

**Colombia: Report on the Observance of Standards and Codes—Fiscal
Transparency Module**

This Report on the Observance of Standards and Codes on Fiscal Transparency for **Colombia** was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed on **April 30, 2003**. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of **Colombia** or the Executive Board of the IMF.

The policy of publication of staff reports and other documents by the IMF allows for the deletion of market-sensitive information.

To assist the IMF in evaluating the publication policy, reader comments are invited and may be sent by e-mail to publicationpolicy@imf.org.

Copies of this report are available to the public from

International Monetary Fund • Publication Services
700 19th Street, N.W. • Washington, D.C. 20431
Telephone: (202) 623 7430 • Telefax: (202) 623 7201
E-mail: publications@imf.org • Internet: <http://www.imf.org>

Price: \$15.00 a copy

**International Monetary Fund
Washington, D.C.**

INTERNATIONAL MONETARY FUND

COLOMBIA

**Report on the Observance of Standards and Codes (ROSC)
Fiscal Transparency Module**

Prepared by the Fiscal Affairs Department

Approved by Anoop Singh and Teresa Ter-Minassian

April 30, 2003

EXECUTIVE SUMMARY

This report assesses the fiscal transparency practices in Colombia in light of the IMF *Code of Good Practices on Fiscal Transparency* on the basis of the authorities' response to a questionnaire supported by relevant documentation and supplemented by meetings with government representatives.

In recent years, Colombia has made considerable progress in improving transparency in public finances. Major initiatives include: adoption of the Presidential Anti-Corruption Plan; improvement in the management of public banks; clarification of the expenditures responsibilities and resources among different levels of government; introduction of modern accounting procedures (SIIF); streamlining of territorial financial information (FOSIT); establishment of an information system for monitoring public procurement (SICE); adoption of the Government On-Line initiative; and strengthening of the civil service disciplinary code. The legislative agenda now underway could lead to the adoption of very important standards in the area of Fiscal Responsibility and Transparency, as well as the integration and strengthening of territorial legislation.

Fund staff has identified several priority areas where further action would help meet the requirements of the *Code*. Specific recommendations include the following: further clarifying the responsibilities and resources among different levels of government; transforming the rather rigid National Development Plan into a quantified rolling medium-term macrofiscal framework; establishing a new budgetary classification consistent with international standards; providing Congress with timely information on budget execution; enhancing the synergies between the Presidential Anti-Corruption Program and the Internal Control Offices in the area of efficiency and transparency in public administration; publishing the assumptions, methodologies, and accounting conventions used in public sector finances and undertaking systematic reconciliations of fiscal figures produced by different entities; and strengthening external control at the territorial level.

Table of Contents	Page
I. Introduction	5
II. Description of Practices	5
A. Clarity of Roles and Responsibilities	5
B. Public Availability of Information.....	18
C. Open Budget Preparation, Execution and Reporting	24
D. Assurances of Integrity.....	34
III. Commentary	38
Boxes	
Box 1. Decentralization: Recent Legislation and Bills.....	8
Box 2. Management of Contingent Liabilities	22
Box 3. Draft Fiscal Responsibility and Transparency Law (LRTF).....	28
Box 4. Cash vs. Accrual: Measuring the Fiscal Deficit in Colombia	36

ACRONYMS AND INTERNET SITES

AGR	General Auditing Office of the Republic	http://www.auditoria.gov.co
BR	Bank of the Republic	http://www.banrep.gov.co
CET	Common External Tariff	_____
CGN	General Accounting Office of the Nation	http://www.contaduria.gov.co
CGR	Office of the Comptroller General of the Republic	http://www.contraloriagen.gov.co
CMGTA	Joint National Commission on Tax and Custom Administration	_____
CNSC	National Civil Service Commission	_____
CONFIS	High Council for Fiscal Policy	http://www.minhacienda.gov.co
CONPES	National Council for Economic and Social Policy	http://www.dnp.gov.co
DAF	Fiscal Support Directorate	http://www.minhacienda.gov.co
DAFP	Civil Service Administrative Department	http://www.dafp.gov.co
DANE	National Administrative Department for Statistics	http://www.dane.gov.co
DAS	Administrative Department for Security	http://www.das.gov.co
DGCP	General Directorate of Public Credit	http://www.minhacienda.gov.co
DGPN	General Directorate of the National Budget	http://www.minhacienda.gov.co
DGTN	General Directorate of the National Treasury	http://www.minhacienda.gov.co
DIAN	General Directorate of National Taxes and Customs	http://www.dian.gov.co
DNP	National Planning Department	http://www.dnp.gov.co
ECOPETROL	Colombian Oil Company	http://www.ecopetrol.com.co
EOP	Organic Budget Law	http://www.minhacienda.gov.co
FAEP	Oil Administration and Stabilization Fund	_____
FCCEE	Public Entities' Contractual Contingencies Fund	_____
FCET	Territorial Entities' Contingencies Fund	_____
FINAGRO	Fund for Agricultural Financing	http://www.finagro.gov.co
FNC	National Federation of Coffee Growers	http://www.cafedecolombia.com
FOGAFIN	Financial Institutions' Guarantee Fund	http://www.fogafin.gov.co
FOSIT	Program to Strengthen the Territorial Financial Information System	http://www.fosit.gov.co
FP	Financial Plan	http://www.minhacienda.gov.co
GEL	Government on Line	http://www.gobiernoenlinea.gov.co
IFI	Industrial Promotion Institute	http://www.ifi.gov.co
INPEC	National Prison Institute	http://www.inpec.gov.co
INVÍAS	National Roads Institute	http://www.invias.gov.co
ISA	Electrical Interconnection S.A.	http://www.isa.com.co
ISAGEN	Enterprises for the Public Service of Generation and Commercialization of Energy S.A.	http://www.isagen.com.co
ISS	Social Security Institute	http://www.iss.gov.co
LA	Appropriations Law	http://www.minhacienda.gov.co
LGPN	General National Budget Law	http://www.minhacienda.gov.co
LOT	Organic Law on Territorial Organization	_____
MEGHA	General Economic Model of the Finance Ministry	_____
MHCP	Ministry of Finance and Public Credit	http://www.minhacienda.gov.co
NFPE	Non-financial Public Enterprises	_____
NFPS	Non-financial Public Sector	_____
PAC	Annual Cash Program Monthly Breakdown	_____
PGA	General Audit Plan	http://www.contraloriagen.gov.co

PGN	General Budget of the Nation	http://www.minhacienda.gov.co
PGR	(Office of the) Attorney General of the Republic	http://www.procuraduria.gov.co
PND	National Development Plan	http://www.dnp.gov.co
POAI	Investment Plan Revenues Budget	http://www.dnp.gov.co
PR	Revenue Budget	
SB	Superintendency of Banks	http://www.superbancaria.gov.co
SENA	National Learning Service	http://www.sena.gov.co
SGP	General Sharing System	
SICE	Information System for Monitoring Public Procurement	http://www.contraloriagen.gov.co
SIIF	Integrated Financial Information System	http://www.minhacienda.gov.co
SINERGIA	National System for the Evaluation of Public Management Performance	http://www.dnp.gov.co
SNCI	National Internal Control System	http://www.dafp.gov.co
TELECOM	Colombian Telecommunications Company	http://www.telecom.com.co
TRD	Debt Reduction Bonds	
UVR	Real Value Unit	
WTO	World Trade Organization	http://www.wto.org

I. INTRODUCTION

1. This report¹ evaluates fiscal transparency practices in Colombia in light of the provisions of the *Code of Good Practices on Fiscal Transparency* of the International Monetary Fund. The evaluation is presented in two parts: the first describes current practices based on the authorities' responses to the IMF's questionnaire on fiscal transparency and additional information received from them before and during the mission and in subsequent exchanges; the second part contains IMF staff's comments on fiscal transparency in Colombia.

II. DESCRIPTION OF PRACTICES

A. Clarity of Roles and Responsibilities

The Scope of Government

2. **The structure and functions of government are well defined in the law.**² Colombia is a unitary but decentralized republic made up of the National Government and the governments of the territorial entities (*departments, districts, municipalities and indigenous territories*) that enjoy autonomy in the management of their own interests.³ Supreme power lies with the legislative, executive and judicial branches. In addition to the bodies that make up the branches of government, there are other autonomous and independent bodies, which carry out the remaining functions of the State.⁴ Executive power lies with the National Government, the Departmental Governments, and the municipalities'. The National Government consists of the President of the Republic, the ministers and the directors of administrative departments.⁵ Policy formulation and implementation is the responsibility of

¹ Prepared by J. Seade (Mission Chief), M. Albino, T. Dabán, all members of the Fiscal Affairs Department, and A. Espejo of the Western Hemisphere Department, during their visit to Colombia, March 6-12, 2002. The team appreciates the cooperation from the Colombian authorities, particularly the officials of CONFIS.

² Political Constitution of 1991 and Law 489 of 1998, on the organization and operation of public entities at the national level.

³ The Constitution provides for the possibility of the grouping of territorial entities. Under Article 306, two or more departments may group together as an *administrative and planning region* with legal status, autonomy, and its own assets, which may eventually become a department through popular consultation. For their part, under Article 319, municipalities may group together in a metropolitan area that may eventually become a district through popular consultation. The Congress regulates the creation and operation of *regional autonomous corporations*. There are also *departmental co-administrations*, which are used for distributing health funds allocated to departments.

⁴ This refers to the Office of the Attorney General of the Republic, the Office of the Comptroller General of the Republic, the National Electoral Council, the National Civil Registry, and the Bank of the Republic, among others (Article 113 of the Constitution).

⁵ Article 115 of the Constitution. There are currently six administrative departments: the Administrative Department of the Office of the President of the Republic, the National Planning Department (DNP), the National Administrative Department for Statistics (DANE), the Civil Service Administrative Department

(continued)

the executive branch, which essentially means the National Government and, to a lesser extent, the governments of the territorial entities.

3. The boundary between the public and private sectors is generally clear. The national public administration, under the authority of the National Government, is made up of the central and decentralized sectors. The central sector consists of the Office of the President of the Republic, the Office of the Vice President of the Republic, the High Councils of the administration, the Ministries, Administrative Departments, and Superintendencies and special administrative units without legal status.⁶ The decentralized sector consists of bodies and entities attached or connected to a Ministry or Administrative Department that have legal status, administrative autonomy and their own assets. These are public establishments,⁷ non-financial public enterprises (NFPE) and mixed-capital societies at the national level,⁸ and other administrative entities with legal status created by law. A similar organization occurs in the public administrations at the territorial levels, which are divided into a central sector consisting of the departmental or municipal government and a decentralized sector consisting of public establishments, NFPE, and mixed-capital societies at the territorial level. There are private sector entities that provide non-commercial services that are financed with compulsory contributions established by law (parafiscal contributions).⁹ In addition, quasi-fiscal activities carried out by specific decentralized entities, particularly by NFPE, make it impossible to establish a clear separation between the

(DAFP), the Administrative Department for Security (DAS), and the National Administrative Department for Social Economy (DANSOCIAL) which is in the process of being dissolved.

⁶ Articles 38 and 39 of Law 489 of 1998, on the organization and operation of public entities at the national level.

⁷ Public establishments are generally special administrative units with legal status, which take the form of superintendencies or scientific or technological institutes. The most important ones are the National Learning Service (SENA), the Colombian Family Welfare Institute (ICBF), the National Roads Institute (INVÍAS), the Special Administrative Unit for Civil Aeronautics, the National Television Commission, the Superintendency of Notaries and Registration, and the International Cooperation Agency. These represent 70 percent of total revenues and expenditures of public establishments.

⁸ The most important NFPE at the national level, where public ownership is 90 percent or more, are the Colombian Oil Company (ECOPETROL), the Colombian Telecommunications Company (TELECOM) and the Social Security Institute (ISS). The most important mixed-capital societies, in which public ownership is 50 percent or more, are Electrical Interconnection. A. (ISA), Energy Generation and Commercialization Public Service Enterprise (ISAGEN), and Atlantic Coast Electrical Corporation (CORELCA).

⁹ This refers to the Family Compensation Funds (CCF), Health Provision Organizations (HPO), and Agricultural Development Funds (FFA). The CCF are financed with a payroll tax paid by the employer, HPO are financed by contributions to the social security system, and FFA are financed with development contributions paid by the producer and set as a percentage of the product's reference price.

commercial and non-commercial activities of the public sector. This makes international comparisons of Colombia's public finance statistics and aggregates difficult.¹⁰

4. The division of responsibilities in the area of taxes and resources between the national and territorial governments is sufficiently clear in the law. The Constitution establishes that the territorial entities enjoy autonomy for the management of their own interests and have the right to self-governance through their own authorities, to exercise the responsibilities assigned to them, to administer their resources, establish the taxes necessary to carry out their functions, and to share in national revenues. Law 60 of 1993, based on the 1991 Constitutional reform, established criteria for the transfer of resources to the territorial entities, which led to a series of problems.¹¹ Accordingly, Legislative Act 01/2001 (amending Article 356 of the Constitution) and Law 715/2001 expanding upon it, clearly and transparently established the amount of resources to be transferred, the rules of growth of the transferred resources, and criteria applicable for distributing resources among departments, districts and municipalities (Box 1).

