



## BACKGROUND NOTE ON PUBLIC ADMINISTRATION REFORM AND ANTI-CORRUPTION

### 1. GOVERNANCE

#### 1.1 Definitions and key characteristics

Development agencies, international organisations and academic institutions describe and define governance in different ways.

World Bank (WB) defines governance as the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them.

For the European Commission governance concerns the state's ability to serve the citizens. It refers to the rules, processes, and behaviours by which interests are articulated, resources are managed, and power is exercised in society. The way public functions are carried out, public resources are managed and public regulatory powers are exercised is the major issue to be addressed in this context. In spite of its open and broad character, governance is a meaningful and practical concept relating to the very basic aspects of the functioning of any society and political and social systems. It can be described as a basic measure of stability and performance of a society. As the concepts of human rights, democratisation and democracy, the rule of law, civil society, decentralised power sharing, and sound public administration gain importance and relevance as a society develops into a more sophisticated political system, governance evolves into good governance. (*Communication on Governance and Development, October 2003, COM (03) 615*)

European good governance principles include<sup>1</sup>:

1. *Openness* - institutions should work in an open manner,
2. *Participation* - the quality and effectiveness of policies depend on ensuring wide participation,
3. *Accountability* - institutions must explain and take responsibility on what they do,
4. *Effectiveness* - policies must be effective and timely and deliver what is needed on the basis of clear objectives,
5. *Coherence* - policies and actions must be coherent and easily understood.

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<sup>1</sup> *Commission White paper 2001*

## 1.2 Governance indicators

The WB produced two sets of governance indicators of major importance for measuring the quality of governance: the Country Policy and Institutions Assessments (CPIAs) are produced annually by the Bank's own staff, i.e. its country teams to assess the quality of countries' borrowing policy and institutional frameworks. The second set of governance indicators is published bi-annually since 1996 by Daniel Kauffmann and his colleagues (originally with co-authors Aart Kraay and Pablo Zoido-Lobaton - hence widely referred to as the "KKZ" indicators) at the World Bank Institute.

### 1.2.1 Country Policy and Institutions Assessments (CPIA)

The CPIAs comprise 16 criteria divided into 4 clusters:

- *economic-management* cluster (macroeconomic management, fiscal policy, debt policy),
- a cluster on *structural policies* (trade policies, business regulatory environment, financial sector policies),
- cluster on *policies for social inclusion and equity* (gender equality, human resources, equity of public resources use, social protection and labour, policies and institutions for environmental sustainability),
- *a public-sector management and institutions* cluster (property rights and rules-based governance, quality of budgetary and financial management, efficiency of revenue mobilisation, quality of public administration, and transparency-accountability-corruption in the public sector).

The bank's country team gives a score of 1 to 6 to a country for each of the 16 criteria, and gives each cluster the same weight in producing the overall country assessment. The public-sector management and institutions cluster serves as a major input for the so called "governance factor" which plays a critical role, in addition to the country's overall CPIA rating, in the allocation of Bank funds.

## 2. PUBLIC SECTOR REFORM

### 2.1 SIGMA's "traditional" approach<sup>2</sup>

The approach of SIGMA in countries with a prospective EU membership is based on the belief that civil service reform, reforms aimed at reducing administrative corruption and a holistic or more general administrative reform cannot be dissociated from each other. The legal administrative context, if properly designed, will shape an adequate institutional environment. Otherwise civil service reform or anticorruption efforts will either lead to nowhere or to frustration. The legal administrative framework forms the public institutional decision-making context, where the civil service and governments have to operate. Therefore SIGMA has insisted on the necessity to address in parallel the reform of the civil service and the reform of the legislation shaping the general legal administrative framework.

