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## FOIA as an Anti-Corruption Tool

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## **Abstract**

This paper tests, explores and exemplifies the role of freedom of information legislation as an anti-corruption tool. In the first part, it tests freedom of information separately and in comparison with other more popular anti-corruption tools, such as an anti-corruption agency. In the second part, it proposes a more elaborated model explaining control of corruption and argues that transparency legislation is intermediated by the existence of civil society and does not work in its absence. In its last and final part it exemplifies with a project in Romania how freedom of information can be used as an integrity building tool.

## FOIA as a determinant of control of corruption

Assessments of the impact of this repertoire on corruption levels around the world have been neither very systematic nor very encouraging. As a review of anti-corruption literature from NORAD (2009) stated:

'The literature can identify few success stories when it comes to the impact of donor supported anti-corruption efforts. Particularly the specialised anti-corruption interventions have registered little progress, although this was originally the approach preferred because of the positive results attained by Hong Kong's Independent Commission Against Corruption (ICAC). This, however, hinged on strong political support, legal frameworks and a court system that worked – the *will* and *capacity* to pursue corruption through *enforcement*. But it is exactly the absence of these factors that is seen as key challenges in many countries'.

As a partner to everyone's anti-corruption efforts, one would have expected a more systematic effort of assessment from the World Bank. But a sobering evaluation by Gurgur and Shah in 2000 was not followed by a reform of anti-corruption programs. As an example: civil service interventions were found to be ineffective, but civil service interventions (trainings or public management toolkits) were continued with no measurable positive effect. A 2011 World Bank evaluation was more temperate, it began by declaring that since the WB supported either governments or other donors, its efforts can hardly be evaluated in isolation. Nevertheless, it did not identify any area of real impact, and the civil service was again identified as an area of no potential for outside intervention (World Bank 2011).

In this paper I test four distinct control of corruption institutional efforts – ratification of the United Nations Convention against Corruption (UNCAC), endorsement of the Freedom of Information legislation/act (FOIA), establishment of an Anti-Corruption Agency and of an Office of Ombudsman. While UNCAC is a very comprehensive and implementation demanding document, encompassing the most advanced laws and procedures, the other three have been around for much longer so their effect, or lack of it, has had more time to materialize. All these tools have been intensely promoted by the international community, with the result that they have been imported by a large number of countries (see Table 1). FOIA and ACA were adopted on a massive scale after 2000. The Ombudsman was more popular as an accountability tool between 1990 and 2000, following democratic revolutions. The final result, however, is a literal explosion of these institutions all around the world.

**Table 1. The development of institutional interventions**

<b>Situation by</b>	<b>UNCAC</b>	<b>FOIA</b>	<b>ACA</b>	<b>Ombudsman</b>
<b>1990</b>		15	12	47
<b>2000</b>		27 new <b>Total of 42</b>	29 new <b>Total of 41</b>	53 new <b>Total of 100</b>
<b>2008</b>	<b>Total of 145</b> ratifications since 2003 by end 2011	34 new <b>Total of 76</b>	57 new <b>Total of 98</b>	35 new <b>Total of 135</b>

Source: Hertie School of Governance Database<sup>1</sup>.

To test the impact of this institutional equipment, two sets of variables were created, one a simple dichotomy indicating the existence of an anti-corruption tool (for example, an anti-corruption agency), and another indicating the number of years the tool has been in operation. The year of reference is 2008. These measures were then tested by two different procedures: A simpler, descriptive procedure comparing the evolution of corruption in time, before and after the introduction of a given institution (marked as year 0) and submitting it to a significance test; and a statistically more advanced procedure, regressing corruption, in bivariate and multivariate designs (with controls for development) for each of our measures. The ICRG measure of corruption for the evolution was used in time graphs because it is a straightforward, 1 to 6 indicator (6 indicates lower risk of corruption) that has been available for a longer period than the other corruption indicators. It is also a good measure since, despite its commercial purpose, it attempts to measure particularism rather than just bribing.<sup>2</sup>

Dependent variables used for regressions were ICRG, TI CPI, WGI Control of Corruption (CC), change in ICRG and WGI CC from 1998-2008 and TI CPI to test the robustness of the models.