5. However, there are still significant ambiguities and duplications with respect to the distribution of expenditure responsibilities. Despite the significant advances made in this area, there is still no legislation that provides for a clear and exhaustive division of responsibilities between the national and territorial governments. Under the Constitution, the Organic Law on Territorial Organization (LOT) must establish the division of functions between the National Government and the territorial entities. However, and although eight bills have been submitted to Congress, this law has still not been promulgated. A partial solution has been provided by Law 715, which contains a distribution of functions between the National Government and the territorial entities and establishes those territorial entities' obligation within a deadline to certify themselves towards the discharge of those devolved responsibilities. However, the law retains some ambiguities: rather than distributing functions and expenditure responsibilities among the territorial entities and ensuring financing for them, the law distributes resources, and establishes the activities to which the territorial entities must apply them.

¹⁰ The Non-Financial Public Sector (NFPS) in Colombia consists of the national government (central administration and national public institutions), NFPE and mixed-capital societies at the national level, territorial governments as well as NFPE and mixed-capital societies at the territorial level.

¹¹ The following problems, *inter alia*, arose with Law 60: although transfers were allocated based on population served and to be served, the temporary distribution for education according to the number of teachers became permanent, and thus it was necessary to introduce *ad hoc* transfers to deal with the labor demands of teaching staff and the volatility of territorial revenues; territorial transfers grew faster than did the revenues of the National Government and the indices of coverage and quality; the pattern for the distribution of resources established in Law 60 encouraged the creation of small municipalities; and no deadline was established for qualifying territorial entities to provide services in health and education, which in the end proved to be a very slow process.

Box 1. Decentralization: Recent Legislation and Bills

I – Legislative Act 01/2001 and Law 715 of 2001

Amount of resources and allocation: Creates the *General Sharing System (SGP)* that includes all transfers made by the National Government in 2001 (base year). It establishes a five-year period for review.

- **Annual Growth of SGP:** average growth rate of the National Government's current revenues during the previous four years (with a transition period from 2002 to 2008, in which the SGP grows with inflation plus 2-2.5 percentage points).
- **Use of SGP:** 58.5 percent for education (preschool, basic and secondary), 24.5 percent to health, 17 percent for general purposes and the rest for specific allocations (FONPET, indigenous reserves, etc).
- **Distribution of SGP:** In *education and health*, resources are distributed based on population served and to be served, relative poverty and performance indicators. *General-purpose* resources are distributed based on relative poverty, urbanization, own local tax revenues, and investment financed with own revenues.
- **Management of SGP:** Qualified municipalities and districts with more than 100,000 inhabitants receive resources directly from the National Government. Departments manage the resources of small municipalities, and certify them when they meet certain minimal conditions.

Distribution of powers between the National Government and the territorial entities: The National Government *grosso modo* is responsible for defining the technical criteria and policies to be followed, as well as for the provision of higher education and specialized health care.

- **In education**, the municipalities take care of basic, primary and secondary education. The departments help the municipalities and assign teaching staff among municipalities based on needs, during the transition period.
- **In health**, the municipalities and districts subsidize delivery to the affiliated poor population (subsidized system). The delivery of health to the unaffiliated poor population and public health is distributed among the municipalities, districts and departments.
- **In general purpose areas**, municipalities are responsible for the infrastructure of public services and transportation within their jurisdiction as well as social housing and prison centers, among other things. Departments basically assist the municipalities in these tasks.

Some problematic areas identified:

- A cap is placed on resources to pay for teacher promotions, and the teaching career is reformed for new entrants. However, the *Teaching Law* has still not been reformed nor have the rigidities in merit-based management of personnel.
- **No performance parameters have been established** for assigning teachers (some 53,000)—such as student/teacher ratios, for example.

II – Draft Organic Law on Territorial Organization (LOT)

The draft LOT creates the **Territorial Organization Commission** to coordinate policies, and establishes requirements for the creation, merger or elimination of territorial entities. It sets conditions for grouping service delivery or to develop common infrastructures. The delay in its approval may reflect the fact that it could affect the electoral map. The LOT establishes or clarifies the **distribution of competencies between the National Government and the territorial entities:**

- **National Government** is responsible for justice, national defense, police, international relations, general management of the economy and territorial organization, *inter alia*.
- **Departments and districts** help the municipalities that are located in their jurisdictions in the areas of higher education, rural development, tourism, transport infrastructure, and care for vulnerable population.
- **Municipalities and indigenous territories** are responsible for solid and hazardous waste management, promoting tourism, transport infrastructure, social housing, delivery of public services and social programs.

For example, whereas provision of education and health services seems to be mandatory for the territorial entities, since these areas are the rationale for their share in National Government revenues, it does not follow from Law 715 that general purpose functions are mandatory for territorial governments (or thereby exclusive), except in the case of sanitation and potable water when this is clearly specified. Box 1 describes the distribution of expenditure responsibilities established by Law 715 of 2001 and the current draft of the Law of Territorial Organization.

6. The territorial entities' share in oil revenues, as well as in the distribution of Cofinancing Funds,¹² is generally based on objective criteria with legal support, although there are significant exceptions. The Constitution establishes that the utilization of a non-renewable natural resource produces royalties in favor of the State, and creates the National Royalties Fund in which all territorial entities have a share, including non-producing ones and those without a port. The percentages for the distribution of the royalties are set by Law 141 of 1994 and are generally based on transparent and non-discretionary criteria, although there are exceptions. For example, the National Royalties Commission¹³ distributes funds from the National Royalties Fund among investment projects submitted by the territorial entities, which are selected on the basis of both objective and discretionary criteria. In addition, Law 209 of 1995 establishes the conditions under which the territorial entities producing oil royalties must contribute to (and may withdraw funds from) the Oil Administration and Stabilization Fund (FAEP).¹⁴ Finally, although the distribution of the Cofinancing Funds has been regulated, it does incorporate discretionary elements.¹⁵

7. The allocation of responsibilities between the executive and legislative branches in the budgetary process is, formally, well established in the law. The Constitution establishes that the government shall formulate each year and submit to the Congress for its approval the General Budget of the Nation (PGN), which consists of the Revenues Budget (PR) and the Appropriations Law (LA). The PR contains the estimate of tax and non-tax revenues collected by the National Government, the parafiscal contributions administered by national public establishments, the special funds, and resources obtained from borrowing, which are called capital resources. The LA includes the budgets of the constitutionally

¹² This refers to the Cofinancing Fund for Rural Investment, the Cofinancing Fund for Social Investments, the Cofinancing Fund for Road and Urban Infrastructure, and others, which the National Government uses to cofinance projects in the territorial entities.

¹³ Comprised of the Minister of Mines and Energy, the Head of the DNP, the Minister of Development, and representatives of the governors and mayors of the territorial entities (both producing entities with ports and non-producing entities without ports).

¹⁴ Any use of FAEP funds other than those established in Law 209 must be established by law. For example, Law 633 of 2001 provided, on an extraordinary basis, that the municipalities and departments may take an extraordinary reimbursement of a portion of their shares in the FAEP and use it exclusively to pay their debts. This operation has led to a considerable reduction of territorial entities debt.

¹⁵ Decree 2132 of 1992 confirmed by Decision C-685 of 1995 of the Constitutional Court.

autonomous entities, the agencies of central sector and the public establishments at the national level. The PGN does not include an estimate of tax expenditures.¹⁶ The General Directorate of the National Budget (DGPN) and the National Planning Department (DNP) have powers to issue rules and set total spending limits that the entities of the central government and decentralized sector must follow in formulating their draft budgets. The powers of the legislature to amend the draft LA are established in the Constitution. At first glance, the timeframe allowed for legislative debate and approval (practically the first three months of each legislature: from July 20-30 to October 20) would seem sufficient for an informed process allowing enough time to do a complete review of government plans and programs. However, the approval process is gradual, broken into successive stages—each only lasting about 15 days—in which particular issues are gradually decided such as the total amount of spending and its composition. The Constitution contains a provision for the conduct of fiscal policy in the event that the PR and LA are not approved. Given that the PGN is approved on October 20 and budget execution starts only in January of the next year, it may happen that the PGN becomes obsolete and may soon have to be modified by the executive branch. The government may submit to Congress, for approval, proposals of supplementary appropriations as well as switches of appropriations between expenditure items without altering the composition of spending among operations, investment and debt service. Any supplementary appropriation must be accompanied by a certification of the availability of funds or shifting of credit. The existence of a considerable amount of earmarked revenues and the high proportion of committed spending (entitlements) distort Congressional deliberations on the PGN.

8. Budgetary and extrabudgetary activities of the central government and the rest of the public sector are subject to coordination and management mechanisms, and these are centralized and clearly regulated. The High Council for Fiscal Policy (CONFIS), an inter-ministerial body¹⁷ presided over by the Minister of Finance and with a technical secretariat in the MHCP, approves (and amends) the budgets of the NFPE in which public ownership exceeds 90 percent.¹⁸ These enterprises do not form part of the PGN, but their budgeting must following the same general principles and comply with the requirements of the Organic Budget Law (EOP).¹⁹ The National Council for Economic and Social Policy (CONPES),²⁰ a very important inter-ministerial body presided over by the President of the

¹⁶ This refers to fiscal costs arising from tax exceptions.

¹⁷ Comprised of the Minister of Finance, who presides over the Council, the Head of the DNP, the Economic Advisor of the Office of the President of the Republic, the two Vice-Ministers of Finance, and the Directors of the National Budget, Public Credit, National Treasury, and National Taxes and Customs.

¹⁸ Article 26 of Decree 111 of 1996 of EOP.

¹⁹ Decree No. 111 of 1996.

²⁰ Comprised of the President who presides over it, the Ministers of Foreign Relations, Finance, Interior, Agriculture, Labor, Transportation, Foreign Trade, Environment, and Culture, the Director of DNP, the General Manager of the Bank of the Republic (BR), the President of the National Federation of Coffee Growers (FNC), the Director of Affairs for Black Communities, and the Director for Women's Equity.

Republic, determines the transfers that the NFPE must make to the PGN and the date when deposit must be made to the General Directorate of the National Treasury (DGTN). NFPE in which public ownership is at least 90 percent may retain at least 20 percent of generated profits. Otherwise, CONPES determines how profits should be distributed. CONFIS coordinates the budgetary activity of the entire NFPS by preparing the Financial Plan (FP), which establishes the financial goals of the public sector as a whole, namely the National Government, territorial entities, and NFPE, both at the national and territorial levels. However, the FP is not sent to Congress with the budget. Consequently, the only document that the Congress discusses and approves is the PGN. This means that Congress does not receive detailed information on the fiscal deficit (broken down, for example, by principal sectors), nor the budgets of the NFPE and of the territorial entities.

9. The Constitution gives administrative, asset and technical autonomy to the central bank or Bank of the Republic (BR) to direct monetary policy, although its Board of Directors is presided over by the Minister of Finance. Relationships between the BR and the government are clearly defined in the law.²¹ The Minister of Finance does not have a double vote nor veto power in the Bank's Board of Directors. The directors carry out their duties under a strict regime against conflict of interest and disqualifications, and are elected for four-year terms, serving for a maximum of 12 years. Every four years, the President of the Republic may replace two of them. The relationship of the BR with its employees is governed by private law, but they are subject to the civil service disciplinary code. The budget of the BR is approved by its Board of Directors, subject to a formal favorable Opinion from CONFIS. It must transfer its profits to the government, which in turn covers its losses. The BR provides treasury services to the National Government, for which it charges a fee; it manages the Treasury account, paying interest on its balances based on market criteria; it acts as financial agent for the management of public debt and as the government's financial advisor. The BR may grant loans or guarantees in the State's favor but only with the unanimous approval of its Board of Directors. The Bank also acts as the administrator of some government funds such as the FAEP and the Mortgage Portfolio Fund (FRECH), for which it charges a fee. The BR carries out quasifiscal activities, including in the printing of money but also some cultural activities.

10. The public corporate sector is present in many strategic sectors. In some it has a monopoly, as is the case of the postal service and oil exploration, production and refining.²² In other sectors it acts in open competition and is subject to the same regulations as the private sector, as is the case of electricity, residential utilities, and telecommunications. There is a legal framework for the privatization of public enterprises that is applicable both at the national and territorial levels. In recent years, the government has carried out a process of privatization and liquidation of public enterprises at the national level. The government

²¹ Constitution (Articles 371, 372, 373) and Law of the Bank of the Republic, or Law 31 of 1992, Article 13.

