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SAR

Transparency for an independent media

How do public institutions spend the money for publicity?

- **case study based on the Freedom of Information Act –**

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Purpose of research

1. Check of the way the central institutions manage the money for publicity – see Part I.
2. Check of the way of implementation of the Law of the free access to information at the level of the institutions in Bucharest – see Part II.

Motivation

Why were we interested in the money for publicity?

The latest reports on the liberty of expression in Romania¹ grasp the journalists' ever more accentuated perception regarding the economic constraints that limit this liberty. The publicity market in Romania is:

- **poor** – the public expenses related to the number of inhabitants are small, as compared to the ones in Western Europe, as well as with other countries in the East.²
- **preponderantly oriented to televisions** – more than 70% of the funds for publicity³
- **strongly concentrated** – great companies, publicity payers, are quite few, thus increasing the risks in the case of losing a client.

On the other hand, the State tends to become an ever more important actor on this market. Public institutions, public companies (regii autonome) and State owned companies buy publicity spaces, especially in the written media. Promotions with the railways, airports, tourist projects, road constructions projects for the youth, national systems of communication or only for promoting events initiated by institutions have become a daily presence in newspapers. **To our opinion, this phenomenon does not represent a negative evolution by itself. On the contrary, if the institutions have a better communication, there are chances for the citizens' trust to increase, with benefits for the development of democracy. But the mechanisms through which these funds are distributed are not known, which may become a major source of political pressure for the media.** There have already been suspicions in this direction. At least a serious case clearly proves that public money has become a

¹ Freedom House – The annual survey of media freedom, 2002; IREX International / Media Sustainability Index, 2002; Agency of Media Monitoring / Freedom of Expression in Romania; Academic Society in Romania, Policy Warning Report, no. 1 – section IV, Media Freedom.

² In France, 153 Euros/per capita are spent for publicity, in Italy 125, in Poland 49, in the Czech Republic 33, in Romania only 13 (data by ARBOmedia).

³ Media Sustainability Index, 2001

source of pressure. In 2003, Dan Matei Agaton, Minister of Tourism, telephoned Sanziana Ionescu⁴, journalist, addressing her as follows: *"I think that the two of us have a problem. Will you stop, or shall I have to speak about it with Cristian Tudor Popescu (editor in chief of the publication - CG's note) to withdraw publicity from your newspaper?"* Actually, the Agaton versus *Adevarul* case constituted an impulse for the approach of this study.

Therefore, we addressed central administration of Romania 66 requests of public information, in order to find out the dimension of the promotion funds, the criteria of attributing the amounts and the amounts attributed to each partner.

This material pleads for transparency in attributing these funds. Public money should not be used to offer favors to the media.

Why have we used the freedom of information act?

Law no. 544/2001 (Freedom of Information Act - FOIA) is an excellent instrument for the research of public policies. For a think-tank, such as the Romanian Academic Society, this law has opened new possibilities of research, thus facilitating the access to data regarding the governmental funds.

The present study is the first one on public policies using this law as an instrument for collecting data. The exercise of a parallel control on public money shall force the public sector on the route of transparency building. If law no. 544 were used more often in this spirit, the arbitrary in spending public money would be limited. Numberless examples, according to which the law may become a useful instrument of transparency building, may be given. This may start with the way money is distributed for road rehabilitation (why only some towns receive funds and others do not) up to the funds invested in schools.

Description of the research

During June 19th – 24th, 2003, 66 requests for public information were deposited with ministries, institutions subordinated to the government or to the ministries, with public companies (regii autonome) or with so-called National Companies and local authorities in Bucharest, according to Figure 1. The requests were deposited before or during the period of the Government restructuring, and we have therefore kept in the present report the names of the institutions as they were, due to the fact that we used the former organization chart of the executive.

⁴ according to the *Adevarul* newspaper

Figure 1. Deposited Requests

Institutions	66
Ministries	23
Institutions subordinated to the Government	6
Institutions subordinated to ministries	20
Public companies and National Companies	9
Local authorities (town/halls + Prefecture of Bucharest)	8

What did we request?

