Such provisions, concerning the citizens' access to public meetings are also found in other regulations, but disparately. The goal of the transparency law is to determine a minimum set of measures applicable to the meetings of all institutions mentioned in article 4.

### **Article 7- Participation in the public meetings**

The relevant public authority shall make public an announcement containing the date and hour of the meeting and the meeting agenda, at least 3 days before the actual taking place of the meeting, by posting such announcement at its headquarters and on its website, and by transmitting the said announcement to the media. The person in charge of relations with civil society is also responsible for disseminating the announcement and for inviting specific persons to the said public meeting.

The law introduces the notion "order of priority". This instrument will be used to differentiate amongst persons that wish to participate in a public meeting, when the number of persons exceeds the number of available seats in the room. In such cases, the order of priority will be established taking into account the interest of those who have filed requests regarding the topic in discussion. However, the priority order may not be used to preclude the media from participating in the public meetings.

### **Article 8 – Points of view**

This article provides the obligation of the chairperson to allow the participants in the public meeting to express their points of view. In absence of such provision, the simple possibility for the citizens to assist at the public authorities' meetings would be inefficient. The participants' freedom of speech concerning the issues on the agenda ensures the exchange of information between civil society and public administration.

### **Article 9 – Responsibility for the adoption of regulations**

Article 9 contains a principle provision, which should have probably integrated better within the introductory articles of the law. The principle refers to the responsibility for adopting decisions belonging entirely to the public administration. This provision is useful because it

clearly identifies the implications that the law intends to have on the public administration's activity.

The transparency law is not meant to introduce rules of direct democracy in the process of decision-making, but only to ensure the dialogue between the public and private sectors, concerning the decisions that impact upon the activity of both parties. This is a consultation process, not a change of roles between public administration and civil society, with respect to elaboration of regulations. This conclusion derives naturally from the law and may also be inferred from the fact that the entire responsibility for making decisions continues to be the public administration's responsibility. The citizens have the possibility to be informed about the normative intentions of public authorities, to actively participate in the process of decision-making through suggestions and comments concerning future regulations and, as a last remedy, to sanction elected officials through their vote.

#### **Article 10 – Minutes of the meetings**

This article introduces for the first time in Romanian legislation the public authorities' obligation to draft the minutes of the public meetings, including mentions of the votes cast on the issues discussed, except for the case when the vote was declared secret. Such minutes shall be made public at the authority's headquarters and on its website.

These provisions respond to the constant requirements, coming from civil society, concerning the need that elected officials make public their vote and take responsibility for it. In the absence of such mechanism, citizens could not evaluate the activity of their representatives in accomplishing their duties, as it used to be previously impossible to document political opinions on previous real performance of elected representatives.

#### **Article 11 – Recordings of the public meetings**

The first paragraph of this article explicitly introduces the obligation of the public authorities to draft and archive minutes of their public meetings. Paragraph 2 regulates the citizens' access to such recordings according to law no.544/2001 regarding free access to public information; such recordings are considered information that can be obtained upon request. There are exceptions to this rule, in the cases previously mentioned in article 6, which remain exclusively regulated by that article.

#### **Article 12 – Annual report**

This article introduces the obligation of all public authorities provided in article 4 to issue an annual report concerning transparency of decision-making, which must include the following information:

- a) the total number of recommendations received;
- b) the total number of recommendations included in draft normative acts and in decisions adopted by the respective authority;
- c) the number of attendees to public meetings;
- d) the number of public debates concerning draft normative acts;
- e) statistics concerning the cases when the public authority was sued for breaching this law;
- f) the evaluation of the partnership with citizens and their legally constituted associations;
- g) the number of closed (executive) meetings and the reasons that determined such restrictions.

Note that the information contained in such reports is public and allows for an evaluation of the respective authority's activity with respect to the enforcement of the transparency law. Also, on the basis of this information, different public authorities can be compared as to the reasons causing a comparatively lower performance.

### **CHAPTER III – Sanctions**

The transparency law provides for three types of mechanisms to sanction those who do not fulfill their obligations:

1. the citizens' possibility to sue the relevant public authority, if such authority breaches their rights provided by the law;
2. the possibility to sanction the officer who fails to observe the citizens' rights provided by the law;
3. the possibility to sanction the attendees to a meeting who fail to observe the rules thereof.

Note that the transparency law does not provide for the possibility to sanction the persons elected in leading positions if they do not fulfill their obligations. The absence of such sanctions is a deficiency of this law, susceptible to generate difficulties in the implementation thereof.

**Article 13 – The possibility to address the Courts**

This article provides the possibility for any person to sue a public authority that breached their rights under this law. The procedural rules are those of the administrative litigation law. Because the transparency law does not provide for derogations to the rules of the administrative litigation law, the persons whose rights were breached must first complete the preliminary complaint procedure, before going to court. This procedure consists in the plaintiff's obligation to address a complaint to the very authority that failed to observe his/her rights, allowing such authority to adjust its mistakes. If the citizen is not satisfied with the public authority's response, he/she may sue the authority before the administrative sections of the Courts.

**Article 14 – The possibility to sanction the officer in charge**

According to this article, the officers guilty of one of the following actions:

- a) preventing public access to public meetings or
  - b) impeding the involvement of interested persons in the process of drafting normative acts
- are considered to have committed a disciplinary offense and shall be sanctioned according to law no.188/1999 or according to labor legislation.

**Article 15 – The possibility to sanction participants in public meetings**

In order to preserve the order, all participants in public meetings must observe the internal rules of order of the respective public authority concerning public meetings. Should the chairperson find that a person has infringed the said rules, he/she shall warn the said person and, as a last resort, may order the evacuation of that person from the meeting room. A special attention should be paid to the expression "as a last resort", which means that chairpersons must use all the means at their disposal before ordering the evacuation.

A deficiency of this article resides in the absence of provisions referring to the authorities' obligation to make available a copy of the respective internal regulations to the participants. This absence may generate abuses, in practice, as public authorities may excessively restrict the citizens' participation to the meetings, invoking breaches to the internal regulations.

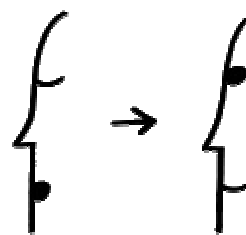
**CHAPTER IV – Final Provisions**

**Article 16 – Entry in force**

This law shall enter into force 60 days after its publication in the Official Gazette. This period of time allows the public authorities to get to know the provisions of the law and to prepare the implementation thereof. On the date of entry into force of this law, all contrary provisions shall be repelled.

**Article 17 – Internal regulations**

In order to avoid any contradictions between the provisions of this law and different internal regulations of the public authorities, this article provides the obligation to modify those regulations according to the relevant provisions of the transparency law.



### III. Recommendations for Public Administration Bodies<sup>4</sup>

#### **You must organize citizen participation to a public meeting?**

The Local Council will organize an open meeting three days after the Transparency Law enters into force. How can you organize citizen participation? How do you let the public know? Who needs to be invited at the meeting? How do you run an open meeting?

#### **You must organize citizen consultation on a draft normative act?**

One week after you were appointed responsible for the relationship with civil society, a new draft normative act has to be open for consultations. How do you let the public know about it? Whom should you send the information to? Who has to receive the announcement, and in what format?

#### **You want to show citizens that your institution is open and transparent?**

Do you want to do more than what the Transparency Law requires of you? What are the means you have at your disposal? What could be the content of a regulation to supplement the Transparency Law?

If you are asking all these questions or if you have other questions on the enforcement of the Transparency Law by the public institution you are working for, this chapter aims at helping you. It presents a set of recommendations for public administration bodies that can contribute to better enforcement of the Transparency Law. These recommendations bear more on general issues related to enforcing the law rather than representing legal interpretation. They can be either

- A. recommendations on the enforcement of the text of the Transparency Law, or
- B. additional measures that can lead to increased transparency.

The recommendations on the enforcement of the Transparency Law focus on offering interpretations to the aim of fully applying the law. These interpretations are also based on the experience of applying the principle of transparency in other countries, like the United States, member states of the Organization for Economic Cooperation and Development<sup>5</sup>, or of the European Union. If public institutions choose to follow these recommendations, then all premises are in place to make sure that the Transparency Law is applied with maximum efficiency.

The law is providing just for the minimum standards to be followed in ensuring transparency of decision-making in the local and central public administration. As we can see from the results of the local projects already initiated by public authorities and NGOs, or from some initiatives of central administration bodies, institutions can adopt higher standards than the ones of the Transparency Law. Many recommendations on enforcing the law can also be, for the sake of more clarity, the object of particular regulations of a certain local or central public authority.

#### *What is the Transparency Law?*

The „Transparency Law“ referred to in this guide is the shorthand for the Law 52 of 2003, regarding the transparency of decision-making in public administration. Initiated by the Ministry of Public Information, drafted and improved with NGO support, the law had gone

<sup>4</sup> This chapter is merely a recommendation for central and local public administration bodies and contains suggestions coming from NGOs on enforcing the Transparency Law.

<sup>5</sup> Organization for Economic Cooperation and Development (OECD), *Citizens as partners. Information, consultation and public participation in policy-making*, Paris, 2001 and *Citizens as partners. OECD Handbook on information, consultation and public participation in policy-making*, Paris, 2001.

rapidly through the Parliamentary procedure: received by the Chamber of Deputies in the first half of June 2002, was adopted by the Parliament on December 19 and was promulgated by the President of Romania on January 20, 2003. The law was published in the Official Gazette no. 70 of February 3, 2003 and is in force since April 4.

*Citizen participation and transparency*

The Transparency Law provides for a method of involving citizens in decision-making at the level of the administration. The spectrum of tools for citizen participation in public administration is larger. Trying to define citizen participation, we can identify it as *the process whereby citizens' concerns, needs, and values are incorporated into governmental decision-making*.<sup>6</sup>

Among the advantages of citizen participation for public administration are:

- Re-establishing and building confidence among public administration and citizens.
- Helps administration to identify faster the needs of the community, and to offer greater satisfaction to citizens.
- Offers to public administration free information on the decisions to be made.
- Drives the community towards consensus instead of conflict.
- Administration and citizens can deal together more creatively with problems and opportunities.

|   |
|---|
| <p>Core values for the practice of public participation:<sup>7</sup></p> <ul style="list-style-type: none"> <li>• The public should have a saying in decisions about actions that affect their lives.</li> <li>• Public participation includes the promise that the public's contribution will influence the decision.</li> <li>• The public participation process communicates the interests and meets the process needs of all participants.</li> <li>• The public participation process seeks out and facilitates the involvement of those potentially affected.</li> <li>• The public participation process involves participants in defining how they participate.</li> <li>• The public participation process communicates to participants to show their input affected the decision.</li> <li>• The public participation process provides participants with the information they need to participate in a meaningful way.</li> </ul> |
|---|

Citizen participation tools vary according to the level of public involvement in the work of the administration.

| Public participation spectrum <sup>8</sup>   |   |   |   |  |
|--|---|---|---|--|
| Inform   | Consult   | Involve   | Collaborate   | Empower  |
| <p><i>Goal:</i><br/>To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.</p> | <p><i>Goal:</i><br/>To obtain public feedback on analysis, alternatives and/or decisions.</p> | <p><i>Goal:</i><br/>To work directly with the public throughout the process to ensure that public issues and concerns are consistently understood and considered.</p> | <p><i>Goal:</i><br/>To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.</p> | <p><i>Goal:</i><br/>To place final decision-making in the hands of the public.</p> |
| <p><i>Promise:</i><br/>„We will keep you informed“</p>   | <p><i>Promise:</i><br/>„We will keep you informed, listen to and</p>                          | <p><i>Promise:</i><br/>„We will work with you to ensure that</p>  | <p><i>Promise:</i><br/>„We will look to you for direct advice</p>   | <p><i>Promise:</i><br/>„We will implement what you</p>                             |

<sup>6</sup> For details, see Eric Chewtynd and Frances Chewtynd, *A Practical Guide to Citizen Participation in Local Government in Romania*, Research Triangle Institute – Local Government Assistance Program Romania, Bucharest 2001.

<sup>7</sup> International Association for Public Participation.

<sup>8</sup> Ibid.

|  |   |  |   |  |
|--|---|--|---|--|
|  | acknowledge concerns and provide feedback on how public input influenced the decision”                                  | your concerns and issues are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision”. | and innovation in formulating solutions and incorporate your advice and recommendations into the decision to the maximum extent possible” | decide”  |
| <i>Example tools:</i><br>Fact sheets<br>Posters<br>Leaflets<br>Newsletters<br>Local radio/TV<br>Website<br>Open houses<br>Annual reports | <i>Example tools:</i><br>Public comments<br>Focus groups<br>Surveys<br>Drop-boxes<br>Public meetings<br>Public hearings | <i>Example tools:</i><br>Working groups<br>Public hearings<br>Deliberative pooling   | <i>Example tools:</i><br>Citizen advisory committees<br>Public hearings<br>Consensus building<br>Referendum                               | <i>Example tools:</i><br>Referendum<br>Citizen juries<br>Delegated decisions |

In this context, the processes provided for by the Transparency Law can be seen as the initiative of the administration to involve citizens in specific issues – decision-making through public meetings and drafting of normative acts. Making use of the other public participation tools is still needed.

### III.1. Recommendations on enforcing the Transparency Law

- ✓ Article 5 is setting forth the exceptions to applying the law.