The main focus in this paper is on the Freedom of Information Acts (FOIA), which have existed for a longer period of time. Empirical results on the impact are mixed, however. Bac argues that greater transparency leads to improved information about whom to bribe (2001: 88). On the opposite end,

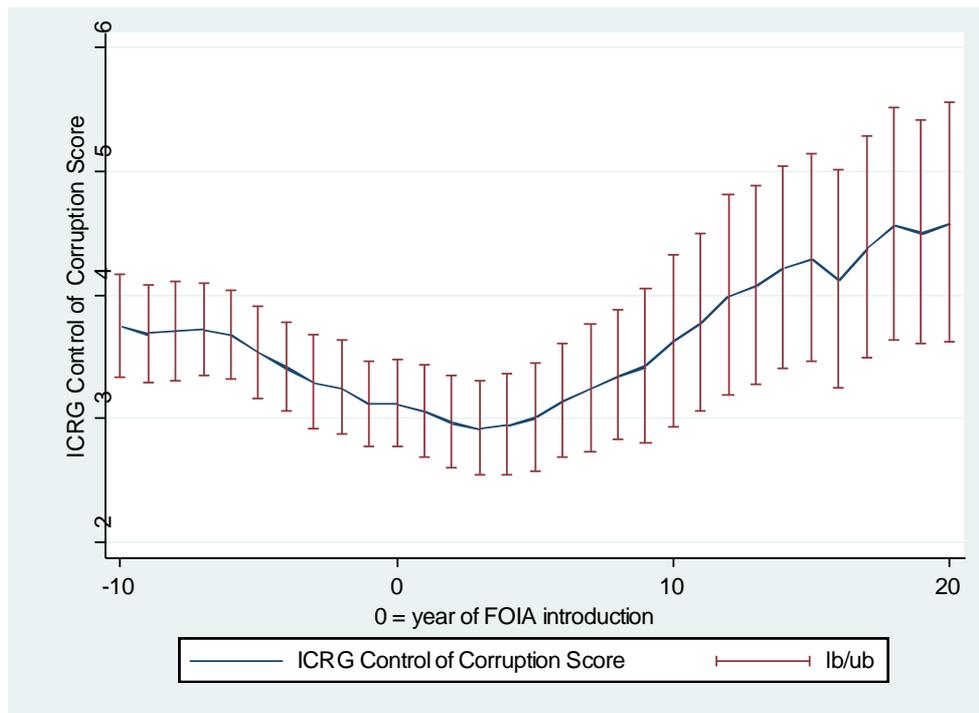
<sup>1</sup> This database was compiled by Hertie School of Governance for NORAD in 2011. In the case of UNCAC, the dataset from the website of the United Nations Office on Drugs and Crime was used, which records information about the ratification of the Convention (applied to 193 countries in our database); in the case of FOIA, Roger Vleugels (2008) records of the existence of FOIA in countries worldwide were used (applied to 193 countries in the Hertie School database). In the case of anti-corruption agencies, according to the OECD categorization, 176 countries were checked for the existence, year of establishment and type of anti-corruption agency in 2008. Similarly, a set of 193 countries has been checked for the presence and year of establishment of a working Office of Ombudsman in 2008. The Hertie School datasets record the sole existence (year of establishment and type of an agency in the case of ACA) and do not include any estimate on the efficiency or independence of the institutions.

<sup>2</sup> Available at: <[http://www.prsgroup.com/ICRG\\_Methodology.aspx#PoIRiskRating](http://www.prsgroup.com/ICRG_Methodology.aspx#PoIRiskRating)>, accessed April 1, 2011.

Islam finds in her study that countries with greater transparency, measured through existence of FOIA, do have lower corruption rates (Islam 2006: 153). By the end of 2003, 46 countries had implemented some form of FOIA (Escaleras et al. 2010: 436) while by 2008 this number had increased to 82 countries (Vleugels 2008). The FOIAs differ in a number of aspects, however all Information Acts around the world tackle a few common elements – who can file a claim for information, what process must be followed (including time frames), how should legislation be enforced, is there a means for appeal, if certain information can be withheld, and if so, by whom (Escaleras et al. 2010: 436).

These days, a growing body of treaties, agreements, action plans and other statements urges or requires nations to adopt a FOIA. The FOIA clauses are included in anti-corruption treaties, agreements on environmental protection and participation as well as in a number of international human rights treaties and regional conventions (Banisar 2006: 8). UNCAC also includes comprehensive support to measures aimed at improving public access to information as a means to fight corruption (Article 10 on “Public Reporting” and Article 13 on “Participation of Society”). Additionally, the Universal Declaration on Human Rights as well as the International Covenant on Civil and Political Rights both requires that every person shall have the right to free expression and to seek and impart information (Article 19, UDHR). Most recently written constitutions from countries in transition (Central and Eastern Europe as well as Latin America) have started to include a provision on access to information (Mungiu-Pippidi et al. 2011). Additionally, a number of countries with older constitutions (e.g. Finland, Norway) have recently embarked on amending their constitutions to include a right to access information (Banisar 2006: 17).

