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REPUBLIC OF SLOVENIA
COMMISSION FOR THE PREVENTION OF CORRUPTION
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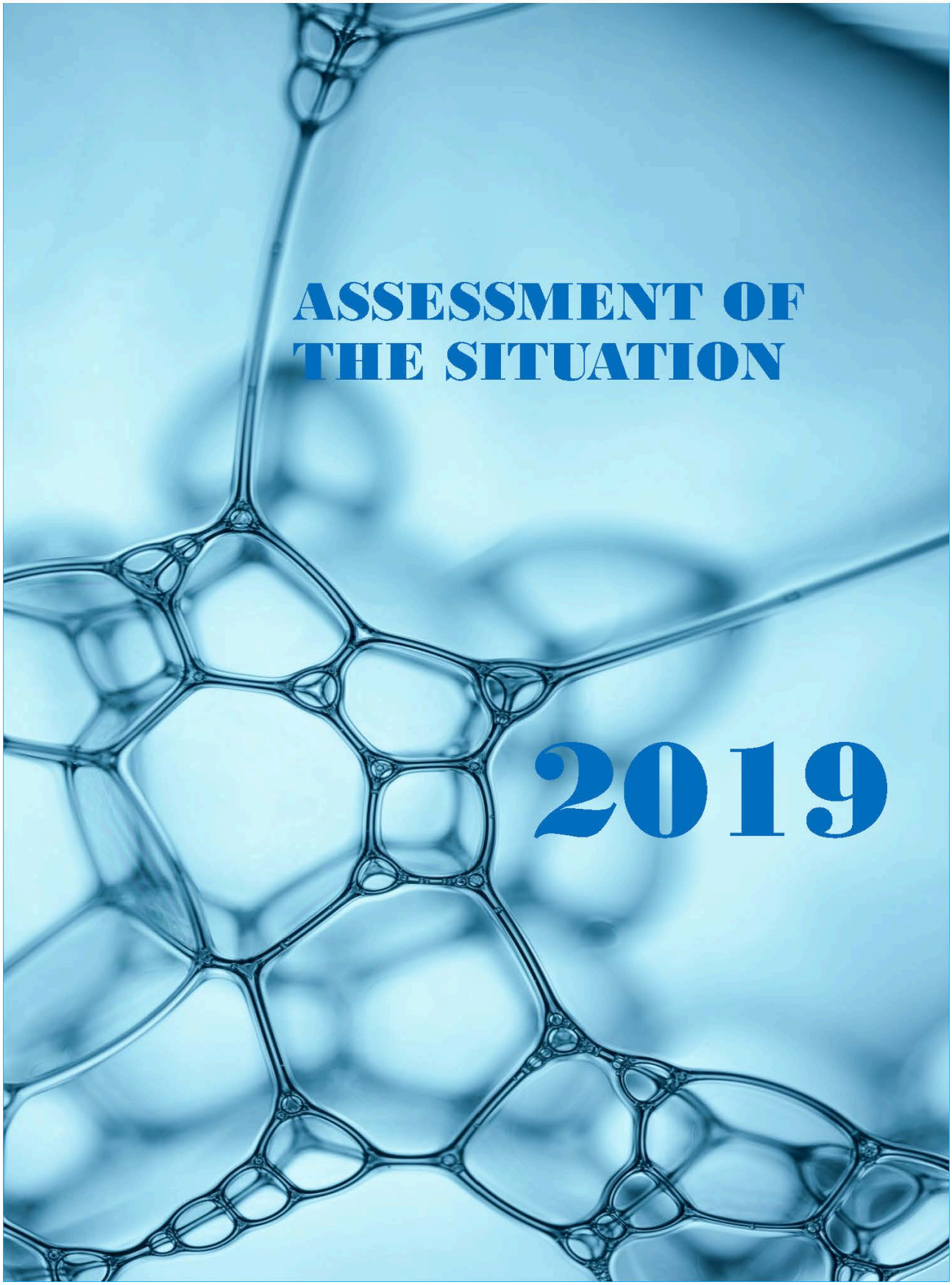

ASSESSMENT OF THE SITUATION

2019

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Pursuant to paragraph one of Article 20 of the Integrity and Prevention of Corruption Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No 69/11 - official consolidated version), the supervision of the performance of the Commission's tasks is exercised by the National Assembly. The Chief Commissioner shall report once a year to the National Assembly on the content and scope of the Commission's work and on decisions, findings and opinions related to the Commission's powers, without giving information that might result in natural and legal persons concerned being identified, and shall provide an assessment of the current situation with regard to the prevention of corruption and prevention and elimination of conflict of interest.

Boris ŠTEFANEC

Chief Commissioner

Ljubljana, March 2020

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Corruption risks in public procurement procedures

In 2019 the Commission made an analysis of corruption risks in public procurement procedures. The Commission based the analysis on public information on below-threshold contracts awarded in 2017, which are available on the portal for public procurement. In addition, for the purposes of the analysis concerned, the Commission examined the findings of individual cases and, on this basis, presented some of the identified forms of practices in the field of public procurement procedures that create significant corruption risks. In general, it holds that, in Slovenia, people strongly support the transparency of the use of public funds and the functioning of the public sector. In the Government at a Glance, the Organisation for Economic Co-operation and Development (OECD) assessed that Slovenia stands out (in a positive way) among OECD member states, as it makes available to the public the most information concerning public procurement. This fact has also been used by the Commission, as the analysis relies mostly on data that are publicly available on the portal of the Ministry of Public Administration.

As part of the analysis of corruption risks in public procurement procedures, the Commission closely examined 44 contracts and found the following:

a suspicion of fragmentation of contracts was identified in six identical public supply and service contracts totalling EUR 326,833.16 excluding VAT, which were subdivided into 19 smaller contracts by contracting authorities;

- 11 order forms or contracts in the total value of EUR 210,726.56 excluding VAT did not contain an anti-corruption clause;
- in one case, the contracting authority did not publish the amended contract on the portal for public procurement.;
- in one case, the Commission suspected that a payment was made without an authentic bookkeeping document;
- in two cases, the Commission suspected that the provisions of own tender documents were violated;
- in three cases, the contracting authority issued an order form only after the contractor had already provided the service in question;
- in three cases, the contracting authority mistakenly reported on the same contract twice.

On the basis of the cases considered, the Commission has established that suspicions of irregularities in public procurement are identified and investigated mostly *ex-post* rather than proactively at the time when contracts are not yet awarded, tenders not yet received and evaluated, or when the contracting authority is only considering whether they have sufficient funds to award the contract or whether there is an actual need for the supplies or services that are being ordered. That is why the Commission proposed that the Ministry of Public Administration consider the introduction of a system of inspection and control in public procurement.

The Commission has also identified development opportunities in the area of ensuring legal protection in public procurement procedures. Reporting persons are often representatives of companies that have not been selected and would like the Commission to file a request for a review on their behalf, thereby, at least in some cases, helping them avoid paying a high fee or prevent the contracting authority or the competitor from "resenting" them. In addition, the Commission has established that decision-making by the National Review Commission may run the risk of corruption and, for this reason, proposed that, in the context of the Act Amending the Legal Protection in Public Procurement Procedures Act, the Ministry of Public Administration provide solutions to additionally strengthen the independence and consistency of operation of the aforementioned state authority.

The Commission has issued a number of recommendations for contracting authorities:

- they should consistently document activities at the pre-tender stage (discussions, meetings, attendance at seminars, fairs and other events where they are informed about the offer on the market);
- contracting authorities should prepare tender documents so that they reflect their actual needs and prevent unnecessary distortions of competition;
- they should take a proactive approach to ensuring transparency (concluded public contracts and annexes to contracts should be made public);
- in cases where they do not need to verify the statements of economic operators, unless there is doubt about their authenticity, they should consider carefully whether such verification is needed, particularly when dealing with unfamiliar candidates or tenderers or when in doubt about their authenticity;
- they should not adjust internal contract award rules to a specific contract;
- they should clearly define the content of tender documents to avoid different interpretations of key content (conditions for participation, award criteria);
- in conducting public procurement procedures, at all stages of procedure, they should document the work performed and record it in the record of documentary material;
- they should pay attention to situations where, in demonstrating their capability and capacity to perform the contract, providers of supplies, services or works rely on capacities of other economic operators; in such cases contracting authorities should also consistently check the grounds for exclusion for entities on the capacities of which tenderers relied;
- in marking contract award documents with classification levels, they should comply with the standards and professional criteria laid down by law; it is unacceptable to mark a document with a classification level solely to avoid using public procurement legislation for the ordering of supplies and services;
- at the stage of adoption of tender documents, contracting authorities should lay down technical and professional criteria for economic operators that are proportional to the subject-matter of the contract;
- after the expiry of the time limit for the submission of tenders and before awarding the contract, contracting authorities should verify the existence and content of data or other information indicated in the tender of the tenderer;
- at the stage of the pre-review procedure, they should ensure compliance with the adversarial principle;
- contracting authorities should establish mechanisms for identifying and managing possible corruption risks, efficient internal controls of compliance of actions of employees who work in the field of purchase of supplies and services, internal channels for reporting unethical/illegal demands and practices by employees, suppliers, potential candidates and providers of supplies and services.

