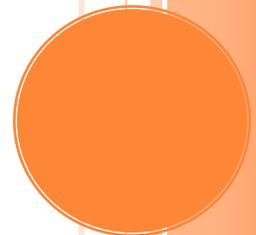


DECENTRALIZING CORRUPTION

Primum non nocere

This document analyses the impact of the “decentralization law” adopted by the Romanian Government in November 2013, as well as how it affects the fight against corruption. The authors focused on the relevance of the provisions in the context of the Cooperation and Verification Mechanism and offered recommendations on how to avoid or limit corruption risks in the local government.

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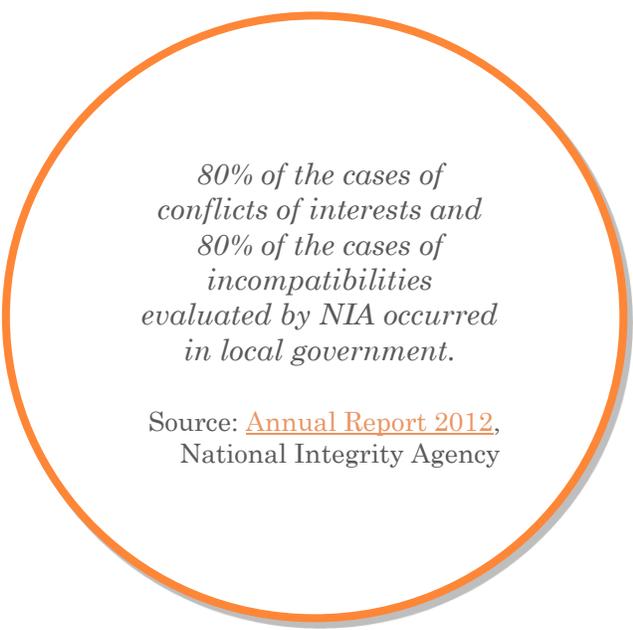
On October 29, the Ministry of Regional Development and Public Administration (MRDPA) published its project on the decentralization of certain competences. Four NGOs requested a public debate on the draft law and after an [open letter](#) signed by 16 NGOs, MRDPA organized a public [debate](#) on the 12th of November. However, the debate did not fully respect the requirements of the transparency law ([52/2003](#)) and the Government decided to pass the law by engaging responsibility against a non-confidence vote, a week later. Thus, in three weeks, the Government passed a law that can have tremendously negative effects on the fight against corruption in Romania, especially in its local public administration.

THE RELEVANCE OF DECENTRALIZATION FOR THE CVM

The law, as passed by the Government, together with other legislative amendments passed within the last 6-7 months, strongly affect the objective to take further measures to prevent and fight corruption, in particular within the local government (Benchmark 4). The key objective that Romania needed to address with a view to fulfillment of this benchmark was to establish an effective strategic, proactive and preventive approach to reducing corruption, to minimize the risk of corruption occurring and to detect irregularities when they happen. This Benchmark also provided for the follow up of horizontal corruption-prone sectors, such as public procurement, as well as the law enforcement response. However, the decentralization law together with two major legislative changes occurred this summer (re-organization of the National Agency for Fiscal Administration (NAFA) and the changes operated on the competences of the General Anticorruption Directorate (GAD) and the National Anticorruption Directorate (NAD) create gaps in the control mechanisms related to corruption within the local government. This is likely to translate into a more frequent and wider-spread presence of systemic corruption and, horizontally, into larger risks in the management of local public funds.