**Figure 1. Improvement in control of corruption after introduction of FOIA**



Legend: Evolution of corruption (horizontal line) after introduction of FOIA (year zero), averaged (confidence interval indicated by vertical bar), significant. ICRG corruption scale from 0 to 6 has the highest number of points indicating the lowest potential risk for that component and the lowest number (0) indicating the highest potential risk.

The test results are shown in Figure 1, which traces the development of control of corruption from 10 years before the implementation of a FOIA ( $t=-1$  to  $t=-10$ ) up until 20 years following implementation ( $t=1$  up to  $t=20$ ).<sup>3</sup> The graph shows that there is a downward trend in control of corruption before the implementation of a FOIA, followed by an upward trend which starts a few years after its implementation. To establish whether the corruption score changed significantly after the implementation of a FOIA, t-tests were run, comparing the mean corruption score at  $t=0$  with the means from later years, up to 20 years following the introduction. Taking into consideration the actual t-test, the increase in corruption score becomes significant at the 5% level 2 years after the implementation of FOIA and remains so for 20 years after the introduction of FOIA. However, control of corruption was also significantly higher 10 to 5 years before the implementation of FOIA.

This positive result is mirrored in the regressions, both bivariate and controlling for corruption (see Table 2). **The existence of FOIA is positively associated with lower corruption and a significant positive trend in controlling corruption.**

<sup>3</sup> The graphs were produced using the `xtgraph` procedure in STATA, showing averages of a single outcome measured at several points over time. Standard errors and confidence intervals are calculated separately for every time point, using the t-distribution. See also Mungiu-Pippidi et al. 2011 for more details.

**Table 2: Testing the effects of AC interventions**

Dep. Variable: ICRG Corruption Measure <sup>a</sup>	(1)	(2)	(3)	(4)	(5)	(6)	(7)
UNCAC ratified	-0.0652 (0.387)						
Years since UNCAC		-0.0714 (0.0625)					-0.0557 (0.0645)
FOIA in power that year			0.755*** (0.187)				0.162 (0.305)
Years FOIA in power				0.0175*** (0.00609)			0.0280 (0.0184)
ACA in power that year					-0.0794 (0.200)		0.0537 (0.186)
Ombudsman						-0.0771 (0.207)	-0.318 (0.208)
Constant	2.760*** (0.373)	2.949*** (0.267)	2.327*** (0.0954)	2.527*** (0.0904)	2.733*** (0.144)	2.753*** (0.170)	2.805*** (0.267)
Number of Obs	130	117	139	139	125	137	107
Adjusted R <sup>2</sup>	-0,008	0,002	0,105	0,137	-0,007	-0,006	0,159
F-Value	0,028	1,307	16.241***	8.268***	0,158	0,139	2.543**

Cross country estimations (OLS) using the International Country Risk Guide's corruption measure in 2010 as dependent variable. Unstandardized regression coefficients reported. Robust standard errors in parentheses. Significance levels: \* p<0.1, \*\* p<0.05, \*\*\* p<0.01

<sup>a</sup> Values range between 0 and 6 (higher values indicate less risk of corruption)

Legend: Reference year 2008.

Table 2 displays results of tests, testifying to some impact of FOIA, and the lack of impact by UNCAC, Ombudsman and ACA, also resulting from the simpler t-tests. **These results are fairly robust, since they were tested on a large number of countries and different sets of them, with different dependent variables (ICRG, CC, CPI) and also with a control for development, using HDI as a proxy (N=130-189, varies according to documentation of dependent variable). Except for the existence of FOIA, which is significant in bivariate models (also with**

development control when ICRG is used as dependent), and years since FOIA was adopted, which turns out to be a significant predictor of control of corruption even when controlling for development (with all dependents), we find no difference in control of corruption between countries which have adopted these institutions and countries which have not. To better capture the effect in time (twenty years on FOIA, five years on UNCAC) we also run regressions with *change in the ICRG score* as dependent variable. Is the change in corruption during this interval determined by the existence of any of these institutions? The answer is an overall no, and is again a robust answer, perhaps unsurprisingly so when we reflect that so little significant change existed in general during this period of time.