Lobbying

Lobbying is the exercise of non-public influence, on behalf of interest groups (legal persons governed by private law), on decisions made within the public sector. "Lobbying" means exercising influence (at the national and local levels) on decision-making in the process of discussing and adopting regulations and other general documents and on decisions made by state authorities, the bodies and administrations of local communities, and holders of public authority on other matters. Exercising such influence is legitimate and desirable in democratic societies, but should be regulated by law.

The regulation of lobbying as laid down in the ZIntPK is directed towards greater transparency; the supervision of this area is exercised by the Commission. In accordance with the ZIntPK, the supervision of lobbying activity is focused on persons lobbied (holders of public office and public employees of state authorities, bodies of local communities, and holders of public authority), who are obliged to make a lobbying record and submit it to the Commission within the set time limit. Lobbied persons are also obliged to avoid any contact with a lobbyist who is not allowed to lobby (illegal lobbying) or contact involving a possible conflict of interest; in addition, lobbied persons must not accept gifts contrary to the limitations that apply to this area. A lobbyist is any person who is engaged in lobbying on behalf of interest groups and who is entered in the register of lobbyists kept by the Commission, or a person who is engaged in lobbying and is employed in an interest group and lobbies on its behalf, or a person who is an elected or otherwise legitimate representative of such an interest group (non-registered lobbyists or exceptions).

The Commission continues to find that the public often perceive lobbying activity as being related to corruption. The term "lobbying" has a negative connotation with a considerable part of the public and is often confused with illegal non-public influence on decision-making or bribing of officials and public office holders. The lobbying profession is still underdeveloped in Slovenia, and according to the Commission, the number of registered lobbyists is very small (at the end of 2019, there were a total of 76 registered lobbyists). The number of registered lobbyists has been rising very slowly, and most registered lobbyists are not engaged in lobbying activities (as evident from the lobbying records and annual reports of lobbyists received).

In the past year, there were a total of 4,968 reported instances of contact, of which 132 were reported as lobbying activities by registered lobbyists and 4,836 as lobbying activities by 'exceptions'. There were a total of 3,142 reported instances of contact made with the aim of influencing the adoption of regulations and other general documents, and 1,826 reported instances of contact made with the aim of influencing decision-making on other matters.

Data on the activities of registered lobbyists show that in the past year, out of 76 registered lobbyists, the majority was not engaged in lobbying activities, a fact that indicates that lobbying activity is still developing in the Republic of Slovenia. In the Commission's assessment, the lobbying profession is still underdeveloped in Slovenia, considering that only a small proportion of the lobbying activity is performed by registered lobbyists. The Commission adds that, by way of exception, it did not impose administrative sanctions on lobbyists who were registered in 2019 and failed to submit an annual report for 2018 (there were 41 such lobbyists); instead, it invited them, by way of a special letter as part of its preventive activities, to fulfil their legal obligations under the provisions of Article 63 of the ZIntPK for the current year and cautioned about the consequences of failing to comply with said provisions.

The Commission has also found that public employees and holders of public office do not regard certain contact that has all the elements of lobbying as lobbying and therefore do not report it. On the other hand, they report contact that is not lobbying, for example, contact with other holders of public office or public employees (i.e. the public sector in relation to the public sector). This is reflected in a large number of reported incidences of contact in 2019 (and past years) that have no elements of legal lobbying in accordance with the provisions of the ZIntPK.

The failure to recognise and identify lobbying at the local level causes particular concern. In 2019, only seven lobbying records were received from representatives of local community authorities; considering that local community authorities decide on a number of matters that are very much at risk of being exposed to different types of influence and attempts to

pursue individual social, economic, financial and other interests in a non-public manner, this shows poor knowledge of the issue or even ignorance of legal obligations rather than the absence of lobbying at the local level.

On the basis of the lobbying records received, the Commission also notes that most registered lobbyists fail to comply with the provisions of Article 69 of the ZIntPK, as they do not show their identification and an authorisation obtained from the interest group to lobby in a particular matter when engaging in lobbying. With regard to the foregoing, procedures are being conducted by the Commission on the grounds of suspected illegal lobbying. Not only lobbyists but also lobbied persons fail to comply with the provisions on lobbying, as they do not ask a lobbyist to provide identification and an authorisation obtained from the interest group before agreeing to have contact with the lobbyist.

Although the legislative provisions of the ZIntPK relating to lobbying have been in force for nine years, the Commission assesses that they are still not sufficiently applied in practice. That is why, despite the legislative arrangements, the possibilities of supervision of this area are limited, and there might be a considerable grey area when it comes to uncontrolled lobbying. The Commission is aware that not all the current legislative solutions are optimal and that there are different issues relating to the understanding of the practical situations lobbied persons and lobbyists find themselves in and of their legal obligations. However, public employees and public office holders with great integrity who have reported and will continue to report lobbying contact and consistently reject unauthorised and illegal lobbying may contribute to greater transparency of lobbying.

In the future, the Commission's preventive action will be focused mostly on the exchange of information with lobbied persons regarding compliance with their legal obligations and the interpretation of provisions of the ZIntPK relating to lobbying, preventive activities with lobbied persons and lobbyists, the exchange of information with lobbyists, ensuring that the act is correctly interpreted, and raising the awareness of the wider public about the objectives of the act. The Commission will carry out the aforementioned activities with a view to strengthening the transparency of lobbying, raising awareness in the field of lobbying and ensuring the effective implementation and monitoring of the implementation of the provisions of the ZIntPK relating to lobbying.

Unethical influence and illegal demands in recruitment and selection procedures

In the previous assessments of the situation regarding corruption, the Commission repeatedly pointed to the issue of exposure to corruption risks and the risk of illegal influence in the field of recruitment and selection procedures in companies with state-owned assets and public institutes. The Commission notes that, in recruitment and selection procedures, typical decision-making processes usually adhere to all the rules of a particular entity, which makes it more difficult for the Commission to prove that there has been illegal influence on specific decision-making processes and to find and confirm the causal connection between an illegal demand and its consequence. In addition, in the past year, the Commission received a number of reports relating to the powers of supervisory boards in companies with state-owned assets and institute councils in public institutes, dismissals by mutual agreement of members of management boards in companies with state-owned assets and the related severance pay and other benefits (e.g. employment in a company after the termination of office by mutual agreement).

Recruitment and selection procedures in companies with state-owned assets, powers of supervisory boards in companies with state-owned financial assets and demands for unethical or illegal conduct in companies with state-owned assets

With regard to the identified corruption risks associated with ensuring transparency and the subsequent supervision of the appropriateness and legality of decisions made in recruitment and selection procedures in companies with state-owned assets, the Commission has issued recommendations to the Government of the Republic of Slovenia and the Slovenian Sovereign Holding for ensuring transparency in procedures for the appointment and dismissal of members of supervisory and management boards of companies with state-owned assets. Regarding the identified corruption risks, the Commission called on the Government of the Republic of Slovenia and the Slovenian Sovereign Holding, which exercise property rights on behalf of the Republic of Slovenia, to consistently comply with the Commission's systemic principled opinion No 06210-201/2014-30 of 16 September 2014, recommending that, to ensure transparency in the management of state-owned assets, they explain in writing the decisions they adopt in procedures for the appointment and dismissal of members of supervisory and management boards of companies with state-owned assets, as this is the only way to eliminate any corruption risks and risks of violation of principles of ethics and integrity and enable possible supervision by state authorities.

With regard to recruitment, as part of considering a specific report, the Commission noted that the Bank of Slovenia Act (the ZBS-1) does not lay down any special conditions or criteria to be met by candidates for Governor or Vice-Governor on appointment, or criteria to be taken into account in the selection of the proposed candidates. In addition, no record, internal document or any other document contains such criteria. In accordance with Article 4 of the ZIntPK, members of the Governing Board of the Bank of Slovenia (Governor and Vice-Governors) are holders of public office and official persons. The Commission said that it was unacceptable that there were no conditions and criteria for the selection of candidates for such positions in the public sector. Procedures for the appointment and dismissal of public office holders that are regulated (or rather not regulated) in the manner as set out in the ZBS-1 are not consistent with ensuring the highest levels of transparency and traceability expected of such procedures and do not allow for the elimination of risks of corruption and political influence and other influence of interest groups on the appointment or dismissal of members of the Governing Board of the Bank of Slovenia. In accordance with the provisions of Article 39 of the Bank of Slovenia Act (the ZBS-1), the office of a member of the Governing Board of the Bank of Slovenia may be terminated if it is established in the prescribed procedure that the member concerned no longer meets the required conditions for the performance of their duties or that they have committed a serious violation; this is unacceptable, considering that the act does not expressly define any such conditions for the appointment of a candidate and the termination of office; accordingly, this could give rise to risks of corruption, a lack of transparency and traceability and, consequently, violations of principles of

ethics and integrity in procedures for the appointment and dismissal of members the Governing Board of the Bank of Slovenia. In view of the aforementioned circumstances that pose corruptions risks, pursuant to Article 12 of the ZIntPK, the Commission recommended that the competent ministry should amend the ZBS-1 by explicitly defining the conditions and criteria to be met by candidates for Governor and Vice-Governor of the Bank of Slovenia and the grounds for the dismissal of such persons, and informed the Office of the President of the Republic of Slovenia, the National Assembly of the Republic of Slovenia and the Bank of Slovenia of its recommendations.

