



**UNODC**

United Nations Office on Drugs and Crime

# **Full Country Review Report of Slovenia**

Review by *Georgia* and *Mongolia* of the implementation by *Slovenia*  
of articles 5-14 and 51-59 of the United Nations Convention against  
Corruption for the review cycle 2016-2021

## ***I. Introduction***

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## ***II. Process***

The following review of the implementation by Slovenia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Slovenia, and any supplementary information provided in accordance with paragraph 7 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Georgia and Mongolia, by means of telephone conferences, e-mail exchanges and involving the focal point of Slovenia, Mr. Jure Skrbec and Mr. Gregor Pirjevec; reviewing experts, Ms. Pelagia Makhauri, Mr. Zurab Sanikidze and Mr. Irakli Chilingarashvili of Georgia, and Ms. Dulamsuren Dorjsuren, Ms. Tsetsegmaa Ganbat and Mr. Javkhlan Yadamdorj of Mongolia.

A country visit, agreed to by Slovenia, was conducted from April 17, 2018 to April 19, 2018.

## ***III. Executive summary***

### ***1. Introduction: overview of the legal and institutional framework of Slovenia in the context of implementation of the United Nations Convention against Corruption***

*Slovenia acceded to the Convention on 1 April 2008. The implementation by Slovenia of chapters III and IV of the Convention was reviewed in the third year of the first cycle, and the executive summary of that review was published on 22 May 2015 ([CAC/COSP/IRG/I/3/1/Add.22](#)).*

*As a monist State, Slovenia recognizes the Convention as an integral part of its domestic law. While the Convention has a lower status than the Constitution in the hierarchy of norms, it takes precedence over other domestic laws and regulations.*

*The main legislative acts of the national legal framework against corruption include: the Integrity and Prevention of Corruption Act (IPCA,<sup>1</sup> 2010), the Act on the Prevention of Money Laundering and the Financing of Terrorism (AML Law), the Criminal Code (CC), the Criminal Procedure Act (CPA), the Enforcement of Penal Sanctions Act, Forfeiture of Assets of Illegal Origin Act (FAIOA) and Cooperation on Criminal Matters with Member States of the European Union Act.*

*In Slovenia, the primary institutions mandated to prevent and combat corruption include: the Commission for the Prevention of Corruption (CPC), the Ministry of Public Administration (MPA), the Ministry of Justice (MOJ), the State Prosecutor's Office, the Police and the Financial Investigation Unit.*

### ***2. Chapter II: preventive measures***

#### ***2.1. Observations on the implementation of the articles under review***

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<sup>1</sup> The Official Gazette of Republic of Slovenia No. 69/11, official consolidated text.

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

*Slovenia adopted an overarching anti-corruption legislation, the IPCA, in 2010, replacing the previous Prevention of Corruption Act (2003). In 2004, it adopted the Resolution on the Prevention of Corruption as its national anti-corruption strategy, which has also been referred to in the IPCA (arts. 51–55) with a subsequent action plan in 2009 for its implementation. In connection with the Resolution, Slovenia also adopted, inter alia, the Programme of Government Measures for Integrity and Transparency 2017–2019 and the Public Administration Development Strategy 2015–2020. It was reported that a new draft act amending the IPCA was pending before the National Assembly at the time of the country visit, and further amendments to the Resolution and Action Plan were under discussion.*

*The CPC, the main preventive anti-corruption body established in 2004, is an autonomous and independent State body with investigative and sanctioning powers (arts. 5 and 12, IPCA). Being designated for monitoring the implementation of the Resolution, the CPC has taken various anti-corruption preventive measures, including awareness-raising programmes, training sessions, and oversight on the use of integrity plans by public entities. Without mandatory measures for submission of draft legislation for proofing of corruption risks, the CPC only conducts corruption proofing where it deems appropriate.*

*The Chair of the CPC is appointed by the President with a term of six years with a possible extension for another term and can be relieved by the President under certain circumstances, including upon conviction and imprisonment (arts. 7 and 22, IPCA). The annual budget of the Commission is determined by Parliament, while funds allocation and human resources are within CPC's mandate. During the country visit, it was reported that the CPC is understaffed and specialized trainings are inadequate though with increased budget.*

