

# THE DECISIONAL TRANSPARENCY IN PUBLIC ADMINISTRATION

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## Abstract

*The principle of decisional transparency is one of the principles of good administration, fundamental principles of public administration and it is enshrined in the law of many European Union member states, including our country. In their work the public authorities must show transparency reflected by the active involvement of citizens in administrative decision as its primary beneficiary. The citizen information, consultation and his stimulation to participate actively in the elaboration of draft normative acts for their preparation and before that by bringing them to public knowledge, are tasks of the public authorities which exceed the limit of the obligations imposed by internal rules and are significant efforts to modernize the public administration and rallying to the administrative structures.*

**Keywords:** *transparency, public administration, information, citizen, decision*

## Introduction

This study aims to address the issue of decisional transparency in public administration issues, one of the principles of good governance, fundamental principles of government.

Research of issues decisional transparency in public administration is topical and important in several respects.

First, the importance of our country's status is determined by the European Union member state and European law enshrines the principle (Treaty on European Union Regulation no. 1049/2001 of the European Parliament and the Council of 30 May 2001 on public access the European Parliament, Council and Commission, the Treaty establishing the Constitution for Europe). Also, transparency in government decision making is established, the law of many Member States of the European Union.

Secondly the research is important to demonstrate openness and transparency of public administration to manage those.

Thirdly transparency in government decision-making leads to confidence in the strength and importance of normative acts. Public confidence in the legal compliance results, with positive consequences on economic development and maintaining cooperative relationships between government and society.

Research is important in terms of developing national doctrine.

Scientific research was done based on research of national legislation, European legislation and the implementation of transparency in some public authorities law and literature approach.

Transparency in government decision-making approach is based on the value of the work of specialists in administrative law, public administration, most authors on the importance of transparency going on in government decision-making, the general rule being that government policy should be an open and transparency. I agree with this view given the fact that transparency in government decision-making is the most important premise of a democratic and accountable governance.

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### Paper content

Transparency in government decision-making involves opening the government to manage the authorities by informing the people on matters of public interest, public consultation on draft laws and their right to participate actively in taking administrative decisions and in the process of elaborating normative acts. Transparency of decision “means the degree of openness for an election or a check”<sup>1</sup>.

Openness and transparency in public administration serve two specific purposes. On the one hand, they protect the public interest as they reduce the risk of maladministration and corruption, and on the other hand, they are essential to protect individual rights because it provides the necessary reasons for administrative decisions, and help the parts concerned to exercise their right to appeal<sup>2</sup>.

It is desirable to provide transparency of public administration, participation in decision making in an appropriate manner, of persons whose rights and interests are at stake, communication to those interested in the criteria for making decisions, reasoning required decisions etc.<sup>3</sup>.

„Change is not possible without difficulty, even in the worst prospect of better. Currently, Romania faces many changes and the responsibility is shared”<sup>4</sup>.

As a general rule „government policy should be one of openness and transparency”<sup>5</sup>. In their work public authorities must show transparency reflected by the active involvement of citizens in administrative decision as its primary beneficiary.

The principle of transparency in government decision-making is a mechanism by which the right to information provided by art. 31 of the Constitution is exercised.

Citizen information, consultation and his stimulation to participate actively in the elaboration of normative acts projects for their preparation and before that by bringing them to public knowledge, public authorities are responsible for obligations beyond the boundaries imposed by internal rules and approaches are significant efforts to modernize public administration and rallying the administrative structures.

Transparency of decisions is necessary to show even more in the local public authorities as, in accordance with the principle of subsidiarity, these authorities are closest to the citizen<sup>6</sup>.

Transparency of decisions is any social mechanism in a democratic society to ensure effective participation of citizens and legally recognized organizations in public life and completes the formal process of election or designation of representatives of institutions and public authorities<sup>7</sup>. This mechanism is regulated in Romania by Law no. 52/2003 on decisional transparency in public administration<sup>8</sup>, with subsequent amendments<sup>9</sup>.

<sup>1</sup> Sigma Papers, no. 27, Emil Bălan quote in *Instituții Administrative*, Publishing C. H. Beck, București, 2008, p. 32 and Ioan Alexandru quote and collaborators in *Dreptul administrativ în Uniunea Europeană*, Publishing Lumina Lex, Bucharest, 2007, 332.

<sup>2</sup> OCDE 1999, *European Principles for Public Administration*, Sigma Papers, no.27, Publishing OECD, 13, www.sigmaweb.org

<sup>3</sup> Emil Bălan, *Drept administrativ și procedură administrativă*, Publishing Universitară, Bucharest, 2002, 253.