In the past year, the Commission received several reports of suspicion of violations relating to the work of supervisory boards in companies with state-owned assets; most of the reportsrelated to suspicions of violations in cases of termination by agreement of employment of managers and, in this respect, provision of certain benefits to managers where this was not in accordance with the law (severance pay and other benefits connected to their post) or where the supervisory board exceeded its powers (conclusion of employment contracts). Some of the reports relating to the work of supervisory boards referred to suspicions of supervisory boards exceeding their powers in procedures for selecting managers in companies with state-owned assets and supervisory boards exceeding their powers regarding the relationship between the supervisory board and the management.

In the past year, a number of reports relating to demands of official persons for unethical or illegal conduct were received. With regard to the reports submitted, a Code of Conduct for members of supervisory boards in cases of political influence and other forms of pressure and unethical influence on independent decision-making was prepared in cooperation with the Slovenian Directors' Association. As is evident from the explanation on the website of the Slovenian Directors' Association, the code of conduct was prepared to inform supervisory board members of their duty to report unethical and illegal attempts at influencing their decision-making made by third parties by means of demands, threats, corruption or any other means with a view to advancing their own interests that are subject to decision-making in supervisory boards. The code of conduct contains specific guidance for supervisory board members on how to act in the aforementioned cases.

Recruitment and selection procedures in public agencies, public institutes and public companies and related demands for unethical or illegal conduct

In the past year, the Commission received a number of reports relating to recruitment and selection procedures in public agencies, public institutes and public companies. Complaints made in the reports were relating mostly to demands of individuals for unethical conduct with a view to appointing a specific person as director of the organisation.

In the course of the investigations initiated, the Commission found one instance of unethical or illegal influence, establishing that, in that case, the actions of the then secretary-general of a certain political party, who by telephone put pressure on the chairperson of a certain supervisory board, insisting that a certain person should be appointed as director of a certain company, inquiring about the timeline for the recruitment procedure and the date of the meeting of the supervisory board and requesting reporting on the recruitment procedure prior to communication with the Slovenian Sovereign Holding, constituted a breach of integrity as defined in point 3 of Article 4 of the ZIntPK.

In the other cases considered, the Commission issued recommendations for individual authorities relating to:

- the line ministry giving an opinion and providing a more specific definition of the procedure for the appointment of directors of public institutes;
- the consideration of candidates by competition committees;
- securing a uniform practice in the use of rules;
- a lack of transparency in decision-making in staffing matters.

The considered issues of staffing and unethical or illegal conduct in companies with state-owned assets and public agencies, public institutes and public companies show that, in Slovenia, the notion of the best candidates competing for the best roles has not yet been internalised; instead an approach following established patterns is used where "the

coalition's confidence" in the person and their political experience is the main qualification for the post. Such method of operation is not consistent with a capitalist, modern market economy that is directed towards achieving the highest possible values for shareholders, but rather enables a certain network of people to ensure jobs for themselves and positions in politics and the economic sector.

Political agreements/negotiations (including informal agreements on staffing quotas for individual political parties) between political parties with different political interests are a normal part of political life; however, the Commission believes that it is unacceptable to negotiate political agreements/conduct political negotiations regarding decision-making by bodies in companies with state-owned assets and, consequently, exercise illegal influence on such decision-making or influence such decision-making through an asset manager (e.g. the Slovenian Sovereign Holding, the Bank Assets Management Company, representatives of the founder or other persons). The same applies to the exercise of influence on the appointment of other official persons (holders of public office, officials in a managerial position, other public employees, managers, and members of the management and supervisory boards of public sector entities) to specific roles. In recruitment and selection procedures, one of the main criteria for selection should be candidates' professional qualifications (and fulfilment of other conditions for the post) rather than their political suitability or servility and obedience. In the Commission's opinion, selecting and appointing candidates on the basis of their political suitability nullifies the principle of equal treatment and the purpose of legally regulated procedures which are to ensure the objective assessment of candidates and strengthens clientelism, corruption risks and increases the lack of transparency decision-making on staffing matters.

According to the Commission, no progress has been made in the aforementioned area (and this despite the fact that, in most cases, procedures are explicitly defined), and this is also supported by the fact that the Commission has been receiving an increasing number of reports relating to undue political influence on the selection/appointment of candidates and dismissals from specific jobs or posts, reports relating to illegal and unethical influence on decision-making by the appointed candidates and bodies to which they have been appointed, and reports of violations relating to supervisory bodies in companies with state-owned assets and other persons governed by public law exceeding their powers.

Corruption risks identified in the area of spatial planning and construction

The reports received by the Commission contained a number of complaints about the conduct of responsible persons of local communities in amending or adopting spatial planning documents. The complaints relate to cases of land use change, changes to spatial implementation conditions, building permits, etc.

The Commission established that reports were made because citizens were not familiar with the legislative provisions on the adoption of spatial planning documents or because the decision maker in such procedures failed to provide transparent information to citizens. With regard to the adoption of spatial planning documents, the Commission found significant risks of corruption, namely the responsible persons could, through illegal conduct (e.g. illegal influence and pressure), enable investors to gain undue advantage. With regard to the aforementioned corruption risk relating to the adoption of spatial planning documents, it was found that, in adopting spatial planning documents, decision makers can be encouraged by interested individuals, and, accordingly, there is a high risk of responsible persons acting in a subjective and biased manner and (also) pursuing their own private interests that are not necessarily the same as, or may even be in conflict with, the public interest, namely to protect the environment and area in which we live.

Regarding the adoption of and amendments to spatial legislation at the local level, the Commission highlights the failure to report lobbying contact and unethical influence. Municipalities consider lobbying and unauthorised influence to be an important issue, but remain passive nonetheless.

The issues in the field of spatial legislation are also related to the issuance of building permits. Every year the Commission receives a large number of reports about irregularities in the issuance of building permits. Since these cases involve administrative procedures, parties and secondary participants taking part in such procedures should use all legal remedies available to them. The Commission may assess the actions of participants in administrative procedures when complaints give rise to a finding that the conduct of responsible persons has all the elements of corruption. If conduct does not have all the elements of corruption as laid down in point one of Article 4 of the ZIntPK, the Commission may not consider the report. In such cases, reporting persons, in so far as they are participants in specific procedures, are advised to pursue legal remedies.

Conflict of interest, incompatibility of office and restrictions on operations

As part of its preventive activities, in addition to considering reports of conflict of interest, incompatibility of office and restrictions on or prohibition of operations, the Investigation and Oversight Bureau provides answers to questions received regarding the interpretation of a certain institution on a daily basis. Questions mostly refer to a situation that has already occurred or to a specific case; a smaller number of questions (although there has been an increase in such questions) relate to preventive action and are usually posed by an official person or public office holder who wishes to inquire whether a person violates any of the aforementioned institutions by engaging in certain conduct while holding certain office.

Most questions and reports received by the Commission in 2019 related to conflict of interest (their number was greater than the year before), and a smaller number of questions and reports related to incompatibility of office and restrictions on operations. With regard to restrictions on or prohibition of operations there is still some lack of clarity about the absolute prohibition of an authority's operations, but this usually involves cases which are not typical in terms of ordering supplies, services or works under the ZJN-3 and in which the obligation to finance a particular entity is laid down by law. The restrictions and prohibition referred to in Article 35 of the ZIntPK do not apply to cases where financing or the acquisition of funds is the legal obligation of the contracting authority and the contracting authority earmarks such funds under a budget heading for a known user.

There is even less clarity when it comes to cases where public institutes conduct business with entities that are connected with public office holders, whereby such situation does not constitute a restriction on operations as it is not an authority in which the public office holder holds office that conducts business directly with such entity but rather a public institute established by that authority. A number of reports were received in which reporting persons reported cases of violations of restrictions on business activities with public institutes, in particular, cases where a company of a municipal councillor of a municipality that established a public institute conducted business with that public institute or cases where the company of a member of the council of a public institute conducted business with that public institute. The aforementioned cases do not involve restrictions on or the prohibition of operation as laid down in the ZIntPK; however, it is important that, in such cases, an official person pays attention to the institution of avoidance of conflict of interest. There are still ambiguities relating to cases of conditionally permitted operations as in such cases there is often doubt about whether a certain entity or society (with which a public office holder is connected) may receive funds from an authority in which the public office holder who (co-)owns this entity holds office.

The number of reports received relating to restrictions on operations is the same as it was the previous year; however, this does not necessarily mean that there are no violations of restrictions on operations in practice. The Commission also found cases where public office holders attempted to find a way of avoiding the provisions of the ZIntPK so that they could, through entities in which they have ownership, conduct business with the authority in which they hold office.

There was also an increase in the number of reports (and questions) received relating to the conflict of interest. The majority of cases relating to conflict-of-interest violations at the local level were cases involving municipal councillors who as members of the Commission for Mandate Issues, Elections and Appointments nominated themselves as a candidate to be appointed to the council of a public institute and then voted for themselves at the session of the municipal council. In public institutes, there are difficulties in recognising personal, business and political contact between members of the public institute council and candidates for managerial positions as circumstances of conflict of interest. When voting at the session of the institute council, members of the institute council (official persons) should exclude themselves from taking a vote on a candidate with whom they have personal, business or political ties.

