

document de poziție

TALKING POINTS DEVELOPMENTS IN ROMANIA

WITHIN THE COOPERATION AND VERIFICATION MECHANISM

LESSONS LEARNT IN OUR PROJECTS

(FIRST QUARTER 2014)

1 April 2014

Funky Citizens prepared these talking points for the meeting with the European Commission Delegation evaluating the progresses registered by Romania within the Cooperation and Verification Mechanism.

We have mainly focused on the lessons learnt in our project, especially with a view to meeting Benchmark 4 – Tackling corruption at all levels. These talking points are intended to draw attention mainly to the evolutions registered in low and medium level corruption and to several issues encountered in managing public funds.

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Documentele de poziție ale Funky Citizens au rolul de a promova pe agenda publică opțiunile de politică publică ale organizației noastre. Ne bucură comentariile și recomandările voastre, pe care vă invităm să le adresați direct autorilor sau la www.funkycitizens.org/advocacy.



Funky Citizens currently implements several projects with a direct focus on the benchmarks of the Cooperation and Verification Mechanism. Whilst all the benchmarks are interrelated, we believe that the results of our projects and the lessons learnt are of particular interest for Benchmark 4 (tackling corruption at all levels) and Benchmark 1 (the judicial process).

BENCHMARK 1: THE JUDICIAL PROCESS

Reform of the judicial system is one of the two overarching themes monitored under the CVM in Romania. These reforms focused on the need to strengthen the efficiency and consistency of the judicial process, as well as the transparency and accountability of the judiciary. Funky Citizens recently started, with the support of the Rule of Law Program South East Europe of the Konrad-Adenauer-Stiftung, a project which focuses on using new technologies to open the justice system and assist citizens, especially in the light of the new codes:

onorată instanță .ro

NAME OF THE PROJECT: Open justice 2.0 for Romania

www.piatadespaga.ro

1 February 2014 – 1 December 2014

MOTIVATION: Romania, driven by its enthusiasm to join the EU and to meet its standards, made significant efforts to tackle corruption and reform the judiciary, efforts revealed by the legislative and institutional measures. However, even after years of reform, a lack of vision in the management of the justice system still prevails, making the justice act unpredictable and the rule of law fragile. The project addresses the issues related to the justice reform by making a distinction between two categories of interventions: reform of the process involved by the justice act and the effectiveness of the justice act (the output consisting in cases, decisions etc). So far, the public discourse was mainly focused on the output of the justice system (i.e. how many high-level corruption cases were solved).

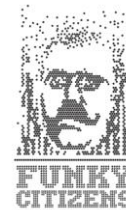
OBJECTIVES: 1. Developing a methodology to assess the predictability of the justice act through a set of three main indicators: duration, jurisprudence, magistrates' performance

2. Improving transparency by making the data available to the public through a comprehensive, user-friendly and interactive platform

3. Advocating for standards in ensuring a predictable justice act by targeting the authorities responsible with the management of the justice system

PROJECT DESCRIPTION: The proposal focuses its intervention on building standards for the processes involved in the justice act and on three components that ensure predictability and trust in the system: standard duration + jurisprudence + performance of magistrates. The current proposal seeks to address the causes related to the processes involved in justice reform, through research, transparency tools, and advocacy. The project consists in three main inter-related components (research, website development,





advocacy) which will be approached with a view to ensure a smooth implementation and a sustainable impact.

RESULTS: The project is still in its early stages. So far, two focus groups with practitioners and experts from the justice system were organized. The objective was to validate the methodology and the approach for the project so as to ensure that the needs of the system are also reflected. However, we have learnt that a priority for the justice system and for all the actors working in this area should be to educate citizens with regards to the new codes. Romania registered in 2013 a historic peak in terms of cases, a situation which has a strong impact on the backlog for the courts, but also makes an emergency out of the necessity to ensure basic information for the citizens with regards to alternative settlement and/or to procedural steps to ensure that they have access to justice (i.e. Art. 196 and Art. 200 of the New Civil Procedure Code provide that if certain elements lack in the request sent to a court, the case can be dismissed before they even get to a judgement).

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BENCHMARK 4: TACKLING CORRUPTION AT ALL LEVELS

The CVM also requires strong efforts to tackle corruption at all levels of Romanian society. Surveys consistently show high levels of public concern about the prevalence of corruption. Successive CVM reports have pointed to the need for determined and sustained efforts at all levels. In our projects, we focus on two areas of interest for this benchmark: fighting low and medium level corruption and public spending.