The conclusions of this review of the impact of favourite anti-corruption interventions tested alone, or with development controls, suggest that a country does not progress just because it imports one or another institutional tool (or all of them) *in the absence of domestic normative constraints which could restraint elites' predatory behavior*. The results do not mean that outliers do not exist and such tools are ineffective everywhere and in every context, but warn strongly against over-reliance on the institutional toolkit. In the next section we shall explore further the context empowering FOIA.

## The importance of normative constraints

Most theoretical studies of corruption develop micro models of individual acts, while empirical papers study corruption at the national level. Micro models view corruption as the result of a balance between resources and costs (Nye 1967; Rose-Ackerman 1999). When costs are low and resources/opportunities high, it is rational for an individual to be corrupt. Robert Klitgaard (1988: 75) proposed the famous formula describing a state of equilibrium:

**Corruption = Monopoly + Discretion – Accountability (C=M+D-A)**

However, macro models treating corruption as a dependent variable have not relied much on Klitgaard's formula as background theory, although a macro model can also be conceptualized as a balance. The exception is the literature on rule of law enforcement (Becker and Stigler 1974), developed in Van Rijckeghem and Weder (1997) who presume that very low wages combined with the absence of corruption detection lead to low control of corruption. Most literature on causes of corruption group determinants as either economic, political and cultural or as two broad categories of factors: i. structural factors (population, legacies, religion, past regime), and ii. current government policies pertaining to control of corruption (economic, but also specific anti-corruption policies). A review of determinants tested so far suggests that the equilibrium concept can actually

make a more theoretically meaningful model using many of the factors already tested. Such a model would include:

Under *resources*:

- Discretionary power resources (due not only to monopoly, but also privileged access under power arrangements other than monopoly or oligopoly; for example Weber's status groups, Mancur Olson's negative social capital networks (1965), North, Wallis and Weingast (2009) social orders, cartels, etc.).
- Material resources (state assets and discretionary budget spending, foreign aid, natural resources, public sector employment, any other resources which can be turned into spoils or generate rents).

As *constraints*:

- Legal: This supposes an autonomous, accountable and effective judiciary able to enforce legislation, as well as a body of effective and comprehensive laws.
- Normative: This implies that existing societal norms endorse ethical universalism and monitor permanently and effectively the deviation from this norm (through public opinion, media, civil society, critical citizens/voters). For an effective sanction we need a population of autonomous and critical citizens capable of collective action.

Control of corruption or its opposite, particularism, can then be summarized in the formula below:

**Corruption/control of corruption = Resources (Power discretion + Material resources) – Constraints (Legal + Normative)**

This equilibrium formula can be empirically tested and offers a more complex picture, not only of the individual causes of corruption (or even categories of factors), but also of their interaction, which allows for a better understanding of why certain policy combinations work and others do not. All elements of the formula can be affected by human agency. Resources, for example, are not an absolute given; they can be manipulated by policy. Power resources can be increased by discretionary regulation and red tape, and decreased by transparency; many anti-corruption policies focus on that area.

The present paper tests transparency, using as proxy the existence of FOIA, in the context of this equilibrium model, concentrating in particular on the existence of normative constraints. We hypothesize that, if of all interventions FOIA seems to be the most effective, the reason is that it is the only anti-corruption tool in whose implementation non-state actors can play a large role. Evidence collected by Transparency International, Open Society Institute and Civil Society against Corruption shows that successful FOIA goes hand in hand with civil society and citizenry activism.

Implementation was poor (TI 2006) in countries where the law was adopted as part of a top-down government reform plan, such as in Albania, or as international initiative (Bosnia), or as lobbying from a civil society elite (Peru). By contrast, in countries such as Romania and Bulgaria, where civil society coalitions pressed for access laws, the resulting legislation, even if far from perfect, was used as a weapon for disclosure by civil society, journalists, and members of the general public alike. Monitoring in Bulgaria and Romania already showed by 2006 that over 50% of requests filed received the information sought (TI 2006) and that NGOs were winning in Courts spectacular litigations against government, forcing disclosures leading directly to accusations of corruption (Romanian Academic Society 2011).

For normative constraints, proxies tested are press freedom, civil society (measured in simple numbers of CSO/100 000 inhabitants), and internet users (signifying the presence of well-informed, thus potentially critical citizens) with controls for development and culture (number of Protestants). In line with political development theory, it is hypothesized that critical citizens, autonomous and informed, are an essential part of normative constraints and therefore of control of corruption. The results are displayed in Table 3 and confirm the explanatory power of normative constraints: all proxies are significant and the models explain more than two thirds of variance.