LOCAL GOVERNANCE AND ANTICORRUPTION IN THE NEW CONTEXT

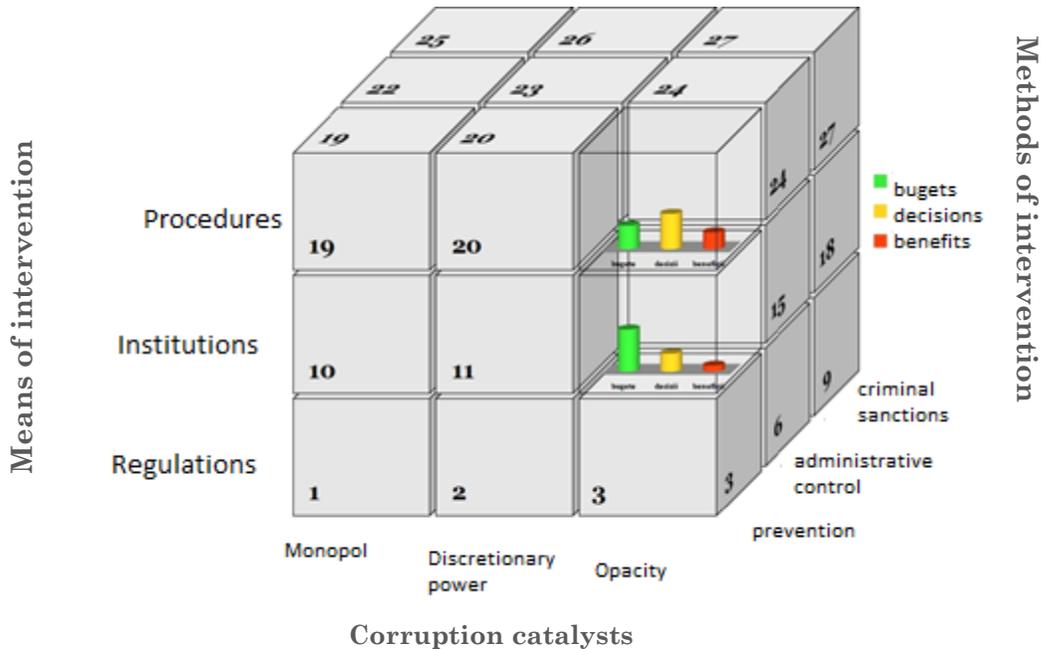
In the analysis of the decentralization law from an anticorruption perspective, we use the “strategic anticorruption cube” method. The cube focuses on 3 dimensions for analysing corruption – **corruption catalysts** (factors which favour the occurrence of corruption); **methods of intervention** against corruption; and **instruments of state intervention**.



80% of the cases of conflicts of interests and 80% of the cases of incompatibilities evaluated by NIA occurred in local government.

Source: [Annual Report 2012](#), National Integrity Agency

Even by ignoring the content of the law (that is, leaving aside the negative effects on education, environment or heritage policies), the analysis on the “cube” shows that this particular choice of decentralization will not necessarily lead to an increase in the corruption “supply”, but it will lead to an increase in the frequency of corruption cases and it will diminish the capacity to intervene of the state in the fight against corruption.



On the vertical line, decentralization affects directly the most concrete instruments of state intervention – the procedures at the level of local and county councils, which will receive new responsibilities; the anticorruption institutions and regulations are not directly affected by the law.

On the horizontal plane, the methods of intervention are weakened through decentralization, but we have to take a closer look to the corruption “catalysts” first:

#1 a centralized monopoly of the state, which was easy to monitor, will be broken into more than 40 units, for which there is no monitoring capacity;

#2 the decisions that were taken until now by experts at central level, on the basis of well-established criteria, will be taken at a local political level, on the basis of political algorithms, agreements, negotiations or other unpredictable whims (thus, increasing discretionary power);

#3 the majority of decisions will be made at the level of the most opaque public institutions in Romania – county council

These 3 issues regarding the catalysts will effect a shift of focus for the specialized anticorruption institutions and the civil society - from the central government (where they already had well-established monitoring mechanism) to the local government (where the monitoring mechanisms are either missing or weak). This means that NAD and GAD

(criminal sanctioning), GAD and NIA (administrative control), the Technical Secretariat of the National Anticorruption Strategy (prevention) and CSOs (for all methods of intervention) will be affected in their efforts for at least an year (if we are optimistic enough to believe that the 2015 budget will supplement the human and budgetary resources necessary to cover the upcoming dilution of the effort at local level; though it is hard to believe that in the context of the new agreement with the IMF, WB, and EC such a measure would pass):

These 3 issues built on the factors which favour the occurrence of corruption will (or, at least, should) move the focus of the specialized anticorruption institutions and of the civil society from the central government (for which they had in place well-established monitoring mechanism) to the local government (where the monitoring mechanisms lack or are weak). This means that NAD and GAD (criminal sanctioning), GAD and NIA (administrative control), and the Technical Secretariat of the National Anticorruption Strategy (prevention) and CSOs (all methods of intervention) will be affected in their efforts for at least an year (if we are optimistic enough to believe that in the 2015 budget the human and budgetary resources necessary to supplement the dilution of the effort at local level, though it is hard to believe that in the context of the new agreement with the IMF, WB, and EC such a measure would pass):