SIGMA's experience suggests that the first -and more difficult- concern has been to introduce in practice the notion of a public administration governed by law. The rule of law, in its dimensions of legal certainty and predictability of public actions and decisions, is crucial for making future partners in the EU reliable. There is an *acquis communautaire* that has to be applied homogeneously across the European Union and the national administration in each

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<sup>2</sup> 6.1 and 6.3 are based principally on excerpts from the paper presented by Francisco Cardona and Wolfgang Rusch, SIGMA staff members, at the World Bank –European Commission seminar on Governance in the WB, 11-12 June 2008, Brussels

Member State is the main implementing authority of the *acquis* in that country. Stressing the importance of the administration as an interconnected legal system has confronted sometimes the mainstream bandwagon originating in influential OECD countries and based on new public management approaches (NPM).

In all countries the legal approach has been the necessary “entry port”. The legal approach has been essential because it has helped to raise awareness that public administration is a tight interconnected legal system. According to SIGMA, managerialistic approaches alone do not work. It is necessary to recognise the role of the law in an international environment still intellectually dominated by managerialism rooted in economics. Legal certainty and predictability of administrative action is perhaps more important for economic and social development than just government efficiency because it is all about inspiring the public and investors with the confidence to trust that their rights will be respected by the State.

The general legal framework of the administration would include legislation on the following matters:

1. Law on the Government
2. Law on the Organisation and Functioning of the State Administration
3. General Law on Administrative Procedures
4. Administrative Proceedings Law
5. Civil Service Law
6. Legislation on Financial Management
7. External Audit
8. Law on Ombudsman
9. Laws on Regional and/or Local Self-governments

Some aspects of these issues may be regulated in a more detailed way by means of connected or supplementary pieces of legislation.

SIGMA’s approach has therefore been basically and necessarily a legal approach because the change required from candidate countries by the EU is mainly about changing the rules of the game and building a new legal order for public administration that is compatible with EU membership aspirations and with the Copenhagen and Madrid criteria. It was understood that legal change was the precondition to build up a new and sufficient administrative capacity to cope with the requirements of EU membership. This approach stems from administrative traditions in continental Europe, where public administrations have a strong legal component.

## **2.2 Administrative law principles**

The main administrative law principles common to Western European countries can be classified into the following groups – other principles can be derived from these:

1. Reliability and predictability: the legal certainty of PA decisions in order to eradicate arbitrariness in the conduct of public affairs (associated with the rule of law),
2. Openness and transparency: the administration is available for outside scrutiny (protection of public interest and of individual rights),
3. Accountability: administrative bodies are answerable for their actions to other administrative, juridical, legislative authorities and to the citizens,
4. Efficiency and effectiveness: maintaining a good ratio between resources and results and ensuring that the PA is successful in achieving its goals.

### **3. ANTI -CORRUPTION**

#### **3.1 Additional elements: quality of public service and anti-corruption**

The difficulties encountered for the want of a political culture respectful of the social role of the law has led SIGMA to introduce additional elements to the "traditional" approach. Two variations complete now the SIGMA approach to Public Administration Reform regarding the basic elements of the politico-administrative systems: One is to tackle, as an additional "entry port" for reform, the improvement of the quality of public services, which is a means to introduce the citizen into the core of the public decision-making processes and promote a more "democratic" attitude. This additional entry port is worth trying only if countries have already a certain degree of professionalism consolidated in their civil services and a certain degree of legal certainty, regularity and predictability in public decision-making. It is not worth using it in countries which are still far from having the necessary legal framework completed and the necessary administrative structures sufficiently developed as to ensure an acceptable degree of transparency and actual implementation of the basic elements.

The other one is to add certain specific policy and institutional approaches to combat corruption. Administrative corruption may be kept under control, to some extent, by strengthening the legal administrative framework and by completing certain criminal law provisions, as described above. Political corruption is more difficult to control with traditional administrative law reforms only.

Therefore, SIGMA's approach to anti-corruption focuses on strengthening public integrity systems. SIGMA generally rejects the model of strong anti-corruption agencies and subscribes to the assumption of the World Bank IEG 2008 Report that "corruption is an outcome of poor governance" and that "direct measures to reduce corruption - such as anticorruption laws and commissions - rarely succeed".