FIGHTING LOW AND MEDIUM LEVEL CORRUPTION



NAME OF THE PROJECT: Piața de șpagă [Bribe Market]

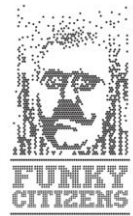
www.piatadespaga.ro

November 2012 - ongoing

MOTIVATION: Starting from the definition of corruption as *the abuse of entrusted power for private gain*, the project assumes that a market of corrupt decisions exists, where the commodity is the abuse of entrusted power, and the price is the bribe. Given that perception of corruption is quite high in Romania, but hard data concerning the exact price of bribes is almost non-existent, the project draws on the previous experience in India (www.ipaidabribe.com) and Europe (www.bribespot.com), adding an innovative element regarding competition among prices and satisfaction regarding quality of service.

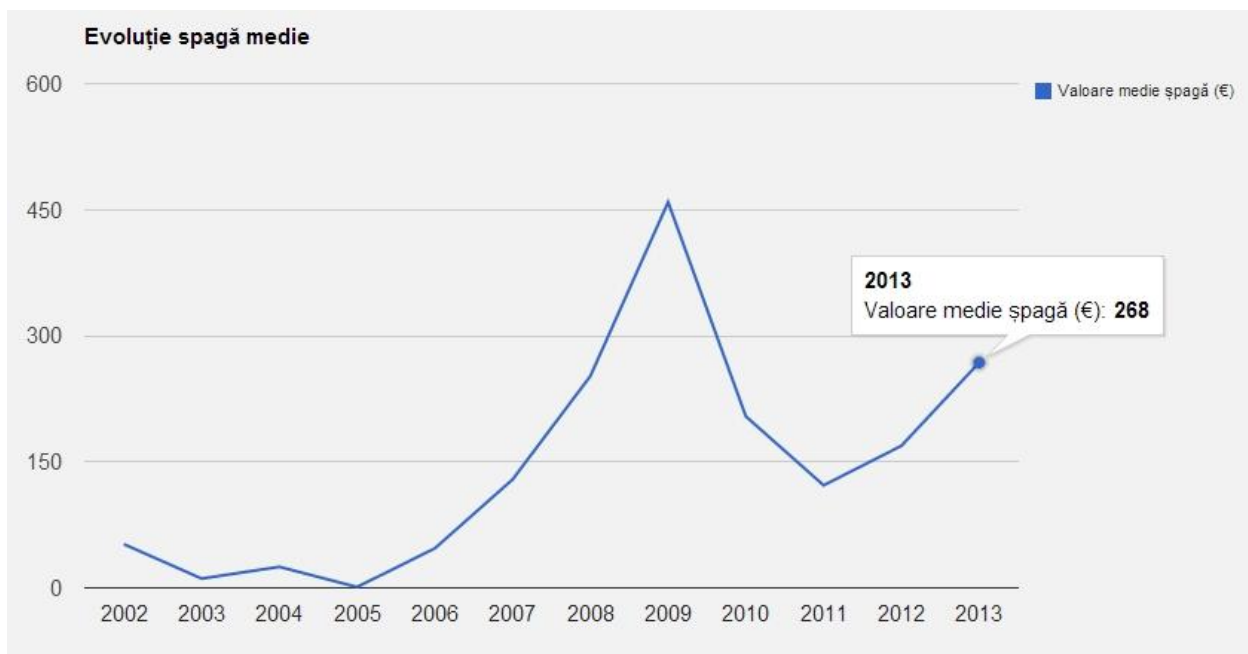
OBJECTIVE: The site introduces price competition on the Bribe Market, in an attempt to inform users of the possibility to obtain public services and/or utilities at no bribe at all. Currently, the data collected on the site supports the initial assumption about the market forces at work, but statistical significance depends on usage. The satisfaction indicator has not yielded spectacular results, but 2014 will be only





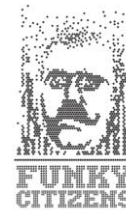
the second year of the site's full functioning, and a longitudinal analysis may be in order by this time next year.