<sup>4</sup> Richard Linning, *Tranparență și guvernare*, International Seminar „Transparency and participation for the government closer to the citizen”, 5-6 december 2005, SNSPA Bucharest.

<sup>5</sup> Ioan Alexandru and collaborators, *Dreptul administrativ în Uniunea Europeană*, Publishing Lumina Lex, Bucharest, 2007, 336.

<sup>6</sup> Lucia Catană, *Tranparența decizională în practica autăritoțiilor publice locale*, International Seminar „Transparency and participation for the government closer to the citizen”, 5-6 december 2005, SNSPA Bucharest.

<sup>7</sup> Victor Alistar, *Tranparența decizională în administrația publică românească*, International Seminar „Transparency and participation for the government closer to the citizen”, 5-6 december 2005, SNSPA Bucharest.

<sup>8</sup> Published in the Official Journal of Romania, Part I, no. 70/3.02. 2003.

<sup>9</sup> Last modified by Law no. 242/2010, published in the Official Journal of Romania, Part I, no. 828 of 10 December 2010

*Law transparency throughout the project*

In November 2000, IRIS Center Romania started the project "Transparency in government activity" that addresses both central and local government. At the central level there were held numerous meetings and seminars attended by public institutions, business representatives and NGOs in order to obtain amendments to the draft proposed legislation.

Since December 2001 IRIS Center has begun consultations with the Ministry of Public Information on the drafting of this bill. It was brought to the public on 16 April 2002 by means of a press conference. On April 22, 2002, the Ministry of Public Information with IRIS Center organized a public debate on the bill presented by the Ministry. In addition to the amendments made in the debate, IRIS Center Romania and Transparency Association sent in writing to the Ministry of Public Information, a series of suggestions to improve the draft law<sup>10</sup>.

The main purposes which the law aims to achieve are:

- Increasing the accountability of government for the citizen.
- Stimulating the active participation of citizens in administrative decision-making process.
- Increasing transparency throughout government.

Law on transparency of decisions addresses to: citizens, NGOs and business associations.

The principles governing decision transparency in public administration are: informing the people on matters of public interest, public consultation on draft legislation and active participation of citizens in the decision-making process and in developing legislation.

Prior information is that the government authority must publish a notice of the contents of a draft law (including Background Notes, the Explanatory Memorandum, Approval Report, the full text of the draft, the date and the deadline by which suggestions or amendments can be submitted). The notice must be published on the Authority website and at its headquarters and transmitted to central or local media (if applicable) at least 30 days before submitting the project for consideration, approval and adoption. The authorities must send the notice to the legally constituted associations which have requested this in advance.

Public consultation on draft legislation takes place through the establishment of a period of at least 10 days from the date the notice was published in which citizens and legally constituted associations may submit written proposals, suggestions and opinions worth recommendation which have to be taken into account when finalizing the final text and sending it for approval and adoption.

Active citizen participation takes place through public debates on the project submitted to transparent procedure. The public authority is obliged to hold a public debate where a legally constituted organization or another public authority requests it in writing. Discussions should be recorded and made public through the minutes of the meeting. The final decision on the recommendations and suggestions in the consultation or public debate belongs entirely to the public authority.

Law transparency of decision should not be confused with the law on access to public information. Transparency law does not give citizens the right to make final decisions on regulations that would be adopted, this belonging to government authorities who will decide whether or not to include draft regulations information and suggestions.

Article 12 of Law no. 52/2003 introduces an obligation for all public authorities to draw up an annual report on the transparency of the decision containing the following information: the number of recommendations received, the total number of recommendations included in draft legislation and the content of the taken decision, the number of participants in public meetings, the number of debates organized publicly on the draft regulations, where state authority was sued for obeying the law, its own assessment of partnership with citizens and their associations legally established, the number of public meetings and incentive closed restricting access.

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<sup>10</sup> Romanian Association for transparency and Pro Democracy Association, *Ghidul transparenței decizionale în administrația publică*, Publishing Tranger Printing, Bucharest, 2006, 6.