There is no consultation on normative acts and citizens and legally constituted associations cannot participate in meetings where information is presented that:

- is regarding national defense, national safety and public order,
- is regarding economical and political strategic interests,
- is containing values, deadlines and technical-economic information concerning commercial and financial activities, if the publicity thereof would result in a breach of the fair competition principle, or
- is regarding personal data.

Abiding by the legal principle that exceptions are of strict interpretation and application, and also taking into consideration that laws should be interpreted in accordance with their goal, and towards enforcement, public administration bodies are encouraged to apply the respective article as strictly as possible. Exceptions to the Transparency Law have to be interpreted as restrictive as possible, aiming to use the law in as many situations as possible. Thus, it is useful to remind the article 1, paragraph 2 stating that the goal of the Transparency Law is to “increase the responsibility of the public authorities towards the citizens, as beneficiaries of the administrative decisions, to stimulate the effective participation of the citizens in the procedure of making administrative decisions and drafting normative acts, and to increase the degree of transparency at all levels of public administration.”

Public participation to drafting norms is unjustifiably limited by invoking considerations on protection of classified information, according to article 5. Classified information *per se* will never be included in the text of the normative act, therefore the interest to protect such information is not justifiable in limiting the participation to norm drafting. As an example, the process of amending the Law on the Romanian Intelligence Service should be open to the public as far as the final text of the law will be published in the Official Gazette. On the other hand, it is normal that parts of public meetings when classified information is presented are closed for the public.

In line with the above, drafting a normative act that touches upon national safety should not exclude public consultation if the final act will be public. Similarly, for public meetings, the public access can be limited to sections of a meeting where classified information is presented. However, the limitation has to deal only with those items on the agenda that are dealing with classified information, and not with the meeting as a whole.

- ✓ Transmitting the draft normative acts to those who filed requests for receiving such information, according to article 6, first paragraph, requires setting up databases with persons and organizations.

Such databases must permit easy queries in order to allow timely and complete transmittal of the information, and also must the preferences of each interested person. Public authorities, working with their information technology departments, Citizen Information Centers<sup>9</sup> or other departments, are encouraged to set up databases with persons interested in commenting draft normative acts to ensure complete and timely transmittal of information.

The law requests that announcements on draft normative acts to be sent to the interested parties but gives no further details on covering the costs for this transmittal. The transmittal should be free of charge. To this aim, sending the announcements in electronic format is the best solution. Public authorities should ask for the email addresses of the people who have filed requests.

- ✓ Article 6, paragraphs 7 and 8 are referring to the mandatory organization of public debates on a draft normative act if requested in writing by a legally constituted association or by other public institution.

Although the law is not expressly providing such possibility, the public institution itself can organize such debates, without any requests when the regulation is of greater importance to the community.

The deadline provided for in the law for organizing the debate is maximum 10 days since the publication of the date and place where it would be organized. The public authority should allow for maximum time possible in order for the participants to better prepare their statements. This way, the authority can receive maximum of useful information for making the decision on the final text.

The law does not provide for how the public debate should be organized. From the experience of other countries we can conclude that the way the meeting is structured has a great importance in making sure that the results are useful for the organizers. In order to obtain maximum efficiency, the meeting has to be structured such as to ensure participation of all interested parties, and they should express their viewpoint on the topic of the debate without deviations and without entering in useless debates.

To satisfy this goal, we present two of the methods for organizing such a debate:

- debate with a set agenda and facilitator;
- public hearing.

*A debate with a set agenda and facilitator* assumes that the agenda containing issues to be discussed, presented in logical sequence, is known to the participants ahead of time, and they would prepare to respond to the issues on the agenda. Such debate also assumes that the suggestions of participants are expressed in an organized manner, with the help of a person that contributes to establishing an environment conducive to sharing thoughts.

The logical structure of the agenda of the debate should consider different criteria, such as the structure of the draft normative act. This way, the participants are encouraged to comment on each area covered by the act.

A facilitator is a person that, without having interest in the content of the debate, makes sure that discussions are structured and they lead towards reaching the goal of the meeting. He or she creates an environment conducive to sharing contributions, by making sure that all participants are involved, by limiting discussions only to the topic at hand and by resolving differences that may appear during the meetings.

*Public hearings* are a consultation procedure whereby any interested party can contribute to public decision-making. Compared to other consultation procedures, public hearings provide a rigorous and effective framework for collecting a significant number of opinions and viewpoints from the interest groups for which the issue under debate has an impact.<sup>10</sup>

A public hearing is a formal process whereby prescribed procedures impartially permit all interested parties to provide well-considered statements of opinions (testimonies) and facts regarding particular subjects, to elected and appointed policy makers. Policy makers are subsequently expected to consider and appreciably draw upon this information when drafting legislation.

---

<sup>9</sup> For details, see the website of the National Association of Citizen Information Centers, [www.ancic.ro](http://www.ancic.ro).

<sup>10</sup> Advocacy Academy, *Public Hearings Procedure* For details, see [www.academia-de-advocacy.org](http://www.academia-de-advocacy.org).



Although the focus of the process is primarily upon the compilation and submission of written statements, most people tend to be more familiar with the public event segment that provides a stage for orally delivered testimonies. In this sense, the public event is useful because it furnishes an opportunity for more dramatic presentations that generate publicity regarding the subject matter. Hence, presenters are chosen according to their potential for public relations impact. However, more substantive policy scrutiny of testimony will be provided to the written form.<sup>11</sup>

- ✓ Article 7 is providing for the way of structuring public meetings. Public authorities are encouraged to interpret that article such as to allow all interested parties to participate.

Thus, meetings should take place in the largest conference room within the institution or, if the interest for the meeting is higher, in other rooms from that city or village that would allow the access of a greater number of persons. Such meetings can be also broadcast live through local radio or TV.

In order to make sure that the meeting is productive, the chairperson should briefly introduce at the beginning of each meeting the provisions of the regulations on public meetings, part of the internal regulations of the institution. Also during the meeting, the chairperson should make sure that all interested parties are allowed to express their opinions.

- ✓ Enforcing the law assumes the use of documents and/or forms such as: the announcement on a draft normative act, the announcement on a public meeting, the request to be part of the list for receiving information on draft normative acts, etc.

In order to make sure that the law is enforced easily, it is recommended that such documents be standardized, at least at the level of each public authority. The usefulness of using standard documents resides in making it easier for the citizens to use the law, as well as facilitating speedier processing of information by the public authority.

- ✓ According to the law, the public authority is solely responsible for the acceptance or rejection of suggestions and comments received from citizens or organization.

The consultation process is a source of information on the impact of the respective normative act, such information being obtained both for free and in a structured way. Comments and viewpoints can oftentimes be contradictory, representing the diverging interests of different persons or organizations. Selecting the contributions is done by the respective public institution, but public authorities are encouraged to make public the reasons for accepting or rejecting comments received during consultations.

- ✓ The emergency procedure regulated by article 6 deals with exceptional situations where there is no time for consultations.

Public authorities should interpret as restrictively as possible article 6 on emergency situations. According to the goal of the Transparency Law, though not expressly provided in the law, authorities can make public, upon publishing the normative act adopted without consultations, an explanation on why the emergency procedure was used.

- ✓ Article 17 states that all public authorities and other legal persons enforcing the Transparency Law have to modify their internal regulations within 30 days since the entry into force of the law, in order to permit the application of the law.

The law requires that until May 4, 2003 all public institutions be ready to enforce the Transparency Law.

### *III.2. Additional measures that can lead to increased transparency*

Below you can see some ideas on how the application of the Transparency Law can be expanded by means of regulations adopted by each institution.

- ✓ Public participation to drafting normative acts is unjustifiably limited by invoking considerations on protection of personal data. Personal data are not enough to be incorporated in legal norms. In norms that would add to the Transparency Law, public authorities can exclude the exception on protecting personal data.

---

<sup>11</sup> Advocacy Academy, *Public Hearings: Guidelines for written testimonies* .

- ✓ Public administration bodies are not obliged to inform the public on the stage of the proceedings for a specific normative act, if these are delayed. Inclusion of a deadline by which the public authority should make a decision on adopting a normative act can prove useful. Such a reasonable deadline can be 180 days. To this aim, we propose the following wording to include such recommendation:

“Within 180 days following publication of the notice of intended drafting of a normative act, if there were no public debates, or within 180 days after the last date of the public debates, [the public authority] shall adopt the proposed normative administrative act or put an end to the procedure through a notice published in the Official/Local Gazette. If, within this delay, neither the proposed administrative normative act is adopted nor the procedure is ended under this paragraph, the initial notice shall expire and a new procedure would have to be started by [the public administration authority], in accordance with this article.”

- ✓ Romanian laws require for some normative acts to be published in the Official Gazette of Romania. Usually, normative acts adopted at the local level are not published in any official publication. Local public administration bodies can publish the normative acts they adopt in the local Official Gazette and on the Internet, on their website.

The Local Council of Sibiu municipality, through the Citizen Information Center, published on the webpage [www.sibiu.ro](http://www.sibiu.ro) the database with decisions of the Local Council since 1996. The database has a search engine that can be queried after the year of the decision, title or words from the text.

- ✓ Public administration bodies are not obliged to open to public consultations a draft normative act if the modifications intervened on the initial version, open for consultations, are substantial. In order to avoid this issue, public authorities are encouraged to adopt supplemental provisions such as the following:

“(1) If [the public authority] determines that a proposed normative act requires one or more amendments before its final publication, it shall determine whether each amendment is substantive or non-substantive.

(2) An amendment may be deemed substantive unless:

a) the amendment is merely a grammatical correction.

b) the amendment has no possible adverse affect on any person or entity.

(3) If [the public authority] determines that an amendment is substantive, the public authority shall begin the public notice procedure anew as for an initial notice of a proposed normative act.

(4) If [the public authority] determines that an amendment is non-substantive, the agency may initiate the public notice procedure anew as for an initial notice of a proposed normative act, or it may adopt the normative act as proposed with an explanation of the non-substantive defect. [The public authority] may, at any time, undertake a new lawmaking procedure to correct the non-substantive error in the normative act.

(5) The correction of a non-substantive error is not subject to the notice and public comment procedures required by the Law 52/2003 if [the public authority] publishes the corrected rule with an explanation of the grounds whereby [the public authority] determined the amendment to be non-substantive.

(6) In any proceeding contesting whether an amendment adopted under paragraph 5, without notice and opportunity for public comment, was in fact non-substantive, the burden shall be upon [the public authority] to demonstrate that the amendment was non-substantive.”

- ✓ There are cases in the course of the activity of a public authority when it needs to act promptly. In such cases it is impossible and inefficient for the public authority to fulfill the requirements presented above. In order to add to the provisions of the Transparency Law, we propose the following wording:

“(1) The procedure established in article 6 of the Law 52/2003 shall not apply whenever [the public authority] has solid grounds to consider that notice and public participation would be unnecessary, impracticable or contrary to the public interest, such as in case of an imminent danger for the public health, defense or public order.

(2) For each normative act adopted in accordance with this article, the [public authority] shall publish a notice in the Official Gazette of Romania/Local Gazette to include:

- a) fundamentals on the necessity to adopt that administrative normative act;
- b) the complete text of the act;
- c) a detailed statement of the solid grounds that determined the application of this article, the reasons for which the act need not be adopted in accordance with the Law 52/2003, was impracticable or contrary to the public interest.

(3) If an administrative complaint is filed against a normative act passed in accordance with this article, the [public authority] shall have to prove that notice and public participation was unnecessary, impracticable, or contrary to the public interest."

- ✓ The Transparency Law regulates citizen participation in debating normative acts initiated by public authorities. A normal addition to this procedure is the citizen normative initiative. The personal initiative consists in the right of people to propose to the public administration a draft of a normative act. The provisions of the Law 189/1999, on citizen legislative initiative,<sup>12</sup> deals exclusively with draft laws. Initiatives regarding other normative acts do not fall under this regulation; thus, there is no over-regulation in this area. The final decision regarding the adoption or the rejection of the draft belongs exclusively to the public authority. To reflect on this idea, we propose the following wording:

"(1) Any person may petition the [public authority] to draft a normative act.

(2) [The public authority] has the obligation to provide the applicant with the necessary forms and propose a normative act with simple procedures for considering drafting a regulatory proposal.

(3) Within 60 days after submission of such petition, [the public authority] shall initiate the procedure of drafting the proposed normative act, or reject the proposal in writing, stating grounds for denial."

- ✓ As a normal consequence to the right of persons to participate in drafting normative acts, and following the right to initiate normative acts, the right of persons to ask for review of normative acts can be included in particular regulations that adds to the Transparency Law. We propose the following text:

"(1) Any person may submit a request for formal review of a specified normative act to [the public authority], to determine whether the act should be amended, repealed or replaced.

(2) If such a review of the specified act has not been conducted within a period of five years prior to the request, and the request is considered justified, [the public authority] shall prepare as soon as possible a written report regarding the specified normative act summarizing its final point of view, its grounds and any proposed course of action.

(3) The report must include a concise statement of the following:

- a) the normative act's effectiveness in achieving its objectives, including a summary of all data supporting the findings;
- b) written criticisms of the normative act, during the previous five years, including a summary regarding any lawsuits against its provisions;
- c) alternative solutions regarding the subject matter of the criticisms and the reasons they were rejected or the changes made in the normative act in response to those criticisms and the reasons for the changes.

(4) A copy of the report shall be sent to the department within [the public authority] competent to prepare, draft, advise and present draft normative acts, and also be made available to the public."