- Prosecutors and police officers at local level are even more vulnerable than those in Bucharest, and their capacity and jurisdiction were already affected through two Emergency Ordinances ([OUG 59](#) and [63/2013](#) and, recently through the rejection of [OUG 59](#) in the Senate);
- Integrity inspectors are too few for the avalanche of new cases of conflicts of interest which will follow in 2014 (the decentralization law will put the members of the county councils in an *a priori* conflict of interest since they will have to nominate the directors responsible for controlling and approving their own activity);
- The Technical Secretariat of the National Anticorruption Strategy has no budget whatsoever
- Local civil society is rarely specialized in these areas and the funding for anticorruption projects is barely existent

As a conclusion, even if (and it is a huge IF) we will not assist to an intensification of the general corruption volume, the decentralization law will certainly lead to an increase in the *frequency of the integrity incidents* and to a *weaker capacity* to identify and correct them.

A CASE STUDY: LOCAL PUBLIC FUNDS

Corruption in the management of local funds (especially within public procurement processes but not only) reveals an extremely high prevalence of budgetary decisions based on political whims and not on financing priorities. For example, an analysis of the Romanian-based think-tank Expert Forum on political clientelism shows that even now the situation is dramatic: the level of discretionary payments from the central level to the local level sometimes reached 70%, and in certain years it was three times more likely to receive funds for the local governments which had the same political colour as the central one.



Over 25% of the locally elected officials divert public funds to the companies where they or their families are shareholders, according to an internal study conducted by NIA.

Wastefulness in public spending through corruption, fraud or bad administration is present at central level, but it severely affects and has a huge impact at local level. If we look at the general consolidated budget, spending related to local government reach almost $\frac{2}{3}$, and the direct financial control mechanisms are almost entirely gone. The most recent report of the Audit Authority, reveals enormous irregularities at local level (a prejudice of 698 mil. Lei was identified only at the local authorities audited in 2012, more than the combined budgets of the Public Ministry and NIA for the same year,

which was of 440 mil. Lei). Moreover, the audit conducted in the same year with regards to the performance of the county councils in spending funds allocated for local roads revealed even worse conclusions, such as: the funds allocated from the central level were only “relatively transparent”, there are no criteria for allocating resources at the county council level, numerous cases in which public procurement procedures were not respected etc.

Even in this situation, the formal control mechanisms are not followed by concrete results (nor immediate where they exist) for the recovery of wasted funds (the Audit Authority can only make recommendations and submit its reports to the responsible authorities and the audit process is extremely delayed).

The decentralization law does not take into account these issues. As a matter of fact, the public funds are of no concern to the law: the mandatory Head Note published for the law was left blank, even though one of the declared aims of the project was to ensure a decentralization of both responsibilities and financial resources to fulfill them. However, the interest in the analysis of the impact of such an important change was zero.

Changes in the public funds legislation were also included in the law, which proposes an amendment to Law 273/2006 regarding local public finance: it introduces the concept of “cost standards” for the public services which will be decentralized. However, the law offers no criteria or clues on how these standards will be calculated. It simply states that until such standards will be elaborated and adopted, the necessary financial resources will be introduced in the Law on the State Budget.

Nevertheless, the draft law on the State Budget (which is currently in the Parliament for debate) provisions no such costs, but only an increase of 44,95% in the budget allocated from the State Budget to the MRDPA. In this way, the control or transparency requirements which were supposed to be the responsibility of the Ministry of Finance, Government, and Parliament with regards to the allocation of the funds for the decentralized services will now be at the sole discretion of the Minister..

Increased dependency on the will of the county council for the local authorities will be another effect of the law. This dependency is also present now and it led to documented cases of local government insolvencies. For example, the judiciary administrator of Aninoasa (a town which declared its insolvency this year) observed that the local government relied on a proportion of 93% on the funds allocated from the central level via the county council, a dependency which ultimately concluded with insolvency. The decentralization law boosts this dependency by leaving more allocations at the disposal of the county council, even in more sensitive areas such as public health or education.

Moreover, the amendments brought to the Fiscal Code in November, through which local authorities no longer have a ceiling for increasing local taxes applied to citizens, put even more pressure on the local budgets. Thus, the new framework encourages political clientelism at county level, boosts “passing the buck” in decision-making, and props up poor administration/bad public management, since in all situations citizens may be taxed in order to foot the bills - either for missing the appropriate political friendships/connections on the county-local council axis, or for missing the local council’s and local mayor’s capacity to properly manage public funds.