The request accomplished according to the annexes to the norms of implementation of Law no. 544 had the following content:

We would like to receive the following information>

1. The total budget allocated in year 2002 by your institution for activities of publicity, promotion and advertising by means of written, audio-TV and other types of media
 - (a) expenses **imposed** by the legal requests (for instance bid, procurement, contest advertisements, etc.)
 - (b) publicity, promotion and advertising expenses by means of written, audio-TV and other types of media, engaged through the initiative of your institution
2. The amount for publicity, promotion and advertising from the budget drafted by your institution for year 2003
 - (a) expenses **imposed** by the legal requests (for instance bid, procurement, contest advertisements, etc.)
 - (b) publicity, promotion and advertising expenses by means of written, audio-TV and other types of media, engaged through the initiative of your institution
3. Were there any criteria of election of the media means through which your institution has developed these activities?
 - (a) if yes, give details
 - (b) if not, indicate the norms (laws, organization regulations, internal decisions of functioning) that regulate the use of these funds (if necessary give separate details for years 2002 and 2003)
4. Which are the names of the mass/media partners through which your institution has developed/is developing these activities and the amounts allocated for each of them (list on activities/contracts)
 - (a) For year 2002
 - (b) For year 2003 (contracts already concluded, or being concluded or stamped)

Part I

How does the State spend the money for publicity?

We have made a summary of the responses received from the institutions. One can see there the total amounts spent for promotion and publicity in 2002 and 2003, criteria of allocation and the media partners.

By the very limits of these researches, the image of the publicity paid by the State is only partially complete. However, the guiding lines of institution behavior may be drafted. One should not forget that the final analysis is based on the answers received.

There are flagrant cases in which the declarations do not correspond with the prior information. For instance, the Ministry of Transports proved to be one the most important payers of publicity from public money. The Report for year 2002 of the Media Monitoring Agency remarks this thing. In exchange, the Ministry declares only 10.9 million lei (that is only the compulsory advertisements for jobs and bids), without any expenses of own initiative. So as the Agency's report remarks, the subordinated institutions and companies have already paid important amounts of money for publicity. Unfortunately, the institutions subordinated to this Ministry have proved to be either not very receptive at the requests deposited, or they took advantage of their own status in order to invoke unclear aspects of the Law (the case of National Railroad Company, see the chapter: *Limits of Access to Information*). Excepted were only *The Managing Company for Railway Assets - "SAAF" – SA* and *Metrorex* (Bucharest Subway Company). The first one sent a detailed and almost complete answer, declaring total publicity expenses of 830 million for 2002 and 2003, an important amount, as compared to the dimension of the company. **Keeping in mind the fact newspapers continue to massively disseminate publicity paid by the companies subordinated to the Ministry of Transports, one can create a pattern of behavior, through which this ministry has an active policy of promotion, but using the institutions there subordinated, and not their own budget.**

Criteria of allocation of promotion funds

We granted special attention and a high score in evaluating the answer for the criteria of allocations of funds for publicity. We must make it clear that there is no certain procedure, that the institutions should follow, and we only observed whether these criteria can be explained, whether the respondents are capable to answer the question: why have you preferred these partners? **Very few of these answers make this aspect clear and bring arguments in favor of a transparent allocation, based on clear criteria, established in a prior period.**

An example in this respect would be AVAB that explained the accomplishment of an algorithm of dissemination, taking into consideration the area of dissemination, the run, the profile of the publication and the target public. At the same time, they organized negotiations as well with a sole source, motivating the need of this selection. Without our asking for this, AVAB accomplished and sent also an indicator of the efficiency of the paid publicity. The National Agency for Labor Force Occupation selected the solution of explaining in detail the procedures they followed. In spite of the fact that they did not follow such a procedure, The Statistics Institute selected that which could be called the solution of *assumed impartiality*: offering publicity in equal amounts (for the promotion of the population census) to all the four important TV channels with national coverage.

The Managing Company for Railway Assets is the sole having mentioned an internal decision, taken by the Board of Directors, of allocation of such funds. As for the other cases it is not clear whether the dissemination follows written internal decisions and neither the level of the decision.