- ✓ People's participation to public meeting is governed by a regulation of the respective meetings, adopted by the public authority. The Transparency Law has no provisions on informing the participants on the rules contained in the regulation. We propose the following wording in order to clarify of this issue:

"The Regulations for public meetings will be offered to the public before the beginning of the public meeting and will be briefly presented by the chairperson at the beginning of the meeting."

<sup>12</sup> Official Gazette no. 611/1999.



#### IV. Recommendations for Citizens and NGOs

**You want to speak your mind on an issue of interest to your community?**

The street you live on has many mud-holes. Not far away, a company contracted by the City Hall is repairing another street of less traffic and less damage. You heard that the economic director of the City Hall lives on that other street. There will be a meeting of the Local Council in a few days and one of the issues to be discussed is repairing the streets. Do you want to ask the authorities how they spend the money coming from the taxes you are paying?<sup>13</sup>

**You want the commercial interests of your company to be respected?**

You own a bakery and a store on the main street of your city. A neighbor who works for the City Hall told you that the Local Council is discussing about a decision that would require that, in the interest of improving the image of the city, you change your signboard. You could only buy the new signboard from dealers authorized by the Council. You do not want to invest money in what you and other shop owners around you think is an inadequate measure. You spoke with other shop owners and you want to explain to the Council that this is not a priority for your city.

**The members of the NGO you are leading complain about their rights not being respected?**

The tap water is always dirty. The Mayor, in the only interview he gave to the local press on this issue, recommended to citizens to boil the water before drinking it. You know that the water filtration unit that should serve the city is not ready yet, due to lack of funds. In a few days the Local Council will approve the funds for building a new public library, as the present building of the library, a historical monument, is being bought by a local investor. Do you want to express the thoughts of the people you are representing in showing what their priorities are?

**The homeowners association whose president you are wants to take a stand on an issue of concern to them?**

Behind the block of flats, on an empty piece of land that used to be a playground for the children of the neighborhood, the Local Council wants to create a waste disposal area. The homeowners are indignant that their children's playground will become inaccessible and, moreover, they will have in their near vicinity a possible source of diseases. Do you want to represent them?

**You want to influence national-level policies?**

The news that the Ministry of Finance is drafting an ordinance to set out of force the legal provisions regulating fiscal facilities for companies who are hiring information technology specialists is upsetting you, as the executive director of an association for the promotion of information technology. Your members are

---

<sup>13</sup> The examples from this guide are the product of imagination, any resemblance with real situations being purely coincidental. Their role is merely to illustrate important issues raised by the enforcement of the Transparency Law.

calling you often, asking what can be done, as they read more and more newspaper stories on this topic. Do you want to represent your association in front of the Ministry of Finance?

These hypothetical situations, as well as others we will be using to illustrate the enforcement of the Transparency Law, and especially a big number of other real situations you are facing daily, are expressing the need of individuals to influence, at a certain point, local or national public policies. Either as individual persons or people representing the interests of others, you want your word to be heard. This is done easier after the adoption of the Transparency Law.

This guide is addressed to all of you that show an interest in the activity of public authorities. Through the Transparency Law you have another tool to make sure that public authorities are working to satisfy your interests. The Transparency Law is not the only tool you can use. There are other regulations that can help you. One example is the Law on access to public interest information.<sup>14</sup> Another one is the ordinance regulating the right to petition.<sup>15</sup> This guide will help you understand what you can get through the Transparency Law and how you need to act in order to achieve your goals.

#### *What is the Transparency Law?*

The „Transparency Law” referred to in this guide is the shorthand for the Law 52 of 2003, regarding transparency of decision-making in public administration. Initiated by the Ministry of Public Information, drafted and improved with support from NGOs, the law had gone rapidly through the Parliamentary procedure: received by the Chamber of Deputies in the first half of June 2002, was adopted by the Parliament on December 19, and was promulgated by the President of Romania on January 20, 2003. The law was published in the Official Gazette no. 70 of February 3, 2003 and the law is in force since April 4.

#### *What are the provisions of the Transparency Law?*

According to the Transparency Law, citizens and their organizations can express opinions and interests with regard to drafting normative acts and to making administrative decisions. The tools they can use are consultations by the public authorities on draft normative acts and participation in public meetings of the respective authorities. We will present separately the two procedures below.

The Transparency Law gives you the right to be consulted with regard to public issues of interest to your community. Through the Transparency Law you can act both at local and at national level. One must not see the law as favoring citizens and disfavoring public servants by burdening them with more work. To the contrary, the public administration is receiving significant and needed information, free of charge and specifically on the draft of normative act or decision. Therefore, it increases the capacity to make decisions and adopt norms that are coherent, adapted to citizens' needs, better accepted and enforced.

#### *What can I influence through transparency?*

The public authorities that fall under the provisions of the Transparency Law are constantly drafting or adopting normative acts and issuing decisions that are influencing people's life and activity. The Transparency Law offers to the citizens the possibility to comment on draft normative acts and express their opinions on decisions that are adopted by public authorities during public meetings. We will describe both of these processes in the following pages.

A *normative act* is an act that is generally applicable and is adopted by a public authority. Normative acts can be adopted by the Parliament or by public administration bodies (Government, Ministries, local and central public administration bodies).

The drafts of normative acts can be divided into drafts elaborated by public administration bodies and drafts elaborated outside the administration. All drafts adopted by administrative authorities, with the exceptions made by the law, fall under the Transparency Law. Draft laws are, as well, elaborated by public administration bodies (usually by Ministries) before being approved by the Government and forwarded to the Parliament. Consequently, all draft laws fall under the Transparency Law. The only draft normative acts that do not fall under the Transparency Law are the legislative proposals, elaborated by Members of the Parliament and promoted to the Chamber of whom they are member.

---

<sup>14</sup> On the Law of access to public interest information, nr. 544/2001, Official Gazette no. 663/2001, see Transparency International Romania, *Ce trebuie să știm despre accesul la informațiile de interes public*, [What we have to know on access to public information] Bucharest, 2001.

<sup>15</sup> Ordinance no. 27/2002 on regulating the activity of responding to petitions, Official Gazette no. 84/2002.

The Local Council of the Frumoasa commune organized a meeting for debating the decision to increase by 20% the tax on dwellings, with the aim of repairing the road that unites the 200 inhabitants of the Trei Ape village with the village where the Mayor's office is. During the meeting, Toader Nadejde spoke up and showed that it would be more logical to have the tax assessed on the area of land or forest one owns, rather than the number of rooms in each house. As most of the houses are build of adobe and have no more than three rooms, the increased tax would not cover the costs incurred by rehabilitating the road. All the participants present at the meeting agreed with what Toader proposed and the decision of the Local Council was modified accordingly.

The recently adopted ordinance that amends the framework law for non-profits is re-introducing the requirement of obtaining the agreement of a state body before being able to register an NGO. In order to influence the form of the draft law to approve the ordinance, over 300 associations and foundations formed a coalition that asked to the author of the draft law, the Ministry of Justice, to organize public meetings where the voice of the Romanian non-profit sector could be heard.

Normative acts can regulate new issues or can amend, supplement or replace already existing norms. According to the law, citizens have to be consulted on all draft normative acts, with some exceptions.

There will be no consultation on draft normative acts:

- regarding national defense, national safety and public order,
- regarding economical and political strategic interests,
- containing values, deadlines and technical-economic information concerning commercial and financial activities, if their publicity would result in a breach of the fair competition principle, or
- regarding personal data.

Forbidding participation to drafting normative acts, even if they regulate important issues such as national security, makes little sense if these acts are published in the Official Gazette. We can anticipate, especially for the immediate period of time following the entry into force of the Transparency Law, that public authorities will often use the pretext of exemption from consultations in order to avoid initiating the processes provided in the law. It is very important that such decisions be challenged through petitions addressed to these authorities, or, missing a positive answer, through courts of law. The judiciary would then be able to set the limits of applying the law. It is very much in the hands of those who make use of the law that these limits be set to a minimum possible, in order for the greater majority of normative acts to be open for consultations.

The Ministry of Industries declared that the text of the ordinance on regulating research would not be open for consultations because it entails strategic interests of Romania. The National Association of Research Institutes replied with the intention of challenging in the court of law the order that contained that decision. As consequence to a petition filed with the Ministry by the Association, the Minister withdrew the order and declared that the Ministry would even organize a public debate on this topic.

In situations that, due to exceptional circumstances, impose the adoption of immediate solutions in order to avoid significant damages to public interest, the law regulates that normative acts can be adopted without consultations. This regulation is useful in times of crisis. In case of an earthquake, for example, the Government may issue a decision aimed at limiting the consequences of the disaster. Due to the limited reaction time at the disposal of the administration, a consultation process cannot take place.

It is important that this exception be used only in *exceptional* circumstances. In such case, the tendency of public authorities to avoid consultations must be closely monitored. This can also imply the analysis of the relevance of adopting such normative acts, after the exceptional situation has passed. An important aspect to

be observed is the causal relation between the act and the exceptional situation when it was adopted. Even in a real exceptional situation, only those normative acts that avoid significant damages to public interest may be adopted without consultations.

Immediately after the news that a gas-heating unit exploded in an apartment from a block of flats situated in the county residence city, the Local Council decided to forbid people to own gas heating units. The decision was taken without public consultation, arguing that the exceptional situation was calling for decisive and immediate measures. Although the technical expertise showed the explosion was due to a gas cylinder, the Local Council did not withdraw its decision. A court order was needed to annul the respective act.

The Transparency Law mentions several times that the opinions expressed by citizens or organizations during consultations are mere recommendations. The decision remains with the public authorities. The normative act will be, after consultations, sent for analysis and opinions according to the legal procedure for drafting normative acts. It will include the modifications based on the opinions expressed during consultations, as selected by the public servants responsible for drafting that particular act. The public authorities are obliged to state in the annual report on transparency of decision-making the number of recommendations included in draft normative acts. It can be useful to ask public institutions to motivate their choice. Law does not expressly provide this, but public authorities can make public the reasons for including some of the arguments presented, as well as for rejecting others.

The *public meetings* that the Transparency Law refers to are, in fact, all the meetings that are needed for a particular public authority to function and that were declared public. The exceptions are clearly stated in the law.

Citizens and legally constituted associations cannot participate in meetings where information is presented that:

- regards national defense, national safety and public order,
- regards economical and political strategic interests,
- contains values, deadlines and technical-economic information concerning commercial and financial activities, if their publicity would result in a breach of the fair competition principle, or
- regards personal data.

The definition given by the law to public meetings allows the public institutions to declare meetings public according to their will, through their internal rules. Many times such internal rules are not at the disposal of the public. Therefore, there is a need to ask for the text of these rules under the Law on access to public interest information, in order to find out what meetings are public.

#### *How can I participate?*

In order to influence decisions or normative acts, people can participate either individually, as citizens, or organized in what the law calls “legally constituted associations”. The law limits in no way the access to its tools, anyone being able to participate irrelevant as to what interest they represent.

Citizens can participate to the processes regulated by the Transparency Law without discrimination based on race, nationality, ethnic origin, language, religion, gender, opinions, political orientation, wealth or social origin.

Interpreting the text of the law, we can notice that foreign citizens or stateless persons, whether residents of Romania or not, cannot use the tools of the Transparency Law. They can however resort to legally constituted organizations to represent their interests.

The NGO for assistance to refugees „Barca” can represent the interests of foreign citizen and stateless person refugees in Romania, in their relations with the Ministry of Interior, when discussing a draft order forbidding them to be hired by businesses where Romanians have been laid off in the last year.

Organizations can also participate through their representatives. The Transparency Law gives such right only to *civic* organizations, meaning NGOs, trade unions and other legally recognized non-profit entities.

Non-Governmental Organizations are the associations and foundations regulated by the Ordinance no. 26/2000, as amended by Ordinance 37/2003.<sup>16</sup>

The environmental NGO „Valea Margaretelor” opposes the project of building a road and a bridge over the river that flows in between the city and the county capital to cut in two the famous Daisy Valley, monument of nature protected by national laws. The study done by the NGO and presented during the meeting of the Local Council showed that the option to build the road through the courtyard of the former battery factory, now deserted, is more economical and also protects the valley. The proposal of the organization contradicts the interests of the prefect’s brother who needs the whole courtyard as storage place for the wood necessary for the sawmill to be installed in the buildings of the former factory.

Commercial companies, cooperatives, agricultural associations or political parties cannot use the law directly. They can intervene either through one person (e.g. owner, manager, member) or through an NGO created to represent their interests.

The Association of Pig Breeders reacted rapidly to the notice of public consultation on the draft law on taxation of some profit-making activities in the field of breeding. The draft law provides for a higher tax on selling pigs in the marketplace in order to gather money for subsidizing state agricultural farms. The businesses in the field, members of the association, worked together for drafting a report showing the contribution of their farms to the economic development of Romanian villages.

An idea can be supported by a person, an association that is not a legal entity, a non-profit association or a coalition.

In order to represent their interests, people can get in contact with NGOs active in the area where their problem belongs. The resources and experience of such NGOs with participation and consultation can contribute to a more efficient intervention. Nothing, however, forbids them to participate alone to consultations or meetings.

In order to find out what NGOs are active in the area of your interest you can ask people in your community or you can access the online NGO databases of the Civil Society Development Foundation ([www.fdsc.ro](http://www.fdsc.ro))<sup>17</sup> or of CENTRAS ([www.centras.ro](http://www.centras.ro)) and the network of Regional NGO resource centers.