As a conclusion, more public funds will be directed *on discretion* to local level, and it is possible that at least 25% of the 1,59 bil. Lei that are transferred from the budget of MRDAP (and there are more from other Ministries as well) will be subject to such corruption cases, leading to an *increase in the volume* of the corruption-risk funds.

RECOMMENDATIONS

Probably the most important recommendation that was already endorsed by the 16 NGOs that signed the open letter to the Minister Liviu Dragnea and also expressed by various other stakeholders is to withdraw the law. The arguments varied in substance and intensity, but the most salient was that the process was too fast and did not respect the legislative requirements related to having an impact study, a cost-benefit analysis among potential choices, as well as proper and inclusive consultations on those choices (Laws 24/2000 and 52/2003). However, since such a recommendation seems obsolete at this point (the President can ask the re-examination of the project once and the Constitutional Court might be notified, but the USL majority in Parliament is stable and steady) we recommend the following measures to close the gaps opened by the law or to limit as much as possible the corruption risks and the costs of the changes:

- By the end of January 2014 at the latest, NAD and GAD should rotate their specialized personnel among the development regions, in order to prevent local complicities or complacencies, this confronting the risk of collusion between political discretion in the local and county councils with the “blind eye” of law enforcement;
- MoJ and SCM should, also by the end of January, consolidate the tiny, dispersed prosecution offices (only 2-3 prosecutors) at the level of first instance courts, into stronger prosecution offices (of 20-30 prosecutors) at the level of county tribunals, in order to allow for genuinely random distribution of cases;

- The National Integrity Agency should increase its staff, by January/February, with at least 30-40 new integrity inspectors, which should monitor closely the County Councils, especially in the first half of the year when their decisions to nominate directors or high-level personnel for the new decentralized institutions could lead to incompatibilities and conflicts of interest;
- The Technical Secretariat of the National Anticorruption Strategy should be supported financially in order to recruit personnel and/or expertise to provide immediate technical assistance to the County Councils in order to avoid corruption risks;
- Financial allocations from various governmental sources (national and/or European) should be allocated to the local civil society organizations that work on anticorruption, or for technical assistance to other NGOs which can monitor local government (since 2007, many local CSOs working on good governance changed their priorities or simply disappeared due to lack of funding);
- Civil servants which will be transferred to the decentralized institutions should be supported to resist any political pressure and/or any changes that might be imposed in the procedures or criteria used in their decision-making process, so as to ensure that their work will be as expertise-based as it was within a central structure;
- Revision of the legislative and institutional framework related to local public finance (Law 273/2006) so as to ensure fiscal discipline, transparency and medium- and long-term sustainability of the local public finances, especially with regards to higher standards on elaborating, implementing, and reporting their budgets
- An extension of the Fiscal Responsibility Law (69/2010) and of the role of the Fiscal Council as to ensure a framework of principles and rules under which the local governments will contribute to the objective to ensure the implementation of fiscal and budgetary policies that provide for the sound administration of financial resources
- NGOs should monitor the regulatory processes as well as the allocation of local funds and block every process which does not respect the Legal Drafting Law (24/2000), the Transparency Law (52/2003) or the transparency and participation provisions of the Local Public Finance Law (273/2006).

CONCLUSIONS

In this short analysis we have only focused on the objective set up by Benchmark 4 of the CVM (“to take further measures to prevent and fight corruption, in particular within the local government”) in the context of the decentralization law and its effects on the local anticorruption fight and on local public funds. Nonetheless, the law has effects on the other benchmarks, especially on Benchmark 2 (National Integrity Agency will certainly have an increase in the volume of its evaluations), but also on the other objectives set to ensure *rule of law* and *good governance* in Romania.

While most of us believe, and the existing research shows, that decentralization is a desirable project for the development of the country, by bringing public administration closer to the citizens, and by offering locally-driven solutions for the local problems, it is clear that such a project cannot be implemented in a blink of an eye. It is our strong belief that from an anticorruption perspective and from a good governance view on the fiscal and budgetary policy, Romania cannot go under such a process without a due analysis on the impact of the decentralization or the proper capacity-building measures which will ensure that it will at least not do more harm.

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