²² There is freedom to operate private refineries, but private initiative is not involved in this activity due to the obligation to sell oil derivatives at subsidized prices.

may participate in the capital of private companies, directly or through public banks. The General Accounting Office of the Nation (CGN) prepares a list of public sector shareholdings in private and public companies, but does not disclose it.

11. The relationship between the central government and non-financial public enterprises is clearly regulated, and the latter must report to CONFIS regarding their activities and profits on their operations. Some of them carry out important quasifiscal operations. ECOPETROL sells oil derivatives at subsidized prices to distributors, who must operate with a maximum retail price. It also sells diesel fuel at subsidized prices to electricity service providers in areas not covered by the electricity network. ECOPETROL receives no transfers at all from the National Government under this heading. Some NFPE are implicitly required to act according to public service and guaranteed coverage criteria. For example, Decree 1020/88 establishes that TELECOM must ensure the supply of telephone services in rural areas. Another example is the Social Security Institute (ISS), which is ultimately responsible for providing health services to population groups that are not profitable for private providers. Estimates are prepared of the value of these subsidies but are not submitted to Congress along with the PGN. Sometimes NFPE receive transfers from the government for this purpose, but they are insufficient.²³

12. The public banking system, which represents close to 30 percent of banking system liabilities, carries out quasifiscal operations,²⁴ maintains significant contingent liabilities, and has access to financial resources under non-market conditions.²⁵ For example, 23 percent of the liabilities of the Agrarian Bank are judicial deposits, which it administers in exclusivity. In addition, it must carry out 70 percent of its operations in the agricultural sector, and maintain commercial offices in areas of the country where there are no other financial institutions. Another source of resources under privileged conditions are the mandatory investments that financial institutions have to hold in the area of housing and agriculture.²⁶ The financial statements of public banks are supervised by the

²³ All long distance operators must contribute 5 percent of their billings to a fund administered by the Ministry of Communications. The fund is meant to expand the population's access to telephone service (*social telephony*), but the payment that TELECOM receives from this fund is insufficient to compensate it for its serving rural areas.

²⁴ These activities explain to a large extent why it has recently been necessary to capitalize and restructure public banks.

²⁵ The first-tier public banks are Bancafé, Banestado, Banco Agrario, and Granahorrar. The second-tier public banks are Banco del Comercio Exterior, FINDETER (territorial entities), FEN (electricity sector), FINAGRO (agriculture), IFI (industrial sector), ICETEX, and FONADE.

²⁶ According to Law 70 of 1990, both public and private financial institutions must buy FINAGRO bonds, a second-tier public bank specializing in the agricultural sector. These FINAGRO bonds yield interest at a below-market rate. In turn, FINAGRO offers a rediscount line of farmers' debts at interest rates higher than those in the market, and guarantees agricultural loans. In addition, under Law 546 of 1999, financial entities must invest 7 percent of their liabilities for 6 years in Debt Reduction Bonds (TRD), which mature in 10 years and are paid at the Real Value Unit (UVR). Amortization and interest payments on these bonds are the responsibility of the

(continued)

Superintendency of Banks (SB), but such statements do not identify the non-commercial activities that public banks carry out on behalf of the government. Public banks generally do not receive transfers from the government to fully compensate them for these activities. In addition, little information is disclosed about the various trust funds that administer public funds.²⁷ The government programs to restructure the financial system that the Financial Institutions' Guarantee Fund (FOGAFIN) administers, many of which are applied to public banks, are well documented in their reports and financial statements.

13. Numerous regulatory and supervisory entities were created during the 1990s. The regulatory commissions²⁸ are basically responsible for setting rates. They are set up as technical bodies, with administrative, asset and technical autonomy, attached to a sectoral ministry, and are basically financed with contributions from regulated operators. The independence of some regulatory commissions is compromised by the presence of representatives of the executive branch, who have a quality vote or power to decide in the event of a tie.²⁹ Prior notice must be given when changes are made in the regulatory framework, but there is no requirement to hold public consultations, or to estimate the regulatory impact, although this is sometimes done. The public is given access to current regulations and proposed new regulations. General regulations can be legally appealed, whereas specific regulations can be appealed to the respective superintendency. In most of the regulated sectors there exists a (quite complicated) cross-subsidy system according to which low-income users receive a subsidy through the regulated rate and high-income users, as well as industrial and commercial users, pay a contribution as a percentage of the regulated rate.³⁰ The Superintendencies,³¹ which have power to impose sanctions, are

National Government and are reflected in the PGN. The funds obtained through these bonds have been used to finance the capitalization of banks with high mortgage portfolios.

²⁷ An example is the trust that manages the pension fund of ECOPETROL. The below-the-line estimate of the non-financial public sector calculated by the Bank of the Republic includes the net variation of financial assets and liabilities in these trusts. Nonetheless, no information is provided to the public regarding the nature of the programs of these entities, the non-commercial component and relationships with the government.

²⁸ Telecommunications Regulatory Commission, Energy and Gas Regulatory Commission, Potable Water and Basic Sanitation Regulatory Commission, Transportation Regulatory Commission, and National Television Commission. Provision is made for the existence of the latter in the Constitution of 1991.

²⁹ For example, the Energy and Gas Regulatory Commission is comprised of five full-time experts, the Minister of Finance, the Minister of Mines and the Head of the DNP. The Minister of Mines has a quality vote in it.

³⁰ Law 142 of 1994 establishes the subsidies and contributions for the provision of residential utilities. Users in strata 1, 2 and 3 (lower-income users) receive subsidies equal to 50 percent, 40 percent and 15 percent of the rate. Users in strata 5 and 6 (higher-income residential users), as well as users belonging to the industrial and commercial sectors, pay a contribution of 20 percent over the rate in order to cover the subsidies granted to users in strata 1, 2 and 3. Law 142 of 1994 established the requirement to create the Solidarity Funds for Subsidies and Income Redistribution. These funds are financed with resources from surpluses that the companies submit, after netting out subsidies and contributions in their own markets. If the resources of the Fund are insufficient to cover all the subsidies applied by the companies, there is a contribution from the National Government through the PGN. There is a program to dismantle the subsidies (Law 632 of 2001) for residential services, which is to be completed before 2005.

(continued)

responsible for the work of inspecting the quality of service delivery, for monitoring compliance with the cross-subsidy system on the part of the provider agencies, for certifying the users by economic strata, and other regulatory matters (environmental, technical, granting permits to operate, etc.) Except for the electrical sector, no information is published on the amount and distribution of these cross-subsidies by type of user. In general, the surcharge to high-income users is not sufficient to finance the lower prices to low-income users, so that there is a transfer from the central government to the system, which appears in the PGN.

Framework for Management of Public Finances

14. The legal and administrative framework for fiscal management is clearly established in the law; it is publicly known, but highly complex.³² Each government must submit to Congress at the beginning of its four-year term, which roughly coincides with the four-year term of the new legislature, a National Development Plan (PND). The annual budget is prepared within the framework of the administration's PND and the economic planning process that begins with it. This planning orientation is reflected in the fact that the current expenditures budget is prepared by the MHCP and the investment budget is prepared by the DNP, specifically by CONPES. CONFIS, the institution responsible for the design of fiscal policy, plays a coordinating role. The preparation of the PGN is centralized in the DGPN, which must formulate it by reconciling³³ the Financial Plan (CONFIS)³⁴, the Annual Cash Plan (DGTN), the Annual Investment Operations Plan (CONPES), the Debt Service (by the General Directorate of Public Credit (DGCP)), and the draft budgets of each of the entities covered by the PGN. The result is a multiplicity of documents related to the formulation, presentation, and execution of the budget, separately prepared by different entities, without a clear framework of coordination, and a consistency difficult to verify. As for discussion, the Colombian budgetary system assigns a very strong role to the MHCP, establishing it as the government's channel of communication with the Congress on budgetary matters.³⁵ The Congress must request written authorization from the MHCP to modify the draft PGN by increasing an expenditure item, introducing a new one, or

³¹ Superintendency of Notaries and Registration, Superintendency of the Social Economy, Superintendency of Banks, Superintendency of National Health, Superintendency of Industry and Commerce, Superintendency of Residential Utilities, Superintendency of Securities, Superintendency of Corporations, and Superintendency of Family Welfare.

³² The legal framework for fiscal management basically consists of the Constitution, the Organic Budget Law (EOP) and each year's PGN Law. The EOP is a compilation of Laws 38 of 1989, 179 of 1994 and 225 of 1996. All this legislation is available at <http://www.minhacienda.gov.co>.

³³ Article 13 of the EOP.

³⁴ The role of the Financial Plan is described in paragraphs 24 and 37.

³⁵ Article 60 of the EOP.

increasing revenues.³⁶ The MHCP also has an important role in executing the PGN, since according to the EOP it is the only body authorized to propose to Congress the modification of PGN appropriations.³⁷ As for the territorial entities, Article 300 of the Constitution establishes that the departmental Assemblies and municipal Councils shall be responsible for issuing the organic laws for the annual budget of revenues and expenditures. The budget cycle at the territorial level is governed by the principles established in the EOP.³⁸

15. National taxes, whether domestic or on foreign trade, and territorial taxes, are based on laws, with partial exceptions in the areas of commerce and parafiscal charges as discussed below. Article 338 of the Constitution establishes that “in peacetime only the Congress, departmental assemblies, and district and municipal councils may set fiscal or parafiscal levies.” It also specifies that the law must determine all the elements that make up a tax (rates, bases, passive and active subjects). There is a Tax Code, Decree 624 of 1989, which governs national domestic taxes. The specific provisions of each tax are not established through individual laws. The PGN Law may not contain provisions that modify taxes. The parafiscal contributions must also be established by law, although in certain cases the contributions have taxable bases determined by an administrative entity.³⁹ Territorial taxes (departmental and municipal), which must have a legal basis as well, are governed by an excessive number of laws and regulations.⁴⁰ The law establishes⁴¹ that the Fiscal Support Directorate (DAF) of the MHCP shall be the authority for interpreting the rules on territorial taxation. Law 488 of 1998 introduced important reforms⁴² and there is currently a draft law for the creation of a Territorial Revenues Statute (EIT) that will provide a compilation of territorial tax legislation and strengthen the sanctions and evidentiary systems at the territorial level.

³⁶ Nothing is said regarding the possibility of reducing revenues.

³⁷ See Articles 76, 79, 80, and 81 of the EOP.

³⁸ The EOP in its article 104 mandates subnational governments to adopt budgetary institutions and procedures at local level that replicate those at the national level. Thus—and while not quite every national-level budget-related document and institution is to be found in every subnational government, the latter are indeed responsible for preparing and monitoring a multi-year development plan, an annual financial plan, an annual investment plan, and an annual budget law.

³⁹ This happens with agricultural development contributions such as that for the development of the palm tree sector (Law 138 of 1994) or the payroll taxes that finance the ICBF (Law 7 of 1997 on the National Family Welfare System). For example, in the case of agricultural development contributions, the law establishes that the tax base shall be the per-kilogram price of the product, but the Ministry of Agriculture determines that price.

⁴⁰ Territorial taxes are divided into departmental and municipal. The most important departmental taxes are those on alcoholic beverages, tobacco, and vehicles. The most important municipal taxes are the real estate tax (*Property Tax*) and the taxes on industry and commerce. In addition, the departments and municipalities share the surtax on gasoline and other hydrocarbons.

⁴¹ Article 40 of Law 60 of 1993.

⁴² This law provides norms on revenue policy and other fiscal issues for territorial entities.

16. Import tariffs proper can be changed by decree, including trade treaties of Colombia that are ratified by Congress and have the force of law. The principal trade treaties are (i) the **Andean Community (CAN)**, which establishes a common external tariff (CET)⁴³ with rates of 5, 10, 15 and 20 percent (and exceptions), plus gradual intraregional dismantling of tariffs; (ii) the **Free Trade Agreement of the “G3”** with Mexico and Venezuela, which does not entail a CET but does involve mutual and gradual elimination of tariffs until reaching zero (excludes agricultural and automotive products); and (iii) the **World Trade Organization (WTO)** in which Colombia has established “tariff ceilings” well above the current tariffs.⁴⁴ Colombia also uses temporary tariff surcharges under the heading of *safeguard* provided both in the WTO (which limits it to four years, with extensions to eight years as an exception, and requires a publicized investigation of damages, public interest, need, etc.) and in the CAN’s *Cartagena Agreement* (which encourages limiting its use to one year in the case of safeguards of extra- and intra-regional applicability, according to Article 107, but sets no specific limit when the action is only between members, according to Articles 108 and 109). Colombia’s use of this instrument, based on Law 7 of 1991 on Foreign Trade, is not infrequent but is usually limited to periods of one or two years. Colombia applies a *price band* for certain agricultural products with a variable tariff above the CET, a practice inconsistent in the WTO that Colombia has maintained through extension. Two other schemes of interest are: first, the “*Tax Reimbursement Certificates*” (CERT) that, until September 2002 in which the rate was reduced to zero, reimbursed exporters 2.5 percent of the exported value, as an approximation to a reimbursement of indirect taxes paid, and second, the so-called “*Vallejo Plan*” of “*temporary imports for active processing*,” which grants exemptions (or deferment) of import tariffs and VAT to registered exporters who export 1.5 times and 2 times more than what they imported.⁴⁵ This has been subject to debate and recently extended for two years under a WTO agreement. Colombia is a moderate user of the antidumping system, and its procedures and regulations for importing seem to be simple and transparent.