*Slovenia has actively participated in a variety of anti-corruption initiatives and programmes, including the European Partners against Corruption, the European Anti-Corruption Training project, the European Network of Integrity Practitioners and the Regional Anti-Corruption Initiative. It is also a member of the Organization for Economic Cooperation and Development and the Group of States against Corruption, and a State party to the agreement establishing the International Anti-Corruption Academy.*

*The CPC is the designated preventive authority under article 6, paragraph 3, of the Convention.*

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

*The principle of open competition for public officials is enshrined in the Constitution (art. 122) and endorsed by the Public Employees Act (PEA) (art. 27, PEA). The recruitment, retention, and retirement of public officials are regulated by the PEA.*

*In open competitions, vacancies are advertised publicly in the Official Gazette, newspapers or with the Employment Service of Slovenia by each Government body. For posts of officials, candidates are selected based on their qualifications and competition results. There is a general policy preference for internal rotation over external recruitment. The selection of officials holding managerial positions is also conducted through open competition, for which the Officials Council (OC) is designated to determine relevant requirements and a special competition commission is appointed by the OC in each instance to run the selection process.*

*There is an appeal mechanism for unsuccessful candidates for lower-ranking positions to challenge a recruitment decision at the competent appellate commission (art. 65, PEA). Judicial review of the decision of the appellate commission is also allowed. For selection of officials holding managerial positions, no appeal is available but the unsuccessful candidate may directly file a petition for judicial review in an administrative dispute (art. 65, PEA).*

*Public sector employees are provided with trainings by the CPC and MPA on prevention of corruption. However, Slovenia has not identified which public positions are especially vulnerable to corruption and therefore no special selection rules for such positions exist. The remuneration of public officials is regulated by the Public Sector Salary System Act.*

*Criteria and appointment procedures for elected/appointed public officials, including the President, ministers, parliamentarians and mayors, are established in the Constitution (arts. 82, 103, 111 and 112), the Government Act (art. 11), the National Assembly Elections Act (arts. 1–3 and 12–16), the Local Elections Act (arts. 103–108) and the Local Self-Government Act (art. 42).*

*The funding of candidatures for elected public office is regulated in the Elections and Referendum Campaign Act (ERCA), where candidates are required to submit a report to the representative bodies and the Court of Audit (CoA) on the funds raised and utilized during the campaigns (arts. 18 and 19). The Political Parties Act (PPSA) governs the funding of political parties, according to which only natural persons are eligible to make contributions to political parties (art. 22) and funding from foreign sources is prohibited (art. 21). The PPSA and ERCA lay down sanctions relating to illegal contributions. Political parties are obliged to disclose revenue, expenditures and loans in their annual reports which are reviewed by the CoA (art. 24, PPSA).*

*Conflict of interest is clearly defined in the IPCA (art. 37). Public officials are obliged to submit two types of interest disclosures: preliminary interest disclosures for public officials who hold or have family members holding positions or business interests in private entities (art. 35, IPCA) and public officials who may be engaged in certain activities (art. 26, IPCA); and, ad hoc interest disclosure applicable when a potential conflict of interest arises upon taking office or during their performance of official duties (arts. 35–41 of the Administrative Procedure Act, art. 39 of the CPA, art. 100 of the PEA and art. 91 of the Public Procurement Act (PPA)). The CPC can also initiate investigation procedures to determine whether a conflict of interest exists (art. 39, IPCA).*

*Slovenia has three main codes of conduct for public officials. First, the Code of Conduct for Public Employees, adopted in 2001, the content of which has been incorporated in the PEA and the Employment Relationship Act. Second, the Code of Ethics for Public Employees in State Bodies and Local Community Administrations (2011) applicable to civil servants; Lastly, the 2015 Code of Ethical Conduct and Behaviour of Officials in the Slovenian Government and Ministries is applicable to ministers and State secretaries on the basis of their constitutional oaths, ideal behaviour and conduct. Various sectoral codes of professional ethics have also been adopted. Slovenia reported that all codes were duly incorporated in different legislation and non-compliant public officials would therefore be subject to disciplinary sanctions.*