Managers employing their family members is common practice in public institutes. It can be noticed that, in certain cases, managers are aware of their duty to exclude themselves from voting and inform their superior pursuant to the ZIntPK and, accordingly, exclude themselves from the recruitment procedure (evaluation of candidates, interviews with candidates and the selection procedure); however, managers still fail to exclude themselves from signing an employment contract, which is also a stage of the recruitment procedure, with their family member. The signing of a contract is an act of enforcement that creates at least the appearance of a conflict of interest, and it is the duty of an official person to avoid the conflict of interest and authorise another person to sign the employment contract.

A significant number of conflict-of-interest violations was found in cases where an official person (either a public employee or a manager of a public institute) participated in a secret vote or voted on candidates for a managerial position, while being themselves a candidate for such position. Such circumstances are a typical example of a conflict of interest, and official persons should avoid it by excluding themselves from such situations; however, this was not the case in the cases considered. This is also due to the fact that official persons follow the instructions of the competent ministry, which do not provide for exclusion from that stage of the procedure, but only suggests that members of the institute council should exclude themselves from voting at sessions of the institute council. The Commission will propose that the ministry should amend the internal instructions to reduce the number of such cases in the future.

It has also been noticed that official persons are still not aware of their duty to inform their superior in writing of the circumstances of conflict of interest; this is an offence in accordance with the penal provisions of the ZIntPK in the event that a conflict of interest is established.

The Commission has noticed an increase in the number of reports and questions received in relation to the conduct of official persons in state-owned companies and public companies established by municipalities or the state. Article 3 of the ZIntPK provides that this Act shall apply to the public sector, unless issues governed by this Act are regulated otherwise by another Act. Because of the subsidiary application of the ZIntPK, the Commission is not obliged to consider cases or answer specific questions relating to the conduct of official persons in state-owned companies, as the institutes governed by the ZIntPK are also governed by the *Slovenian Sovereign Holding Act*, and the *Companies Act* applies to the conduct of official persons in public companies (d. o. o. or d. d.). The Commission is aware of the extent of this issue and differences in the regulation of institutions, in particular the conflict of interest, and has proposed that, under the ZIntPK-C amendment, the Commission's powers regarding the assessment of conflict of interest should be extended to also include official persons in state-owned companies and public companies.

In 2019, the Commission carried out a systemic inspection of incompatibility of office and the prohibition of membership and activities for deputies of the National Assembly of the Republic of Slovenia. It was established that certain deputies did not report to the Commission that they were engaged in an additional professional or other activity aimed at generating income since the incompatibility of office of deputy with other activities is regulated by the Deputies Act. Because of the subsidiary application of the ZIntPK (Article 3), the Commission does not assess the incompatibility of the office of professional public office holders with a professional or other activity aimed at generating income as this content is determined/defined in special acts; however, pursuant to paragraph two of Article 26 of the ZIntPK, professional public office holders are obliged to inform the Commission within the statutory time limit of additional activities they perform, unless otherwise provided by a special act. *Clarification for professional holders of public office as to the performance of additional professional or other activities* (Article 26 of the ZIntPK) No 06240-3/2019/1 of 7 November 2019 has also been supplemented in this part.

In accordance with paragraph two of Article 26, a professional holder of public office who engages in an additional activity must notify the Commission in writing within eight working days of the commencement of the activity and enclose with the notification their employer's permission and the contract under which they may perform the activity or profession. The Commission has identified practices where, on the basis of a contract concluded for a longer period of time (e.g. project work), a professional holder of public office may begin performing an additional activity for which they obtain authorisation from their employer, without notifying the Commission thereof, and then they change their employer (e.g. first they hold the office of State Secretary at one ministry and then they become a minister at another ministry) and

obtain authorisation from their current employer to perform the same additional activity and, in addition, are also allowed to engage in a new additional activity, etc. With regard to the incompatibility of office of professional holders of public office, the Commission has noticed that employers have different criteria when it comes to the treatment of and giving authorisation to professional holders of public office. The Commission has also found that, subsequently, nobody checks what tasks and work are performed by the professional holder of public office under the contract concluded, and authorisation is given in the form of 'I agree', without any specification as to the work to be done and the timeline for it under the contract concluded by the professional holder of public office.

The Commission notes that a significant number of reports of violation of the incompatibility of office received related to the performance of an additional activity by public employees; in most cases additional activities were performed in the same area of work as the work performed by public employees with their employers; however, it is important to stress that, due to the subsidiary application of the ZIntPK, the Commission does not have powers to consider the aforementioned cases since this area is regulated by Article 100 of the Public Employees Act.

As part of assessing the prohibition of membership and the performance of activities, the Commission has noted that there is a lack of legal certainty regarding the definition of the term 'entity governed by public law'. Paragraph one of Article 27 of the ZIntPK lays down that a professional holder of public office may not be a member of or engaged in management, supervision or representation activities in a company, economic interest grouping, cooperative, public institute, public fund, public agency or other entity governed by public or private law, the exceptions being societies, foundations and political parties. In considering specific cases, the Commission has found that there are different interpretations as to whether certain entities (e.g. Pomurje Hungarian Self-Governing National Community, the Association of Municipalities of Slovenia, the Association of Municipalities and Towns of Slovenia, etc.) are entities governed by public law in which a professional holder of public office may not be engaged in management, supervision or representation activities.

Healthcare

At its own initiative, the Commission considered the issue of the purchase of a cogeneration unit in a public health institution.

The implementation of investments in cases of high-value projects in the field of construction (and renovation) of public infrastructure is a very complex and demanding process. The greater the value and complexity of the project and the number of participants involved in its implementation, the greater the complexity of exercising supervision over investments in such project from the very beginning to handover for use. In order to ensure the legal, cost-effective and successful implementation of an investment and reduce the risk of irregularities and corruption occurring, the following risks should be reduced:

- inappropriate or useless terms of reference;
- non-harmonised project documentation;
- non-defined roles of individual participants within the project and/or an inappropriate delegation of functions;
- lack of information on the part of participants involved in the implementation and changes of the project in different areas;
- non-compliance with the instructions of the investor, supervisor and/or building designer.

The management and administration of construction projects are reflected in the quality and economic performance of such projects, and the final result is reflected in the quality of the executed works, the timely execution of works and the acceptable final price for the required quality of works without unnecessary additional costs. The contracting authority is responsible for the entire execution of the project from the pre-investment assessment to the handover of the investment. The contracting authority should be aware of the importance of and responsibility for managing the investment that is being implemented. The contracting authority is also responsible for the appropriate maintenance of the installed machinery.

During construction works, different justifiable and unjustifiable reasons may exist for amending the requirements set out in the contract documents. However, amending the key elements of the requirements of the contracting authority is unacceptable. If the key elements are amended in technological terms and in terms of implementation, this can also mean that if other interested tenderers had been informed of such facts, they could have been among the tenderers for the published public contract.

If a person who is authorised by experts (a chamber) to give an expert opinion on matters within their field of expertise gives an opinion that is unprofessional, misleading, subjective or intentionally inappropriate, they violate the professional standards of their field of expertise. Disciplinary commissions of different chambers or professional associations are competent to consider such cases. An expert in a particular field who is appropriately authorised may only give an opinion that reflects the established facts, and if they are in doubt, they are obliged to explain their doubts appropriately. The public sector as the contracting authority reasonably expects experts who hold suitable licences issued by professional bodies (chambers) to practice their profession conscientiously, fairly and responsibly and not to jeopardise the integrity of operation of the public sector (contracting authority).

The Commission has issued a recommendation to the Ministry of Health to improve the implementation and increase the transparency of investments in public health institutions:

- The Ministry of Health and/or public health institutions should insist that architects produce technical plans that enable different contractors and different suppliers to implement the project, this being the only way to ensure competition between tenderers for the supply of different equipment to implement the investment. For example, a plan in which an architect (intentionally) includes a technical solution that may be provided or supplied by only one supplier (who is "connected" to the architect) for the selected most favourable contractor in the process of

implementing the investment is inappropriate. If the contracting authority does not request that the architect's design should include solutions that make it possible for the necessary equipment to be supplied by at least three suppliers, there is a risk of the architect being connected with a certain supplier, expecting the supplier to pay them a certain percentage of commission on the supplied and installed equipment because they helped them get the job.

- The Ministry of Health and/or a public health institute as the contracting authority should have confidence in an expert who holds a licence issued by the Slovenian Chamber of Engineers, but they should nonetheless supervise the expert's work. If an expert who holds a licence issued by the Slovenian Chamber of Engineers and the contractor that has been selected as the most advantageous tenderer in the public procurement procedure have interests that are "very similar", it can hardly be expected that the expert will work in the interests of the contracting authority as they will make decisions in favour of the contractor rather than the contracting authority.