17. Tax legislation is public but suffers from great complexity. National and territorial tax legislation is public. The General Directorate of National Taxes and Customs (DIAN)

⁴³ Applied by Colombia, Venezuela and Ecuador. CAN also includes Peru and Bolivia, which have negotiated exceptions to the CET: Peru as a gradual transition and Bolivia in the form of an open exception given its participation as an associate member of Mercosur.

⁴⁴ Colombia has consolidated its tariff in the WTO at 35 percent and 40 percent for most of its production and up to 240 percent (averaging about 100 percent) for agricultural products, the latter as a result of the tariffification of Colombia’s earlier non-tariff barriers in the agricultural sector.

⁴⁵ The system grants an exemption from the tariff and the VAT *on raw materials* (seeking to approximate a draw-back system) and an exemption from the tariff and deferment of the VAT for five years *on capital goods*. The latter is the subject of serious discussion in the WTO, given the difficulty of relating the acquired stock of capital goods to the annual flow (or 5-year flow) of exports. The legal basis for this instrument is Decree-Law 444 of 1967 followed by (executive) Decree of 1985.

releases the texts of national tax laws on the Internet, together with regulations, administrative provisions and explanatory material. General administrative provisions applicable to national taxes are issued annually through Opinions (*Conceptos*) and are published in the *Official Gazette of the Republic*. Administrative provisions affecting individuals are not available to the public. Simplicity in the regulation of some taxes is diminished by the existence of a significant number of exemptions and special sectoral treatments. In addition, the legal wording crafted by Congress and the regulatory wording crafted by the tax administration sometimes lack enough clarity.

18. The private sector seems to feel that significant costs (and uncertainties) are generated in its relationship with the public sector beyond taxes, which render its investment decisions more difficult. Over-regulation, bureaucratic red tape or irregular payments in the areas of government contracts and taxes, lack of neutrality in policy decisions and public procurement, continuous changes in the legal and institutional framework and lack of independence in the courts⁴⁶ are factors that seem to weigh on performance and planning in the productive sectors. On the other hand, the Presidential Anti-Corruption Program is an interesting initiative that is obtaining results in the area of preventing irregular practices on the part of public officials. The program is based on a comprehensive inter-institutional approach led by an office with good support from the Office of the President of the Republic. The program comprises a public officials' training program and a system for managing complaints.

19. Taxpayer rights and the system of dispute resolution on tax matters are clearly defined by law. The Tax Code establishes the formal rights and duties of the taxpayer, the penalties system, the evidentiary system, and tax inspections. The decisions of the tax administration may be challenged through an appeal to DIAN for reconsideration or reversal. DIAN will have a year to resolve appeals for reconsideration or reversal, provided there is no procedural defect to be remedied. Once this period has passed, administrative silence implies a decision in favor of the party filing the appeal. The taxpayer may also go directly to the administrative courts. If the dispute is not settled, the taxpayer may appeal to the regular courts of justice. Proceedings usually last an average of three years: two years before DIAN and one year in the courts. The ruling is in the taxpayer's favor in 30 percent of cases. There is no possibility of negotiated settlement. The penalties system included in the Tax Code applies also to parafiscal contributions and territorial revenues. There is a Customs Code that deals with operating procedures, as well as disputes, penalties and appeals on tariff matters. There is a *Defender of Taxpayers and Customs Users* who, *inter*

⁴⁶ Colombia occupies the 63rd place in a survey of 75 countries in the *Growth Competitiveness Index* prepared by the World Economic Forum, and 14th place among the 16 Latin American countries in the sample. This index is a combination of sub-indices of macroeconomic stability, technology and information, and public institutions. In this latter heading, Colombia occupies 57th place. Although the internal conflict and organized crime have considerable weight in the overall result, other questions such as the lack of neutrality in public institutions and irregular payments are also very important.

alia, participates in the Joint National Commission on Tax and Customs Administration (CMGTA), a DIAN advisory body in which the private sector participates.⁴⁷

20. The observance of the principles of ethical conduct for public officials, which are stipulated by law, is being strengthened. In order to eradicate corruption in the administration, Law 90 or the Anti-Corruption Law was promulgated in 1995. It contains the following measures, *inter alia*: all public servants must submit a criminal background certificate issued by the Administrative Department for Security (DAS), a disciplinary background certificate issued by the Office of the Attorney General of the Republic (PGR); and an assets and income statement. In addition, Law 90 introduces changes in the penal code to increase the disqualifications and sanctions for using privileged information and for influence peddling. Law 734 of 2002 contains a disciplinary code for public servants establishing administrative responsibilities and ethical standards of public conduct. The code applies to all public servants (National Government, territorial entities and public enterprises). The PGR, which is in charge of applying the code, has the power to remove a public servant who violates the Code and to establish penalties.⁴⁸ In addition, there are specific codes of ethics for certain entities—among them DIAN and the Office of the Comptroller General of the Republic (CGR).

B. Public Availability of Information

Coverage of Public Sector Information

21. Several public entities regularly disclose a large volume of information on public finances in Colombia, which differs in quality and coverage. CONFIS, DNP, BR, the National Administrative Department for Statistics (DANE),⁴⁹ and the CGR compile statistics pertaining to the monitoring of the NFPS. The coverage of the NFPS is broad, in that it includes the National Government, the social security entities, public enterprises, territorial entities, and decentralized entities. The SB publishes information on the financial public sector. However, data quality and calculation methodologies vary from sector to sector. Information on public enterprises and state banks can be obtained on an accrual basis;⁵⁰ the National Government publishes its outturns on a cash basis with accrual adjustments; and the information on the territorial entities is on a cash basis, and difficult to obtain although there are more detailed reports from these entities in the CGN.

⁴⁷ The Defender of Taxpayers and Customs Users is appointed by the President of the Republic for a period of one year, from a short list submitted to him each year by the CMGTA.

⁴⁸ Between 1999 and 2001, the Office of the Attorney General of the Republic prosecuted 2,400 civil servants in the Social Security Institute.

⁴⁹ DANE is the body responsible for the national system of statistics, and uses fiscal information in preparing the national accounts. The CGN and DANE have agreed to analyze the degree of consistency between the public sector's accounting and financial information, and the national accounts.

⁵⁰ Information on public enterprises for fiscal purposes is published on a cash basis with respect to revenues and on an accrual basis with respect to expenditures.

22. Historical and current information on the National Government's fiscal deficit is available to the public. Information on tax revenues and expenditures of the National Government can be found in CONFIS publications on the MHCP Web page, on the DIAN Web page and, to a lesser extent, through DANE and the BR. Activities of the public sector are monitored monthly. Public entities submit their monthly reports with lags of between one and two months. As a result, the consolidated figures for the NFPS are published with lags of two or three months. In particular, CONFIS publishes monthly statistical data on the National Government and quarterly data on the rest of the NFPS, including parafiscal contributions and the situation of public funds based on a sample of 227 entities. CONFIS has recently started to publish a monthly analysis of the National Government's fiscal situation, using information from the Treasury.

23. Information available on the territorial entities is being improved, but for now is limited and fragmentary. The implementation of the CGN's electronic repository and Law 617 have resulted in a significant accumulation of information on the finances of the territorial entities, their debts and contingent liabilities. This information is now being systematized, and the Program to Strengthen the Territorial Information System (FOSIT) is finalizing the start-up of an Internet-based electronic system that feeds the database on the territorial entities in the CGN. Upon completion of the FOSIT project, the CGN will be able to produce balance sheets for the territorial entities and the rest of the public sector from 1996 to the present.

24. The official NFPS deficit is published by CONFIS⁵¹ in the *Financial Plan (FP)*. Following the practice of a relative majority of Latin American countries, CONFIS estimates the deficit on a cash basis with corrections for accruals, and publishes it in the FP. The FP is an analytical document that serves as the annual framework for the preparation and submission of the PGN, as an input in the Presidential Message that accompanies the submission of the General National Budget Law (LGPN) to Congress. In addition, the FP is the mechanism that ensures the consistency between the objectives of fiscal policy with monetary and exchange policy. The Presidential Message informs Congress of the goals established in the FP for the National Government, the NFPS and the consolidated public sector, and establishes the consistency between the fiscal goals established in the FP and the budget sent to Congress. However, there is no cross-reference table that could make possible to reconcile the FP figures with the PGN figures and vice versa. CONFIS evaluates the FP every six months and publishes its results on the MHCP Web page. The Organic Budget Law (EOP) is the legal framework that establishes that CONFIS is responsible for consolidating and publishing the public sector deficit.⁵²

⁵¹ CONFIS is also the body responsible for following up the program with the IMF, and in this context has been using the deficit definition contained in the program as the definition and official measure of fiscal deficit in Colombia.

⁵² The responsibilities of CONFIS are described in Decree 111 of 1996, Article 26.

25. In addition to CONFIS, other public entities publish estimates of the NFPS fiscal deficit. The DNP and the BR have traditionally prepared reports on the fiscal situation using different coverages, accounting methods, and classification systems. The CGN has also recently begun to produce its own estimates of the deficit. Given that it is not entirely possible to do the estimate on an accrual basis, the CGR for its part has recently suggested to change the method of estimating the deficit used by CONFIS to a cash basis. Even though the preparation of estimates of the fiscal deficit by different public institutions is in itself not necessarily a problem, the multiplicity of measurements can lead to unnecessary confusion and create uncertainty in public opinion as to the true fiscal situation, in particular when these public entities do not publish their methodologies on measurement and their relationship to the official CONFIS estimates. This is further discussed below (paragraph 55 and Box 4).

26. The Financial Institutions' Guarantee Fund (FOGAFIN) publishes information on its activities with the banking sector.⁵³ FOGAFIN administers deposit insurance, carries out operations to support the banking system and monitors bank liquidation operations and privatizations in the banking system. FOGAFIN reports monthly on its financial operations, in particular those supporting the restructuring and liquidation of the public banking system, which is clearly presented in its reports.

27. The National Government publishes information on its financial assets, and domestic and external public debt. Three entities compile data on the debt of the NFPS: the BR, the General Directorate of Public Credit (DGCP), and the CGR. The BR gathers information on the external debt and the domestic bond debt issued by the National Government and territorial entities, using data from DGCP and DAF. In addition, the DGCP releases information on placements, debt swaps, legal documents on debt operations and the technical characteristics of market bond placements. The CGR also publishes by legal mandate a report on public debt statistics⁵⁴. The DGCP and the BR have independently finalized a preliminary report on the debt of the National Government and other entities of the NFPS. The public debt reports published by the CGR and by the BR include a comprehensive set of debt statistics. Partial information on the banking debt of the territorial entities is available at the CGN, DAF and DGCP, which has been partially systematized and published by the BR. The BR, CGR, and CONFIS have recently prepared documents on the sustainability of public finances, but a systematic analytical and institutional effort on this subject is still needed.

28. There is no consistent recording of contingent liabilities of the National Government, nor public information on quasifiscal activities and tax expenditures. Some contingencies are included in the PGN. For example, there is a budgetary

⁵³ Law 117 of 1985 created FOGAFIN in response to the 1982 crisis in the financial sector. FOGAFIN is supervised by the SB.

⁵⁴ Constitution, article 268 and Law 142 of 1993, article 43.

appropriation to be used in the event that the courts issue rulings against the National Government. Additional information on other contingent liabilities is very limited and is not made public. The most important contingent liabilities are National Government guarantees on the debt of the territorial entities and the payments from TELECOM to its partners in joint-venture contracts. In both cases, the contingent amounts are significant (something more than 1 percent of GDP) (Box 2). Other contingent liabilities are the energy purchase agreements with some public energy distributors, and the minimum traffic guarantee on leased highways. Law 448 of 1998 on contingent liabilities establishes that if the debt contracted generates contingencies for the nation, the corresponding public entity will have to contribute to a contingency fund in proportion to the risk of the operation. The quasifiscal activities of public enterprises and other public entities are not properly estimated, some of which are seemingly important such as subsidies for gasoline, compulsory services offered by public enterprises, and cross subsidization. Tax expenditures are not estimated at the National Government level and their magnitude is unknown in the case of the territorial entities.

29. Public opinion has become more aware of the financial situation of the Social Security Institute (ISS) and of the impact of its pension liabilities on the finances of the NFPS in the medium term. However, the information available on the pension system and the health system is still not systematized so that it could be easily understood by public opinion. In particular, the costs of minimum pension guarantees, the costs of recognition bonds to those transferring to the private individual capitalization system, and the costs of maintaining special privileged pension regimes, are not publicly known. However, the actuarial deficit of the pay-as-you-go system is known.