*The IPCA explicitly states that public officials may report illegal or unethical conduct to their superiors, or to the CPC directly if internal reporting is unavailable or unsuccessful (art. 24). Reports can be submitted to the CPC by various means, including anonymous reporting. The protection of reporting persons and their family members is well defined in the IPCA (arts. 23 and 25). All State agencies and organizations having public authority are required to report criminal offences (art. 145, CPA).*

*Slovenia has an asset declaration system for certain types or levels of public officials, such as senior civil servants and personnel dealing with public procurement (art. 41, IPCA). Only declaring officials are required to file the declaration, excluding their spouses and minor children. Asset declarations are to be submitted to the CPC upon taking office, a year after ceasing functions, every change in office, activities, ownership or assets that exceeds 10,000 euros, and upon request by the CPC.*

*The asset declarations are open to the public during the tenure of each official until one year after departure from the public service (art. 46, IPCA). The CPC uses random checks and target selection checks of declarations. However, Slovenia also reported that there are two officials designated with the responsibility to verify over 1,400 declarations per year, and that there are plans to introduce an automated system in the future.*

*Acceptance of gifts is prohibited, with exceptions for low-value protocol or occasional gifts (art. 30 of IPCA). The PEA defines and restricts activities and work of public officials that are not compatible with the public function (art. 100).*

*The independence of the judiciary is established in the Constitution (art. 125). The organization of courts and the recruitment and dismissal of judges are governed by the Constitution and Judicial Service Act (JSA). Judges are elected by the National Assembly on the proposal of the Judicial Council. Slovenia has a specific Code of Judicial Ethics for judges. The courts make use of professional as well as lay judges. The JSA*

*provides for rules on the prohibition of gifts (art. 39), excluded activities and secondary employment (arts. 41–43). The Courts Act governs procedures regarding case assignment and distribution.*

*The public prosecutor enjoys functional independence according to the Constitution (art. 135). The organization and functioning of the Office of the Public Prosecutor is regulated in the State Prosecutor's Office Act, which provides that the State Prosecutorial Council (SPC) is an independent State body responsible for selecting prosecutors, appointing members for the Ethics and Integrity Commission (EIC) and applying disciplinary procedures. The SPC adopted a special Code of Ethics for State Prosecutors in 2015.*

#### *Public procurement and management of public finances (art. 9)*

*Public procurement in Slovenia is decentralized and regulated by the PPA, which transposed relevant European Union directives. The PPA is applied to procurement above a certain threshold (art. 21), which provides for diverse procurement methods, including competitive procedures (art. 39). Each method has clear rules on participation conditions and notification time frames (arts. 40–47, PPA). It is mandatory to publish invitations for tenders regarding public contracts on the public procurement portal, except in negotiated procedures without prior publication (art. 39, PPA). Contracts are awarded to the most economically advantageous tender. In lower-value procurement, the contracting authority is required to keep a record and publish the awards (art. 21, PPA).*

*The National Review Commission (NRC), is a specialized, independent, autonomous body assigned to review public procurement award procedures. According to the Act on the Legal Protection in Public Procurement Procedures, an aggrieved party must request a review by the contracting authority before resorting to the NRC (art. 24). The latter's decision, having suspensive effect over the procurement process, is final and cannot be challenged except for civil damages (art. 49) or the contract's voidability (arts. 42–48).*

*The procedures for deliberation and adoption of the national budget are set out in the Public Finance Act (art. 13, PFA). The national budget is prepared by the Ministry of Finance and approved by the National Assembly. The Government is required to submit reports on revenues and expenditures to the National Assembly (art. 63, PFA). The data regarding budget, revenue and expenditure is publicly accessible.*

*The CoA is in charge of auditing the national accounts, State budget, and public spending, including issuance of auditing standards. The budget supervision office is responsible for designing the public internal control system. If an error is found, the budget inspector can propose correction measures.*

*The different length of storing various financial documents and penalties for falsifications of such documents are set out in the Accounting Act (arts. 30 and 55).*