Every day you pass by the lake in the center of the park you see that the oil spot is growing bigger. You heard that the situation of the park will be discussed during the next meeting of the Local Council. Being interested in what happens with the park, you contacted the local environmental club and together you prepared an opinion to be expressed during the public meeting.

Citizens and NGOs can form coalitions in order to increase the impact of their proposals through increasing the number of their constituency.

The associations representing greenhouse owners decided to convene a meeting to agree on a common position on the draft law to increasing the customs duties on chemical fertilizers imported from countries other than European Union member states. The members of the associations understood that acting together their position will be considered more carefully.

*I want to express my opinion with regard to draft normative acts. How can I do this?*

First of all, you need to know what normative acts are being drafted. The consultations on normative acts are a process whereby the agenda is set by public institutions. Public institutions decide according to their priorities what acts to be drafted. This requires

---

<sup>16</sup> For details, see Marieta Avram, Marian Nicolae, Horațiu Dumitru, Bogdan Dumitrache, *Ghid legislativ pentru organizațiile neguvernamentale din România*, [Legislative Guide for Romanian Non-Governmental Organizations] APADOR-CH, Bucharest, 2002.

<sup>17</sup> See also the website of eRomania Gateway Association, <http://ro-gateway.ro/node/185810/ongsearch>.



permanent attention to find out what acts impacting on your interests are under discussion at a certain moment.

The first step is getting information on the acts open to consultations. The information on draft normative acts under consultations should be coming from public institutions by default and prior to consultations.

Information sources on draft normative acts under consultation are:

- announcements on the Internet website of the public institution;
- announcements posted in a space open to the public at the headquarters of the institution;
- mass-media, if they published the announcement sent by the public institution.

Looking at the information channels provided in the law, we notice that, similar to the case of the Law on access to public interest information, a website of that particular public institution is assumed to exist, and be periodically updated. We also notice that distributing the announcement to the press is mandatory. The particular public institution is responsible for selecting the media outlets where to send the announcement. Similarly, it depends on the media if they decide to publish the announcement or not.

The announcement should be comprised of:

- an explanatory note, an exposition of the reasons requiring the adoption of that normative act or, as the case may be, a report of approval stating the necessity of adopting the respective normative act;
- the complete text of the draft normative act;
- the deadline for comments (at least 10 days) and
- the modality wherewith interested persons may send their written comments.

Another important channel of receiving information on consultations on draft normative acts is the procedure of filing a request with the respective public authority.

The text of the law is rather vague, mentioning just that draft normative acts will be sent to all persons who have previously filed a request to receive such information. We can assume that the public institutions will set up procedures for sending the announcement to the persons who have filed requests. You can ask that the announcements be sent to you in electronic format, by email, to the address you provided in the request.

We can notice here that the Transparency Law speaks, when talking about informing on draft normative acts, about *persons* and not *citizens*. Therefore, foreign citizens, stateless persons as well as all legal entities, whatever their legal status, may receive information on draft normative acts. We stress that only citizens and NGOs can be consulted under the law.

In order to efficiently take advantage of this provision of the law you should be aware to the following:

- you should send a request to all public institutions that are active in the field of your interests;
- you should make sure that you stated the field of your interest using words that are general enough to avoid missing any draft you would want to comment on;
- you should make sure that the channel of communication from the public institution to you is rapid enough to allow you sufficient time to respond, and that the institution can make use of that particular channel.

The federation reuniting NGOs active in the field of social assistance in the county requested the Ministry of Labor and Social Solidarity to inform on any draft normative act that would modify the law no. 34/1998 on granting subsidies to Romanian legal entities, associations and foundations, that establish and administer social assistance units, as well as the norms for the application of the law. By doing this, the NGOs can speak their mind on a law of great interest to them.

Individuals or NGOs can initiate communication channels to forward to all interested parties the information that just one of them received. In practical terms, communication among NGOs is more efficient than communication between a public institution and each NGO.

The email list [transparenta@yahoogroups.com](mailto:transparenta@yahoogroups.com) was created in order to allow NGOs to widely distribute announcements on drafting normative acts received from state authorities. This way, information received by one NGO can be forwarded to many others and therefore more resources be mobilized in order to have a greater impact.

For normative acts relevant to the business environment, the public institution that initiated the draft should transmit the announcement to business associations and other associations legally constituted on different business areas. As the law is not clear on how the public institution would identify such associations, it is better that the associations would signal their existence to institutions that may draft acts of interest to them.

According to the law, participation to drafting normative acts is done during the drafting process before sending the draft for analysis and advice to the public authority that initiated it. Citizens have only a limited time at their disposal, the deadline being specified in the public announcement. The deadline cannot be shorter than 10 days since the publication of the announcement.

The comments, or, in the words of the law "proposals, suggestions and opinions, as recommendations", will be received by a person specifically designated by the leader of the public authority. Commentators have to pay attention to how they transmit their comments: they should check, for example, whether that particular authority can receive emails with attachments or can receive faxes.

Another way of consultation, apart from written comments, is organizing public debates. Public debates can be requested in writing by a legally constituted association or another public authority, and the initiator of the draft is obliged to organize them.

From the ranks of the civil society, demanding public debates can be done only by organizations, not by private individuals. Nothing forbids citizens to participate in debates, even if they do not represent any organization. Also, although public authorities are not necessarily the direct beneficiaries of the processes regulated by the Transparency Law, they can ask that public debates be organized. This way, civil society can be using those public institutions open to transparency in order to convince other authorities of the benefits of transparency.

Public debates will take place in maximum 10 days since the publication of the announcement on their organization. This means that NGOs should be ready to react rapidly, as the wording of the law allows for the debates to be organized the next day after the announcement! The law does not provide for any way of organizing and structuring these public debates.

The term public debate has been used in Romania to describe a public meeting that provides a formal opportunity for information exchange. For instance, public debates have provided an opportunity for information exchange on planned city budgets. Sharing some characteristics of public meetings and some of public hearings, public debates are a somewhat unique Romanian format that seems to serve well the needs of Romanian communities at this time.

Public hearings are usually more formal than public meetings. A public hearing is characterized by attentive listening by public officials. [...] At the hearing, officials listen and usually do not provide answers, so a public hearing is not an opportunity for interactive exchange (compare with discussion of public meetings, above). The hearing and listening format helps assure that: (a) the process remains nonpolitical; (b) personalities do not become a factor perturbing attention; (c) government officials do not become defensive; and (d) one or two discussions do not use up all the allotted time. After all citizens who wish to do so have spoken (or after the time for public comment has run out), officials thank citizens for their participation and usually, at this time, the hearing ends.<sup>18</sup> Shortly thereafter, the report on the public hearings is published.

A public hearing is a formal process whereby prescribed procedures impartially permit all interested parties to provide well-considered statements of opinions (testimonies) and facts regarding particular subjects to elected and appointed policy makers. Policy makers are subsequently expected to consider and appreciably draw upon this information when crafting legislation.

Although the focus of the process is primarily upon the compilation and

---

<sup>18</sup> Eric Chewtynd and Frances Chewtynd, *A Practical Guide to Citizen Participation in Local Government in Romania*, Research Triangle Institute — Local Government Assistance Program Romania, Bucharest 2001.

submission of written statements, most people tend to be more familiar with the public event segment that provides a stage for testimony delivered orally. In this sense the public event is useful because it furnishes an opportunity for more dramatic presentations that generate publicity regarding the subject matter. Hence, presenters are chosen according to their potential for their public relations impact. However, more substantive policy scrutiny of testimonies will be provided to the written form.<sup>19</sup>

Other consultation tools that can be requested by citizens, although not expressly provided for in the law, are:

- electronic consultations, like an electronic forum (see the example of the Constitutional Forum, [www.forumulconstitucional.ro](http://www.forumulconstitucional.ro))
- community meetings, organized in a public place, close to the community that would be affected by the normative act (thus not organized at the headquarters of the public authority)

The City Council initiated a normative act that provides for privatizing a portion of the central park to an investor in order to build a residential area. At the request of the homeowners associations from the blocks of flats close to the park, the City Council decided that the public hearing will take place in the amphitheater situated in the middle of the park.

*I want to participate in public meetings. How can I do this?*

Similar to the procedure for normative acts, the first thing to be done is to get information on the agenda of the public meetings. Once the Transparency Law will be applied constantly, you will know what public institutions in your community organize public meetings and what their schedule is. Generally, such meetings are taking place regularly (e.g. once a week) although, depending on each public institution, extraordinary meetings may also take place. Knowing this, you just have to find out the agenda of the meeting to see whether there are issues of interest to you and on which you want to express your opinion.

The public authority is obliged to render public the announcement on the meeting with at least three days before the meeting takes place. The announcement will be made available through:

- announcement on the Internet website of the public institution;
- announcement in a space open to the public at the headquarters of the institution;
- communicate it to the press.

The announcement will contain

- the date, hour and place of the meeting
- the agenda.

The observations we made in the part on normative acts remain the same here: a website of that particular public institution is assumed to exist, and be updated regularly. Distributing the announcement to the press is mandatory. The particular public institution is responsible for selecting the media outlets where to send the announcement. It depends on the press if they decide to publish the announcement or not.

The law provides that the announcement has to be brought to the attention of citizens and legally constituted associations that have previously presented suggestions and proposals on the issues to be discussed during the meetings. The law hereby entails persons who, either using their right to petition, or the procedures of the Transparency Law regarding the consultations on draft normative acts, have previously formulated opinions on the topics present on the agenda of that particular meeting. This procedure assumes that the person in charge with sending the announcement will check every time before a public meeting the agenda and the registry where citizens' petitions were recorded, the list of those who sent written comments on the draft normative acts to be analyzed, and, as the case may be, the list of participants to public debates on these acts, all these in order to draft an additional list for distributing the announcement. Lacking a computerized evidence system, this operation will be time and energy consuming.

Participation in the meeting is limited to the number of seats where the meeting takes place. In order to determine who has priority to attend, the law talks about the "order of priority" and leaves to the discretion of the chairperson of that meeting to decide who has a

<sup>19</sup> Advocacy Academy, *Public Hearings: Guidelines for written testimonies*. For details, see [www.academia-de-advocacy.org](http://www.academia-de-advocacy.org).

greater interest in participating. The order of priority cannot be used in order to prevent from participation to the meeting of those protected under the Ordinance 137/2000 on preventing and sanctioning all forms of discrimination.<sup>20</sup> The press has preferential access to the room irrelevant of the “order of priority”.

The same chairperson of the meeting has another tool to control the meeting—the possibility to give warnings and even evacuate a participant who does not respect the regulation of the meetings, part of the internal regulations of the respective public institution. Those that cannot attend the meeting will be able, under the law on access to information, to receive the minutes of the public meetings.

Similar to the case of normative acts, participants' contributions to the public meetings are mere recommendations, decision-making being the exclusive competence of the public authorities.

#### *How easy will it be for me to have my voice heard?*

The Transparency Law has just been published. Public authorities are not yet accustomed with the idea of transparency.<sup>21</sup> There is a need for a major change in the mentality of public administration, passing from the culture of opacity to that of transparency, as well as in the mentality of citizens, from the lack of involvement to direct participation.<sup>22</sup> It is likely that resistance to transparency will be higher in the first years of enforcing this law. This does not mean that the law should not have immediate visible effects. As we have repeatedly stated throughout this guide, the law will be the more useful to citizens the more they will peruse its provisions.

#### *Public authorities are not transparent. What can I do?*

We can anticipate resistance to transparency in the period immediately following the coming into force of the law. In order to challenge opacity, one must understand first why is it preferred to transparency.

- Reflexes coming from years of secrecy over how power operates are still present thirteen years after the fall of communism. Habits are a second nature—powerful as may be, but that can be changed.<sup>23</sup> The operations of public administration in Romania as member state of the European Union will have to be governed by transparency;
- Opacity favors corruption. A constant and continuous enforcement of the Transparency Law by honest public authorities will increase citizens' trust therein;
- Public authorities lack the practice of openness to their patrons. Not all public servants are used to dealing with the public, and direct public relations make them feel unsafe. This is why instinctive defense mechanisms can be triggered and public servants defend themselves behind opacity. Transparency of administration will bring more professionalism to public servants;
- Some public administration decision-makers are still considering that they know best what should be done. In this line of thought, consultations are meaningless. They do not understand that participation can bring along the adoption of decisions or normative acts closer to reality and easier to be accepted by the public, if the public were part of the process that lead to their adoption.

Resistance to transparency can be shaped different ways. Some public institutions will use the exceptions provided by the law or will try to manipulate its meaning in order to make it impossible to be enforced. As a reaction, it is important to constantly remind authorities the principle that the Transparency Law should be enforced rather than allow institutions to hide their activities.

One should not forget that transparency of public authorities is a dynamic process. The more the law will be enforced, the more public authorities will be transparent, as they will have the practice of enforcing the law.

---

<sup>20</sup> Published in the Official Gazette no. 431/2000.

<sup>21</sup> On this, see Transparency International Romania, *Transparența și participarea în procesul de reglementare la nivel local și central în România—raport preliminar asupra situației existente*, [Transparency and participation in the rule-making process at the local and central levels in Romania—preliminary report on the existing situation] on [www.transparency.org.ro](http://www.transparency.org.ro).

<sup>22</sup> See Dan Jurcan, *The Romanian Law on Access to Information of Public Interest*, presented to the „Government-citizen communication workshop”, Budapest, 8-9 March 2002.