30. Military expenditure is included in the national budget. Spending for domestic security includes national police expenses. The PGN includes current expenditures and outlays to purchase and maintain military equipment.

The Legal Obligation to Report

31. The law determines how often the National Government, the BR, and the CGR must report to Congress, although there is no obligation to submit periodic reports to the public. The legal basis for the disclosure of public statistics comprises decrees that regulate the preparation and dissemination of public statistics as well as decrees on the role of DANE as the principal body charged with the production of government statistics. In practice, reporting to Congress is the main axis in the preparation of official figures by the National Government, the CGR, and the CGN. Reports to Congress are annual and, in particular, the financial situation of the NFPS and execution of the PGN are not officially

Box 2. Management of Contingent Liabilities

The management of contingent liabilities has traditionally been restricted in Colombia to the sphere of the National Government, and to the inclusion of appropriations in the national budget to cover two main types of contingencies:

- **Payments derived from court rulings against the Nation and arbitration costs** (amounting to 0.04 percent of GDP in 2002); and
- **Service of external debt contracted with a National Government guarantee, which has been subject to restructuring** between the National Government and the debtor entity or entities, as is the case of the Medellín Metro. This line amounted to 0.3 percent of GDP in 2002.

Law 448 approved in 1998 establishes a formal mechanism for handling the contingent liabilities of all public entities. The law requires the National Government, the territorial entities, and decentralized entities of all types, to include in their budgetary appropriations enough resources to cover possible losses due to contingent liabilities for which they are responsible. In addition, it requires that the MHCP regulate the estimation method used to quantify these obligations. In developing this law, the National Government also established two special funds to manage specific contingencies, which could result in significant appropriations in the national budget should they be enforced. These funds are:

- **The Public Entities' Contractual Contingencies Fund (FCCEE)*** to cover payments resulting from executing guarantees provided to partners in joint-venture contracts in the context of privatizations or concessions; and
- **The Territorial Entities' Contingencies Fund (FCET)**** to cover payments of territorial entities' debt contracted with the National Government's guarantee.

Fund for Contractual Contingencies of State Entities

- The FCCEE is a deposit account and does not constitute liability insurance. Participating public entities may use all the resources deposited in the FCCEE in the event that the contingency becomes effective, but the fund does not provide them with additional liquidity in the event of an emergency.
- The fund operates as a special account attached to the MHCP and administered by a trustee. The trustee invests the fund resources in treasury bills.
- Public entities' contributions to the FCCEE depend on their repayment capacity, the amount of the obligations assumed in the contract, the project execution period, the likelihood that a default event will occur, and the equivalence between the present value of the contingent liability and the total contributions required. Contributions made to the Fund are considered executed once transferred to the fund, and can only be reimbursed to the contributing entities when it is definitively confirmed that the anticipated risks have not been realized.
- The DGCP is the institution responsible for estimating the contributions to be deposited in the FCCEE. In December 2001, the DGCP approved for the first time the valuation and the contribution plan for two road concession projects. Two additional projects are being studied, one of which is a project of considerable scope (the Highway Tunnel).

Fund for Contingencies of the Territorial Entities

- The FCET is an account that is also attached to the MHCP and administered by a trustee. The trustee must maintain separate accounts for each territorial entity, with the funds transferred by the National Government to be used in the event that the guarantee is called to service the territorial entities' debt. Balances in the funds transferred by the National Government for this purpose have to be invested in treasury bills.
- The MHCP includes, in the national budget, appropriations to be deposited in the FCET to be used in the contingency of serving territorial entities' debt. The 2002 budget had appropriations for the equivalent of 100 percent of territorial entities' obligations under this program (\$210 billion; 0.1 percent of GDP).

* Decree 423 of 2001.

** Decree 1248 of 2001.

submitted to Congress in the course of the year. The obligation to disseminate information to the public is not established in the law, but the authorities and public officials understand that this is an important feature of their management responsibilities, and the *Network of Citizen Inspectors*⁵⁶ has been systematically exercising the right of citizens to access public sector information.

32. Mid-term projections of the fiscal outlook are not readily accessible to the public. The closest to an official medium-term projection is the *National Development Plan (PND)*, which the executive submits to the Congress at the beginning of its term for approval. The Plan includes a four-year projection of the macroeconomic situation and projections of the fiscal deficit. However, economic agents cannot use it as a benchmark in decision-making, in that its assumptions are not revised during the rest of that government's term nor do they extend beyond it (this is discussed in the next chapter). The DNP and CONFIS publish partial medium-term projections on the NFPS outturns.

On-line Public Sector Information Systems

33. The Integrated Financial Information System (SIIF)⁵⁷ gathers, processes and produces fiscal information on most of the entities included in the PGN. Currently, the SIIF's coverage reaches 87 percent of the value of the PGN. The public entities that are still not covered are to be integrated into the system in the course of this year. In terms of the information it manages, as discussed in the next chapter, the system is capable of producing fiscal figures on an accrual basis, without performing the intermediate step of estimating cash values. The public does not yet have access to the SIIF.

34. The FOSIT project is a program designed to strengthen the territorial financial information system. FOSIT⁵⁸ is a data entry module that allows the territorial entities, *inter alia*, to reduce the amount of time spent answering questionnaires from various interested entities, from the CGN, the departmental Office of the Comptroller, and DANE. Previously a territorial entity had to fill out 125 monthly forms frequently requesting the same information with different levels of aggregation. FOSIT standardizes these questionnaires and reduces them to 16 forms that have greater flexibility for adaptation to new information requirements. In a second phase of the FOSIT project, the data entry module could be converted to a public management module for territorial entities. For this purpose, FOSIT is developing a pilot project with 15 territorial entities to start up the management module.

⁵⁶ The Network of Citizen Inspectors is a non-governmental organization that advocates, among other objectives, citizens' rights to free access to public sector information.

⁵⁷ Created by Decree 2806 of 2000.

⁵⁸ See also paragraph 23.

35. **The National Government is developing the *Government On Line (GEL)* initiative, creating Internet access to national public entities.** This is a government strategy to ensure greater quality, uniformity and timeliness in the information that is disseminated through the public sector, and is at the same time a way to allow the National Government and national public entities to offer services to the private sector. Presidential Directive 02 of 2000 stipulated that the GEL must be implemented in three phases to conclude by June of 2002. The objective of the final GEL phase is for a large segment of National Government procurement to be carried out via the Internet. For the moment, the web pages make it possible to submit claims and complaints to all entities participating in the GEL. Currently, GEL incorporates 83 percent of national public entities and, after the presidential objectives are attained, it is hoped that the GEL will extend its coverage to the territorial entities. In addition, GEL offers to non-business users access to a wide range of government services through the Internet including tax information (calendar of tax payments, forms, services to taxpayers, auctions and sales), and drafts of proposed laws presented to congress.

International Commitment on Dissemination of Information

36. **Colombia is a member of the IMF's Special Data Dissemination Standard (SDDS).** The BR is responsible for administering and updating the information on Colombia on the IMF's Web page. Colombia meets the standards for coverage, periodicity and timeliness established for the fiscal sector by the IMF. In other sectors, there are some information requirements that are still under the flexible system.

C. Open Budget Preparation, Execution and Reporting

Budget Documentation

37. **Budgetary documentation specifies the objectives of fiscal policy and includes an evaluation of fiscal feasibility, but -does not strictly comply with the legal mandate to indicate how the budget adheres to the government's development plan.** The *Financial Plan* (FP) (see also paragraph 24 above) is formally part of the budget system, together with the PGN and the *Annual Operating Investment Plan* (POAI).⁵⁹ However, it is not submitted to the Congress. The document that presents to the Congress the objectives of fiscal policy in terms of the annual deficit goal approved in the FP is the *Presidential Message*, which establishes goals for the National Government, the NFPS and the consolidated public sector. Currently there is no norm or standard governing its content. This document does not include a table or any reference to facilitate conversion of the figures from the FP to the PGN and vice versa. In turn, the EOP establishes that the PGN must be consistent with the four-year PND. However, the *Presidential Message* does not clearly indicate how the PGN is adapted to the objectives of the PND. In its report on the General Budget Account of 1999, the CGR showed that the PGN differs substantially in amount and composition from what is

⁵⁹ The POAI indicates investment projects classified by sectors, bodies and programs.

established in the PND. By law,⁶⁰ the Presidential Message must also include an evaluation of ability to pay the public debt, which at a minimum must include evolution of the balance and debt service in proportion to GDP and exports. In this regard, the Presidential Message presents debt indicators from an annual perspective and incorporates developments over the last two years.⁶¹ The shortcomings found in the budgetary system at the national government raise serious doubts about the functioning of subnational budgetary systems. As footnote 37 pointed out, by law, subnational governments should replicate the complex budgetary institutions and procedures at the national level but, except for large cities, an average subnational government might find more difficulties than the national government to comply and effectively operate such a complex budgetary system.

38. There are numerous legally defined fiscal rules, although some of them are subject to interpretation. The PGN verifies the level of compliance with only some of them. The EOP contains fiscal rules governing the PGN formulation. However, some are ambiguous in their application. This is true of rules on the real growth of the revenue budget,⁶² the rate of absorption of extraordinary national revenues that can cause a macroeconomic imbalance (leading to the FAEP), the social investment budget and social public spending by the territorial entities. Based on an imprecise definition of social spending,⁶³ the EOP establishes that the social investment budget may not decline as a percentage of total spending as compared to the previous year, and also that social public spending by the territorial entities may not decline as compared to the previous year. The Presidential Message only verifies the extent of compliance with the rule relating to social investment, although using data not supported by an adequate budget classification. The Constitution establishes that the BR may extend financing to the Government, but only with a unanimous vote of its Board of Directors. The Territorial Fiscal Restructuring Law sets ceilings on some spending items for the entities included in the PGN and public enterprises during the period 2001-2005.⁶⁴ In addition, it establishes that the operating expenses of the territorial entities may not exceed a

⁶⁰ Law 358 of 1997 established that the National Government's ability to pay must be analyzed when the draft budget and indebtedness laws are submitted.

⁶¹ Last year, the DNP prepared a preliminary analysis of fiscal sustainability over ten years, which it submitted to CONPES. CONFIS also prepared a study on public debt sustainability (Advisors Document 02/02).

⁶² The rule states that real growth in the Revenues Budget must be congruent with growth in the economy, so that it does not create a macroeconomic imbalance.

⁶³ Article 41 of the EOP defines social public spending as operating and investment spending that seeks to satisfy unmet basic needs in health, education, environmental health, potable water, and housing, as well as aimed at raising general welfare and improving the population's quality of life.

⁶⁴ This law (Law 617 of 2000) indicates that the growth in personnel expenses of national public entities may not exceed 90 percent of the inflation target projected for the year and set by the BR. As for expenses for the purchasing of goods and services by entities included in the PGN and NFPE, on average their growth may not exceed 50 percent of the projected inflation target. Excluded from the latter are expenses for the delivery of health services, the services of the Armed Forces and those of the DAS.

certain percentage of freely disposable revenues, which varies according to the population and the income level of the territorial entity.⁶⁵ In turn, there are rules on the ratios of debt interest to operational savings, and debt to current income, on the basis of which three bands of values are established to control the indebtedness of the territorial entities (“traffic light” rule).⁶⁶ Both Law 617 and Law 358 seek to avoid the creation of a new and unsustainable deterioration of territorial public finances and debt like that which occurred in recent years.⁶⁷ The MHCP is now preparing a draft Fiscal Responsibility and Transparency Law (Box 3) to strengthen the State’s capacity to meet its obligations and at the same time provide greater transparency and disclosure of information to the public.

39. The formulation of the PGN is based on a comprehensive and consistent macroeconomic framework with an annual perspective. This framework is presented in the Presidential Message. The framework is approved before the budget is submitted to the Congress. The macroeconomic context is prepared by the MHCP in close coordination with the DNP and BR⁶⁸—although there is no law requiring this coordination—using a quantitative instrument of the MHCP called the General Economic Model of the Ministry of Finance (MEGHA), which consists of five modules (real, fiscal and external sectors, and debt and financial consistency). Its perspective is annual and it is submitted in July by the DNP for the consideration of CONPES, which approves it in the document called *Macroeconomic Balance and Perspectives*. Although this document discusses at length the elements and assumptions of the macroeconomic framework, it does not present the methodology used to compile it. The approved framework incorporates the fiscal goal established and approved by CONFIS. As paragraph 24 indicates, the FP is the mechanism that ensures the macroeconomic consistency between fiscal, monetary and exchange

⁶⁵ Law 617 establishes the following sanctions for entities that exceed the limits: 1) they must submit a fiscal adjustment program to the MHCP, 2) in the event of failure to comply with the adjustment program, the entity may be reclassified under a lower category or merged with another territorial entity, 3) the National Government will not guarantee the debt of territorial entities that do not comply with the law.