#### *Public reporting; participation of society (arts. 10 and 13)*

*Legal entities and natural persons have the right to access public information freely (art. 39 of the Constitution, governed by the Access to Public Information Act (APIA) and the Media Act), which may only be refused on certain grounds, such as the protection of classified information and personal data (arts. 5 and 6, APIA). However, the prescribed refusal bases are subject to exceptions if the information relates to public interest, use of public funds, or environmental protection (art. 6, APIA). If requests for information are unattended or denied, appeals can be made to the Information Commissioner, and then to administrative courts (arts. 27 and 31, APIA).*

*Information is made public through press conferences, official governmental websites and the Gazette (art. 10, APIA). In 2016, an Open Data Portal, containing metadata of all public registers and databases, was launched to facilitate public access to information in addition to the e-government portal. The CPC publishes reports concerning corruption risks in different sectors from time to time.*

*The freedom of assembly and association as well as the freedom of expression are enshrined in the Constitution (arts. 39 and 42). While draft legislation is published for consultation, the Government Communication Office also collects proposals submitted by the public through a designated website. Civil society organizations play an important role not only in the process of formulating preventive policies and*

measures against corruption, but also in awareness -raising campaigns. The curricula of primary, secondary and tertiary schools in Slovenia contain ethics and anti-corruption programmes. Anyone can report corruption directly to the CPC via the website, telephone, email or in person. The commission regularly informs the public of its activities in terms of protection of reporting persons.

#### *Private sector (art. 12)*

The Companies Act (CA) lays out basic requirements for establishing and operating commercial legal entities, including provisions on elimination of conflicts of interest in the private sector (arts. 38a). Corporate Integrity Guidelines as well as codes of good business practice for certain industries have been designed to safeguard the integrity of private entities.

The private sector may report allegations of corruption to the Police, the Public Prosecutor's Office and the CPC, subject to the same level of protection as that on reporting persons (art. 24, IPCA).

The Court Register of Legal Entities Act (arts. 4, 5 and 7), in addition to the CA, requires the registration of certain entities in the commercial or business register whose information is open to the public. There are various corporate governance codes for companies. Auditing and accounting standards are regulated by the CA and the Auditing Act. However, measures on preventing the misuse of procedures regulating private entities were not reported.

The IPCA has imposed a temporary restraint on senior public officials from serving as representatives of a business that may have business contacts with the official's former office after leaving office (art. 36). However, there is no general provision regarding a "cooling-off" period for public officials moving to the private sector.

Private entities must keep permanently books and accounts, subject to sanctions (art. 685, CA). In addition, criminal provisions on forgery or destruction of business documents (art. 235, CC) can apply.

The tax deductibility of expenses that constitute bribes is not allowed (art. 30, Corporate Income Tax Act).

#### *Measures to prevent money-laundering (art. 14)*

The AML Law of Slovenia came into force on 19 November 2016 and established a list of financial and non-financial institutions subjected to this regime (art. 4). The AML Law also lists categorized supervisory authorities of these professions (arts. 139-162), as well as details on risk management by obliged entities (arts. 13-15).

In 2015, Slovenia finalized a national risk assessment with the assistance of the World Bank, which is designed to identify, assess and understand the money -laundering and/or terrorist financing risks within its jurisdiction. Consequently, Slovenia applies a risk-based approach in accordance with articles 7 to 11 of the AML Law. Slovenia has established a Financial Intelligence Unit (FIU) (arts. 2 and 19, Organization and Competence of Ministries Act) and has domestic coordination meetings and platforms such as the Permanent Coordination Group, which serves as a platform for meetings and discussions of relevant bodies. These bodies represent all supervisory authorities and meet periodically to address relevant issues.