The public integrity of the administrative system is promoted by a large number of factors that should be embedded into the administrative system of a country. Some of these are inherent in the design of procedures and organisation in administrative units (for example double signature processes, control units). Others emerge out of the horizontal or cross governmental systems of management - for example professionalism of the civil service, procurement or public internal financial control. These systems, which rely on prevention (e.g. procurement open tendering), discovery (e.g. disclosure of assets, whistleblower protection) and professionalism (civil service culture, which is supportive of the public interest and rule of law), increase the "corruption resistance" of the administrative system and of the system's ability to resist or even counteract corruption from political sources (e.g. through the protection afforded to civil servants to refuse to obey illegal orders and through well established internal and external reporting mechanisms).

It is, therefore, difficult to extract the "anti-corruption elements" from the SIGMA reports, because they are inherent in the whole administrative system. This applies equally to both candidate and potential candidate countries.

#### **3.2 OECD and Anti-Corruption Policy**

The OECD takes a multidisciplinary approach to fighting corruption. This approach embraces work in fields such as fighting bribery of foreign public officials, fiscal policy, public sector governance and private sector integrity, and development aid and export credits. The OECD has been a key forum for combating corruption over the past 15 years and has played a critical role in setting and promoting anti-corruption standards.

Six specialised groups work together in the OECD's anti-corruption efforts, among these the Public Governance Committee and the Working Group on Bribery.

The OECD emphasises promoting good governance in the public service in order to prevent corruption – thereby addressing critical “demand side” aspects of corruption. The OECD provides a forum to identify good practices and work out standards for developing a sound “Ethics Infrastructure” – the combination of laws, institutions and management mechanisms that help prevent corruption and promote integrity in the public service. Moreover, OECD countries are committed to review regularly and modernise their integrity policies and practices by adopting the following integrity instruments: the 1998 Recommendation on Improving Ethical Conduct in the Public Service and the 2003 Recommendation on Guidelines for Managing Conflict of Interest in the Public Service.

For the OECD, the conflict of interest is a primary risk to integrity in the public sector. The Guidelines for Managing Conflict of Interest in the Public Service signal countries’ determination to ensure that the integrity of public decision making is not compromised by public officials’ private interests. They set a comprehensive benchmark for modernising governance structures to identify and manage conflict of interest situations. To help governments apply the Guidelines, a practical Toolkit has been developed to put policy into practice.

Since the adoption of the 2003 Recommendation, 23 of the OECD’s 30 member countries have enhanced the standards in their laws and codes of conduct and strengthened implementation measures to prevent conflict of interest. The OECD has recently reviewed arrangements for promoting integrity in lobbying and post-public employment.

Preventing corruption requires more than designing and implementing core integrity and anti-corruption standards. Success also depends on the creation of a supportive environment in the public administration in which transparency and accountability play an essential role. Administrative simplification, regulatory reform, e-government, accounting and control in public governance and public employment are essential components of a long-term strategy for addressing corruption by promoting a culture of integrity and increasing resistance to corruption, particularly in risk areas. One such risk area is public procurement. The OECD is currently developing an operational guide to help government agencies prevent and detect corruption in the public procurement process through improved transparency and accountability. Parties to the OECD Anti-Bribery Convention will review the conditions for participating in public bids and the sanctions related to fraudulent public procurement to formulate more effective preventive measures.

The OECD has also developed an Assessment Framework as a practical tool to guide public organisations in assessing their policies to promote integrity in the public service.

Relations with non-OECD economies to promote the OECD anti-bribery and integrity instruments have been developed in different regions of the world. In Central and Eastern Europe progress in fighting corruption is being made in the framework of both the Anti-Corruption Network for Transition Economies and SIGMA. The Anti-Corruption Network (ACN) was established in 1998 and its main objective is to support its member countries in their fight against corruption by providing a regional forum for the promotion of anti-corruption activities, exchange of information, elaboration of best practices and donor coordination. The ACN includes countries from Eastern Europe, Caucasus and Central Asia. The OECD member states are also taking part in the ACN activities. The main counterparts of the ACN are the national governments and anti-corruption authorities of the participating countries. Civil society, business associations, international organisations and international financial institutions are also taking an active part in the ACN.

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