RESULTS: 1,200+ reports, whereof 900+ maintained for statistical relevance, cleaned of political attacks or vengeful retaliation; 1,600+ followers on [facebook](#); 1,000+ unique visitors/month; circa 25-35% of reports on "no bribe" instances, at any given time. Based on these figures and calculations, the project determined that Romania's [Bribe Freedom Day](#) was 25 January, both in 2013 and 2014. The Bribe Market was featured in *the engine room's* review of [new technologies against petty corruption](#), as well as *U4's* review of [technological innovation to identify and fight corruption](#); the site is also part of the *community boost_r's* set of examples on [new approaches to online participation](#) in Eastern Europe. Cooperation with the Bucharest-based *Center for Legal Resources—CRJ* resulted in a mobile application for iOS and Android, [InfoCoruptie](#), launched on 9 December 2013. Potential cooperation with *BribeSpot* is still under review by both partners.



ANALYSIS IN THE CONTEXT OF THE CVM

The average bribe reportedly paid by the average Romanian exceeds €200; yet, the average Romanian pays more than just one bribe a year, the total amounting to ~€260/year, a figure comparable with the minimum net monthly salary or the average net monthly pension, according to the projected [State Budget 2014](#). From a methodological perspective, in 2014 the site will migrate from presenting averages of the reported bribes, to the most customary amounts of bribes (the median instead of the mean). With this correction in mind, and extrapolating from the reported data, adjusted with internet availability and population age groups (according to *Facebook Insights* and *Google Analytics*), the grand total of small bribes reportedly paid in Romania amounts to €1 bn./year. This estimate concurs with the €2.5 bn./year in kickbacks from public procurement (estimated by the *Institute for Public Policies—IPP* in



2012) or the €1.5 bn./year in grand corruption (estimated by *Transparency International* and the *World Bank* in 2010-11), rising the total cost of corruption in Romania to an estimate of €5 bn./year (consistent with other findings regarding the total volume of tax evasion, for instance, estimated at ~€10-12 bn./year).

Food for thought:

- 45% of the reported bribes relate to the [health sector](#); the "market" assumption of the entire project is confirmed with the realization that the average health-related bribe is only €170, lower than the overall average on the site—namely, high rotation on the market is correlated with lower prices; similarly low average of bribes is visible with the [police](#) & [customs](#), but the statistical significance is questionable;
- the highest average bribe, exceeding €1,500, is reported in [urban planning](#), but the figure may lack statistical significance (only 2% of reports); similarly high averages are found in the [justice sector](#) (but less than 1% of the reports); while [education](#) was expected to display similar results with health (above), the results are ambiguous—somewhat surprising, the subset of bribes in higher education only (!) displays some similarity with the justice and urban planning sectors, namely a higher average of €400+, which suggests lower rotation in this particular sub-market;
- the yearly average of bribes reported for [2008-2009](#) indicates either that users prefer to report their behavior with a 3-year delay (a faulted expectation that the statute of limitation might prevent potential prosecution) or that Romanians indeed pay higher bribes when they can afford the money (during periods of economic boom) and lower bribes when the family budget is under pressure (during the austerity period); if the former is true, an awareness campaign may be in order; if the latter is true, the mindset of paying bribes out of custom may need other means of intervention, possibly focused on prevention of bribery in the public sector;
- the estimated amount of €1 bn./year in small bribes is roughly the same size as the Bucharest city budget; if this money, paid by our users, were declared income at the other end of the bargain, and adequately taxed with the 16% flat rate, Romania could afford to double the budget of the entire prosecution offices across the country (the yearly budget of the Public Ministry is €160 mln., according to www.banipierduti.ro);
- in the upcoming months, further analysis of the collected data will attempt to compare the (median) reported bribes paid by the average Romanian with the costs per household concerning the consumption of goods, services and utilities, and/or with the extent of tax evasion (the hypothesis is that some of the bribe money being spent from the family budget may be traced back to illicit income or to informal/black labor).

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PUBLIC SPENDING



NAME OF THE PROJECT: Bani pierduți? [Lost money?]

www.banipierduti.ro

May 2012 - ongoing

MOTIVATION: Romanian citizens are not informed with regards to what happens with public money, even though the information is public and they have the necessary legal rights to participate in the process. By using user-friendly technologies, the project banipierduti.ro is changing the perception that transparency in public spending should not just be the responsibility of governments or civil society, but rather each citizen with access to internet can be empowered to follow public funds. Thus far, the project has developed an online platform which offers a comprehensive image of the manner in which public funds are spent and a participatory tool for engaging users in budgetary decisions.