Regulation (EC) No. 1889/2005 on controls of cash entering or leaving the Community supported by the Foreign Exchange Act (FEA) requires all persons entering or leaving the European Union to declare cash and bearer negotiable instruments equal or in excess of 10,000 euros to the Customs authority which is responsible for centralizing, collecting, registering and processing the information contained in the declarations (arts. 3 and 14, FEA). Sanctions for undeclared, false or incomplete information to the customs authority range from a fine between 500 and 42,000 euros to seizure of the consignment and means of transportation (arts. 14-17, FEA). Slovenia has various provisions for electronic transfers and money remitters. These include European Union Regulation 2015/847 and the guidance note of 18 February 2019 on information accompanying transfers of funds and European Union Regulation 260/2012 establishing technical and business requirements for credit transfers and direct debits in euros.

## **2.2. Successes and good practices**

- Slovenia has facilitated public access to information by various means, such as providing an e-government service and an open data portal for citizens (art. 13, para. 1);
- Slovenia has established domestic coordination meetings and platforms which meet periodically and represent all supervisory authorities (art. 14, para. 1 (b)).

### **2.3. Challenges in implementation**

*It is recommended that Slovenia:*

- Consider ways to ensure the Resolution and Action Plan are kept up to date to reflect the current preventive anti-corruption practices (art. 5, para. 1);
- Consider ways to ensure that draft legislation be shared automatically with the CPC for its consideration in relation to the prevention of corruption (art. 5, para. 3);
- Take measures to ensure that the CPC is allocated the resources required to ensure its mandated duties, including provision of adequate trainings for its staff to carry out their functions (art. 6, para. 2);
- Consider identifying positions that are especially vulnerable to corruption, and formulating clear rules for the selection of staff for such positions, and, where appropriate, strengthening the system for relevant rotation (art. 7, para. 1);
- Consider extending the asset declaration system to all public officials, and their immediate family members if necessary, specifying rules and strengthening methods of verification of asset declarations, including through automated or electronic systems (art. 8, para. 5);
- Consider taking measures to prevent the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities (art. 12, para. 2);
- Continue to take measures to strengthen post -employment restrictions, including, where appropriate, by providing a general “cooling-off” period for all public officials moving to the private sector that may have potential conflicts of interest (art. 12, para. 2).

## **3. Chapter V: asset recovery**

### **3.1. Observations on the implementation of the articles under review**

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

*The asset recovery legal framework in Slovenia consists mainly of the CPA, CC, FAIOA, AML Law and the Act on Cooperation with the Members of the European Union. These allow for criminal, civil and non - conviction-based forfeiture. In addition, the Convention can be directly applied in Slovenia pursuant to article 8 of the Constitution. Its application is however difficult in practice given the absence of clear domestic policy and procedure.*

*A number of law enforcement, financial and judicial institutions play a role in the asset recovery process. These include the police, the FIU (Office for Money - Laundering Prevention), State prosecutors, the CPC and courts. The police department is the law enforcement authority with competence over the criminal investigation of corruption and other serious crimes under the Police Tasks and Powers Act. In practice, the police conduct investigations and trace assets, and the State prosecutors request measures for their freezing, seizing and confiscation before the courts. There is no single national institution specialized in the tracing, securing, confiscation and management of assets.*

*Slovenian legislation does not explicitly prescribe or prohibit the spontaneous transmission of information for the ultimate objective of recovering assets domestically or internationally. However, it is possible in practice through several channels: such as through the Egmont Group, the International Criminal Police Organization (INTERPOL) and Eurojust. Slovenian legislation allows mutual legal assistance in the absence of a bilateral or multilateral treaty (chap. 30, CPA). However, Slovenia has concluded bilateral treaties with*

*Serbia and Bosnia and Herzegovina on mutual legal assistance and concluded agreements for cooperation between law enforcement agencies with regard to the offences contemplated in the Convention with almost all the European countries, Turkey and the United States of America.*

*Prevention and detection of transfers of proceeds and crime; financial intelligence unit (arts. 52 and 58)*

*Obliged entities in Slovenia are required to identify their customers, including occasional ones as well as all beneficial owners (art. 12, AML Law). They are also required to verify the identities of their clients, to set up their risk profiles and implement an appropriate risk management system (art. 16, AML Law). Beneficial owners are defined under article 35 of the AML Law. Article 16 also creates the obligation to obtain information on the beneficial ownership of all accounts. In accordance with the AML Law, on December 2017, Slovenia also established a registry of beneficial ownership which collects, stores and registers data on beneficial ownership relating to various entities (art. 44, AML Law). Article 61 of the AML Law defines politically exposed persons and requires obliged entities to have risk-based procedures to carry out customer due diligence (arts. 13–15, AML Law).*