**Table 3: OLS regression for control of corruption (with robust standard errors and outlier exclusion)**

	(1)	(2)
Number of CSOs (per 100,000 pop.)	0.00710** (0.00270)	0.00554* (0.00226)
Freedom of the press <sup>a</sup> (Freedom House)	-0.00993*** (0.00240)	-0.0134*** (0.00191)
Internet users (per 100 people)	0.0224*** (0.00331)	0.0212*** (0.00263)
Protestant (% of population)	0.00348 (0.00213)	0.00454* (0.00176)
HDI <sup>b</sup>	0.740 (0.376)	0.566 (0.315)
Constant	-0.810** (0.251)	-0.500* (0.206)
Number of Obs.	153	145
Adj. R-Squared	0.782	0.847

Regression results for 153 countries using the World Bank's 'Control of Corruption' index as the dependent variable. Huber-White standard errors are in parentheses. Model 2 excludes outliers using Cook's D as test statistic. Significance levels: \*\*\* p<0.001, \*\* p<0.01, \* p<0.05.

<sup>a</sup> Values range from 0 (best) to 100 (worst); <sup>b</sup> Human Development Index, values range from 0 (low

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development) to 1 (high development).

Note: Eight outliers with Cook's D > 4/N identified. These outliers are Belize, Botswana, Jamaica, Namibia, Papua New Guinea, Qatar, Rwanda, and Singapore.

Testing Freedom of Information in the context of normative constraints is the next step. In complex versions of the model, either the one presented in Table 3 or other more sophisticated models based on the equilibrium formula, FOIA loses its significance as a predictor of control of corruption. But to test our hypothesis we need far less predictors. I hypothesize that FOIA will make a difference under similar civil society development, and to test these hypothesis the following proxies are used:

1. Number of civil society organizations per capita (CSOs) (Grimes 2008, available in The Quality of Government dataset, version from May 27<sup>th</sup>, 2010);
2. Rural population (%of total population) (World Bank Development Indicator);
3. Shadow economy estimate (% of "official" GDP, averaged for 1999-2006).

I deem these controls to be sufficient for establishing the role of FOIA. The test displayed in Table 4 confirms that transparency is a highly significant predictor of corruption at equal levels of rural population, informality and civil society. This also implies that in highly informal and rural societies, with fewer civil society organizations, its role is weaker or might be canceled.

**Table 4: The role of transparency in a development context**

<b>Determinant</b>	<b>Coefficient (std error)</b>
FOIA	.396 (.012) ***
Rural	- .010 (.004) ***
CSOs/population	.019 (.005) ***
Informal economy	-.045 (.006) ***
Constant	4063 (253) ***
Number of Obs.	126
Adj. R-Squared	0.49

Cross country estimations (OLS) using the International Country Risk Guide's corruption measure in 2010 as dependent variable. Unstandardized regression coefficients reported. Robust standard errors in parentheses. Significance levels: \* p<0.1, \*\* p<0.05, \*\*\* p<0.01.

<sup>a</sup> Values range between 0 and 6 (higher values indicate less risk of corruption).

Legend: Reference year 2008.

## How can transparency work? A model for action

We have sufficient evidence that normative constraints are essential to enforce ethical universalism as a governance norm, and transparency is a useful tool; the next important question is what kind of anti-corruption programs can be derived to take advantage of its existence. On the basis of this empirical model the Romanian Academic Society (RAS), a think-tank in Bucharest has organized starting with 2004 various anti-corruption coalitions and campaigns using transparency as a tool (RAS 2007; 2009; Romanian Coalition for a Clean Parliament 2006). The targets were the candidates for parliamentary elections, mayoral elections, and county elections on one side and public agencies, including universities on the other. The overall goal is to push actors whose behavior we want to change to compete for public credit for their performance. The original strategy, developed in connection with parliamentary elections, had four steps. The first step to exit the vicious circle of particularism is to organize the losers of the status quo against the status groups and the predatory elites: in other words, to build an insurrectional 'army'. This should not be only an alliance of idealists, but of groups who stand to lose most by corruption. It must necessarily contain a civil society that is politically engaged, although non-partisan, and broadly based: media, unions, church and NGOs of every type. The second step, and here international assistance can play a role (Romania acceded to NATO and EU in the space of a few years from 1999 to 2007, and as such enjoyed important international conditionality), is to create some institutional weapons that an anti-corruption coalition or isolated anti-corruption entrepreneurs can use for monitoring. The typical 'institutional weapons' are freedom of information acts, but there are other regulations, such as transparent and mandatory disclosure of wealth for politicians, civil servants and magistrates which are helpful. The third step is to set the new norm, which is ethical universalism, not particularism. The coalition should agree on some concrete criteria embodying this ideal and spell them out as a full action program. The targeted actors should then be monitored by the criteria (the difference between the norm and the actual practice) and the results should be made public. Finally, the fourth step is to create incentives for the change of behavior. This is realized by the creation of a 'market' for integrity. Taking advantage of existing competitions is the best: the Romanian Coalition for a Clean Parliament succeeded in 2004 to make 98 MP candidates lose office and a government party with 20% lead at the beginning of the campaign lose elections, due to triggering of a competition of integrity among political parties. Once the first important political party accepted to cooperate (in exchange for being publicly credited as a promoter of integrity) and submitted its electoral lists to be screened by the Coalition, the rest necessarily followed, creating a snowball effect as the media also cooperated in raising the stakes. Disclosure campaigns thus work best when combined with circumstances where a form of market exists and so incentives can be maximized. In the case of universities, the coalition announced that an integrity (originally was phrased as 'corruption') top will