As one can see in the annex, the larger part of the answers consist of general and formal reference, of the type of "larger run", "target public". Although, such criteria were taken into consideration for the evaluation of the answer, **it is not clear whether such criteria were included in a standard procedure or whether the officer having answered tried to re/constitute *post-factum* this procedure in order to give us an answer.** However, the largest part of the institutions limited themselves to evoking laws/norms. 15 of them made reference to the Emergency Ordinance 60/2001 (for public procurement) and/or to the Government Decision 461/2001 (norms of implementation of the EO 60). None of these documents cover however our question, the regime of public procurement should be detailed by means of internal norms or by means of technical conditions in the case of bids. Other institutions mentioned the norm document of establishment, which, again, is insufficient. There were some bizarre references, such as Decision no. 1031/2000 of the European Parliament regarding the national youth agencies (answer received from the National Agency for Promoting the Youth Initiative). **Actually, by making reference to various norms, these institutions avoided the answer, thus proving that there are no such criteria for allocating funds for publicity.**

There are, but only in very few cases, coherent strategies for promotion and it is not very clear why a certain policy should or should not be accompanied by measures of promotion. It seems that the attitude of the institutions, in what concerns these funds, keeps to the political initiatives and interests of the one who leads them, rather than to the analyses of the needs for policy promotion.

Conclusions and recommendations

There is a need for dissemination of some good practices in the field, so that the promotion policies of the State to be controllable and transparent and to have motivations linked to the impact of the policies (is promotion necessary for policies to be successful?).

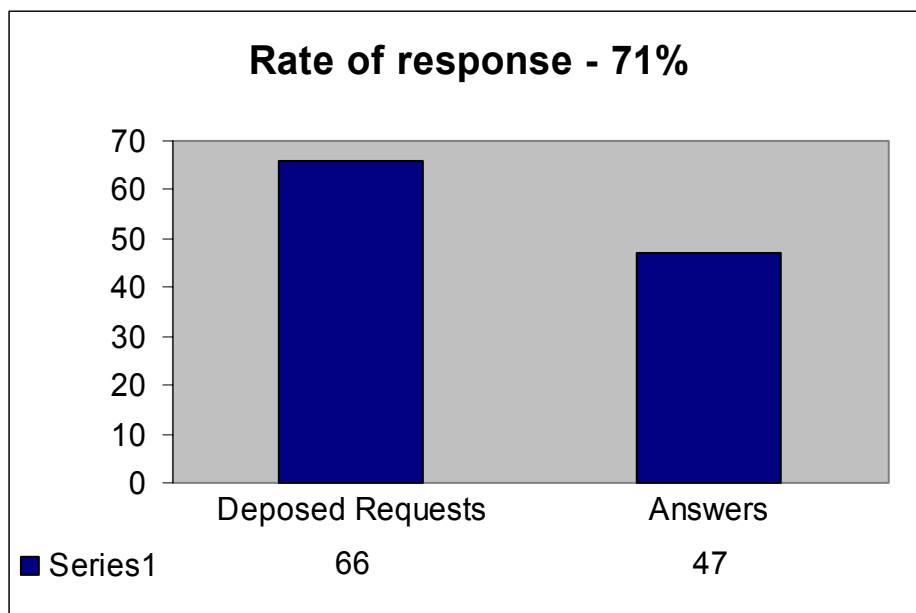
This first study on the publicity based on public money has drafted only the general lines of the phenomenon. Needed are other programs, to continue the present study, in the following directions:

- Verification of the information supplied by institutions by monitoring disseminated/printed publicity from public money.
- Continuation of the program by focusing upon those institutions that have not answered this request or have supplied incomplete answers and that spend important amounts for promotion.
- Launching trials against those institutions that do not answer requests or that interpret law in a fraud way (see the chapter: Limitations of access to information).
- Launching of debates regarding the use of this money, with the help of the media directly interested in the topic.
- *Advocacy* for the adoption of a responsible attitude face to these expenses. In the journalistic environment, people speak about this money, everybody seems to know that influence on public money is practiced, but everybody seems to be satisfied with the situation. **The debate and transparency represents the solution.**

Part II

After two years - implementation of Law 544 at central level

For the 66 requests deposited, we received 47 answers (Figure 2)



The rate of response of 71% is low enough, especially because the institutions in Bucharest have benefited from training courses for the implementation of the law, and because they are large institutions that allow themselves to allocate large resources in this direction. The request was sent on behalf of the Romanian Academic Society and we did draw the attention, in the very form of request, upon the legal obligations of the institutions.