⁶⁶ Law 358 of 1997 states that the borrowing capacity of an entity depends on its financial situation. In particular, and using IP to represent *interest payments*, OS for *operational savings*, DS for *debt service*, and CI for *current income*, the rule establishes that a territorial entity *has autonomy* (“green light”) to take on debt provided that $IP/OS < 40$ percent and $DS/CI < 80$ percent; it *may assume debt* with the authorization of the immediately higher government level and subject to a fiscal adjustment plan (“yellow light”) if $40 \text{ percent} < IP/OS < 60$ percent and $DS/CI < 80$ percent; and it will *need authorization of MHCP and must sign a fiscal adjustment plan* (“red light”) if $IP/OS > 60$ percent or $DS/CI > 80$ percent. This “traffic light rule” was supplemented with a supply-side rule defined by the Decree 2187 of 1997 that mandates commercial banks to value the risk of loans to territorial governments by provisioning at 100 percent if the territorial government is in green light status and at 130 percent if it is in either yellow or red light status. In 1998, however, the government set the provisioning in connection with yellow or red light status at 100 if the territorial government agreed to a fiscal adjustment with the MHCP.

⁶⁷ The Department of Valle and the Municipality of Cali are very illustrative examples.

⁶⁸ Specifically, with the DNP’s Macroeconomic Unit and the BR’s Directorate of Economic Studies.

policies. By mandate of the EOP, once the PGN has been submitted to the Congress the BR must advise the legislative committees, during their discussion, of the macroeconomic and sectoral impact of the deficit, financing and the proposed spending level.

40. No budgetary estimates are prepared that are integrated, consistent and renewable in the medium term. The EOP establishes that the PGN must be consistent with the four-year PND that is approved at the beginning of each administration, but the PND is not updated during the four-year period, nor does it include any link between current and capital expenditures. The PND—which contains a statement of mid-term objectives and priorities in the government’s economic and social policy—establishes the *National Investment Plan* of the national public entities under the current administration. The plan identifies the objectives of each investment project and includes an indication in constant real terms of the four-year budgetary allocations to be assigned to them. The PND is issued through a law that has precedence over other laws. However, the expenditure levels approved in the Plan can be increased or decreased in the annual budget laws.⁶⁹

41. The budget document does not clearly distinguish the impact of new policies on the revenues or the expenditure side, nor does it contain an analysis of fiscal risks. Under the Constitution,⁷⁰ if the legally authorized revenues of the PGN are not sufficient to cover projected expenses, the Government may separately propose, to the same committees that are studying the proposed draft budget law, a draft law to create new revenues or modify existing revenues so that the projected amount of spending can be funded.⁷¹ However, this is not a common practice. Generally tax reform bills are submitted outside the budget framework and, as a result, the Presidential Message does not usually quantify in detail the impact of new tax revenue policies. In addition, the Presidential Message does not always or systematically explain the spending components for which new policies are presented nor the estimated fiscal effects of such policies. The Presidential Message does not include an analysis of the sensitivity of fiscal aggregates to variations in economic parameters or other uncertainties such as disputes, nor does it contain an analysis of principal contingent liabilities.

⁶⁹ The 1998-2002 PND was declared unenforceable by the Constitutional Court in 2000. This ruling was based on failure to hold the required debates. The PND is being implemented through the annual investment plans.

⁷⁰ Article 347.

⁷¹ In this case, the Constitution establishes that the PGN can be approved before the draft law on additional resources has been reviewed, the proceedings for which may continue during the next legislative period.

Box 3. Draft Fiscal Responsibility and Transparency Law (LRTF)

Coverage: National and territorial governments and public enterprises.

Fiscal Rules:

- *Requires national and territorial governments to impose on themselves an annual primary balance goal for the next fiscal year, as well as recommended primary balance goals for the next ten fiscal years, in order to ensure the sustainability of the consolidated debt of the NFPS.*
- *Subjects public enterprises to the grounds for dissolution established in the Commercial Code and to the sustainability criteria of Law 617 of 2000.*
- *Limits approval of expenditures impacting future fiscal years: CONFIS to determine ceiling consistent with the FP, and territorial CONFIS or Council to establish ceilings consistent with the PND and borrowing capacity. Prohibits approval of expenditures impacting future fiscal years in the last year of a government.*

Macroeconomic and Fiscal Framework:

- *Approval of fiscal goals and macroeconomic program: the FP, including the fiscal goals of the National Government for the next fiscal year (primary balance, deficit, debt), must be approved by CONFIS before being approved by CONPES. The FP must also include ten-year projections of the fiscal deficit and the primary balance and assess public debt sustainability. Along with the FP, CONPES must approve the macroeconomic program consistent with the FP. The territorial governments must also approve FPs with the same characteristics and submit these plans for information purposes to the respective Assemblies and Councils. Budgets must be consistent with FP goals so that they are executed in their entirety in the corresponding year.*
- *Schedule and Dissemination of the FP: submission before March 31 and revision prior to December 31. Dissemination to the public and the respective Assemblies and Councils.*
- *Contingent liabilities and tax expenditures: requires quantifying contingent liabilities in the FP using approved methodologies. The approval of tax expenditures must be consistent with FP goals.*

Reporting:

- *Evaluation of compliance: submitted by national and territorial governments to the Congress or Assemblies and Councils, explaining deviations from goals and corrective measures to be taken.*
- *Schedule and dissemination: for the national level, before April 10 of each year; for territorial level, start of first session of the year. General dissemination to the public.*

Budgetary Programming

- *Outstanding commitments to be paid against the next year's budget. As a transitory measure, the law establishes that for the years 2003 and 2004, only 35 percent and 70 percent, respectively, of the outstanding commitments (*reservas de apropiación*) of the National Government and the territorial entities shall be paid against next year's budget.*
- *Actions associated with personnel expenses to be invalidated in the 180 days prior to the end of the period of government.*
- *Requires earmarked funds to be fungible with the rest of resources administered by the DGTN.*

Regulations on Territorial Indebtedness.

- *Defines concepts, methodologies and information sources for determining ability to pay.*
- *Limits flow of credits and subjects the borrowing of territorial entities in precarious fiscal situations to the authorization of the MHCP and the adoption of a fiscal adjustment program.*
- *Prohibits the territorial entities from financing themselves through their public banks. In addition, it prohibits financial support from the National Government, beyond what is provided in the Constitution, for entities that fail to comply with the LRTF. Makes constitutional transfers contingent upon repayment of guarantees undertaken by the National Government and prohibits borrowing if there are arrears with the National Government.*
- *Makes credit of financial institutions contingent upon compliance with Law 617 of 2000 and the LRTF and in the case of violation of the LRTF cancels credits and requires beneficiaries to return only the capital.*
- *Regulates short term loans with financial entities, for liquidity management purposes, and the placement of transitory liquidity surpluses*

Sanctions: Defines non-compliance with the LRTF as a very serious violation of the National Disciplinary Code.

Budget Submission

42. Budgetary and extrabudgetary data are submitted using a classification system of expenditures and revenues that has serious deficiencies. As for budget expenditures, the EOP establishes that they must be submitted to the Congress classified by institutions⁷² and distinguish between operating expenses, debt service, and investment expenses. The expenditure classification by economic category, however, is not compatible with any international classification (for example, the investment heading of the PGN includes subsidies and debt service). In addition, there is no classification of spending by function or target, and classification by programs is limited to capital spending only. Regarding budget revenue, it contains estimated current income, parafiscal contributions, special funds, capital resources and income from national public institutions. Credit resources⁷³ are classified as part of capital resources, making it impossible to explicitly distinguish the financing aspect of the budget.

43. The Presidential Message presents the consolidated fiscal balance of the NFPS included in the FP. However, it does not present disaggregated information for the national public administration nor for the rest of the public sector. The FP—which as noted above is not sent to Congress—also includes broad balance measures including BR and FOGAFIN balances and the costs of the financial sector restructuring, important information that should be part of the budgetary documentation that is sent to the Congress. The Presidential Message does not state the accounting method used to obtain the fiscal balance of the NFPS.

Budget Execution

44. The accounting system used by the central public administration makes it possible to obtain timely information for evaluating arrears. For the central administration as a whole, excluding public establishments, the integrated financial information system (SIIF)⁷⁴—which includes the budget, treasury and accounting modules⁷⁵—registers and incorporates timely and reliable information on the different stages of the expenditure process (commitment, obligation, and payment), encompasses on a timely basis all externally financed transactions, and maintains records of assistance in kind not associated with cash flows (such as machinery and medications, for example). These features make the

⁷² Including the Judicial Branch, the Legislative Branch, the Prosecutor General's Office, the Attorney General's Office, the Public Defender, the Office of the Comptroller General, the National Civil Registry, the Ministries, administrative departments, public establishments, and the National Police.

⁷³ Other capital resources include: financial returns, exchange rate differential, donations, financial surplus of public establishments and national-level NFPE, and the profits of the Bank of the Republic.

⁷⁴ See paragraph 33.

⁷⁵ There is a revenue module that gathers information on large aggregates.

SIIF a reliable tool for evaluating arrears.⁷⁶ The SIIF began to operate fully in 2001. Nonetheless, for the official reports on the fiscal accounts prepared by CONFIS, a modified cash accounting method continues to be used, according to which the total deficit is calculated as the cash deficit reported by the SIIF, adjusted on the revenue side by the portion corresponding to revenue from concessions and on the expenditure side by the change in the floating debt (or variation in the stock of the budgetary carryover.⁷⁷ The SIIF performs in real time a reconciliation of accounting reports and budgetary allocations, and has the ability to reconcile accounting records with bank accounts. The executive branch does not submit reports to the Congress on budget execution in the course of the fiscal year.

45. The Internal Control System provided by the Constitution has recently been strengthened to improve the management and transparency of the results of public entities. The National Internal Control System (SNCI)⁷⁸ is directed by the President of the Republic and coordinated by the Civil Service Administrative Department (DAFP)⁷⁹. Effectiveness is verified through the Internal Control Offices or Units within each public sector agency.⁸⁰ Various entities play important roles in the internal control system: the MHCP helps in the preparation, execution and control of budgetary allocation; the DAFP establishes the policies of public management; the CGN coordinates with the entities on compliance with the National Government Accounting System; and the CGR assesses the SNCIs of the entities under its supervision. The different entities in the central and

⁷⁶ Current weaknesses in the system prevent the DGTN from making direct payment to third parties. The EOP and its regulations, however, establish that the entities must return funds to the DGTN if the respective payment has not been made after five days. Subnational governments seem also to have significant spending arrears with weak capacity to systematically monitor them.

⁷⁷ Legally, PGN appropriations expire after December 31. Nonetheless, the entities have until February 15th to set up their budgetary carryover, which comprises both legally contracted obligations pending settlement as well as commitments undertaken but not performed. Traditionally, budgetary carryovers have been basically concentrated in the area of investments.

⁷⁸ Established in Articles 209 and 269 of the Constitution and regulated for the first time through Law 87 of 1993. It covers all public sector agencies.

⁷⁹ The Council of the SNCI consists of the Director of the DAFP, who presides over the Council; the General Accountant or Deputy Accountant, the Director or Deputy Director of the DNP; the Comptroller General or Deputy Comptroller; the Auditor General or Deputy Auditor; the Attorney General or Deputy Attorney General; the President or Vice President of the General Conference of Governors; the President or Vice President of the Colombian Federation of Municipalities; the President or Vice President of the Colombian Organization of Departmental Comptrollers; the President or Vice President of the Legal Committee on Accounting of the Congress; the Director of the Presidential Anti-Corruption Program; and four delegates representing the heads of Internal Control Units or Offices.

⁸⁰ It was initially established that the director of the respective organization would appoint the Head of Office, as a public official attached to a higher level in the hierarchy who could be freely appointed and removed. However, given the lack of independence of these officials, the President of the Republic took away their power to appoint the Heads of these offices.

decentralized sectors must submit to the DAFP,⁸¹ before February 16, a copy of the Annual Executive Report containing the final result of the evaluation of the internal control system conducted by the respective Internal Control Office, using a standard format. This document is used as the basis for the report on the SNCI that the President presents to Congress at the beginning of each legislative session.

46. The legislation on public procurement is public and uniform for all of the levels of government.⁸² The law establishes the principle of transparency, which involves aspects of disclosure, objective selection, and the right of appeal. In addition, it requires the public entity to publicize the opening of bidding, competitions and other selection procedures as well as the rules to be used in awarding contracts. Cases where a public hearing is appropriate are established by legislation. There is a single registry of bidders in which registration must be renewed annually and which is public. The Chambers of Commerce prepare and publish a monthly bulletin with the proposed bidding sessions of the entities. The law requires that copy of actions taken and bids submitted must be provided to anyone who shows a legitimate interest. Bidders have the right to learn about reports, opinions, and decisions produced during the bidding process, and may submit observations and objections within the period established for this.