The Commission also considered a case where a public health institution that was owned by a municipality enabled a legal person to practice ophthalmology as a concessionaire, to rent the institution's premises for that purpose and to practice as an optician in the same premises (the legal person is registered to practice ophthalmology – a healthcare service and to practice as an optician – a craft business). After considering the case, the Commission established that the manager of the institution indeed enabled a company that is a lessee of the business premises of the public health institution to practice as an optician. The circumstances where the same legal person practices as an ophthalmologist and as an optician in the premises of a public health institution carry a high risk of violation of the Medical and Technical Devices Circular No 13 of the Health Insurance Institute of Slovenia (ZZZS), the Medical Devices Circular No 1/2018 of the ZZZS, and the Commission's principled opinion No 138. The aforementioned circulars of the ZZZS provide that an insured person has the right to freely choose an optician who has concluded a contract with the ZZZS. This means that it is the duty of the health service provider who practices as an optician to issue an order form to the insured person to whom they prescribed glasses, contact lenses or aids. If the health service provider does not issue an order form to an insured person (this applies to all types of order forms that are used in prescribing medical devices), this is a restriction on the exercise of rights of insured persons and a violation of the contractual obligation pursuant to the provisions of Article 44 of the General Agreement for a particular contract year. If the activity of ophthalmologist and the activity of optician are carried out in the same premises and are covered by the ZZZS, there is a risk that a patient will not be able to freely choose where they will order their glasses with the order form.

At its own initiative, the Commission also considered the issue of "court-appointed experts". The reason for considering the issue of the preparation of expert opinions by court-appointed experts was (1) the Commission's finding that, in the course of ten years, court-appointed experts received approximately EUR 26.5 million in their personal bank accounts for the expert opinions they prepared in accordance with court orders, and since many of court-appointed experts are full-time public sector employees, there is a risk that, in some cases, court-appointed experts who are full-time employees of public institutes prepare expert opinions during their time at work, in the official premises of their employer and with the equipment provided by their employer, while they receive payment for providing their expert opinion in their personal bank account; and (2) a large number of reports in which reporting persons expressed their disagreement with the work of court-appointed experts.

The Commission issued the following recommendations to the Ministry of Justice:

- regardless of whether an expert opinion is prepared by a court-appointed expert as a natural or legal person, the expert opinion, if it was prepared with the use of technical equipment, should contain information as to (1) which technical equipment was used to prepare the opinion, (2) how accurate the equipment is, and (3) where the equipment is situated;
- for technical equipment that was used for the preparation of an expert opinion and must meet "technical requirements" (e.g. a microscope that must be calibrated once a year), information on when the equipment was calibrated should be provided and should accompany the expert opinion;
- if an expert prepares an expert opinion using databases or paper documentation of a public institute that are not publicly available, they should state the source and the method of obtaining the information.

- In the case concerned, the Ministry of Justice informed the Commission by way of a letter of 6 February 2020 that they had informed all court-appointed experts and appraisers who are entered in the directory of court-appointed experts and appraisers published on the Ministry's website of the Commission's recommendations. The Ministry also informed the Council of Experts for Court Expert Opinions, Certified Appraisal and Court Interpretation of the Commission's findings.

In the case of court-appointed experts, the Commission also issued the following recommendations to the Ministry of Health:

- doctors as court-appointed experts – natural persons who are requested by courts to prepare an expert opinion which they cannot prepare without the examination of a natural person in the appropriate premises and without the use of the necessary medical equipment in accordance with scientific and expert rules, and do not have such premises and equipment themselves, are obliged to notify the court who requested that they prepare an expert opinion of these circumstances and, in their notification to the court, as experts in their field specify the legal and/or natural person who has the necessary professionals, premises and technical equipment;
  - certain types of expert opinions for the needs of courts may be prepared on the basis of a database (paper documentation) that is managed by the public sector and is not publicly available. In such cases, an expert opinion may be prepared exclusively by a public institution that manages such database (and not by a natural person – court-appointed expert who is employed by the public institution that manages such database);
  - if a doctor – court-appointed expert (as a natural person) employed by a public health institution examines a natural person in the premises of the public health institution without the employer's consent, there is:
    - a risk of being responsible for a possible harmful event if during the examination the person that is being examined is injured (this person is not entered in the records of the public health institution as "a person treated" in the public health institution);
    - a risk of waiting periods being skipped (the person examined in the premises of the public health institution by a court-appointed expert as a natural person for the purposes of preparation of an expert opinion is not recorded in any document of the public health institution: such examination for the purposes of preparation of an expert opinion undoubtedly affects the established waiting periods (Principled opinion No 63 of 1 February 2007) and/or the total time the doctor devotes to patients treated that day).

In 2019, the Commission also considered the issue of employment of relatives of employees of a public health institution where, in exercising administrative supervision, the Ministry of Health found a large number of cases involving family relations. After comprehensively examining the matter, on 9 December 2019, the Commission issued a recommendation to the Ministry of Health to improve the management of public health institutions. By way of a document of 24 December 2019, the Ministry made the following recommendations to all health institutions and the Agency for Medicinal Products and Medical Devices:

- responsible persons of public health institutions as official persons should pay due attention to any actual or possible conflict of interest and make every effort to avoid such (paragraph one of Article 37 of the ZIntPK). Pursuant to the provision of point 12 of Article 4 of the ZIntPK, a conflict of interest means circumstances in which the private interest of an official person influences or appears to influence the impartial and objective performance of their public duties;
- in classifying jobs relating to the provision of healthcare services in the broadest sense, public health institutions should comply with the opinions or positions of competent professional chambers and other competent bodies regarding, for example, the required education and the fulfilment of conditions for applying for specialisation, as it is necessary to ensure the protection of people's health and lives.

The Ministry asked councils of institutes to consider the issue of employment of relatives in the institution and, if necessary, take action in accordance with their powers and inform the Ministry of Health of their findings and possible measures.

Foundation for Funding Disability and Humanitarian Organisations

The Commission for the Prevention of Corruption has been monitoring the operation of the Foundation for Funding Disability and Humanitarian Organisations in the Republic of Slovenia (FDHO) for many years, more intensively in the last few years.

The FDHO has around EUR 17 million public funds at its disposal annually, and there is insufficient systemic and actual supervision of the distribution and use of these funds. It can be expected that partial interests will be pursued when it comes to the distribution of funds among users in any area, and since certain users could have undue advantage over other users due to such interests, it is necessary to ensure the legal and transparent distribution of funds (to match users' actual needs) and establish mechanisms for minimising the risk of advancement of partial interests. The FDHO should absolutely adhere to such principles in its operations; this is about public funds, and the FDHO was established to care for vulnerable groups – disabled persons and users of programmes of humanitarian organisations. Any potential deviation from the distribution of funds in accordance with users' needs is at the expense of vulnerable groups and is contrary to the legislative purpose of the FDHO.

The Commission has been receiving reports relating to the FDHO since it was founded. In 2011, the Commission ordered the FDHO to draw up an integrity plan, as it found that there are risks of corrupt and dishonest practices in the FDHO that are not appropriately managed. Since some of the identified risks are system-relevant, the Commission became actively involved in the preparation of new legal basis some time ago and became a member of the working group for drawing up a new act on the Foundation for Funding Disability and Humanitarian Organisations and the Foundation for Funding Sports Organisations.

Despite its initial opposition, the FDHO drew up an integrity plan. Although the plan had many deficiencies, the FDHO made no updates to it. Therefore, in 2017 the Commission intensified its activities to update or revise the FDHO's integrity plan. In 2018, an agreement was reached that the Commission was to take over the technical assistance to the working group on the FDHO's integrity plan, providing assistance and support to the FDHO in identifying risks and finding solutions for them. In 2019, the working group on the FDHO's integrity plan started to regularly meet with two representatives of the Commission. The working group will continue its work in 2020, as this is an extensive process of considering specific risks of the Foundation.

As already mentioned, some of the risks of corruption and breach of integrity stem from the legal bases for the FDHO's operation. In 2019, intensive work was carried out to prepare new, high-quality legislative bases for the operation of the FDHO (and the Foundation for Funding Sports Organisations – the FSO). In 2019, in accordance with the decision of the Ministry of Education, Science and Sport (the Ministry), which is responsible for drawing up the act, the working group on the act on the FDHO and the FSO was reduced to include only representatives of the Ministry of Finance, the Commission and the Ministry. The working group met many times and, over the course of the year, many variants of the proposed act were prepared with different solutions in individual areas of operation of these two foundations. In the final stage, the Government Office for Legislation was also involved in drawing up the proposed act. Just before the final draft that would be the basis for discussion between stakeholders and inter-ministerial coordination was prepared, the Ministry stayed the preparation procedure as the government collapsed.

In addition to identifying and addressing risks in the system and operation of the FDHO, the Commission decided, on the basis of a number of reports from recipients of the FDHO's funds, to carry out supervision of the actual distribution of the FDHO's funds. The purpose of the supervision is to identify potential risks of corruption and breach of integrity in the process of distribution of funds and, in the event of suspected violations, consider such breaches and report them to the

competent authorities. In 2019, the Commission obtained the necessary databases, took note of the functioning of the system of distribution of funds and began exercising supervision, which will also continue in 2020.

Upgrading the concept of strengthening the integrity of the public sector through integrity plans

In accordance with the ZIntPK, the Commission is responsible for strengthening the integrity of the public sector on the basis of integrity plans[1] and the provision of training for employees and holders of public office; the Commission, to a large extent, itself decides on the method of implementation of such activities. Over the years of exercising such powers, the Commission has established that the current integrity plan fails to effectively address all integrity factors of authorities or organisations. In 2018 the Commission exhaustively examined an additional method of strengthening the integrity of an organisation, i.e. leadership by values[2]. This method is based on establishing an integrity culture in an organisation, which is founded on clear ethical norms and expected conduct, good human relations and the primary role of the organisation's managers as role models in complying with these norms and fulfilling the expectations. This type of leadership emphasises and strengthens the integrity of employees who, in turn, strengthen the integrity of the organisation with their conduct.