Non/answers

The following institutions did not answer the request forms, in spite of the fact that they registered them:

Ministry of Public Administration, Ministry of Industries and Resources, Ministry of Education, Ministry of the Environment, Ministry of Development and Prognosis, National Agency of Housing, Romanian Railway Authority, Insurance House for Transports, National Company of Railways – CFR, SN – CFR- Goods, "Romanian Waters" National Company, National Institute for Research and Development in Tourism, Institute of Cadastre and Organization of planning of the Agricultural Land, National Company for Land Improvement, "Tutunul

Romanesc" National Company, National Institute for Administration, Town hall of District 2, Town hall of District 5, Town hall of District 6.

Promptness of answers

Law no. 544 provides that the answer to a request for public information to be given in a maximum of 10 days or, if the request pre/supposes processing of information, the institution may transmit the information in a period of 30 days, on condition that in 10 days' time, the person having requested to be informed on the delay. Out of the 47 institutions that gave an answer, 7 informed that they needed more than 10 days in order to give an answer.⁵

The average duration of answer⁶ was of 8.71 working days, in the period of 10 days provided for by the law. Very late answers were received from the Town hall of district 4 – 47 days, the Ministry of Finance – 22 days, the Ministry of the Interior / 19 days, the General Town hall – 16 days.

We haven't produced a top of the most rapid answers because we have discovered that these ones were the most incomplete ones. Interesting is the fact that the Ministry of Finance, that was in delay, transmitted the most complex answers as compared to all the other ministries (see the Top of transparency below).

Top of transparency

For the evaluation of the answers, we created a grid from 0 to 20 sores, granting a certain number of scores for the answer to each question of the form, according to figure 2. We granted the largest scores for those questions referring to criteria for allocation and to sums/partners, this having a larger relevance for the object of the study.

Figure 2. Evaluation of answers

Question (see the request)	Object of the question	Scores
1a	Compulsory expenses - 2002	2 pts
1b	Expenses from own initiative - 2002	2 pts

⁵ At the calculation of the average answer rate we took into consideration this first answer.

⁶ It is about the 47 answers received, non/answers are not included

2a	Compulsory expenses - 2003 ⁷	1 pt
2b	Expenses from own initiative - 2003	1 pt
3	Criteria of allocation	5 pts ⁸
4a	Sums/partners - 2002	4 pts
4b	Sums/partners - 2003	4 pts
	Coherence and clarity of the answer	1 pt
	Total	20 pts

According to these criteria, we evaluated each and every answer; see the results of figure 3. **The average of the 47 answers is of 13.04 (65%). Practically, if we transform this answer on a scale between 0 and 10, one can say that the institutions in Bucharest have obtained an average score of 6.5 for transparency.**

One cannot say that the institutions having declared more money spent for promotion/publicity are on a lower position in this top. On the contrary, **among those having offered the most complete answers, there are also institutions having had larger budgets for publicity:** the National Institute for Statistics and Economic Studies (expenses linked to the promotion of the population census), the National Agency for Labor Force Occupation, AVAB, The Managing Company of the Railway Assets / SAAF, or the Ministry of Agriculture.

Figure 3. Top of transparency

Institution	Score 0-20
Average for the 47 answers	13.04
National Institute for Statistics and Economic Studies	20
National Agency for Labor Force Occupation	20
Ministry of the Interior	20
National Authority Regulating the public services for commune planning	20
National Authority Regulating the Sector of Natural Gas	20
National Authority Regulating Communications	20
METROREX (Subway Company)	20
Ministry of Youth and Sports	19
Ministry of Finance	19

⁷ We granted a lower score to those data for 2003 starting from the idea that these contracts are developing and/or they are not centralized. We therefore preferred an approach favorable to the institutions that could obtain a high score if they made a presentation on the global amounts in 2002 and the sums/names of the partners of year 2003 up to the moment of the research.