OBJECTIVE: A growing awareness of corruption in public spending has led to an increasing distrust in politicians and to the perception that the local and central governments are not providing basic services such as health care or education, nor the development expected in the post-communist era. Part of the problem can be solved by enabling citizen participation in directing public funds to the investments or services that are most needed in their communities. Bani_pierduti? is a project aiming at engaging informed civil society (taxpayers) in the decision making process related to the priorities in public spending. We do this through an online platform which offers a comprehensive image of the manner in which public funds are spent and information and tools for participating to the national and local budgetary decision-making process.

72% of the Romanians consider that citizens should have a say in government spending and contracting.

Sursa: World Bank Institute – [Global Opening Government Survey 2013](#)

RESULTS: Web-based and social media technologies can increase participation in monitoring and allocating public funds by involving active citizens to act as social change actors through user-friendly tools. So far, the project managed to develop three types of tools: visualization tools for central and local budgets; participatory tools aimed at engaging citizens in the decision-making process (budget simulator); in-depth analysis and advocacy. The interest of the Romanians is for understanding and engaging in the public spending process is growing. For example, in less than two weeks, **13668** people were reached at the first implementation of the simulator for the budget revision (30 July-13 August 2013). Also, the analysis on the Bucharest local budget reached **5525** users in only 3 days (26-28 February 2014).

ANALYSIS IN THE CONTEXT OF THE CVM

Public spending and procurement are a source of distrust in Romania. From taxi drivers which evaluate roads as being unfixed due to corrupt public contracts to the business evaluation (Romania ranks 114



out of 144 countries at “waste in public funds” in [World Economic Forum’s Global Competitiveness Report](#)) and to the notes related to public procurement within the [CVM](#).

From independent studies to official evaluations, public spending and procurement seem to get the same label: the lack of transparency and accountability leads often to corruption or mismanagement. The estimations range between 40% of the public funds lost ([as stated by the President of the Court of Accounts](#)) to 18% ([PWC study commissioned by OLAF](#)). Bottom line, annual loses from public funds are evaluated between 12 and 5,4 billion euro. Our project revealed several causes for the lack of accountability in public spending:

1: Transparency provisions are not fully implemented

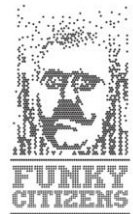
The budgetary policy is extremely complicated and technical. Access to budgetary data is guaranteed by general legislation like the Constitution and the Law 544/2001 on access to public information (art. 5 provides for the ex officio publication of funding resources, budgets and balance sheets by each public entity), but also by specific legislation – Law 500/2002 on public finance (art. 9 defines the principle of publicity for budgets) and Law 273/2006 on local public finance (art. 8 defines the principle of transparency and publicity). Unfortunately, these provisions are not always enforced and, if they are, it is rarely that they really inform the citizens. The most important problems we have identified are:

- Central budget datasets are not yet available in an open format, even though Romania signed such a commitment within the [Open Government Partnership](#). Thus, if a citizens or a NGO wants to perform a comprehensive analysis on the budget, they have to work with hundreds of pages of numbers in a non-readable format.
- At local level, the situation is even more complicated. Even though it is mandatory for public administration to publish the institutional budget on their websites, these information is either absent on the websites or illegible. Thus, the transparency requirements are only (if) fulfilled formally, and there are no sanctions for this type of “fake transparency”.
- Both at local and central level, the information is not presented in an accessible format for the average citizens. The technical language is almost never explained in a contextual manner, which makes it impossible for taxpayers to engage in the decision making process or to monitor public spending.

2: Participation to the decision-making process is scarce

Like in the case of the transparency and publicity provisions, the legislative framework provides measures to ensure the taxpayers participation to the public funds management policy: general legislation (Law 52/2003 on transparency in the decision making process) and specific provisions (Law. 69/2010 on fiscal and budgetary responsibility, Law 500/2002 on public finance and Law 273/2006 on local public finance). Nonetheless, due to the scarce implementation of these provisions, the dialogue between taxpayers and decision-makers remains only a legal requirement with no impact in the real life. In this regards, the recent budget adoption processes (both national and local) are relevant:





- Unfortunately, **the emergency argument** is used very often in the adoption of the budgets (and the calendar established by law is brutally ignored) which makes it impossible even for the authorities which should be part of the process to state comprehensive opinions. For example, for the July 2013 central budget revision, the Fiscal Council (whose opinion is mandatory for the passing the law), stated that they feel "obliged to restate the recommendation from January 2013 for the Government to ensure at least a week between the moment in which the Ministry of Finance transmits the necessary documentation and the moment for adopting the relevant legislation, these timeframe being minimal for ensuring the elaboration of a thorough analysis"
- On 18th December 2013, the **state budget for 2014 was adopted**, even though it was out of the calendar established by law. After a series of debates among the Prime-Minister and the President, the budget was finally published in the Official Journal. However, in the adoption process, at least three major laws were ignored: Law 500/2000 on public finance (the adopted budget was not modified in accordance with the negotiations between the Government and the Presidency), Law 69/2010 on fiscal responsibility (an Emergency Ordinance for changing the fiscal policy was published and adopted in the same day even though the law provides that such measures should be published and publicly debated for a reasonable time), Law 52/2003 (which provides that a law initiated by a central public administration authority should be available for public debate for at least 10 days – the Ministry of Finance published the draft law for the budget on 13th November and the Government adopted it on 14th November). An more thorough analysis on the adoption of the 2014 State Budget can be found at: <http://bit.ly/1muXsnu>.
- When they decide to respect the legislation and to organize public debates on the budget, there are cases in which the **debates are announced with only a day in advance**, which makes it impossible for a citizen or a NGO to actually participate to consultations
- Even when NGOs manage to mobilize and to provide analyses on local budgets and request to local authorities the mandatory debate, the requests are ignored. A recent case from February 2014 was during the adoption of the Bucharest budget. Besides the fact that the legal requirements in terms of calendar were ignored, Funky Citizens (along with Centre for Public Participation Resources, Active Watch and Salvați Bucureștiul Association) managed to develop an [Analysis on the budget](#) and organized a press conference to highlight numerous problems encountered in the way the public funds will be spent in 2014. The organizations also requested a **public debate on the budget which was dismissed by the Bucharest mayor**. As a consequence, we have notified the Bucharest Prefecture and the General Direction for Public Finance Bucharest within the Ministry of Finance. On the 1st of April 2014 (after a month) we have finally received an answer – the National Agency for Fiscal Administration (ANAF) started an investigation and we are looking forward for its results.

Food for thought:

- Even though the European Commission highlighted the issues of corruption, fraud and/or mismanagement related to public spending in several reports issued under the Cooperation and Verification Mechanism, the topic did not receive as much attention as others. Without diminishing the importance of all the other measures, we believe that public spending corruption and waste should become a stronger presence in the evaluations, since it affects development for all.



- The recommendations for a more transparent and accountable public spending from the CVM are usually forgotten by the Romanian authorities and a possible cause could be the publication date of the report (January). The budget debate and the adoption usually take place (with all the delays) in November-December. Changing the publication date for the CVM Reports to September-October could not only make the recommendations related to public spending more visible, but could also lead to including necessary resources for implementing all recommendations within the budget for the next year.
- There are major deficiencies at the level of the authorities with oversight responsibilities (Ministry of Finance, Audit Authority) in the capacity to control and monitor public spending (especially at local level). Several institutions and organizations (among which the National Integrity Agency) highlighted the extent of corruption in public spending, especially at local level and it should be analysed whether there is enough specialization and resources for all institutions (including the judiciary) to address the issues which appear both at the procedural level (provisions related to the calendar for adopting the budgets, transparency requirements etc.) and at management and content level (how the funds are spent).

For further information, please contact: Elena Calistru (elena@funkyCitizens.org).



FUNKY CITIZENS builds research-based, data-driven online advocacy tools. Our tools aim to be educational and actionable, encouraging young citizens to engage in accountability and government responsibility initiatives in which they can see an impact. By aggregating and educating youth around a series of tools, we believe we can build the understanding and human capital necessary to influence more participatory, responsible and transparent democracy in Romania. Ultimately, our user-base should empower citizens to influence public sector reform.

Funky Citizens is a newly established NGO, mainly known for www.banipierduti.ro (which engages taxpayers in decision-making processes related to public spending). The project successfully mixed online & offline research and advocacy tools and became our flagship project.

Other activities related to the area of good governance and justice reform include: member of the civil society platform monitoring the National Anticorruption Strategy; member of a coalition of 10 NGOs engaged in the Constitution revision process; constant participation on behalf of the civil society in the activities for the implementation of Open Government Partnership in Romania; advocacy for the implementation of UNCAC in Romania.

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