<sup>23</sup> Surprisingly, some people state that citizen involvement was higher during the communist regime. Such statements are based on the fact that all activities that can be now considered 'civic' were taking place under strict state control. For the situation in another former communist country (Lithuania), see Earl Mathers, *Facilitating Community Development Through Local Government Collaboration With NGOs*, Development Associates, Occasional Paper No. 1.

You should always react to opacity. Not enforcing the law or applying it wrongfully has to be challenged. One should constantly insist on respecting the rights conferred by the law until they are being respected. Do not forget that those able to influence the result of a consultation or participation process are both the decision-makers and the ones that have to directly apply the Transparency Law.

In order to be successful, the defended position has to be clear, and the procedures provided by the law carefully respected. Only this way your action can be successful through minimizing all the chances that public administration bodies could invoke lack of compliance with procedures.

The Transparency Law is providing for appeals in case it is not respected. Through article 13, persons or organizations have the right to sue public authorities that do not respect the provisions of the Transparency Law, under administrative litigation law.<sup>24</sup> The provision makes reference to the procedure regulated by the Law 29/1990,<sup>25</sup> as subsequently amended and supplemented. The plaintiff has the burden of proving the damage brought to a legally recognized right or legitimate interest through the misapplication of the Transparency Law. That person has to use the administrative complaint procedure prior to filing the case.

Moreover, officials that prevent access to public meetings or impede involvement in consultations on draft normative acts can be sanctioned for disciplinary misconduct. First, it is important to see the meaning of the terms “preventing” or “impeding” in the context of the Transparency Law. The law does not define the terms, so any action has to be rigorously argued in order to clearly show how one was hindered from participating. Secondly, we should stress that the law talks about officials, meaning any employee of the public institution. The sanctioning though is different for a public servant than for other employees of that institution.

The Statute of the public servants, Law no. 188/1999,<sup>26</sup> provides that disciplinary misconduct can be sanctioned by:

- warning,
- reprimand,
- reduction of salary with 5-10% for 1-3 months,
- suspension of the right to promotion for 1-3 years,
- demotion of the servant, for 6-12 months, with the reduction of the salary,
- dismissal.

The sport association „Avantul” was not able to participate to the meeting of the Local Council discussing the sale of the local soccer playground to an investor coming from the county capital. When the president of the association asked for the time of the meeting, over the phone, the public servant gave him the wrong hour. The association filed with the Local Council a request to sanction the servant. The Secretary of the Local Council, finding out that, minutes before speaking with the people from „Avantul”, the same servant had given the correct hour to other persons, decided to convene the disciplinary commission in order to assess what sanction to be applied.

The servant can be sanctioned with warning or reprimand by the leader of the department he or she is working in. The persons who were not allowed to participate or to comment have to send a memo to the direct supervisor of the public servant and ask for his or her sanctioning. The other types of sanctions are applied by the leader of the institution, upon proposal from the disciplinary commission. In this case, the memo has to be sent to the leader of the institution, with the request to convene the disciplinary commission, or directly to the members of the commission. You should keep in mind that the sanctioning decision is at the disposal of the supervisors, and you have little, if any meaningful, tool to control whether they actually sanction that person or not.

For the other employees of public institutions that are not public servants, the sanctioning regime is to be found in the Labor Code. According to the new Labor Code, in force since March 1, 2003, an employee can be sanctioned with:

- written warning,
- suspension of the individual labor contract for no more than 10 working days,
- demotion, with reduction of salary, for a period of no more than 60 days,

<sup>24</sup> The administrative litigation law regulates the right of any person to sue in court of law (administrative section) either acts issued by public administration bodies, infringing on rights or legitimate interests, or refusals by public administration bodies responding to a request about rights or legitimate interests.

<sup>25</sup> Law no. 29/1990, Official Gazette no. 122/1990.

<sup>26</sup> Law 188/1999, Statute of public servants, Official Gazette no. 600/1999, as subsequently amended and supplemented.

- reduction of salary for 1-3 months with 5-10%,
- reduction of salary, and, as the case may be, of management bonuses for 1-3 months with 5-10%
- dismissal.

The sanctions are enforced by the employer.

Note that the leaders of public institutions who are not public servants, but high (elected or appointed) officials or their personal councilors, cannot be sanctioned following these procedures. The only way is available through the administrative litigation law.

The decision to use this way of sanctioning the persons who block transparency is rather delicate. Its efficiency depends on many factors, and especially on the fact that the decision to sanction belongs exclusively to the institution who employs that public servant or official.

Another means of recourse for people who consider that their rights arising from the Transparency Law have not been respected is the appeal to the People's Advocate (Ombudsman). Institution created by the 1991 Constitution of Romania and functioning since 1997, the Ombudsman is the defender of the rights and liberties of citizens in their relationships with public authorities.<sup>27</sup> Although this tool is not expressly provided in the Transparency Law, people can make use of its attributions.<sup>28</sup>

The law provides for a tool to be used by citizens in order to monitor the way the law was enforced by the authorities—the annual report on transparency of decision-making. The report explains, at least from a quantitative point of view, to what extent the law was enforced. People can challenge in court the public institutions that do not publish the report in due time.

#### *I want the public authorities in my city to be more transparent*

The Transparency Law provides in article 1 that its standards are minimal. This means that all state institutions that have to follow the law are obliged to respect these standards. But this also means that any public institution can adopt legal norms to provide for more rights on participation to norm drafting or to public meetings. This has already happened even before the law was adopted, and examples can be cited for both local and national levels.

On November 29, 2001 the Local Council of the Giurgiu Municipality has adopted Decision no. 206 on implementing the project “Transparency in the local public administration”. Giurgiu is the first municipality in Romania to adopt measures allowing public participation in the process of decision making at the local level. The decision provides for the mandatory publication of the draft normative acts of the Local Council in the “Information Newsletter” before being adopted. Interested persons have 60 days to offer suggestions or comments. If the Local Council notices a higher interest for a topic, then public debates can be organized to discuss it. The same decision allows persons to propose the initiation, modification, setting out of force or replacement of normative acts. Also, the decision requires cost benefit analyses for all decisions impacting on economic life, these analyses being public.

The Emergency Ordinance on the general legal framework for communications<sup>29</sup> provides in chapter IX the procedures of consultation, transparency and information that the National Agency for Regulation in Communications (ANRC) has to respect. Article 50 provides for the procedure to be followed when ANRC intends to adopt measures of significant impact to the market of electronic communications or postal services. The draft normative act will be published on the webpage of the Agency,<sup>30</sup> and all persons and organizations that have expressed an interest in the issue will be notified by email. The deadline for sending comments is minimum 30 days since publication, but can be shortened to 10 days in emergency situations. The draft can be adopted only 10 days after the deadline for comments, and the text will

---

<sup>27</sup> Law 35/1997, Ombudsman Law, Official Gazette no. 48/1997, amended.

<sup>28</sup> For a parallel on the Ombudsman and the Law on access to public interest information, see Codru Vrabie, *The Role of the People's Advocate in protecting free access to information of public interest*, Transparency International Romania, 2002.

<sup>29</sup> Emergency Ordinance nr. 79 of 13 June 2002 on the general framework regulating communications, Official Gazette nr. 457/2002.

<sup>30</sup> [www.anrc.ro](http://www.anrc.ro).

be accompanied by a synthesis of the observations received, with the position of ANRC on each of them.

*What can I do if my goal cannot be reached through this law?*

As mentioned before, the Transparency Law joins other norms that have been created to serve you in ensuring that your interests are respected. Through the Law on free access to public interest information<sup>31</sup> persons or organizations can request information from state authorities.<sup>32</sup> You can then find out what was decided for you or the issues of interest to you. The Ordinance regulating the right to petition<sup>33</sup> allows people and NGOs to file petitions, i.e. requests, reclamations, notices or proposals towards public authorities. You can then interact with authorities outside public meetings or consultations on normative drafts. The Law on administrative litigation<sup>34</sup> allows you to challenge in court the administrative acts that are restricting your rights and legitimate interests.

**The Transparency Law has added a new tool, perhaps the most powerful in relation with the public administration. Through this tool you can have your voice heard. Use it! Do not forget that:**

***“ABSENTS ARE ALWAYS WRONG”***

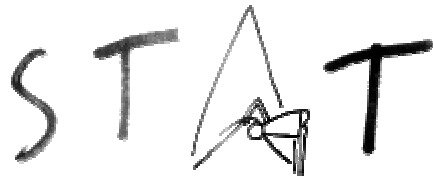
---

<sup>31</sup> See footnote 14, above.

<sup>32</sup> For details, see Transparency International Romania, *Ce trebuie să știm despre accesul la informațiile de interes public*, [What do we have to know on access to public information] Bucharest, 2001.

<sup>33</sup> See footnote 15, above.

<sup>34</sup> See footnotes 24 and 25, above.



## V. NGO Experience, Availability and Potential to Implement the Transparency Law

The research component<sup>35</sup> of the project analyzed the methods and techniques that Romanian NGOs use in order to participate in developing public policies, within the framework of public participation opportunities defined by the recently adopted Transparency Law. The research aimed:

- a. To determine the Romanian NGOs experience related to participation and consultations with public administration
- b. To analyze the NGOs' availability of involving in consultations

In the first part of the research you will find the profile of the respondent NGOs. The second part dwells on the public participation of NGOs, while the third part examines the consultation process in drafting normative acts. The fourth part analyses participation in public meetings.

### Methodology

Transparency International Romania, IRIS Center Romania, Media Monitory Agency—Academia Catavencu and Civil Society Development Foundation have developed a questionnaire that requested information about the respondent organizations, their experience and availability of taking part in consultations and public hearings. The questionnaires have been distributed through mail<sup>36</sup> or posted on the Internet sites of the initiators.<sup>37</sup> The research was conducted between January 27—February 17. Responses to the questionnaire<sup>38</sup> relied exclusively upon the respondent organizations' good will, effort and interest—77 organizations interested in the research subject<sup>39</sup> have answered our call. Such limited number cannot be considered a representative sample of the Romanian NGOs. However, from both the geographical point of view and the perspective of field activities, our respondents draw very close to the national sample, as shown below.

### Profile of Respondent Organizations

For the NGOs' profile, we took into account, on the one hand, the geographical distribution and the type of activity, and on the other, organizational aspects such as: staff, financial capacity in 2002, available legal expertise.

For the geographical distribution of NGOs, we present the results according to breadth of coverage in the development regions defined by the legislation in force<sup>40</sup>. Figure 1 presents the NGOs distribution on development regions. The most numerous organizations are from Bucharest, followed by the Center Region. The least come from Oltenia.

The structure on development regions of the respondent NGOs is presented in the graph. This structure does not match the NGOs' distribution on development region according to CSDF's NGO database<sup>41</sup>. However, a correspondence exists with the organizations' distribution according to the database. A similar situation reflects on the case of the respondent organizations' distribution by activity types<sup>42</sup>. Most NGOs have as activity field

---

<sup>35</sup> Undertaken by Oana Pigănescu of the Civil Society Development Foundation (CSDF), who also prepared this section of the guide, under supervision from Oana Zăbavă of TI-Romania.

<sup>36</sup> A number of 362 questionnaires have been disseminated along with the periodical paper publications of the initiators.

<sup>37</sup> Courtesy of eRomania Gateway Association.

<sup>38</sup> Of the 77 responses, one was mailed, 34 sent by email, 10 by fax and 32 completed on-line.

<sup>39</sup> We consider that interested organizations are part of those NGOs that paid a special attention to public participation. Therefore, the answers belong to those directly involved in participation and are probably more optimistic than if they belonged to a representative sample.

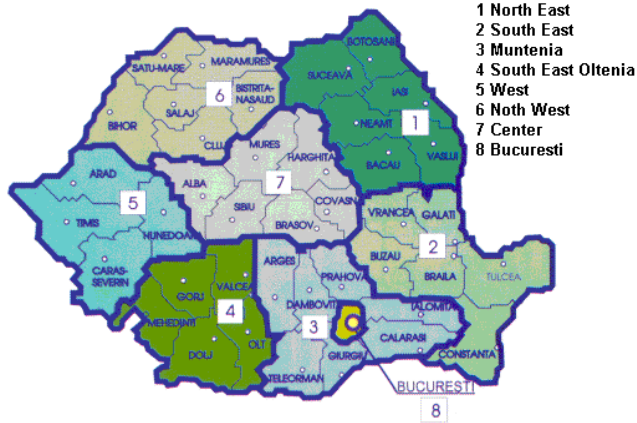
<sup>40</sup> Law 151/1998 regarding regional development in Romania, Official Gazette 265/1998, modified and completed.

<sup>41</sup> CSDF NGO Directory NGO-Bit: records are selected based on completeness and how recently data was updated. It contains contact details, area of activity, activities and projects.