⁸ We granted 2 points out of 5 for those institutions that limited themselves to invoking certain legislative documents.

AVAB - Agency Valuing the Banking Assets	19
Company Managing the Railway Assets - "SAAF"	19
General Secretariat of the Government	18
Ministry of Labor and Social Solidarity	18
Ministry of Agriculture	18
European Institute in Romania	18
Town hall of District 4	18
State Inspectorate in Constructions	17
Agency for State Properties	17
Ministry of Justice	17
General Inspectorate of Police	16
Competition Office	16
General Directorate of Customs	16
Town hall of District 1	16
National Office of the Trade Register	15
National Agency for Youth Initiative Promotion	14
Agency for Foreign Investments	14
Ministry of European Integration	14
APAPS (Privatization Agency)	12
National Authority for Child Protection and Adoption	11
Ministry of Public Works, Transportation and Habitation	11
Ministry of Public Information	10
Ministry of Culture and Cults	10
Ministry of Tourism	10
Romanian Road Authority	10
LAGGERS OF THE HIERARCHY	
Ministry for Small and Medium Sized Enterprises	9
Ministry of Communication and Information Technology	7
National Authority for Persons with Handicap	6
National Administration of Roads	5
National Authority for Consumers' Protection	5
Town hall of District 3	5
Ministry of Health and Family	4
CFR Passengers National Company	3
Prefecture of Bucharest	2
Ministry of National Defense	1
Forestry National Regie	1
Ministry for the Relationship with the Parliament	0
General Town hall of Bucharest	0

Limitations of the free access to information

Even if the Romanian FOIA is liberal enough, as compared to laws adopted by other countries in the region, especially in defining the information of public interest and in facilitating the access, **practically there still are mechanisms limiting this liberty.**

A modification of the law, especially of the practices of implementation in the spirit of the following principle is necessary:

Public money = public information

Through this research we have observed some ways of interpretation and implementation that do not observe this principle:

A) Invoking some contracts with private companies

For instance, the Ministry of Tourism concluded a contract with a promotion agency for the management of the 75 billion lei (for year 2003) dedicated to publicity. A similar answer was received from APAPS (the Privatization Agency). They concluded a contract of more than 200 billion lei (for 2002) and 175 billion lei (for 2003) with an agency. Both institutions did not answer the questions referring to the way in which this money was spent, invoking the fact that the partners are private companies. **Practically, these sums may not be followed this way. The argument of these institutions is not acceptable, the information being evidently of public interest.**

On the contrary, in spite of the fact that they concluded a similar contract with a promotion agency, AVAB (the Agency Valuing the Banking Assets) attached to the form a centralizing document on behalf of the company. The AVAB example proves also the solution: institutions should conclude contracts with private companies, so as to pre-view the activity under the conditions of access to information. In other words, if the private agencies do want to use public money, they should also accept all these constraints. There is no need of a change of the law, but only the spread of good practice.

B) Invoking free competition

Some institutions invoked abusively Art. 12, paragraph c) of the law, that excepts from the status of public information "those information regarding commercial or financial activities, if their publicity touches the principle of loyal competition, according to the law."

We received this kind of answer from the Ministry for Small and Medium-Sized Enterprises and from the National Road Administration. Mention should be made about the fact that none of these answers was motivated: we were not explained

how this information could affect competition. **On the contrary, we consider that should transparency be the rule in allocating these funds, loyal competition would be encouraged, the best of the best thus winning.**

Anyhow, the two institutions interpreted the law without bringing any argument in the support of the own point of view and without invoking according to which laws the respective information is excepted, so as Art. 12, above presented, provides. Again, this limitation of the access to information does not keep to the law, but to a fraud interpretation on behalf of some institutions.

C) Invoking the status of the organization

Law no. 544 (Art. 2, paragraph a) states that "any public authority or institution, as well as any public company (regii autonome) using public financial resources are subject to the free access to information."

So as it can be seen, the law makes explicit reference to public companies (regii autonome) but not to the so-called National Companies. It is difficult to explain according to which principle the two forms of organization differ: since it is clear that these companies use public money.