Implementation of the Transparency Act in 2009 to some public authorities:

Public Authority	No decisions adopted projects	No. projects brought to public knowledge no decision.	No. recommendations from citizens and associations legally constituted	No. recommendations included in the draft decision	No. meetings	No. public hearings	No. person participating in the meeting	No. public debate	No. participants in the debate	No. actions for breach of Law 52/2003
Arad City Hall	85	77	69	19	30	30	474	8	241	0
Ilfov County Council	207	207	0	0	12	12	-	-	-	0
Hunedoara County Council	203	203	-	-	15	15	300	-	-	0
Olt County Council		-	-	-	13	13	650	-	-	0
Botoșani County Council	228		0	-	21	21	180	-	-	0
Ialomița County Council	86	86	72	9	11	11		7	-	0
Bacău City Hall	441	441	4	2	26	26	15, 20/meeting	1	-	0
District 4 City Hall	124	6	0	0	16	16	600	4	-	0
Suceava County Council	12	-	33	33	-	-	880	0	-	0
Tg-Jiu City Hall	430	-	2	0	13	13	300	-	-	0

\* Data are taken from reports made by public authorities, published on their websites, and where it is – there is no information.

The observed low level of active participation of citizens in decision making, but public authorities and lack of properly prepare the annual report on transparency of decisions, there are no certain information in the report heading.

Despite the crystallization of a formal framework that can ensure transparency in decision making and access to information of public interest, there is still in Romania a state of inertia in the field of citizens' involvement in decisions affecting the public interest. The local government gives us many examples<sup>11</sup>.

<sup>11</sup> Emil Bălan, *Transparență vs. opacitate în administrația publică*, International Seminar „Transparency and participation for the government closer to the citizen”, 5-6 december 2005, SNSPA Bucharest.

Transparency law provides for three types of mechanisms to punish those who neglect their obligations:

- the possibility for citizens to challenge government authority in court, if it violates the rights provided by law.
- the possibility of official sanction restricting the full exercise of rights provided by law by citizens.
- the possibility of penalizing those persons participating in public meetings that do not comply with them.

Knowledge of public administration to citizens and their participation in decision making for public administration has some advantages<sup>12</sup>, as follows:

- restores and builds trust between government and citizens;
- helps the administration to identify community needs faster and with greater satisfaction for citizens;
- provides free information to the public administration regarding the decisions to be taken;
- leads to community consensus and not to conflict;
- government and citizens are able to jointly address problems and opportunities in a much more creative way.

Article 5 of the Law sets out exceptions in applying the Law of transparency. Thus, there has been a consultation process for developing legislation that provides information on national defense and public order, the strategic, economic and political interests of the country as well as information on personal data.

Treaty on European Union enshrines the concept of transparency in the art. 1, para. 2, stating that “this treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly and as closely as possible to the citizens”<sup>13</sup>.

Transparency of decision making in European institutions is guaranteed by the provisions of Regulation no. 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to the documents of the European Parliament, Council and Commission<sup>14</sup>.

The beneficiaries of this regulation are all citizens of the Union and any natural or legal person, resident or having their headquarters in a Member State (Article 2, section 1).

Transparency helps to ensure better participation of citizens in the decision-making process, ensuring greater legitimacy, effectiveness and accountability of government towards the citizens in a democratic system. Openness contributes to strengthening democratic principles and fundamental rights, as defined in Article 6 of the European Union Treaty and the Charter of Fundamental Rights of the European Union (section 2 of the preamble of the Regulation).

Regulation no. 1049/2001 establishes the principle according to which the documents held by an institution that is prepared or received by it and in its possession, in all areas of EU activity should be accessible to the public. Are there, however, exceptions to this principle as follows:

The institutions shall refuse access to a document where disclosure would undermine the protection:

- (a) the public interest as regards:
  - public safety
  - defense and military issues
  - international relations
  - the financial, monetary or economic politics of community or of a State Member

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<sup>12</sup> Romanian Association for transparency and Pro Democracy Association, *Ghidul transparenței decizionale în administrația publică*, Publishing Tranger Printing, Bucharest, 2006, 14.

<sup>13</sup> Enhanced version of the Treaty on European Union published in the Official Journal of al UE C115 of 9. 05. 2008.

<sup>14</sup> Published in the Official Journal L 154 of 31. 05. 2001.

(b) privacy and integrity of the individual, especially in accordance with data protection legislation.

The institutions shall refuse access to a document where disclosure would undermine the protection:

- Commercial interests of a natural or legal person, including intellectual property;
- Court proceedings and legal advice;
- the purpose of inspections, investigations and audits, unless an overriding public interest in disclosure of that document.

Access to a statement from an institution for internal use or received by an institution and an issue on which the institution has not yet taken any decision is denied if its disclosure would seriously undermine the decision-making institutions, unless there is an overriding public interest in disclosure of that document.