be established and the full survey will be published so that prospective students can make an informed choice when applying to a state university.

The Coalition for Clean Universities was thus created in 2006, in the aftermath of major media scandals concerning fraudulent degrees. Even a Health Minister was forced to resign his public office when it was proven that his major book had actually been the result of plagiarism<sup>4</sup>. The practice of copying new textbooks *ad literam* from old ones is widespread in Romanian medical schools, but as there is no legal sanction for it, this gentleman remained a professor even when in an unprecedented decision his peers decided to expel him from university. By mid- 2000s several online sellers of undergraduate dissertations have developed. On [www.licenta.ro](http://www.licenta.ro), for instance, dissertations on all fields are offered for an average price of 150-200 euros. The Romanian government passed a law on the quality of education in 2005 (Government Emergency Ordinance no. 75/2005), establishing a supervisory body (the Romanian Agency for Quality Assurance in Higher Education (ARACIS)) with responsibility for accrediting programs and evaluating universities. This body took over that responsibility from the National Council on Academic Evaluation and Accreditation (part of the Ministry of Education), which had granted accreditation (sometimes highly controversially) since 1993. 54 private universities function in Romania, having received state accreditation or some provisory functioning authorization. The ARACIS board has to be approved by Parliament and as such reflects the political majority in Parliament: members are all informally supported by some political party. No substantial conflict of interest regulations exist, so that the board includes people from top university management who do not have to give up their positions at their original universities while evaluating others. The first appointment of this body proved a lengthy process and only few universities had been evaluated for quality by 2007.

It was against this backdrop that Romanian Academic Society (RAS) built a coalition to integrate all the stakeholders in the higher education system: representatives of students, unions and professional associations or academic watchdog groups. The Coalition members decided to join forces in a program which would monitor all state universities for two years with the main goal of promoting integrity norms versus generalized bad practices. For this purpose SAR developed an evaluation questionnaire meant to investigate the governance practices in a given university. The coalition debated if only public universities should be monitored, as Romania has a large and growing number of private universities, also subjected to ARACIS evaluation. As only public universities receive public funds and are subjected to regulations related to such funds the decision was taken in the end to monitor them alone.

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<sup>4</sup> See Paul Kun, Dosarul Docea, in Revista 22, 14.11.2007, <http://www.revista22.ro/dosarul-docea-4126.html>

A 2007 UNESCO study by Hallak and Poisson found that systemic corruption in education is due to a combination of internal and external factors. The internal factors quoted were monopoly and discretionary power of management, low salaries and lack of incentives for quality teaching, absence of professional norms, low management capacity, weak accounting and poor public information. The external factors identified were lack of access to information, lack of external audit and poor judicial capacity, poor generalized administrative practices with fragile budgets and low salaries (Hallack and Poisson 2007: 70). As Romania was engaged in the ambitious process of EU accession, new national legislation introducing better governance had been recently passed or was under way. The questionnaire was designed to take advantage of recent legislation on freedom of information and procurement. A Freedom of Information Act (FOIA) was passed in 2001: three rounds of surveys on monitoring its implementation at the national level had already been carried out by SAR. A new, EU-endorsed procurement law was passed in 2005 when Romania signed the EU Treaty of Accession. Furthermore, in 2003 a comprehensive anti-corruption package was passed introducing for the first time some regulations against conflict of interest. One of the important causes of systemic corruption signalled in the UNESCO report, poor laws and regulations was thus addressed by 2007: the gap seemed to be rather between the practice in each university and this general legal framework.