As is evident from the literature, research has shown that the main building blocks of the integrity and ethical context of an organisation are ethical culture and ethical climate (Treviño and Weaver 2003, in Kaptein, 2008[3]). Ethical climate is most often defined as those aspects that determine what constitutes ethical behaviour in the workplace (Victor and Cullen, 1988[4]), while ethical culture means those aspects that encourage such ethical behaviour (Treviño and Weaver, 2003, in Kaptein, 2008). In researching the ethical culture of an organisation, Kaptein (2008) developed a multidimensional model of ethical virtues of an organisation (Corporate Ethical Virtues Model – CEVM or CEV Model), which defines eight virtues or dimensions of ethical culture that affect (un)ethical behaviour in an organisation[5]. Dimensions mean organisational conditions for ethical behaviour, a method or way of achieving ethical behaviour in an organisation, and as such reflect the organisation's ability to promote ethical behaviour of its employees. Kaptein (2011[6]) defined them as the desirable virtues or qualities of an organisation. The greater the level of embeddedness of individual

[1]Integrity plans are tools for managing the risks of corruption and breach of integrity. They are a useful mechanism for strengthening the integrity of the public sector at the specific, operative level of operation of public sector authorities and organisations, but only when used consistently and pro-actively. An integrity plan gives an authority or organisation a clear overview of the risks of corruption or breach of integrity related to its operation, the threats to the authority/organisation if these risks are realised and measures that could limit or eliminate these risks. Since an organisation is a live organism whose operation changes through time, its inherent risks also change; that is why it is essential to regularly and promptly review and update integrity plans if their implementation is to be effective. By being aware of the risks and designing and implementing measures to limit/eliminate them, an organisation strengthens its integrity and indirectly also the integrity of its employees.

[2] The Commission believes that in terms of content, leadership by values is the best approximation of the term "ethical leadership", which has less substance.

[3] Kaptein, M. 2008. Developing and testing a measure for the ethical culture of organizations: the corporate ethical virtues model. Journal of Organizational Behavior 29(7): 923–947. Available at: https://www.researchgate.net/publication/227701978_Developing_and_Testing_a_Measure_for_the_Ethical_Culture_of_Organizations_The_Corporate_Ethical_Virtues_Model, 3 May 2018.

[4] Victor, B., Cullen, J. B. (1988). The organizational bases of ethical work climates. Administrative Science Quarterly, 33, 101–125. Available at: https://www.researchgate.net/publication/228298420_The_Organizational_Bases_of_Ethical_Work_Climates, 3 May 2018.

[5] The eight dimensions were identified by means of a factor analysis conducted on the basis of a qualitative analysis of 150 diverse cases of unethical behaviour by managers and employees that were caused by a failing organisational culture.

[6] Kaptein, M. 2011. Understanding unethical behavior by unraveling ethical culture. Human Relations, 64, 843–869. Available at: http://journals.sagepub.com/doi/pdf/10.1177/0018726710390536, 3. 5. 2018.

dimensions of ethical culture in an organisation, the higher the ethical quality of the organisational culture and the less likely it is that unethical behaviour would occur (Kaptein, 2008).

The first cultural dimension in the Kaptein model is "clarity"; it concerns the extent to which the ethical standards within an organisation are concrete, comprehensive, and understandable. The second and third dimensions are consistency of behaviour of managers and supervisors with the ethical standards of the organisation; they are the role model behaviour of managers and supervisors in complying with ethical principles and values. The fourth dimension or virtue is "feasibility" and refers to the extent to which an organisation ensures conditions that enable managers and employees to behave ethically and in accordance with the normative expectations of the organisation. The fifth dimension of ethical culture refers to the extent to which an organisation supports and promotes ethical behaviour of employees and encourages and ensures a culture of commitment to ethical principles among employees, and the extent to which employees identify with the values of their organisation and are committed to the ethical norms of the organisation. The sixth dimension or virtue is "transparency" and refers to the degree to which (un)ethical behaviour and its consequences are observable to employees of an organisation. In the model of virtues of organisational ethics, Kaptein (2008) defined two components of visibility, namely a vertical and horizontal component. The vertical component refers to the extent to which managers are able to observe unethical conduct of employees and its consequences (top–down) and vice versa, the extent to which employees are able to observe unethical conduct of their superiors and its consequences (bottom–up). The horizontal component refers to the extent to which employees are able to observe unethical conduct and its consequences among themselves. The seventh dimension or virtue of ethical culture refers to the openness of an organisation to discussions on ethical dilemmas and issues, and the eighth dimension refers to the likelihood of employees being punished for behaving unethically and rewarded for behaving ethically (Kaptein, 2008).

On the basis of these findings, Kaptein developed a questionnaire by means of which the ethical culture of an organisation is measured in terms of the aforementioned ethical dimensions. The Commission translated the questionnaire (with Kaptein's consent) and in 2019 adapted it to the specific characteristics of the Slovenian public sector with a view to establishing a mechanism for measuring the ethical culture or climate of public sector authorities and organisations. In 2020, the Commission plans to integrate the questionnaire into a programming environment in order to enable it to be widely implemented in public sector organisations.

In addition to the questionnaire, the Commission is developing other mechanisms for strengthening awareness and promoting the implementation of leadership by values in public sector authorities and organisations with a view to providing additional solutions for improving the integrity of public sector organisations and their employees.

Codes of Ethics of the National Assembly of the Republic of Slovenia and the National Council of the Republic of Slovenia

In October 2012, the Group of States against Corruption (GRECO) established by the Council of Europe recommended, as part of the Fourth Evaluation Round, that the Republic of Slovenia as a member state should adopt a code of ethics/code of conduct for deputies of the National Assembly and members of the National Council. In addition, deputies of the National Assembly and members of the National Council should develop credible mechanisms of supervision and sanction that would ensure compliance with the code of ethics and the code of conduct. In March 2018, GRECO completed the Fourth Evaluation Round for the Republic of Slovenia since the majority of the recommendations for deputies of the National Assembly, members of the National Council, judges and prosecutors were implemented. However, the recommendation to prepare and adopt the codes of ethics, together with a credible mechanism of supervision and sanction, for deputies and members of the National Council remained unimplemented.

When GRECO evaluated the framework of rules in the field of integrity that applied to deputies of the National Assembly and members of the National Council in 2012, it stressed that it consisted of rules contained in different regulations and that the adoption of a single code of conduct for deputies of the National Assembly or members of the National Council would contribute to better awareness of ethical issues in general. As it was stressed by GRECO, the purpose of a code of ethics is not to impose additional obligations on deputies and members of the National Council, but to complement and clarify the obligations that are imposed by regulations. Such code of ethics would provide deputies of the National Assembly and members of the National Council with a comprehensive set of ethical norms applying to them during their term of office and instructions on how to act in the event of ethical dilemmas, thereby ensuring the consistency of their conduct.

One of the main objectives that could be achieved with the adoption of such code of ethics is the awareness of the public about the rules of conduct for deputies of the National Assembly and members of the National Council; if the public is aware of the conduct that is expected from elected representatives, this facilitates the supervision of directly elected representatives, the degree of integrity they show in performing the duties of the office and the degree of integrity of the institution, i.e. the National Assembly and the National Council, they represent.

GRECO also stressed that a code of ethics itself would not (sufficiently) contribute to the ethical culture among the aforementioned holders of public office if not coupled with a mechanism of supervision and sanction. An essential part of any system of integrity is the appropriate tools to secure its implementation, i.e. ensuring that violations are revealed and appropriately sanctioned.

For a number of years, the Commission has been actively calling for the adoption of a code of ethics by deputies of the National Assembly and members of the National Council, including by offering professional assistance in drawing up the codes and attending sessions of working bodies of both national authorities. With regard to the development of a code of ethics, GRECO has regularly highlighted that it is important that persons to whom the code will apply are involved in its preparation, as this will help ensure "the ownership" of the code – if persons draw up a code of ethics themselves, they are more likely to comply with the code's requirements as they will not feel as though they are being forced upon them. A similar approach to the preparation of such code was taken by Slovenian courts and the prosecution service, to whom GRECO also recommended, within the same evaluation round, to draw up codes of ethics. With the help of online questionnaires completed by judges and prosecutors who thus provided their opinion as to the occurrence and method of solving different ethical dilemmas, content was developed and incorporated in the codes of ethics.

The National Council of the Republic of Slovenia adopted its code in March 2015. Since in the process of evaluation of compliance with the recommendations in October 2015, GRECO assessed that the code was partly inappropriate as it contained only a set of general rules (such as dignity, loyalty) and did not contain any detailed rules on, for example, the conflict of interest, gifts and other benefits, contact with third parties, including lobbyists, or a mechanism of supervision and sanction, in 2019 the Commission continued its activities to improve the adopted code. With its contribution on the requested changes to the code, the Commission participated in several sessions of the working bodies of the National Council of the Republic of Slovenia which prepared or considered the draft code of ethics for members of the National Council, and attended the session of the National Council held in July 2019 at which the National Council adopted amendments to the code of ethics that define conflict of interest in more detail and introduce training and confidential advisory services as a mechanism for raising the awareness of members of the National Council.