A Member State may request the institution not to disclose a document originating from that without its prior consent

Requests for access to documents shall be made in writing, including electronically, in one of the languages of the Member States and in a sufficiently precise way to enable the institution to identify the document. The applicant is not obliged to give reasons for the request (Article 6, section 1 of the Regulation). Whenever an application is not sufficiently precise, the institution shall ask the applicant to clarify and assist in this purpose, for example by providing information on the use of public registers of documents.

The deadline for resolving the request for access to documents is 15 working days from the date of filing. The institution may grant access to documents requested and provide such documents, or reject in whole or in part the request, pointing out reasons for rejecting the applicant, and also informing him about his right to enter a confirmatory application asking the institution to reconsider its position.

Confirmation request is nothing more than a purely administrative appeal, an administrative gracious appeal and settled gracefully within 15 working days after filling the application. In case of rejection of all or part of the application the Regulation establishes the remedies available to it the applicant, that of the appeal court and / or complaint to the European Ombudsman.

On this occasion we must mention the words addressed by Mr. Nikiforos Diamandouros, during his reelection to the post of European Ombudsman: "I will ensure that EU citizens will take full advantage of the Treaty of Lisbon. It is the right to good administration, the right of access to EU documents and the right to engage in dialogue with EU institutions. For me it is extremely important to strengthen "service culture" within the EU administration, this approach include greater transparency and fair, impartial and speedy civic affairs".

European Ombudsman examines complaints about maladministration in EU institutions and bodies. Most complaints received by the Ombudsman refers to the lack of transparency in EU institutions.

Before the Ombudsman investigate the complaint of an authorized plaintiff regarding the maladministration within a European institution or body must meet the criteria of admissibility. These criteria, laid down in the relevant articles of the Statute of the European's Ombudsman<sup>15</sup>, read as follows:

- Author and subject of the complaint must be identified, the author may request that the complaint remain confidential [Article 2 (3) of the Statute];
- The Ombudsman may not intervene in cases pending in court or bring into question the merits of a decision [Article 1 (3) of the Statute];

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<sup>15</sup> Adopted by decision of Parliament on 9 march 1994 (JO L 113, 4.5.1994, p. 15) and amended by its decisions of 14 march 2002 (JO L 92, 9.4.2002, p. 13) and of 18 june 2008 (JO L 189, 17.7.2008, p. 25).

- The complaint must be filled within two years from the date on which the facts justifying the applicant are brought to the attention of [Article 2 (4) of the Statute)];

- The complaint should be preceded by appropriate administrative approaches to the institution or body concerned [Article 2 (4) of the Statute)] and

- For complaints about the working relationship between institutions and bodies and officials, their internal administrative channels have to be exhausted to resolve the claims or administrative complaints before submitting the complaint [Article 2 (8) of the statute)].

Article 195 of the EC Treaty provides that the Ombudsman "conducts inquiries for which they claim to be appropriate." In some cases, there might not be sufficient grounds for the Ombudsman to initiate an investigation, even if the complaint is admissible. For example, if a complaint has been considered as a petition by the Committee on Petitions of the European Parliament, the Ombudsman considers that there is normally a justification for an investigation of the Ombudsman, unless new evidence is submitted.

For example, in total, 42% of eligible cases handled in 2007 were considered unjustified to start an investigation.

Since the establishment of the Ombudsman institution, the situation of complaints relating to transparency, including refusal of information is as follows.

Year	No. complaints registered	No. investigations initiated	% investigations relating to transparency, including refusal of information
1995 <sup>16</sup>	298	131	22%
1996 <sup>17</sup>	842	207	14%
1997 <sup>18</sup>	1181	196	30%
1998 <sup>19</sup>	1372	170	40%
1999 <sup>20</sup>	1577	201	32%
2000 <sup>21</sup>	1732	223	42%
2001 <sup>22</sup>	1874	204	41%
2002 <sup>23</sup>	2 211	222	41 %
2003 <sup>24</sup>	2436	253	34%
2004 <sup>25</sup>	3.726	351	36%
2005 <sup>26</sup>	3.920	338	55%
2006 <sup>27</sup>	3.830	258	73 %