*Article 50 of the AML Law requires financial institutions to apply enhanced due diligence measures to customers identified as high risk. To this end, article 59 provides for an indicative list of potentially higher-risk factors, to which financial institutions must pay particular attention, and article 63 of the AML Law is applicable to customers or transactions related to high-risk countries. Its article 85 provides examples of potentially suspicious indicators for purposes of account-opening and general monitoring, including types of clients, accounts, services and transactions.*

*Foreign politically exposed persons are included in the screening tools pursuant to article 61 of the AML law.*

*Article 132 of the AML Law provides that records and files should be kept for at least 12 years in a durable medium. Furthermore, article 49 of the AML Law requires obliged entities to carry out proper account monitoring and regularly update the information received for customer due diligence purposes.*

*The establishment of “shell banks” is prohibited (arts. 60 and 66, AML Law). Financial institutions are prohibited from establishing or maintaining correspondent banking relationships with any fictitious financial institution and must verify that their correspondents abroad are subject to the same obligation (art. 66, AML Law).*

*The system of asset declarations in Slovenia provides for a fine of between 400 and 1,200 euros for non-compliance (art. 77, IPCA). Details on the propriety of this sanction was not provided. Declarations may not be shared with competent authorities in other jurisdictions. Slovenian legislation provides for the reporting to the tax authority of accounts in which all persons (including public officials) have an interest in or signature or other authority over in foreign jurisdictions (art. 49, Financial Administration Act).*

*Obliged entities are required to submit Suspicious Transactions Reports (STRs) to the FIU (art. 69, AML Law). In case of non-compliance, entities can get financial penalties of up to 5,000,000 euros or initiation of administrative proceedings by their supervisory entities (arts. 163–172, AML Law). The FIU does not have investigative powers. As a result, it receives and analyses STRs and forwards them, where needed, to the law enforcement authorities. In addition, both the FIU and law enforcement authorities have neither emergency nor temporary freezing powers in Slovenia. As the FIU disseminates information to financial entities, it assesses systemic risks and regularly hosts discussions with financial entities and Government authorities. The FIU is an autonomous body under the Ministry of Finance composed of members who are experts in anti-money-laundering, terrorist financing, as well as tax matters. It may cooperate with other FIUs pursuant to its memorandum of understanding and membership in the Egmont Group of Financial Intelligence Units, as well as articles 104 to 113 of chapter VI of the AML Law, which allow the exchange of information between FIUs.*

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*



Natural and legal entities are entitled to initiate civil action, sue for compensation and be recognized as legitimate owners of property acquired through an offence established in accordance with the Convention (art. 76 of the Civil Procedure Act and art. 131 of the Obligations Code). Its extension to foreign States is not clear. Slovenia has also never had a case involving a foreign State as a civil party nor a civil recovery case.

Slovenia does not require a treaty prior to rendering international cooperation, including for asset recovery purposes. If the requesting State party is a member of the European Union, the request is considered following a motion filed by the State prosecutor in accordance with the European Union Cooperation Act. If the requesting State is a non-member of the European Union, the State prosecutor must act in accordance with any bilateral agreement, or if there is no agreement: the general provisions of the CPA, which states, among other things, that the request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of Slovenia and does not prejudice its sovereignty and security (art. 516, CPA).