On the other hand, in all these years (and even before, because deputies began to draw attention to the need to prepare and adopt the code of ethics for deputies as early as in 1993), all that the National Assembly of the Republic of Slovenia did was to manage to establish working groups that were responsible for the preparation of the code and which, upon the termination of their term of office and new elections, handed over this task to the new members of the National Assembly. Consequently, in all those years, the draft code of ethics was reviewed and upgraded time and again and remained what it is – a draft. This is also one of the reasons why in 2019 the Commission called on all deputy groups to be active and put more effort in the preparation of the code of ethics. With the establishment of a new working group for the preparation of the code of ethics, at the end of the year, the Commission became actively involved in the process of drafting the text of the code of ethics and, in the process of exchange of opinions, drew attention to GRECO's expectations regarding the quality of the code of ethics and certain good and bad practices in GRECO member states. It was agreed that the exchange of opinions would continue until the final draft of the code of ethics, which is expected to be adopted in 2020, is prepared.

Systemic deficiencies in the legislative procedure

Consistent compliance with the prescribed legislative procedure is one of the key measures in the Resolution on the Prevention of Corruption in the Republic of Slovenia, the main objective being to ensure a transparent legislative procedure and enable the broadest public to exercise supervision over the making of laws.

A good regulatory basis has been provided by the Resolution on Legislative Regulation (hereinafter: the Resolution), which was adopted by the National Assembly on 19 November 2009 and the provisions of which are described in detail in the Rules of Procedure of the Government of the Republic of Slovenia and Instruction No 10 for Implementing the Provisions of the Rules of Procedure of the Government of the Republic of Slovenia, together with the Manual for the Implementation of Assessments of Consequences of Regulations and Policies (last amended in July 2011), which follows the provisions of the Resolution and, above all, the aforementioned instruction.

The resolution represents the commitment of each government to comply with the principles of better preparation of regulations when drafting regulations and policies, including: (1) the principle of the necessity of legal regulation of an area, which requires that the legislator should analyse in depth the policy (which is being introduced or amended) from which issues that need to be regulated, causes of such issues, and detailed objectives and methods of regulation arise; (2) the principle of legal certainty, in accordance with which regulations should be clear and understandable to the general public so as to ensure legal certainty, confidence in the law, and equality before the law, and avoid different interpretations or applications of regulations in practice; and (3) the principle of transparency, in accordance with which the policy of regulating certain area should be presented to the broadest possible public, in particular, to the interest groups to which it refers, which means that regulations should be announced, prepared and adopted in regular legislative procedures that enable the interested public to receive high-quality information about, respond to and influence regulations.

The main objective of such an approach is to ensure that the regulation adopted has the greatest possible legitimacy, including through the participation of experts and the general public in the procedure for the adoption of the regulation and its subsequent implementation.

Although considerable progress has been made in the past years in relation to improving the quality and transparency of the preparation and implementation of legislative procedures and including the public in the drafting of regulations at the regulatory level, the Commission has noted that, in certain areas, the implementation in practice of such norms often remains unsatisfactory.

In view of the above, in 2017 the Commission decided to begin a project to eliminate systemic deficiencies in the preparation and implementation of legislative procedures; the Ministry of Public Administration as the competent line ministry is also involved in the project, and the Commission also invited the Secretariat-General of the Government of the Republic of Slovenia to participate in the project.

The Commission decided to comprehensively identify systemic deficiencies in the preparation and implementation of the legislative procedure of relevant line ministries after it examined and provided comments on the proposed Environmental Protection Act (hereinafter: the ZVO), which on 10 July 2017 the Ministry of the Environment and Spatial Planning published on its website[7]. The Commission found that the proposed act was another proposed regulation that does not comply with the standards for legal acts in the Republic of Slovenia. The regulatory framework laying down the standards in the field of drawing up and adopting regulations is often overlooked in practice, and the Commission underlined this fact by examining a specific case of the adoption of and amendments to the Decree on limit values for

[7]The draft Environmental Protection Act and the invitation to provide comments and proposals are published on:http://www.mop.gov.si/si/medijsko_sredisce/novica/7680/.

environmental noise indicators[8], assessing that said case proved to be an example of bad practice in the field of drawing up and adopting regulations.

After examining the e-Democracy web portal, analysing a large number of proposed regulations at different stages of the legislative procedure, and finding many inconsistencies, the Commission proposed that the identified systemic deficiencies in the legislative procedure should be eliminated.

The first activities to eliminate the systemic deficiencies in the legislative procedure were carried out in 2018 when the Commission had a meeting with the Secretary-General of the Government of the Republic of Slovenia and other representatives of the Secretariat-General of the Government of the Republic of Slovenia and representatives of the Ministry of Public Administration. The purpose of the meeting was to define deficiencies in the current legislative procedure and possible measures for their elimination. The participants of the meeting agreed that the regulatory framework laying down the legislative procedure in the Republic of Slovenia was good and was an example of good practice in comparative legal terms (OECD assessment, GRECO) and that in Slovenia there were examples of good practice in the field of drawing up regulations; however, they also agreed that the implementation in practice of the regulatory framework was too often unsatisfactory and inappropriate. It is necessary to improve supervision and clearly define the authority responsible for appropriate supervision of the implementation of the regulatory framework for the legislative procedure or the procedure for drawing up other regulations of line ministries in practice.

The following was highlighted: many legal fields are overregulated; the public interest in relation to drawing up regulations and taking into account proposals made by the interested public is poorly defined; the quality of proposed regulations also depends on the knowledge of those who draw up regulations and their knowledge of the Resolution and of the government instructions for the coordinated preparation of proposed regulations; the non-uniform implementation of the regulatory framework laying down the rules of the legislative procedure by different authorities responsible for drawing up regulations (ministries); for these reasons, there are differences in the preparation of draft regulations.

The prepared proposals and draft regulations contain deficiencies as they do not contain all the elements laid down in Article 9a (material that is subject to publication and public debate) or Article 8d (elements of a proposed implementing regulation) of the Rules of Procedure of the Government of the Republic of Slovenia, which also affects the quality of public debate. Consequently, only the text of articles is published, without a summary of the content with expert bases, key issues and objectives of the proposed regulation. The explanation of individual articles of a proposed regulation is often insufficient, lacks detail, and in many cases only cites or quotes the wording of particular provisions of the regulation. Unfortunately, the minimum recommendation contained in the Resolution on Legislative Regulation that provides for the preparation of a report on the participation of the public and the presentation of its influence on the solutions contained in a proposed regulation is often insufficiently taken into account in practice (the recommendation is set out in Instruction No 10 for Implementing the Provisions of the Rules of Procedure of the Government of the Republic of Slovenia or Annex 1 to the Instruction, which defines in detail the content and form of the cover letter accompanying the government material, a mandatory element of which is also the presentation of public participation; however, those who propose regulations have very different ways of providing such information in practice).

When it comes to the participation of the public in the process of the adoption of regulations, violations of the 30- to 60-day time limit for consultation with the public as laid down in the Resolution on Legislative Regulation[9] are common. On the other hand, it should also be acknowledged that the legislative procedure has its own rules. Often, it is very important that the Government responds promptly and quickly to certain social changes; in such cases, the time limits for consultation with the public that are laid down in the Resolution are excessively long. The principle of responsiveness

[8] The opinion on the process of the adoption of the Decree on limit values for environmental noise indicators is published at: https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/novice/03/2018/postopek-spreminjanja-uredbe-o-mejnih-vrednostih-kazalcev-hrupa-v-okolju-ne-sledi-javnemu-interesu-in-ustavni-pravici-do-zdravega-zivljenjskega-okolja-primer-slabe-prakse-zakonodajnega-postopka.

[9] See the counter of violations of the Resolution on Legislative Regulation, which is available at: https://www.cnvos.si/stevec-krsitev/.

laid down in the Resolution on Legislative Regulation could be implemented in practice in a manner that would enable high-quality public participation in the drafting of regulations. In accordance with the principle of responsiveness, in the process of drafting a regulation, it is necessary to inform the participants of the reasons why their comments, suggestions, and opinions have been taken into account or disregarded. The principle of responsiveness is described in detail in the Rules of Procedure of the Government of the Republic of Slovenia; however, there is certainly room for optimising the provisions of the Rules of Procedure so that information on whether comments on the proposed regulation have (not) been taken into account is provided at an early stage of the drafting of a regulation, for example, as part of a public presentation and in the form of a written summary at the end of the presentation. The volume of proposed regulations that are considered and adopted under an emergency procedure is worrying, as this considerably limits the possibilities of participation of experts and the general public in the procedure.