For instance, CFR – Passengers motivated by means of invoking the own status the refusal to supply the information, in spite of the fact that this company, with entirely state-owned capital pays huge publicity inserts in the newspapers. An interesting situation was registered in connection with METROREX. They supplied the requested information, but they wanted to make it clear: first of all we want to mention that Metrorex is not subject to Law no. 544, but we shall answer your questions." It is true that Metrorex did not even have any costs of this kind.

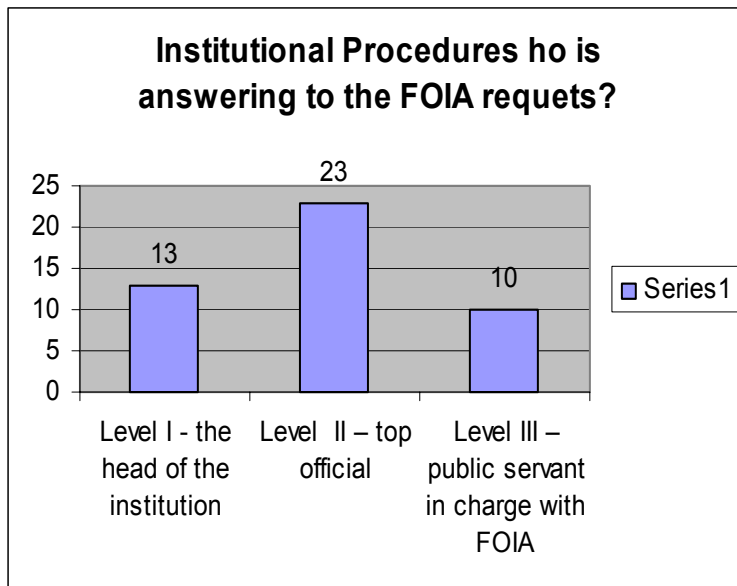
Contrary to this, the Managing Company of the Railway Assets (SAAF) adopted a totally different attitude. They sent the information almost complete and detailed. **SAAF was observed the legal provisions although they have exactly the same form of organization and the same subordination (Ministry of Transports) as CFR Passengers.**

It is clear that the law is interpreted in the own interest by those companies that do not operate transparently. A judicial precedent should be created so as instances should interpret the law in the spirit of including these State Companies under the incidence of the free access. Maybe a more secure solution is that of changing the law, in the spirit of the express provision of the principle: public money = public information.

The route of public information is not clear

Another problem that deserves being mentioned deals with **the absence of some clear institutional procedures that followed by public information.** Several civil servants in charge with FOIA implementation complained about this. In spite of the fact that the implementation norms provide for institutions to establish operation regulations for the public information departments, these regulations rarely exist, and, in some cases, neither a department was created, the tasks of such a department being distributed to the departments already existing. More over, information does not circulate within institutions, so that even these officers do not have any access to them. There were cases in which we received more forms with different answers on behalf of internal directions. The officer in charge of information delivered the answers as such because, actually they answered our questions. The officer thus justifies partially the fact that we do not receive the requested information. This happened with the answers received from the Ministry of National Defense and from the Ministry of Health.

An indicator of the absence of procedures for such requests is their route inside the institution. The largest number of these answers was signed by two or three persons. In Figure 4 one can see that very few answers (10) were sent by only the responsible officer. The largest part of them was counter-signed either by the superiors or by the second echelon of the institution (State Secretaries, Secretaries General of the ministries, etc) or by the manager of the institution himself (ministers, agency directors, presidents, etc). This route does nothing but consumes time and money; information should be at the disposal of this officer that should assume responsibility for their dissemination. **The lack of procedures just like an institutional culture that places the whole responsibility on the chief lead to blockings in the operation of this law.**



Establishing some internal standards of operation is needed, and these standards should aim to:

- giving responsibilities to officers in charge with the implementation of this law
- direct access to information for these officers
- the implementation of the principle that the citizen enters in contact with only this officer

For the support of the implementation of this law, the Romanian Academic Society will start a new project called: "**Good practices for the implementation of this law of access to information**". Funded by GRASP – USAID, the project ties to develop mechanisms of internal organization that should make institutions transparent. There are examples in which institutions created efficient mechanisms of implementation of the law. We shall identify these good practices, trying their generalization.

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