47. However, there are numerous exceptions where the law does not require compliance with established procedures. Exceptions include cases of clear emergency such as public disasters or situations affecting the delivery of service; the procurement of minor amounts in terms of the annual budgets of the entities; scientific or technological activities; procurement of goods with regulated prices; purchase or lease of real estate; and goods and services for national defense and security. In addition, there are exceptions for cases when bidding sessions or competitions produce no bidders; when there is a lack of acceptable bids, and when the direct purpose of a contract is commercial and industrial activities carried out by public enterprises. It should be particularly noted that the law does not regulate subcontracting.

48. The CGR has established an Information System for Monitoring Public Procurement (SICE).⁸³ SICE includes all significant information on public procurement and performs an on-line (and real time) comparison of all prices paid for purchases made by the State and the reference prices held by the information center. SICE helps to structure purchasing plans on a technical basis, and makes it possible to later compare such plans with actual contract outturns within the ranges of market prices.

⁸¹ Decree 2145 of 1999

⁸² Governed by Law 80 of 1993 and its regulatory decrees.

⁸³ Law 598 of 2000.

49. **In the current administrative career system adopted by law,⁸⁴ jobs in the public sector must be filled through a call for applications and open competition. However, following a decision of the Constitutional Court, competitions have been suspended since 1999.** The general career system covers employees in the Executive Branch at the national and territorial levels and their decentralized entities (including, in the Ministry of National Defense, the Armed Forces and the National Police, civilian personnel only).⁸⁵ The law delegates the selection of personnel to the entities and establishes that calls for applications must be publicly advertised⁸⁶ and that the job should be filled through competition under the guidelines and supervision of the National Civil Service Commission (CNSC) and with assistance from the DAFP—which formulates administrative policy. The failure to apply professional standards is grounds for misconduct. However, procedures for issuing a call for applications and for competition have been suspended since 1999, when the Constitutional Court eliminated the CNSC because it was attached to the Executive branch. As a result, public entities were left without a supervisory body to monitor the process. There is currently a bill before Congress to set up the CNSC and issue rules on administrative careers.

50. **Certain entities and employees are subject to special personnel regimes.** There are *special* personnel administration systems, provided by the Constitution and regulated through Statutes adopted by laws for certain public sector agencies.⁸⁷ There are also *specific* personnel administration systems created by law for the employees of entities that carry out specific activities in the executive branch.⁸⁸ By Constitutional mandate, both in the *special* systems and in the *specific* systems, entry is determined based on merit, and continuation in the position is subject to good performance and conduct. Further, *official workers* are those in construction and public works maintenance, or who render their services in the NFPE and are governed under sector private law. This category of employee has the right to unionize

⁸⁴ Law 443 of 1998.

⁸⁵ Not considered career officials are those who occupy positions filled by popular election, positions with terms set by the Constitution, or positions for which people can be freely appointed and removed. In the Central Administration, the latter positions are limited to the Minister and Vice Minister; Director and Deputy Director of an Administrative Department; the Director and Deputy Director of the National Police; a Superintendent; and the Director of a Special Administrative Unit, as well as employees of the Office of the President of the Republic and those attached to command offices in the Armed Forces and National Police, given the necessary level of confidence required.

⁸⁶ If in the press, the newspaper must have wide circulation (two notices on two different days); if on radio, officially authorized stations with national coverage (at least three times per day for two days during working hours); if through TV, officially authorized channels (at least twice, on different days and during peak hours).

⁸⁷ This includes the Judicial Branch, the Prosecutor General's Office, the Attorney General's Office, the Office of the Comptroller General, the Armed Forces, and the National Police, among others.

⁸⁸ This is the case with the Administrative Department for Security (DAS), the National Prison Institute (INPEC), the National Civil Registry, DIAN, and the diplomatic service.

and negotiate collective labor agreements. Lastly, *personal service provision contracts* apply to the hiring of highly qualified personnel and are governed by the General Public Procurement Law. The selection processes for both official workers and contractors are not usually based on open competition.

51. The Joint National Commission on Tax and Customs Administration (CMGTA)⁸⁹ was created by law to support and supervise the conduct of tax administration. The DIAN is legally required to submit to the CMGTA a quarterly report on the development of its activities and the *Annual Plan to Combat Evasion and Contraband*. In addition, the DIAN must submit on April 15th to the third Committees of Congress the results of the Plan together with the opinion issued by the CMGTA.⁹⁰ Given the nature of some of its functions, the DIAN has a special personnel administration system, nomenclature and classification, staffing, and administrative career, as well as a special disciplinary system.⁹¹ However, it usually follows in practice the guidelines of the DAFP—which makes it difficult to remove officials for misconduct.

Budget Closure

52. The Balance Sheet and the General Budget and Treasury Account are submitted to Congress during the year following the fiscal year. By constitutional mandate,⁹² the government must send to Congress six months after the end of the fiscal year, the Finance Balance Sheet audited by the CGR.⁹³ The Balance Sheet is the responsibility of the General Accountant—an executive branch official—who consolidates the general accounts of the National Government with those of the rest of the public sector. The General Budget and Treasury Account—which covers the entities included in the PGN⁹⁴—must be submitted to the Congress by the CGR no later than July 30th of each year. Legally,⁹⁵ the CGR must

⁸⁹ Law 223 of 1995 and Decree 1071 of 1999. The Commission includes the Minister of Finance and Public Credit or his delegate, who presides over the Commission, the General Director of the DIAN, the Director of Taxes, the Director of Customs, the Secretary of Institutional Development, the Defender of Taxpayers and Customs Users, the General Secretary of the DIAN who acts as secretary, and delegates and representatives from business associations. (See also paragraph 19 above),

⁹⁰ Law 223 of 1995.

⁹¹ Decree 1072 of 1999.

⁹² Article 354.

⁹³ The Balance Sheet must be sent to the CGR before May 15th.

⁹⁴ Including the Legislative Branch, the Ministries, Administrative Departments, Superintendencies, Special Administrative Units, Judicial Branch, Justice Department, Electoral Organization, CGR, Prosecutor General's Office, General National Police, and public establishments at the national level.

⁹⁵ Article 39 of Law 42 of 1993.

submit the computation of the deviation of each budgetary item from the initial calculation. In practice, in addition to meeting this requirement, the General Account also includes the factors that explain deviations in both the revenue and expenditure sides. To supplement this information, an analysis of sources and uses is included, to show the behavior of the different sources of financing for the initial budget in comparison with the final budget.

53. The National System of Evaluation of the Results of Public Management (SINERGIA) provides feedback for governmental management and decision-making. The DNP is legally mandated⁹⁶ to act as coordinator of an evaluation system of public management and results, in relation to PND investment policies and projects. In addition, DNP is responsible for submitting to CONPES each year a report on fulfillment of the PND. In 1994, the DNP began to develop SINERGIA to carry out its legal mandate. SINERGIA includes a system of indicators and a management tool called the Indicative Plan. The indicators are both quantitative and qualitative: plans developed and laws submitted to the Congress; planned products or services; impact on the achievement of the sectoral objective; and volume of procedures or processes carried out by the entity. The Indicative Plan is a tool that allows each entity to specify the sectoral or policy objectives to which it seeks to make a contribution; the specific objectives and commitments of the entity; and the indicators and goals to be used during the evaluation. The annual evaluation is conducted both on a decentralized basis (each entity evaluates itself) and centrally (conducted, selectively, by the DNP). The different evaluations must be consolidated by the DNP and submitted to CONPES in the month of April. Subsequently, the President must submit to Congress (in July) a detailed report on implementation of the PND and its different components at the start of each legislative session.

D. Assurances of Integrity

Rules on Data Quality

54. The budget data do not reflect expected expenditure during the year. Due to the existence of a significant volume of *payable bills and outstanding commitments*,⁹⁷ the final volume of expenditure in cash terms is quite different from the level of appropriations for the year. This is the result of unrealistic programming, which is then corrected in the course of the year through rationing of cash to spending units, which in turn is offset by the possibility they are given to defer budget execution appropriations through up to December 31st of the following fiscal year.⁹⁸ This practice has, in turn, indirectly affected the measurement of spending “accrued” during the year. See paragraph 25 and Box 4.

⁹⁶ Article 343 of the Constitution and Article 29 of Law 152 of 1994.

⁹⁷ In some years these have reached 2.5-3 percent of GDP.

⁹⁸ In accordance with the principle of annualized accounting, the budget year ends on December 31st. However, the LGPN allows appropriation reserves to be established in the first part of the next fiscal year (in the year 2000 this was allowed—as an exception—up to April 30th, and February 15th was set as the date for 2002).

(continued)

55. The various units involved in compiling fiscal figures do not use the same accounting conventions, work with different dates for data submission by reporting entities, and do not carry out systematic data reconciliation. The General Accounting Office (CGN) consolidates the activities of the Colombian public sector, provides information on balance sheets and financial statements, and publishes the Annual Balance Sheet that must be submitted to Congress. The CGN follows double entry accounting and includes asset accounting, with active and passive accounts and accrual-based treatment. The CGN does not have the ability to impose sanctions on entities that do not release the required information, which delays the consolidation exercise. In addition, CONFIS compiles an estimate of the fiscal figures of the public sector based on the cash execution of a sample of entities, correcting the figures for certain accrual-based operations. No routine and detailed reconciliations are done on a timely basis during the year. In addition, CONFIS and CGN work with different closing dates for the fiscal year⁹⁹ (Box 4).

Independent Evaluation

56. External control of the public sector is well established at the national level but has some serious deficiencies at the territorial level. The Office of the Comptroller General of the Republic (CGR)¹⁰⁰ is a technical entity with administrative and budgetary autonomy that exercises external control over the execution of the budgets of all Colombian public sector entities and those private sector entities that manage public goods or resources. The budgetary independence of the CGR is reinforced by the collection of an auditing fee and by the ability to capture resources from the multilateral banking system. The Comptroller is elected by the Congress for a period equal to the term of the President of the Republic. Both financial and non-financial public enterprises are required to be audited by a contracted consulting firm. The BR is also considering doing the same thing. The Constitution assigns to the territorial comptrollers' offices (departmental, district, and municipal) the corresponding functions within their jurisdictions. The territorial comptrollers are elected by Assemblies or Councils. The exercise of this external control currently has serious deficiencies. The law has established the precedence and concurrence of the CGR vis-à-vis the territorial comptrollers' offices in the monitoring of resources transferred to the territorial entities by the National Government (transfers from the SGP and royalties). The law empowers the CGR to exercise ex-post control on an exceptional basis over the accounts

Once established, these appropriation reserves can be executed and paid through the next fiscal year, with a deadline of December 31st.

⁹⁹ The ability to establish outstanding commitments in the first part of the next fiscal year conflicts with the entities' obligation to submit their information to the CGN before March 11th.

¹⁰⁰ Title X, Chapter I of the Constitution.

Box 4. Cash vs. Accrual: Measuring the Fiscal Deficit in Colombia

- In recent years, CONFIS has calculated the public deficit as the difference between income and payments adjusted for the variation in the *stock of the budgetary carryover (rezago presupuestal)*, which seeks to measure the spending commitments assumed by the authorities during the year, payment on which is considered merely deferred. This *modified cash system* seeks to capture the gap between expenses truly accrued during the year and revenues, whether the former has been or remains to be paid. This correction abandons the traditional cash-based measurement in order to approximate a calculation of the deficit on an *accrual* basis. In the context of the first review of the program of Colombia with the IMF, and with the purpose of controlling the budgetary carryover, the authorities proposed to incorporate in the definition of the floating debt, not only the central government's payable bills, but also the central administration's "outstanding commitments" that are postponed to the following year (i.e. no verified commitments because goods have not been provided yet).
- A *modified cash system*, as an approximation at the level of aggregates of an *accrual* system is not an exception but rather common international practice. Within the OECD, Australia, Iceland and New Zealand use a complete accrual method (from the individual accounting level); the Netherlands, Switzerland and Turkey use cash methods; and the rest use a *modified cash system*. In addition, of a total of 33 Latin American countries, 17 use modified cash, 7 only adjust the deficit for interest charges accrued, and 9 use a cash basis. In this sense the adjustment introduced by Colombian authorities in the measurement of the public deficit are in line with international practice—exception made for the inclusion of outstanding commitments in the estimate of the floating debt, given that the transaction has not been concluded.
- In addition to CONFIS, other public institutions reports on the fiscal performance in Colombia, using different coverages, methodologies and classifications. Some institutions—such as the CGR—believe that *outstanding commitments* should not be part of the deficit measurement, have questioned the *modified cash system* because it is neither one system nor the other, and have suggested keeping the traditional cash-based measurement. Nonetheless, the deficit measurements contained in the follow-up of the *Financial Plan* that CONFIS compiles and publishes on the MHCP Web site on the indicated basis have been considered official. The fact that different public sector entities generate different measurements of the deficit for different purposes is a common international practice, which carried out transparently (methods and objectives) does not create confusion.