Participants of the debate agreed that the regulatory framework that lays down the procedure for the adoption of regulations in the Republic of Slovenia was relatively good but remained overlooked in practice, which is why it is necessary to ensure methods of its implementation in practice. It is necessary to strengthen or establish mechanisms for the quality control of drafted regulations. For improvements to be made in practice, it is necessary to make certain systemic changes (e.g. clearly define responsibilities for exercising the horizontal expert supervision of all procedures for drafting regulations by establishing a central authority that will monitor the drafting of regulations and materials or drafts at the horizontal level and assess them from a professional point of view). The participants also agreed that it was necessary to strengthen in practice the implementation of the principle of the necessity of legal regulation which is laid down in the Resolution on Legislative Regulation and requires that the legislator should analyse in depth the policy (which is being introduced or amended) from which issues that need to be regulated, causes of such issues, and detailed objectives and methods of regulation arise. In addition, it is necessary to ensure greater uniformity of materials and draft regulations in the early stages of their preparation. Materials submitted for inter-ministerial coordination and public consultation should be uniform.

After the meeting, in addition to the record of common findings of all three stakeholders that were exchanged at the joint meeting, the Commission provided the Secretariat-General of the Government of the Republic of Slovenia with its own recommendations for remedying the identified deficiencies, namely:

Recommendations for ensuring the quality of draft and proposed regulations:

- It is essential to make an in-depth evaluation of the situation at the very beginning, i.e. to make an in-depth analysis of the regulation or policy that is being amended or introduced.
- A proposed regulation should be based on appropriately prepared and published expert bases.
- The Rules of Procedure of the Government of the Republic of Slovenia should define in detail the mandatory elements of a proposal for an implementing regulation.
- Published draft regulations should contain a detailed and understandable explanation that is provided on the basis of the considered expert bases; the explanation should relate to the content and should not only cite or contain quotes of individual provisions of the regulation concerned. The explanation of the regulation should be such as to show the purpose of the regulation.
- The aim should be to reduce the number of regulations that are being amended or drafted anew. If the number of regulations was reduced, more time could be devoted to the preparation of an individual regulation, which would result in the better quality of the regulation.
- A mechanism for the supervision of the quality and conformity of draft regulations should be established. It is necessary to clearly define the authority responsible for monitoring the drafting of regulations and exercising expert supervision of the quality of proposed regulations at the horizontal level. Accordingly, such central authority would make a professional assessment of whether the conducted in-depth analysis contains sufficient justified grounds for adopting or amending a regulation before deciding whether a new regulation should be drafted or the existing regulation amended.

- In addition to establishing a system of appropriate supervision of the quality and conformity of draft regulations, it is necessary to establish a mechanism for accountability of those who draft regulations. In practice, those who draft regulations are not held accountable for an unprofessional and poor-quality proposal for a regulation and an inappropriately conducted legislative procedure.

Recommendations for ensuring public participation in the adoption of regulations:

- All (including publicly available) documents relating to the preparation of a particular regulation should be regularly published on a single portal.
- As many materials as possible should be made public in the early stages of the procedure.
- All proposed regulations, including those that are to be considered under an emergency procedure, should be made public.
- Public participation in the drafting of regulations is of paramount importance. If proposers of regulations published the grounds for amendments to a regulation before a draft is made, this would improve the quality of public participation in the drafting of regulations, as the public would be able to participate and give proposals at a very early stage of the procedure.
- If the public has expressed considerable interest in the issues that are being considered or if the issues that are being regulated are socially significant, public debate should be held on the proposed regulation during the time the proposed regulation is open to public debate (is published on the internet).
- Information on whether comments on a proposed regulation have (not) been taken into account should be provided at an early stage of the drafting process, for example, as part of a public presentation or debate and in the form of a written summary at the end of the presentation or debate (this requires amending the applicable regulations in accordance with which the proposer of a regulation is obliged to inform the participants of the reasons for taking into account or disregarding their proposals within 15 days of the adoption of the regulation or its submission for further consideration).
- The principle of responsiveness and the principle of transparency could be more effectively implemented if all comments received from the interested public were promptly published on the website at which the regulation in question is made available for public debate. Active cooperation with the public (e.g. through public debate and written correspondence with the participants during the drafting of a regulation) provides a greater guarantee that high-quality comments will be taken into consideration in the proposed regulation, as it is more likely that, through such cooperation, the two sides will understand each other correctly. The exchange of views, experience and knowledge may significantly contribute to clarifying all circumstances relating to the regulatory framework and facilitate the proper definition of the overriding public interest that a particular regulation should pursue.
- In order to prevent different stakeholders and the interested public from pursuing private and partial interests in the drafting of regulations, it is necessary to clearly define the public interest pursued by a particular regulation.

In the Programme of the Government of the Republic of Slovenia to enhance integrity and transparency for the 2017–2019 period[10], as part of measures in the area of "Increasing transparency and efficiency in drafting regulations and conducting procedures", the Government of the Republic of Slovenia included measure IV.2: A modular tool for the preparation of electronic documents – the MOPED application and measure IV.3: SME test – a tool for assessing the impacts of regulations on the economy, available to the public through the e-Democracy portal; the two measures partly address the deficiencies highlighted by the Commission.

The MOPED application will facilitate the drafting of all documents that are required in the legislative procedure and will replace the Register of Regulations of Slovenia. This is a modular tool for keeping data on regulations of the Republic of Slovenia and legal acts of the EU, drafting regulations, together with all the required explanations and assessment of consequences, the main aim of which is to improve the quality of the process of drafting regulations, particularly in terms

[10] The programme is available at: https://www.gov.si/assets/ministrstva/MJU/STIPS/Integriteta/Program-Vlade-2017-2019/462f84f8b1/Program_2017_2019.pdf.

of transparency, clarity and predictability. In addition to facilitating drafting, the tool will include temporal factors in planning the drafting of a regulation, taking into account the principles of the Resolution on Legislative Regulation, provide traceability between different versions of a particular regulation, and ensure the consistent publication of all draft regulations.

To increase the transparency of grounds on the basis of which regulations are drafted and to provide assistance to those who are drafting regulations in assessing a regulation's effect, the measure 'SME test' – a tool for assessing the impacts of regulations on the economy, available to the public through the e-Democracy portal has been included in the Programme of the Government of the Republic of Slovenia to enhance integrity and transparency for the 2017–2019 period. A greater transparency of the grounds on the basis of which a regulation is drafted will enable external stakeholders to prepare high-quality positions on the draft, and on the other hand, help those drafting the regulation to obtain more information from the public on possible regulatory impacts and other possibilities on the basis of which they are able to improve the quality of the draft regulation.

To facilitate and speed up the identification of gaps and deficiencies in the applicable regulation of the procedure for drafting and adopting legislation, at its session held on 25 July 2019, the Government of the Republic of Slovenia adopted the Action plan for improving the planning, drafting, adoption and evaluation of impacts of legislation for the 2019–2022 period [11].

In 2019 the Commission again held a meeting with the relevant stakeholders, this time with the Ministry of Public Administration, which participates in the development of the MOPED application (the authority responsible is the Government Office for Legislation) and is responsible for the SME test.

At the meeting, the representatives of the Ministry of Public Administration outlined activities relating to the implementation of the two measures and presented in detail the MOPED application and the e-Democracy portal (the latter will become part of the PisRS portal). Since e-Democracy is intended for the public in the regulation drafting process, the upgrading of e-Democracy with an online tool for assessing the impacts of regulations on the economy (SME) has enabled the interested public to respond to the assessment of impacts of a regulation on the economy and provide its comments on such assessment during a public debate on the regulation. The interested public or external stakeholders may propose their own version of the SME test or produce their own SME test. A calculation may be prepared for all proposed regulations that are open to comments. In this regard, one of the Commission's recommendations is being followed to a certain extent, namely that it is necessary to make an in-depth evaluation of the situation at the very beginning, i.e. to make an in-depth analysis of the regulation or policy that is being amended or introduced.

At the presentation of the MOPED application, representatives of the Commission put forward specific proposals for ensuring greater transparency in drafting regulations (e.g. who is responsible for drafting the regulation; which part of the regulation is drafted by an external expert; the list of all experts, including those who are not paid from public funds, who participated in the drafting of the proposed regulation; compliance with the time limits laid down in the Resolution on Legislative Regulation, etc.) and proposals for ensuring better connectivity between the MOPED application and other applications, in particular, the Erar application, which is managed by the Commission and which contains records of lobbying contact and information on all proposed regulations on which the Commission has provided its opinion.

Since it was established at the meeting that the Government Office for Legislation, which is the authority responsible for developing the MOPED application, should also be involved, the Government Office for Legislation was invited to participate in the next meeting. The Government Office for Legislation presented several proposals, including proposals in the form of regulatory acts of the Government (e.g. proposed amendments to the Rules of Procedure of the Government, and proposals for two instructions on the implementation of the Rules of Procedure) which were drawn up

[11] The texts are available at: https://www.gov.si/novice/2019-07-25-62-dopisna-seja-vlade-republike-slovenije/ and http://vrs-3.vlada.si/MANDAT18/VLADNAGRADIVA.NSF/71d4985ffda5de89c12572c3003716c4/1f70f408bd614bb3c125842600251d2c?OpenDocument.

to improve the quality of and increase the transparency of the drafting of regulations (among other things, also to ensure the functioning of the MOPED application). These proposals are now waiting for a response from competent authorities, namely the Secretariat-General of the Government of the Republic of Slovenia and the Ministry of Foreign Affairs. It was agreed that only the Commission and the Government Office for Legislation would attend the next meeting to present in more detail the MOPED application and agree on possible coordinated action to ensure progress in this area.