Seventy-five per cent of the items in the questionnaire covered issues of university management and administration, and twenty-five covered the governance of academic issues. Each evaluation of a university was therefore predominantly an evaluation of university central management, as the Rector alone is in charge legally and financially and together with the Senate which elects and can dismiss him he is the holder of nearly all power. To assess academic practice, a department was randomly selected for investigation from within each university at a public meeting of the Coalition. The passage from Communist authoritarianism to rule by faculty has never been completed in Romania and universities have gained autonomy (Education Law no. 84 (r2) from 24/07/1995, Art. 13), but mostly on behalf of management. The faculty has no decision rights except to elect Councils who then elect the Dean. The Deans are automatically members of the Senate. The Education, Research and Innovation Ministry's main responsibilities are reduced to approving the national strategy of education, to allocate education funding according to the law and to confirm the appointment of rectors elected by the Senates (Art. 141 from Law no. 84 (r2) of 24/07/1995).

The target population of the CUC survey was all public Romanian universities (45): three Arts universities of a very special nature were excluded, leaving 42 in total. While universities vary in size and number of departments (see

Table 5), the governance practices do not vary greatly across one university, as most of the decision lies with management and rules are adopted at university, not department level (for instance the internal regulations, the ethical code, etc). The department randomly selected was

therefore simply the location within one university where the survey inquired on academic practices in order to avoid surveying all departments unnecessarily.

The evaluation team was composed of a senior academic (Ph.D. level) and a student. Evaluators were generally selected from another university town and from a discipline different from that of the department and university they were evaluating, thereby eliminating any potential conflict of interest. The questionnaire was designed to allow for checking of formal rules and informal practices and to measure the distance between the two. Section one, on transparency and responsiveness, was meant to evaluate the practices of university bureaucracy: the score for this section (S1) was assigned a weight of 30% of the total score. The general benchmark of transparency legislation (FOIAs) is that general information should be available ex-officio, without applicants having to solicit it. A reasonable amount of information should also be available so that both students and faculty members, as well as members of the informed public (for instance journalists) can check on the universities standards, chief activities and practices. Ideally, all the relevant information should be posted on the website of the university. Where there are material impediments, key information should be posted in other forms, but it should be available without payment, either formal or informal. Such information should include (without being exhaustive): all charters and internal regulations and guidelines; the budget and financing sources (including from private donations) of a public university; all competitions and their rules; composition of committees who decide over public funds or appointments; summaries of students evaluations; formal decisions of disciplinary committees; the yearly research, academic and financial report; the list of faculty with their resumes, the curriculum and syllabi. Aside the information which should be posted on the website, it is vital that easy access is provided for claimants, journalists and civil society watchdogs to another type of information, such as a typical contract form, copies of procurement decisions of over 10 000 euros, a chart of teaching employment allowing to evaluate actual teaching loads and remuneration, the statements of assets and conflicts of interest of the management, a transcript of the budget debate and approval by the board (or Senate), and all other elements adapted to the legal context which would allow to check on the principle of non-discriminatory access to information, the existence of procedures and standards of good governance, compliance to more general legislation, eventual abuses of management to increase its personal profit (by favouring certain service providers, cumulating several fictional teaching loads, allowing monetary premiums to themselves or favourites, etc). Under FOIA (law 544/2001), disclosure is mandatory of any documents which are not classified in 30 days from the moment the request is made. There are administrative and legal ways of attack if a request is denied.

The most sensitive issues were the most recent statements of assets of the members of the university's management board (Law 144/2007 requires such statements to be posted on the Internet at the beginning and end of any new term of public office), and the minutes of the most

recent meeting of the university's ethics committee (the 2005 law on the quality of education made such a committee mandatory, but very few such committees were even created, let alone met). Each university was evaluated according to their response to the requests: the more documents they provided or posted on the website as statutorily required, the more points they accumulated. A greater weight was granted (5 points) for the presence/absence of statement of assets and interests of management on the website. These are regulated by a special law (78/2003) and their accuracy is controlled by a state agency created in 2008, Agency for National Integrity, which was under organization at the date of this project. The final rating reflected the range of information available, its quality (updated, correct) and the responsiveness in providing it<sup>5</sup>. The evaluators' team approached the universities in two steps, first by checking the website, and second by applying for information not available on the website and rating the treatment that their request received as well as the quality of information. One university hired initially a legal firm to protect its information in the pilot phase, claiming that public universities are not subject to FOIA: after SAR sent a letter detailing the legal procedures of FOIA, the university gave up the lawyers and granted full access.