In light of the above the authorities should consider introducing the following measures: clearly establish the responsible entity and the official method for measuring the deficit to be used for macroeconomic analysis, without excluding that other measurements of the deficit may be appropriate and may be used for other purposes—as has been the case of the broadening of the deficit definition in the context of the IMF-supported program with the objective of controlling the budgetary carryover; *maintain for the above purpose the approximation to the accrued system, correcting it for macroeconomic analysis by excluding the outstanding commitments in the measurement of the deficit*; and publish sufficient information to allow for calculation and reconciliation of the different deficit measurements. In addition, *it is important to maintain and increase control over the outstanding commitments and to try to eliminate this budgetary irregularity as soon as possible— and in the meantime to publish with complete transparency their total value and the intention to eliminate them in the very short term.*

of any territorial entity, without diminishing the control for which the territorial comptrollers' offices are responsible. The recent elimination of municipal comptrollers' offices has increased the workload of the departmental comptrollers' offices and of the CGR.

57. The CGR exercises macroeconomic, microeconomic and fiscal responsibility controls on public finances. Macroeconomic control is reflected in the General Budget and Treasury Account that the CGR sends to the Congress, in the auditing and certification of the Finance Balance Sheet compiled by the CGN, and in the preparation of the Public Debt Report and the Report on the Status of Natural Resources and the Environment. The CGR carries out microeconomic control through its audits of entities under its supervision, on the basis of which individual Improvement Plans are prepared for the entities, which are subject to follow-up. Control of fiscal responsibility is carried out through the filing of cases against public servants who cause damage to public assets.

58. The design of the General Auditing Plan (PGA) of the CGR is appropriate. It is based on criteria on the representativeness of the entity to be audited, the level of risk of irregular practices, results of recent audits, and complaints. The auditing cycle is three years. There are different types of audits: regular, short, special, and follow-up; and different types of control such as exceptional or concurrent control. The PGA establishes *auditing lines* (matters for special attention), as in the case of 2002 with respect to the existence of contingent liabilities, contracts carried out under the clear emergency concept, and compliance with Law 617 on limits on operating expenses by public entities. The CGR has power to impose sanctions in the event of non-compliance or untimely information.

59. The external control agencies are in turn subject to supervision. The General Auditing Office of the Republic (AGR) monitors the fiscal management of the CGR and the departmental and municipal comptrollers' offices, for which it does not charge an inspection fee. The Auditor is elected for two years by the Council of State, from a short list submitted by the Supreme Court of Justice. Although its existence was contemplated in the Constitution of 1991,¹⁰¹ the AGR was only recently set up. The AGR has a General Auditing Plan for 2001-2003 that reflects appropriate criteria. The AGR must submit reports for the year on its management to the Supreme Court of Justice, the Council of State, the DAFP and the CGN. The AGR may initiate a process to seek the imposition of sanctions on entities that do not submit information on a timely basis. It carries out training work for the territorial comptrollers' offices.

60. DANE is the agency responsible for the national statistics system and uses fiscal information for preparing the national accounts. There is an agreement on collaboration between DANE and the CGN to perform a consistency analysis between the public sector's

¹⁰¹ Article 274 of the Constitution.

accounting and financial information and the national accounts. Independent experts' views are not sought in the evaluation of fiscal and macroeconomic projections.

III. COMMENTARY

61. **Colombia has recently made significant progress in fiscal transparency, with respect to the relationship between the public and private sectors, the distribution of powers among levels of government, budget management, and management of fiscal policy.** The mission emphasizes: ► the introduction of competition in markets providing public services; ► the creation of regulatory agencies; ► improved management of the public banking system; ► clarification of the expenditure responsibilities of the different levels of government; ► reduction of discretionality in territorial transfers; ► adoption of tools for macroeconomic analysis (MEGHA), introduction of modern accounting procedures (SIIF) and rationalization of territorial financial information (FOSIT); ► establishment of SICE, which will have a significant impact on the transparency of the public procurement process; ► the Government-On-Line initiative that seeks to impose greater quality, uniformity and timeliness, and thus reliability and transparency in information provided on the public sector; ► strengthening of the civil service disciplinary code; and ► the Presidential Anti-Corruption Plan. The legislative agenda now underway could lead to the adoption of very important standards in the area of Fiscal Responsibility and Transparency, as well as the integration and strengthening of territorial legislation.

62. **However, in a series of areas Colombia could continue to improve its practices with respect to fiscal transparency and the IMF mission recommends the actions that appear below. These are classified according to the timeframe in which they should be carried out, the legislative changes they require, and their priority.**

Actions that could begin immediately:

63. **Improve budgetary programming: (i) give high priority to preparation of a realistic budget that will not entail the use of cash rationing as a means of containing spending. The budgetary carryover that otherwise result limit the relevance of the budget that is approved, and reduce enormously the transparency of the process. In connection with this, (ii) eliminate the ability to apply such budgetary carryover against the previous year's budget beyond the second month of the following year, as is the usual practice in other countries.** In addition, it is necessary to (iii) establish specific mechanisms to ensure better integration of the investment and current appropriations. The direct way to do this is to require the MHCP to prepare the investment budget as well. As a minimum alternative, (iv) ensure that when an investment project is approved and/or programmed a careful estimate is done of current resource needs it entails, that a corresponding schedule is established along with the financing sources, and that this information is an integral part of the budgetary process and documentation.

64. Keep the approximation to the accrual system but discontinue the inclusion of outstanding commitments in the official measurement of the deficit. However, it is emphasized that, together with the methodological change suggested, the mission recommends that the authorities **maintain and increase their control** over the outstanding commitments and seek to **eliminate this budgetary irregularity** as soon as possible (so that unexecuted appropriations are not automatically carried over to the following year). **In the meanwhile, publish with total transparency** the value of the outstanding commitments.

65. Improve coordination between units that produce fiscal figures. It is important to clearly establish the entity responsible and the method for official measurement of the deficit to be used for macroeconomic analysis, without preventing other entities from compiling and even publishing deficit measurements for other purposes. The units that compile fiscal figures—whether budgetary (DGPN), accounting (CGN), or macroeconomic (CONFIS, DANE, BR)—should also conduct systematic consistency exercises and publish the reconciliation methodology. These units should all establish the same date for the entities that execute spending and work with the same date for the close of the fiscal year.

66. Improve the budgetary documentation that is submitted to Congress. First, the Presidential Message should discuss in greater detail the macroeconomic context, the budget's consistency with that context, and a sensitivity analysis. Second, the Message should also explicitly show the consistency between the PGN, PND and FP. The FP should be included in the budgetary documentation. In this way, the Congress will have information on the rest of the public sector. Third, the PGN should include the quantification of tax expenditures, contingent liabilities and quasifiscal activities.

67. Fully utilize the information systems available from SIIF, FOSIT, BR, and the CGN. The utilization of these information systems will make it possible for the process of gathering, producing and disseminating information on the activities of the NFPS to be more transparent, and will reduce the administrative costs of handling requests for information from various entities at the same time. The production of information on the NFPS under functional and economic categories will facilitate analysis of the impact of public sector activities on the economy and will enrich the budgetary debate in Congress. Therefore, the National Government should intensify its efforts to fully utilize the SIIF and adopt budgetary classifiers based on international standards. In addition, the National Government should support the development of the FOSIT project in all territorial entities.

68. Establish a new budgetary classification consistent with international standards. With the current budget expenditure classification, it is rather difficult to analyze the economic impact and purpose of the budget. First, the Revenues Budget should not include resources from financing, which must be presented separately. Second, expenses should be classified by economic, functional, and administrative categories. This will require reform of the EOP.

69. Strengthen the National Government's reporting process to Congress, both in the course of the fiscal year as well as at the close. Quarterly reports should be submitted to Congress, with information on budget execution and the financial situation of the National Government and the rest of the public sector. In addition, at the close of the fiscal year, the government should report to the legislature on budgetary outturns, attainment of the objectives of the principal budgetary programs, the result of the management of public finances, and progress made in meeting the goals and objectives of the PND. The government should not be not relieved of responsibility to report to Congress the annual final accounts by the fact that the CGR compiles and sends to Congress the General Budget and Treasury Account, and audits the Finance Balance Sheet prepared by the CGN

70. Legally ensure access to information on the NFPS. The requirement to inform public opinion should be as strict as the duty to submit reports to Congress. The draft Fiscal Responsibility and Transparency Law should establish the annual schedule and the minimum content of fiscal information that should be submitted to Congress and the public. In addition, the National Government must periodically compile and publish medium-term projections of the NFPS position.

Actions to be undertaken in the short term:

71. Transform the PND into the key instrument for setting medium-term socioeconomic policy objectives and priorities, as the requisite framework for the annual preparation of the budget. To this effect, the PND must specify the objectives of expenditure policy, both operational and investment. At the same time, the PND must ensure consistency between current and investment expenses. In addition, the medium-term macroeconomic and fiscal scenario envisioned in the PND must be revised each year, and for the full four-year period ahead. This means that even in its last year a government should need to present a macroeconomic and fiscal framework for a four-year horizon. It might be necessary to amend the Organic Law of the PND in order to ensure the institutionalization of this commitment.

72. Strengthen the synergies between the Presidential Anti-Corruption Program and the Internal Control Offices in the area of efficiency and transparency in public administration. The authorities could order public entities to adopt and comply with the standards of efficiency and transparency in public administration that have been prepared as part of the Presidential Anti-Corruption Program. These standards cover areas of public procurement, control and evaluation, budget, accounting, staff selection, formation, and training of human resources. It is important to establish a systematic procedure for publishing the reports prepared by the Internal Auditing Offices.

73. Clarify and reconsider the fiscal rules included in the EOP. First, with respect to the rule on the growth of social expenditure contained in the EOP, the law should specify clearly the spending components that will be considered social. This should be based on an appropriate and precise budgetary classification. Second, review the usefulness of certain fiscal rules of the EOP and eliminate them for the sake of simplifying budgetary legislation.

74. Improve the transparency of tax legislation, strengthen the economic foundation of tax policies and streamline tax disputes with taxpayers. There is considerable room for simplifying the tax and customs system and making it more transparent. Above all, this would mean greater clarity in the wording of legal and regulatory texts. It would be advisable to create a tax-policy analysis unit in the MHCP that would work independently, although in coordination with the DIAN. This would allow the DIAN to focus on tax administration, which would be reflected in a streamlining of taxpayer dispute resolution with the DIAN.

75. Ensure the independence of the regulatory commissions and their discussions with regulated operators. The presence of representatives of the executive on the regulatory commissions compromises their independence. It would be advisable to conduct public consultations, and to estimate on a systematic basis the impact of regulatory changes.

Actions to be undertaken in the medium term:

76. Clarify and specify more precisely the distribution of expenditure responsibilities and resources among the different levels of government. First, the Law on Territorial Organization should be promulgated as soon as possible, clearly and precisely establishing the functions of each level of government. Second, National Government decisions should take fuller account of their financial impact on territorial entities (e.g., the territorial entities are involved in education but the salaries of teaching staff are determined by the National Government). Third, distribution of the National Royalties Fund and the Cofinancing Funds should be made more transparent and objective.

77. Set more clearly the scope of the public sector in the economy, consistent with good international practices. This essentially requires: (i) using a broad definition of the Colombian public sector (NFPS) consistent with international practices; (ii) identifying quasifiscal activities; and (iii) limiting trust funds that involve public resources and parafiscal contributions managed by private sector entities. Information on public finances should be submitted in accordance with (i), (ii) and (iii). For this, it would be necessary to prepare information on the consolidated position of the NFPS, strengthen the information from the territorial entities, and quantify and publish information on quasifiscal activities, or replace them with revenue or expenditure programs in the National Government's budget. These measures would facilitate a better international comparison of public finance statistics and aggregates, and would also facilitate discussion of the impact of fiscal policy and, thus, a more informed budget debate.

78. Amend the budget cycle. First, the current expenditure and investment budgets should be prepared in conjunction with each other, in the MHCP, with DNP remaining being responsible for the evaluation and selection of the investment plans. Second, the legislature's capability and accountability in budget preparation should be strengthened. To do this, the date for budget approval by Congress should be moved closer to the start of budget execution (December). At present, the PGN is approved on October 20 and sometimes

becomes obsolete before its execution begins on January 1st of the following year, and this in turn requires the executive branch to make adjustments, which hinders the information content of the budget originally approved by Congress. Third, earmarked revenues should be eliminated or at least reduced.

79. Strengthen territorial-level budget institutions and external control entities. Given Colombia's high level of fiscal decentralization, it is necessary to ensure that adequate and transparent budget systems are in place at the subnational level. The authorities might consider simplifying the current budgetary framework, and provide technical assistance thereon for small and medium subnational governments. It is also important to ensure that the territorial comptrollers' offices have sufficient technical and human resources, and that they follow appropriate methodologies to carry out a good external control.