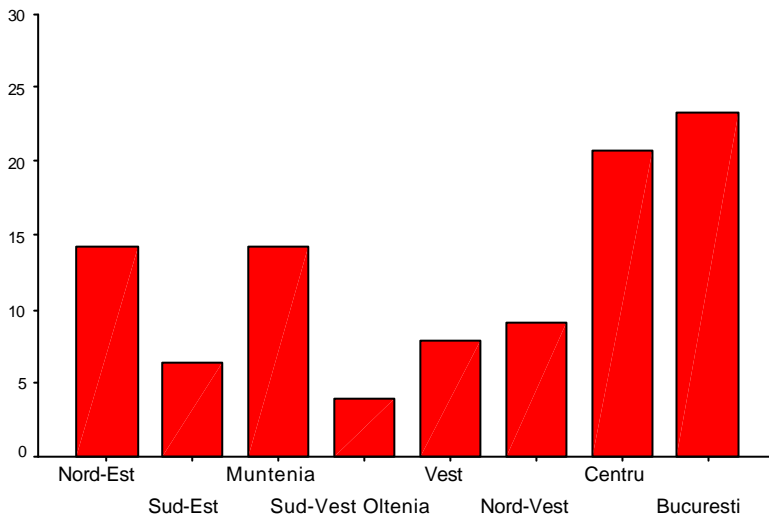
<sup>42</sup> For example, 13% of the organizations registered in CSDF database came from North East region, while 14,3 % of respondent organizations are located in this region. Except for Muntenia region and North West



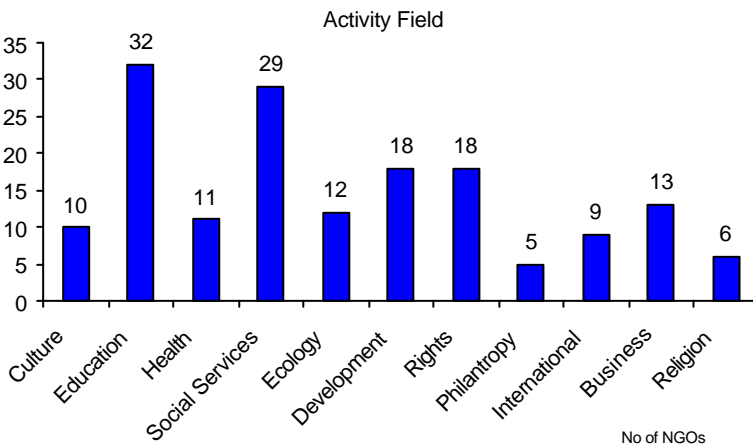
education (32), social services (29), development, and rights (18). Figure 2 presents NGOs' distribution on types of activity.



Graph 1 Distribution of NGOs by region



Graph 2 Distribution of NGOs by activity field



region, the report respondent organizations/CSDF database has values between 0,8 and 1,2. Regarding the distribution on types of activity, considering as most frequent education and social services, the above-described report is 0,8.

As for the distribution of human resources, the majority of organizations have between 1 and 10 employees. The table below illustrates the categories encountered amongst the respondents.

Table 1 Human Resources in 2002

|         | Full-time staff<br>in 2002 | Part-time staff<br>in 2002 | Volunteers<br>in 2002 |
|---------|----------------------------|----------------------------|-----------------------|
| 1 – 10  | 38                         | 26                         | 36                    |
| 10 – 20 | 7                          | 13                         | 13                    |
| 20 – 30 | 2                          | 8                          | 3                     |
| 30 – 40 | 2                          | 3                          | 2                     |
| 40 – 50 | -                          | 5                          | 1                     |
| over 50 | 2                          | 7                          | 1                     |

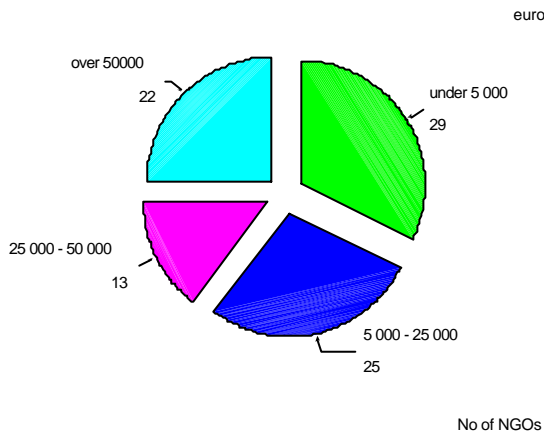
From the perspective of the Transparency Law, legal expertise is a key resource, relevant especially for the NGOs' availability and capacity of developing relations with public administration: half the respondent organizations declared not to have legal expertise.

In order to determine the financial capacity of NGOs, we designed 4 categories:

- a. NGOs that gathered funds under 5,000 Euro,
- b. NGOs that gathered funds between 5,000 and 25,000 Euro
- c. NGOs that gathered funds between 25,000 and 50,000 Euro
- d. NGOs that gathered funds over 50,000 Euro

In 2002 most of the respondent NGOs obtained funds under 5,000 Euro (22 organizations), followed by those that obtained funds between 5,000 and 25,000 (19 organizations). Figure 3 details the NGOs' distribution on each defined category.

Graph 3 NGO Funding in 2002



Even with limited resources, NGOs get involved in public participation. Although the NGOs' activity in delivering services is well acknowledged, expectations are far from met with respect to their involvement in the decision-making process, in developing new behaviors and promoting democratic values. Donors should target especially those organizations with limited resources that do have potential for representation, both at local, as well as to central level, thus stimulating public participation initiatives.

### Public Participation

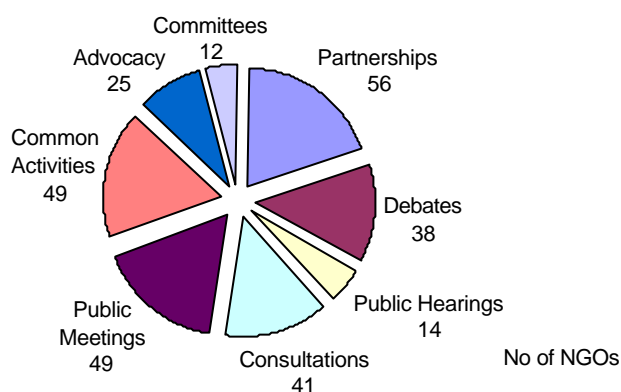
Respondent NGOs declared to have experienced at least one of the following instances of public participation.

- Partnership with local administration (developing medium- or long-term partnerships on issues of common interest implies working groups and relations of contractual type),
- Public debates (formal interactions that approach subjects of public interest and take the form of meetings, seminars, working shops)
- Public hearings (structured public debates that imply preparation in advance, analysis and decision-making on the basis of a written testimony),
- Consultations related to normative acts (they have a very technical character and need judicial expertise for enacting, changing and repealing of norms),
- Public meetings (meeting of authorities and institutions opened to the public and the press),

- Joint activities, in partnerships and coalitions (implies joint efforts but limited in time or isolated),
- Advocacy campaigns (efforts to induce the decisions of public institutions and authorities regarding the issues of public interest)
- Citizens consultative committees (semi-institutionalized groups with a consultative role for public administration)

The majority of organizations initiated partnerships with the local administration (49) and participated in public meetings (49). Just 25 organizations have been involved in advocacy campaigns. More than half of the organizations took part in consultations regarding elaboration of normative acts. In the same time, NGOs' seldom participate in citizens' consultative committees (only 12 organizations declared such experience), or use public hearings as a public participation tool. Figure 4 reflects NGOs involvement in decision-making processes by types of instruments/activities.

Graph 4 NGO Involvement in Decision-Making Processes



Considering the impact of public participation activities in various forms, we note a higher rate of responses "important" and "very important" in the case of respondents that were involved in joint activities, partnerships and consultations. On the other hand, public hearings and citizens' committees are also positively appreciated by the respondent organizations, even if with a comparatively lower frequency. While legislation in force and donor policies favor, at least formally, the establishment of partnerships, it is not surprising that many NGOs are involved in this type of public activity.

Research results from another study<sup>43</sup> of the Romanian NGO sector support these findings. NGOs seldom use the partnership framework and avoid making propositions and offering alternatives for building advocacy capacity at local level.<sup>44</sup> The review of the Romanian NGO sector also looked at the knowledge and understanding of NGOs about the legal and fiscal framework wherein they operate, as well as to their capacity of using that knowledge effectively.<sup>45</sup> According to the report, a key point in empowering NGOs to work on the legal framework and contribute to decision-making was the creating and managing the relationship with local and central government. To achieve these the report considered necessary to further develop consultative mechanisms with the central government, particularly on future funding of the sector and to introduce specific programs to inform local authorities about the new legal provisions for NGOs, their role and examples of good practice in joint work. However, the organization's decision of getting involved in various public participation activities does not depend on their capacity for fundraising and legal expertise.

<sup>43</sup> Review of the Romanian NGO sector: Vera Dakova, Bianca Dreossi, Jenny Hyatt & Anca Socolovschi, *Strengthening Donor Strategies*, September 2000.

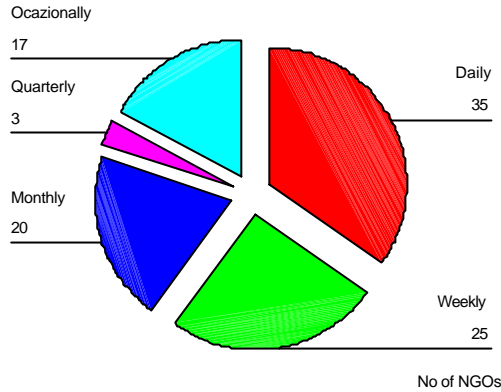
<sup>44</sup> These recommendations include: Enhance the capacity of NGOs for advocacy work at national and local levels; Build policy development agencies (think tanks) that are able to work with government, international agencies and others on strategic public policy issues; Enhance understanding in all sectors of the role of NGOs both as service providers and advocates for change in relation to government and to business; Encourage the development of structures such as community groups, advocacy alliances, networks operating across and within fields and self-help groups. Such structures have a vital role to play in civil society development and reduce emphasis on NGOs as the only means of bringing about social change.

<sup>45</sup> It recommends actions to increase the awareness and skills of NGOs to use the existing legal and fiscal provisions through information dissemination and advice provided by local NGO resource centers. The report also suggests to increase the capacity of national level NGOs to become 'full-service' advocacy groups which not only take responsibility for drafting and promoting legislation but also for monitoring law implementation or under-implementation.

*Information regarding the public authorities' agenda*

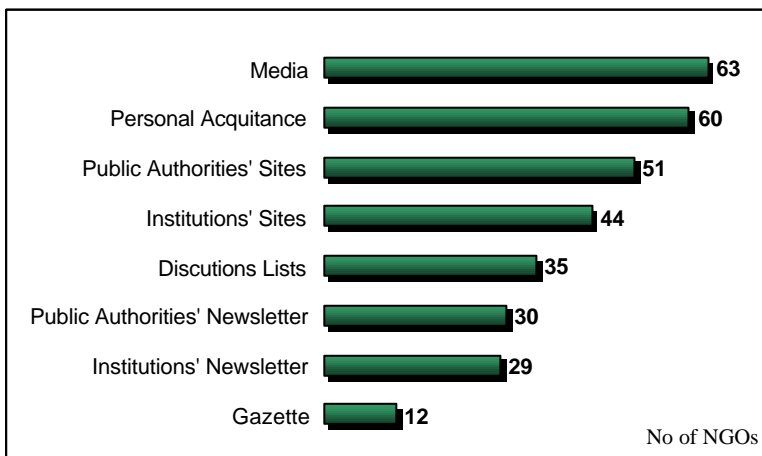
Information regarding the agenda of public authorities with competence in the organization's activity area represents a preoccupation for the respondent organizations; the majority seeks information systematically, while only 17% of the organizations do so occasionally. In figure 5 we illustrate the frequency with which non-governmental organizations seek information regarding the public agenda.

Graph 5 How often do you seek information about the public agenda



Mass media represents the NGOs main source of information regarding the agenda of public authorities that have competence in their activity area. Note also the high number of organizations (60) relying on personal contacts that represent one of the main information sources. Figure 6 classifies the main sources of information for NGOs.

Graph 6 Information sources about public agenda for NGOs



Legend: Local and central press; gazette; newsletters published by the competent authorities; newsletters of public or private institutions; competent authorities sites; public or private institutions' sites; lists of discussions and electronic forums; personal contacts.

Although a secondary source of information,<sup>46</sup> mass media is invested with a high level of confidence. Limitation to secondary information,<sup>47</sup> and the fragmentary character thereof, can only inhibit the organizations' initiatives for public participation.

Out of the 77 total, only 12 organizations mentioned having requested information on the basis of Law 544/2001 regarding free access to information of public interest, while 9 of them stated having received satisfactory answers. The numbers of requests addressed to

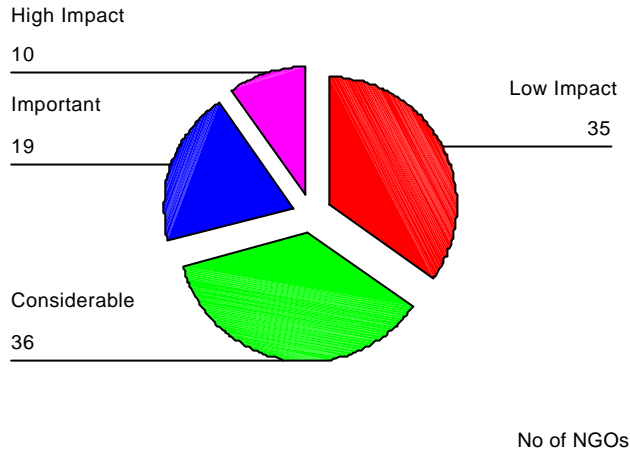
<sup>46</sup> In this context, by primary source we understand the authority's site, gazette or newsletter. Mass media is secondary information, meaning that the information coming from the public institution or authority is filtered and selected through the prism of mass media' commercial interests.