<sup>16</sup> The annual report on the activities of the European Ombudsman in 1995, p. 14, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>17</sup> The annual report on the activities of the European Ombudsman in 1996, p.8, p.17, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>18</sup> The annual report on the activities of the European Ombudsman in 1997,p.12, p.30, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>19</sup> The annual report on the activities of the European Ombudsman in 1998, p.15, p.26, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>20</sup> The annual report on the activities of the European Ombudsman in 1999, p.15, p.22, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>21</sup> The annual report on the activities of the European Ombudsman in 2000, p.17, p.22, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>22</sup> The annual report on the activities of the European Ombudsman in 2001, p. 17, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>23</sup> The annual report on the activities of the European Ombudsman in 2002, p. 22, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>24</sup> The annual report on the activities of the European Ombudsman in 2003, p. 24, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>25</sup> The annual report on the activities of the European Ombudsman in 2004, p. 24, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>26</sup> The annual report on the activities of the European Ombudsman in 2005, p. 24, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>27</sup> The annual report on the activities of the European Ombudsman in 2006, p. 23, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

2007 <sup>28</sup>	3.211	303	71%
2008 <sup>29</sup>	3.406	293	36%
2009 <sup>30</sup>	3.098	335	36%

In order to ensure the democratic nature of the European Union and the Union closer to citizens, there are set a series of principles of functioning of the Union<sup>31</sup>, including the principle of transparency.

At European Union level, the measures to enhance transparency and openness, clearly underline the importance of these two principles<sup>32</sup>, on the European Transparency Initiative (ETI-European Transparency Initiative), introduced by the European Commission launched on 3<sup>rd</sup>, March 2005 and adopted the 9<sup>th</sup>, November that year to increase transparency, openness and accountability of governance processes of the European Union, noting that “transparency has passed from being a subject of public debate on the priority agenda of European politicians, achieving a highest possible degree of openness and transparency is one of the main objectives of the Commission in the period 2005-2008”.

In May 2006 the Commission published a Green Paper on European Transparency Initiative which was intended to initiate a debate with stakeholders on how to improve the transparency of EU funds, to increase consultation with civil society and create a framework for the role of lobbies and NGOs in European Union decision-making by institutions.

ETI concept itself was developed in response to the need to “reconnect Europe with its citizens and put an end to both physical and mental differences that make it difficult for people to understand what Europe does and why it matters”. ETI objectives therefore were “to increase openness and accessibility of European Union institutions, having the power to increase the use of European Union budget and to make European Union institutions more accessible to the public” with the intent to promote transparency in European Union decision making.

The principle of transparency is reflected in the Treaty establishing a Constitution for Europe art. I-50 - Transparency of procedures of the institutions, organs and bodies of the Union. Paragraph 1 of this Article provides that "In order to promote good governance and to ensure the participation of civil society, institutions, bodies and agencies working Union respecting the highest principle of openness." Also, “ any citizen of the Union or any natural or legal person residing or having its registered office in a Member State has the right to have access to the institutions, organs and bodies of the Union” (par. 3, art.I-50).

The treaty establishing a Constitution for Europe provides on art. 1 - 47 the participative democratic principle which states that institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. In order to ensure consistency and transparency of European Union action, the Commission shall carry out broad consultations with the concerned parties.

Lack of transparency in decision-making, among other shortcomings of the regulatory activity, leads to low confidence in the strength and importance of company laws. Absence makes the rules consultations to be frequently modified or replaced, and this causes a sharp legislative instability.

Confidence in the legal framework will result in a greater degree of compliance with positive consequences on economic development and maintaining cooperative relations between your government and society.

<sup>28</sup> The annual report on the activities of the European Ombudsman in 2007, p. 20, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>29</sup> The annual report on the activities of the European Ombudsman in 2008, p. 16, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>30</sup> The annual report on the activities of the European Ombudsman in 2009, p. 16, [www.ombudsman.europa.eu](http://www.ombudsman.europa.eu).

<sup>31</sup> **Ion Gâlea, Mihaela Augustina Dumitrașcu, Cristina Morariu**, *Tratatul instituind o Constituție pentru Europa*, Publishing All Beck, Bucharest, 2005, 93.

<sup>32</sup> **Emil Bălan**, *Instituții administrative*, Publishing C. H. Beck, Bucharest, 2008, 23.



## Conclusions

Research of the principle of transparency in government decision-making results highlight the importance of this principle for both public administration and citizens, the principle of transparency in government decision-making leading to improved citizen-government relationship.

Transparency in government decision-making is one of the values that have an impact on the democratic process, the most important premise of a democratic governance. In any democratic state should encourage transparency in government decision-making, lack of transparency leading to maladministration.

In the future, require increased transparency in public administration, ensuring the maximum level of transparency as the degree of transparency is much higher public administration is closer to citizens, the principle of transparency in government decision making closer to citizens and public administration leads to removing any corruption or suspicions thereof. Transparency in government decision-making is a principle of proximity, helping to improve the quality of the administration the benefit of citizens.

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