The documents thus received became the basis for the rest of the evaluation, together with information from the universities' websites, meetings with management and local stakeholders, media and official reports from the Audit Court. The CCU has also set up a website for unsolicited information. Evaluators publicly announced their presence at a university, so that every interested party could contact them and provide additional relevant information.

Of the 42 universities approached with requests for information, only 16 responded (of which only two without having to be approached a second time), 23 replied only when evaluators arrived at the respective university, and three completely refused to respond, even though they were statutorily required to do so. Thus, only 38% of state universities were completely transparent and responsive. However, except for three universities, they all ultimately cooperated with the evaluators and submitted the required documents, albeit in some cases after the statutory ten-day term.

Article 10 (e) of Law 144/2007 requires public institutions to publish and update the assets and interests statements of their management boards on their website. Of the 42 universities, 16 had published and updated all assets statements, 13 had published them in an incomplete form, while 13 had refused to make them public, despite being required to do so by law and despite risking a fine. The National Integrity Agency (NIA), the institution empowered with enforcing this law, which was just under organization during this project was functional enough by summer 2009 to issue a warning to all the rectors and the university management to stop breaching the law. It also started

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<sup>5</sup> This methodology was used before by SAR to test transparency and responsiveness of the public sector agencies. Originally it was inspired by Robert Putnam's questionnaire used to rate the Italian regional governments, described in Putnam; Leonardi, & Nanetti (1993).

investigations on the basis of CUC reports in some individual cases. Most of these investigations are still under way. In the only one finalised and highly publicized the former rector of the last University was asked to return nearly 70 000 euros that NIA considered could not have been justified from his official income.

**Table 5. Final assessment of governance practices brief results**

	<b>Category weight (maximum score)</b>	<b>Mean score (Standard deviation)</b>	<b>No. universities above average</b>	<b>No. universities below average</b>
TRANSPARENCY AND RESPONSIVENESS	30%	20 (6.08)	24	18
ACADEMIC INTEGRITY	20%	12 (3.73)	20	22
GOOD GOVERNANCE	35%	10 (5.00)	18	24
FINANCIAL MANAGEMENT	15%	8.8 (3.80)	25	15

An immediate consequence of the rankings provided by the CCU and its public disclosure was the dramatic improvement in university websites. Even during the process, many universities rushed to post public documents they were legally required to publish (and which had not been made public before) on their websites. Following the press conference when the rankings were announced, those universities that had not yet published the assets disclosure statements eventually decided to do so. A second evaluation, taking place in 2009-2010, concentrated on the follow-up of recommendations made by evaluators to all universities and this led to even more improvements.

After the final scores had been computed, the universities clustered into six rough categories clustering around a median score. Categories were attributed a ranking, ranging from five stars to zero. No university scored full marks on all the integrity criteria, and so no university received five stars. Three were awarded four stars, 18 received three stars, ten universities were awarded two stars, five universities one, and six universities received no stars on account of their total lack of transparency and integrity (in fact, they had so many penalties that their original low score fell below zero). Universities were offered the possibility to contest results and present evidence in their support. However, none was able to contest findings substantially. The zero ranked universities, who behaved in the least transparent manner, were unsurprisingly those which had been surrounded by most media scandals.

The results of the assessment were presented in the form of a public ranking of universities, accompanied by more detailed reports on each institution. The CCU employed this “naming and shaming” procedure to stimulate competition. The rectors of universities with four stars received

awards at a public ceremony, and their best practices were popularized. Using the final scores of this assessment exercise as a dependent variable measuring integrity, I tested for causes explaining variation across universities. A positive statistical association was found between integrity and the academic quality of the university as measured by the number of published papers quoted by ISI Thomson. This proves a serious correlation exists between quality at international level and integrity: it also validates the integrity scale resulting from the exercise. A new education law was passed in 2010 establishing stronger penalties on plagiarism. However, in 2012 two Education ministers in a row had to resign after being found guilty of this integrity breach.

Transparency proved a powerful instrument in the hands of an organised civil society promoting integrity in the case of Romanian Coalition for Clean Universities. But its limit was reached at the university level, where no grassroots follow up action was initiated. As predicted by the model, insufficient civil society could not build further on this spectacular action. Little except transparency of universities evolved, and no significant evolution will come in the future unless it is put to further use by collective action directed towards promoting integrity and academic performance.

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