<sup>47</sup> „The population's highest level of trust is oriented to church (90%), army force (78,6%) and mass media (65,5%)", Preliminary results ROMNIBUS\*, September 1999, research displayed by IMAS, at BBC request, with CSDF and CENTRAS assistance.

public authorities on the basis of Law 544/2001 varies from 1 to 45 per NGO,<sup>48</sup> the answers' degree of satisfaction being around 60%. Exercising the legal right to request information of general interest does not depend on the organization's "age"<sup>49</sup> or availability of legal expertise.

The answers to the question „How do you appreciate the impact of public participatory activities?“ present almost an equal rate of satisfaction/dissatisfaction, revealing an equivocal attitude. Organizations evaluate their activity as having both a low (35%), and a considerable (36%) impact.

Graph 7 Evaluate the impact of your public participation related activities

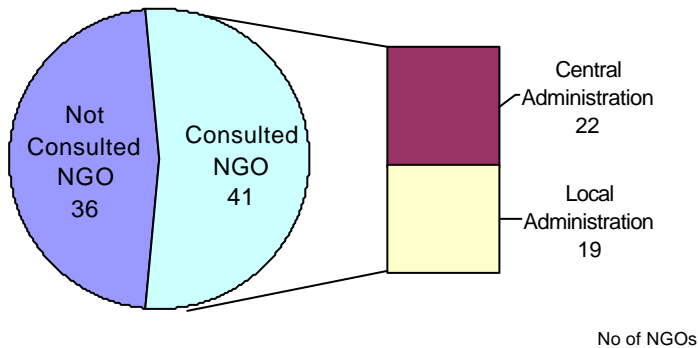


Taking into account the number of organizations that evaluate the impact of their activities as being considerable (36 organizations) and the number of organizations that had suggestions discussed and accepted, partially or totally, we can presume that NGOs are able to generate some changes in the public agenda.

**Consultation on Drafting Normative Acts**

More than 50% of the respondent organizations mentioned they have not been consulted with respect to regulations issued by central or local public administration in 2002. Out of the NGOs that have been consulted, 22 got involved in consultations with central administration and 19 with local administration (see Graph 8).

Graph 8 Consultation with public administration in 2002



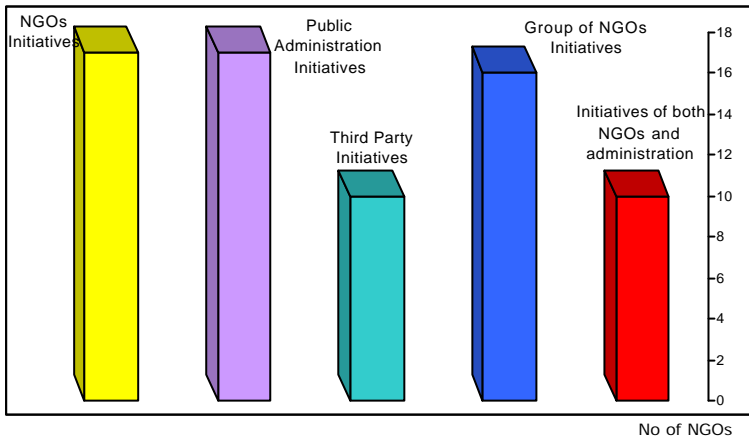
<sup>48</sup> On the average there were 10 requests.

<sup>49</sup> Organization's "age" is defined in accordance with the year of establishment/incorporation.

We consider relevant the findings of other research conducted by CSDF in 2001 stating that cooperation with central and local administration has an ad-hoc character and is due to personal contacts.<sup>50</sup> In this case, the study showed that social and cultural norms are not generally enabling of civil society development. Respondents state that public institutions do not encourage the activities of civil society organizations, a perception related to the fact that NGOs are not requested by local and national government to be involved in policy formulation.

In the present study, half of the organizations that mentioned they have been involved in consultations during 2002 declared the initiator of the consultation process. Graph 9 shows that the NGO sector (own initiative or initiative of a group of organizations) are the most frequent initiators of consultations. As individuals, the number of NGO initiatives is at the same level as public administration initiatives.

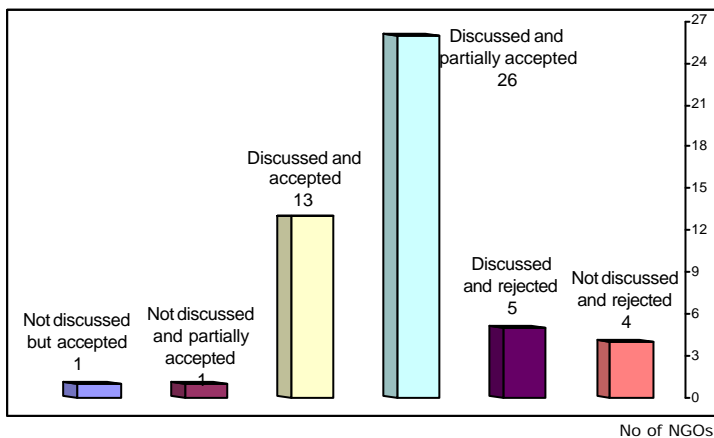
Graph 9 Who had initiated the activities? (initiatives undertaken in 2002)



The number of NGO initiatives (17) may seem high when looking at the results. It is worth mentioning that an initiative is just the first step in a process of influencing public policies, and it is possible that NGOs stop in the initial stages. On the other hand, not all initiatives turn into specific actions, due to lack of information and interaction with other organizations with similar interests.

No matter who initiated the consultation process, NGOs' suggestions were generally brought into discussion and usually accepted by public administration. There is a low frequency of rejecting NGO proposals or of avoiding discussing their suggestions.

Graph 10 What were the results of the consultation?



In a perception analysis at national level,<sup>51</sup> the respondents considered that NGOs are usually not invited to participate in the generation and discussion of legislation. Also, NGOs are not

<sup>50</sup> Carmen Epure, Oana Tiganescu and Ancuta Vamesu, *Romanian Civil Society: An Agenda for Progress*; August 2001; CIVICUS Index on Civil Society, Occasional Paper Series, Volume 1, Issue 9.

<sup>51</sup> Ibid.

requested by local and national government to be involved in policy formulation and they do not have good access to the legislature in order to promote their point of view. NGOs are not able to successfully influence government policies in favor of their constituents. In exchange, they seem to cooperate more successfully with public authorities in the implementation of public policies.

The same report showed in 2001 that despite recent successes, organizations seem to have a limited capacity to influence public policy. Such results point to a discrepancy between the capacity of the organizations to meet the needs of their members, clients, or communities and their capacity to promote those interests by influencing public policy. In the context where, according to general perception, NGOs are not able to influence public policies, the present study illustrates that organizations that initiate and maintain their involvement in public participation may actually influence the public agenda.

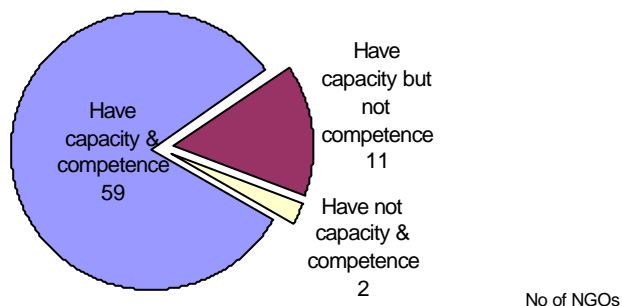
To what degree are NGOs prepared for public participation processes? A high percent of the respondent organizations declared they have the capacity to formulate a documented point of view in 5 days,<sup>52</sup> as well as the competence to present proposals in a proper legal format (see Chart 11). There are some other organizations that, even if able to react promptly, do not have the specific legal competence.

Even when capable to formulate a documented position, NGOs prefer not to get involved in advocacy campaigns, public hearings and citizen committees. The decision of the organization to get involved in public debates or consultations is not dependent on the capacity to formulate a documented answer. The technical character implied by partnerships, joint activities and public meetings relates to a certain degree of organizational development. Thus, it is not surprising that NGOs involved in such activities do have the capacity to support their point of view.

NGOs declaring the capacity to formulate an argument in legal terms prefer to engage in partnerships, joint activities, public meetings and consultations on legislation. A small number of those organizations get involved in public hearings and citizen committees. NGOs declaring not to have the necessary legal expertise did not get involved in public participation activities.<sup>53</sup>

Note that NGOs that are able to formulate their opinion in legal terms do not usually get involved in advocacy activities. NGOs without legal expertise seldom get involved in activities like advocacy campaigns and consultations. The absence of competency, however, does not prevent organizations to attend public meetings or to get involved in joint activities or partnerships.

Graph 11 NGO capacity and competence to answer in legal terms



Legend: capacity means the ability to formulate a documented opinion in 5 days, while competence means the ability to use legal terms

In general, organizations that are involved in at least one form of public participation have both the capacity to formulate an argument within 5 days, and the competence to express it in legal terms.

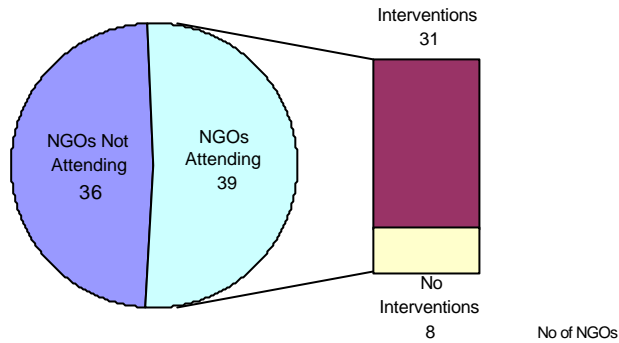
### Attendance in Public Meetings

Half of the respondent organizations attended public meetings. As showed in Graph 12, 79% of these NGOs mentioned that had interventions during the meeting.

<sup>52</sup> The 5-day interval is a test set up before the Transparency Law was adopted. It is shorter than the interval provided in Law no. 52/2002.

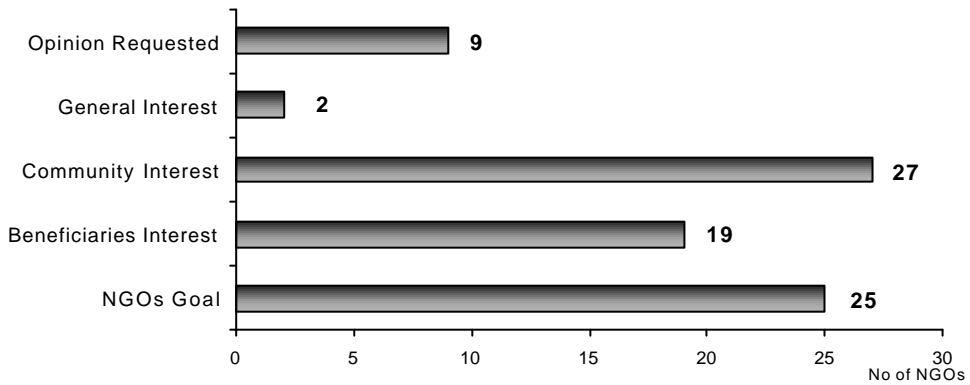
<sup>53</sup> For example, out of 10 organizations that declare not to have legal competence, 9 never got involve in citizen committees .

Graph 12 Attendance in public meetings and interventions on behalf of NGOs



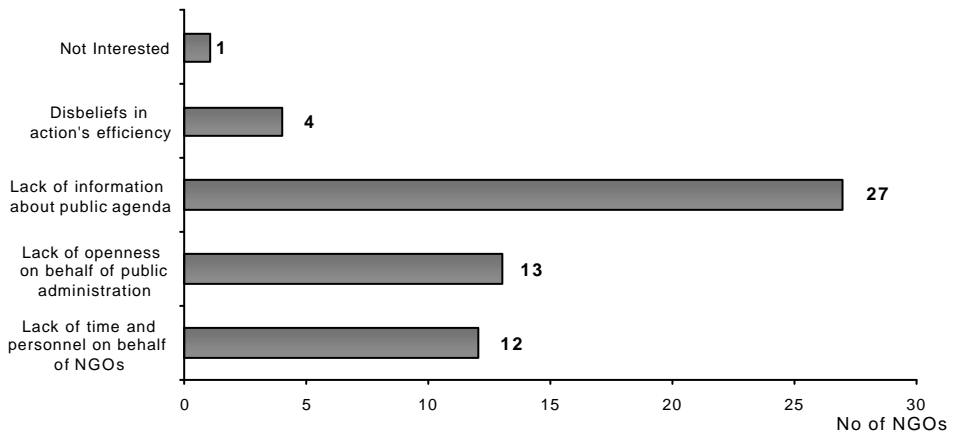
In most cases, NGOs declared to have participated in public meetings. Their attendance was determined by the fact that the topics on the agenda related to community and beneficiaries' interests or the public agenda overlap with the organization's goal. Only 9 cases referred to participation consecutive to invitations to express opinions on topics of the public agenda.

Graph 13 Reasons for participating



The lack of interest toward public/community issues is a reason for not attending public meetings in only one case. The main reason for not to attend public meetings is related to the lack of information about the public agenda. This finding is consistent with the findings of previous research,<sup>54</sup> where 55% of respondents<sup>55</sup> mentioned that NGOs do not have easy access to the decision-making system, in order to express their opinion.

Graph 14 Reasons for not participating

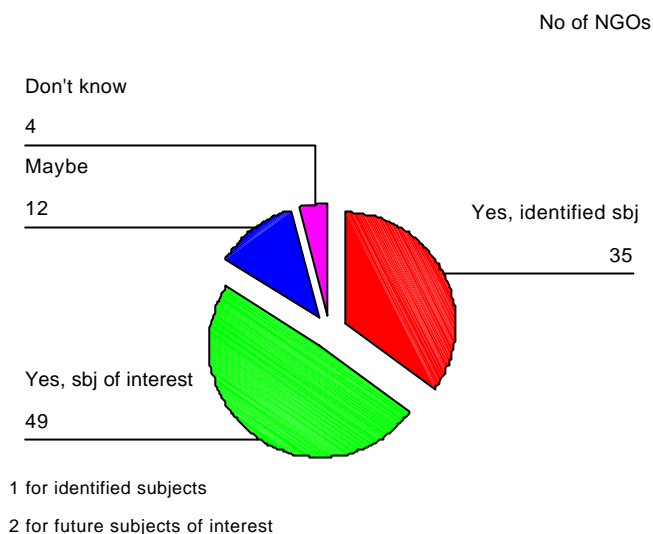


<sup>54</sup> Epure et al. *Romanian Civil Society: An Agenda for Progress*. Cited above.



More than three-quarters of the respondents declared their availability to future participation in public meetings. Only 12% of the organizations did not affirm their intention to attend public meetings.

Graph 15 Intention to participate in public meetings in the future



NGOs that declared their intention to participate in public meetings have legal capacity and specific competencies. This intention appears mostly in NGOs that already had public participation experiences, but is not avoided by others.

### Main Findings of the Research

- Half of the respondents did not have legal expertise in 2002
- Despite limited resources, NGOs got involved in various types of public participation in 2002
- Partnerships and joint activities with public administration were the preferred forms of public participation for NGOs in 2002
- Legal expertise is not determinant for NGOs practicing the right to free access to public interest information
- Main sources of information used by NGOs in 2002 were mass media and personal contacts (both of them secondary sources)
- Suggestions on draft normative acts issued by NGOs in 2002 were generally discussed and accepted by public administration
- Data about the degree of NGO's satisfaction with the impact generated by their participation in public policy formulation in 2002 are inconsistent
- Even when NGOs formulated documented opinions on certain topics, or had legally formulated point of views, in 2002 NGOs avoided involvement in advocacy campaigns
- Attendance in public meetings depends on whether the agenda contains topics of community interest or close to the organizations' goals
- Lack of attendance in public meetings depends on lack of proper information about the agenda of the respective public authority

### RECOMMENDATIONS

#### Non Governmental Organizations

- Improve information systems, switch to direct sources of information (websites and newsletters of public institutions, other institution publications) and adopt informational management practices
- Use law 544/2001 to reach information about the public institution's agenda
- Get oriented towards more technical, structured and efficient types of public participation (public hearings and advocacy campaigns)
- Develop legal expertise within organization

<sup>55</sup> NGOs and other sector's stakeholders.

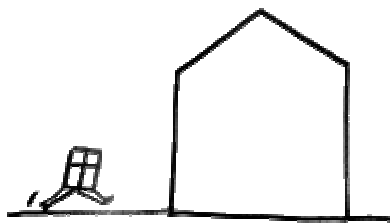
- Monitor and disseminate information about the results of consultations or of other forms of public participation

**Public Administration**

- Improve internal and external information systems to facilitate access to the public agenda
- Create and maintain a database with information on organizations and institutions that are potential contributors to public policies formulation
- Identify (through the database and information management systems) organizations and institutions that have the necessary competence and are interested in certain issues, in order to involve them in public policies formulation
- Get oriented towards more technical, structured and efficient forms of public participation, such as public hearings
- Disseminate results following consultations, in order to prevent perception that public participation is ineffective or useless

**Donors**

- Support initiatives that aim at developing information systems for facilitating the exchange of information between public institutions and civil society
- Promote efforts in consultation and public participation tools such as public hearings and advocacy campaigns
- Support the development of legal expertise within organizations
- Support coalitions of organizations in advocacy campaigns



## APPENDIX. Law 52/2003 regarding transparency of decision-making in public administration<sup>56</sup>

### CHAPTER I — General Provisions

**Article 1** (1) This Law establishes the minimal procedural rules applicable in order to assure transparency of decision-making within the public authorities of the central and local administration, elected or appointed, as well as to other public institutions using public financial resources, in their relations with the citizens and with the citizens' legally constituted associations.

(2) The purpose of this Law is:

- a) To increase the responsibility of the public authorities towards the citizens, as beneficiaries of the administrative decisions;
- b) To stimulate the effective participation of the citizens in the procedure of taking administrative decisions and drafting normative acts;
- c) To increase the degree of transparency at all levels of public administration.

**Article 2** –The principles at the foundation of this Law are the following:

- a) Prior information of the citizens, performed *ex officio*, concerning the matters of public interest that shall be debated by the central and local public authorities, as well as regarding draft normative acts;
- b) Consultation of the citizens and of their legally constituted associations during the elaboration of draft normative acts, upon the public authorities' initiative;
- c) The citizens' active participation to the decision-making process and to the elaboration of draft normative acts, with the observation of the following rules:
  1. the meetings held by the institutions concerned by this Law are open to the public;
  2. the debates shall be written down and made public;
  3. the minutes of the said meetings shall be recorded, archived and made public according to the law.

**Article 3** – In this Law, the following terms shall mean:

- a) *normative act* – the act issued or adopted by a public authority, with general applicability;
- b) *decision-making* – the deliberative process performed by the public authorities;
- c) *drafting of normative acts* – the procedure for elaborating normative acts, before their submission for approval;
- d) *recommendation* – any point of view, suggestion, proposal or opinion, oral or written, received by the public authorities from any person interested in the process of decision-making or drafting normative acts;
- e) *transparency obligation* – the obligation of the public authorities to inform and submit to public debate the draft normative acts, to grant access to the process of taking administrative decisions and to the minutes of public meetings;
- f) *legally constituted association* – any civic organization, business association, trade union or other civic associative entity;
- g) *minutes* – the written document containing the points of view expressed by the participants to a meeting and the results of the debates.
- h) *order of priority* – the order determining the priority of participation in public meetings, related to the interest in the meeting's agenda.
- i) *public meeting* – the meeting taking place within the public authorities to which any interested person is granted access.

**Article 4** – The public authorities compelled to follow the rules set forth in this Law are the following:

- a) the authorities of the central public administration: the ministries, other bodies of the central public administration subordinated to the Government or to the ministries, the decentralized public services thereof, as well as the autonomous public administration authorities;
- b) the authorities of the public local administration: the county councils, the local councils, the City Hall, the local and county institutions and public services;

**Article 5** – The provisions of this Law shall not apply to the process of drafting normative acts and to the meetings during which are presented information regarding:

- a) national defense, national safety and public order, economic and political strategic interests as well as the deliberations of public authorities, if they involve classified information, according to the law;
- b) values, deadlines and technical-economic information concerning commercial and financial activities, if

<sup>56</sup> Published in the Official Gazette, Part I no. 70 of February 3, 2003; English translation courtesy of IRIS Center Romania.

their publicity would result in a breach of the fair competition principle, according to the law;  
c) personal data, according to the law.

## **CHAPTER II — Procedures Concerning Participation of Citizens and their Legally Constituted Associations in Processes of Drafting Normative Acts and Decision-Making**

### *Section 1 — Provisions Regarding Participation in Drafting Normative Acts*

**Article 6** –(1) During the procedure of elaborating normative acts, the public authority has the obligation to post an announcement regarding such elaboration on its web page, to publish it at its headquarters in a visible spot accessible to the public and to send it to the central or local media, as the case may be. The public authority shall also transmit a copy of the draft normative act to all the persons who have previously filed a request to receive such information.

(2) The announcement referring to the drafting of a normative act shall be made public according to paragraph 1 at least 30 days before its submission for analysis, approval and adoption by the competent authority. The public announcement shall include an explanatory note, an exposition of the reasons requiring the adoption of the normative act or, as the case may be, a report of approval stating the necessity of adopting the respective normative act, the complete text of the draft normative act as well as the deadline, the place where and modality by which the interested persons may send their written proposals, suggestions and opinions, as recommendations concerning the future normative act.

(3) The announcement regarding the drafting of a normative act having impact on the business environment shall be communicated by the initiating authority to the business associations and to other legally constituted associations, considering their specific fields of activity, within the term provided in paragraph 2.

(4) When publishing the said announcement, the public authority shall determine a maximum period of 10 days to receive any written proposals, suggestions and opinions concerning the draft normative act.

(5) The head of the public authority shall appoint a person in charge of the relation with the public who shall receive all the proposals, suggestions and opinions concerning the draft normative act sent by the interested persons.

(6) Upon finalization, the draft normative act shall be communicated for analysis and approval to the relevant public authorities on the basis of the observations and propositions provided in paragraph 4.

(7) The relevant public authority must organize a public debate concerning the draft normative act that it has initiated, if such debate was requested in writing by a legally constituted association or by another public authority.

(8) In all cases when public debates are organized, they must take place in maximum 10 days of the date when the place and time of the debate was publicly announced. The relevant public authority shall analyze all the recommendations received concerning the draft normative act.

(9) Should an exceptional situation require immediate action, in order to avoid serious damages to public interest, the draft normative act shall be adopted according to emergency procedures provided by the law.

### *Section 2 — Provisions Regarding Participation in the Decision-Making Process*

**Article 7** – (1) The participation of the interested persons to the public meetings shall be done subject to the following conditions:

a) the announcement of the public meeting must be published at the authority's headquarters, on its web page and send to the media at least 3 days before its taking place;

b) the citizens and their legally constituted associations which sent written suggestions and proposals referring to one of the issues to be discussed in the public meeting shall also be informed about the said announcement;

c) the said announcement must also include the date, hour and place of the meeting, as well as its agenda;

(2) The person in charge of relations with civil society is responsible for disseminating the announcement and for inviting specific persons to the said public meeting.

(3) The participation of the interested persons in the public meeting is limited to the number of places available in the room where the meeting shall take place, with the observation of the order of priority, related by the interest that the legally constituted associations could have in the meeting agenda, which is determined by the chairperson.

(4) The order of priority cannot limit the media's access to public meetings.

**Article 8** – The attendees to the meeting may verbally express their point of view concerning one or more points on the agenda, upon request of the meeting's chairperson.

**Article 9** – (1) The adoption of the administrative decisions is the exclusive prerogative of the public authorities.

(2) The points of view expressed during public meetings by the persons mentioned in Article 8 shall be considered as recommendations.

**Article 10** – The minutes of the meeting, including the vote expressed by each participant to the public meeting shall be made public at each authority's headquarters or on their respective site, with the exception of the situations when the vote is secret.

**Article 11** – (1) The public authorities indicated in Article 4 shall elaborate and archive the minutes of the said public meetings. The public meetings may be recorded, if such measures are considered necessary.

(2) With the exception of the meetings provided in Article 6, the minutes and the recordings of the meetings shall be made public upon demand, according to Law no. 544/2001 regarding free access to public information.

**Article 12** – (1) The public authorities provided in article 4 shall elaborate and publish an annual report concerning transparency of decision-making, which shall include among others the following:

- a) the total number of recommendations received;
  - b) the total number of recommendations included in draft normative acts and in decisions adopted by the respective authority;
  - c) the number of attendees to the public meetings;
  - d) the number of public debates concerning draft normative acts;
  - e) statistics concerning the cases when the public authority was sued for breaching this Law;
  - f) the evaluation of the partnership with citizens and their legally constituted associations;
  - g) the number of closed meetings and the motives that determined such restrictions.
- (2) The annual report regarding transparency of decision-making shall be made public on the authority's site, at its headquarters in a publicly accessible spot or shall be presented in a public meeting.

### **CHAPTER III — Sanctions**

**Article 13** – (1) Any person invoking an infringement of their rights set forth in this Law may file a complaint according to the Administrative Litigation Law no 29/1990 as subsequently amended and supplemented.

(2) The complaint and the recourse thereof shall be judged according to the emergency procedures and are exempted from stamp tax.

**Article 14** –The preventing by an official of the access to public meetings or the impeding of the public participation to the process of drafting normative acts, in other cases than those provided by the law, constitute disciplinary offences and shall be sanctioned according to Law no. 188/1999 concerning the Statute of Public Servants and to the labor legislation.

**Article 15** – The participants in public meetings, invited or attending on their own initiative, must observe the internal rules of order of the respective public authority concerning public meetings. Should the chairperson find that a person has infringed the said rules of order, he/she may order, as a last resort, the evacuation of such person from the meeting room.

### **CHAPTER IV — Final provisions**

**Article 16** – (1) This Law shall enter into force 60 days after its publication in the Official Gazette, Part I.

(2) On the date of entry into force of this Law, all contrary provisions shall be repelled.

**Article 17** – Within 30 days of the entry in force of this Law, the public authorities and other legal persons provided in Article 4 shall modify their internal rules of order according to the provisions of this Law.

The Senate adopted this Law in its session of December 19, 2002 with the observation of the provisions set forth in Article 74 paragraph 2 of the Romanian Constitution.

PRESIDENT OF THE SENATE,  
NICOLAE VACAROIU

The Chamber of Deputies adopted this Law in its session of December 19, 2002 with the observation of the provisions set forth in Article 74 paragraph 2 of the Romanian Constitution.

For the PRESIDENT OF THE CHAMBER OF DEPUTIES  
VIOREL HREBENCIUC

Bucharest, January 21, 2003  
No. 52