Article 200 of the Cooperation in Criminal Matters with the Member States of the European Union Act allows, *inter alia*, the direct enforcement of foreign interim decisions from European Union member States for seizure of assets. The provisions of this Act provide detailed guidance on the recognition and enforcement of freezing orders in Slovenia, issued by a judicial authority of another State member of the European Union, in criminal proceedings, in order to collect evidence to ultimately confiscate property. Slovenian legislation does not provide for the direct enforcement of foreign interim decisions outside the European Union. In addition, Slovenia does not have additional measures making it possible to preserve property for confiscation on the basis of foreign arrest or criminal charges issued by a foreign court. Indirect enforcement in Slovenia of interim measures may be requested by a foreign State party in the absence of a court order. In such a case, the request must be sent through diplomatic channels to the MOJ (art. 515, CPA). Slovenia can provide assistance relating to interim measures (art. 49, FAIOA). It is not clear whether the standard used to determine assistance is a reasonable basis to believe that there are sufficient grounds. The form and content of the requests is governed by article 51 of FAIOA.

The recognition and enforcement of foreign judgments or confiscation orders in Slovenia is provided in article 517 of the CPA. It is not clear whether it is possible to enforce foreign judgements or orders for freezing, seizing or confiscating assets in Slovenia unless they relate to criminal proceedings.

Confiscation of proceeds and instrumentalities of money -laundering is prescribed (art. 245, CC), including when the predicate offence is committed outside Slovenia or if the funds are of foreign origin. The provisions also protect bona fide owners (art. 30, FAIOA). Slovenia provides for the possibility of non -conviction-based forfeiture, including where a suspect is deceased, has absconded or is otherwise unavailable (arts. 498 and 498 (a), CPA). Slovenia legislation specifies conditions pertaining to refusal or any provisions relating to the lifting of provisional measures (arts. 20 and 53, FAIOA). Slovenia submitted copies of its pertinent laws at the time of the review.

#### *Return and disposal of assets (art. 57)*

There is no specific law that mentions and provides for asset returns or the disposal of property to its prior legitimate owners. Furthermore, where requesting States are European Union member States, confiscated property in excess of 10,000 euros is shared on a 50 per cent basis, although non-cash assets may be returned in full to the requesting States. Slovenia has not yet concluded agreements on the final disposal of confiscated assets nor returned corruption-related assets to any foreign State.

### **3.2. Successes and good practices**

- Slovenia has established a Register of Beneficial Ownership Information (arts. 12 and 52, para. 1).

### **3.3. Challenges in implementation**

*It is recommended that Slovenia:*

- *Assess whether the creation of a comprehensive system for the effective management of assets including a specialized authority/unit for the management of assets prior to their return would be beneficial (art. 51);*
- *Assess the effectiveness of its asset declaration system, including the revision of sanctions for non-compliance in conjunction with the financial disclosure system (arts. 8, para. 5, and 52, para. 5);*
- *Consider taking measures to allow for the sharing of declarations with competent authorities in other jurisdictions and provisions on the reporting of accounts held in foreign jurisdictions (art. 52, para. 5);*
- *Verify and ensure that another State party is allowed to initiate civil action, sue for compensation and be recognized as legitimate owner of property acquired through an offence established in accordance with the Convention (art. 53);*
- *Take measures to provide for the direct enforcement of foreign interim decisions emanating from countries outside the European Union, including decisions emanating from civil proceedings (arts. 54, para. 1 (a), and 55, para. 1 (b));*
- *Consider taking measures making it possible to preserve property for confiscation on the basis of foreign arrests or criminal charges issued by a foreign court (art. 54, para. 2 (c));*
- *Take measures to ensure that whenever possible, the requesting State party is given an opportunity to present its reasons in favour of continuing the measure before lifting of provisional measures (art. 55, para. 8);*
- *Take measures to ensure that property confiscated as a result of Convention offences may be returned to requesting States in accordance with the Convention, as well as prior legitimate owners including in the absence of a sentence in the requesting State (art. 57, paras. 1–4) and consider concluding agreements for the final disposal of confiscated property (art. 57, para. 5);*
- *Consider granting the FIU and law enforcement authorities emergency or temporary freezing powers over suspicious transactions (arts. 52 and 58);*

#### **3.4. Technical assistance needs identified to improve implementation of the Convention**

- *Assistance in the creation of a confiscated asset management institution (art. 51);*
- *Capacity-building (art. 53).*

## IV. IMPLEMENTATION OF THE CONVENTION

### A. Ratification of the Convention

The National Assembly of the Republic of Slovenia ratified the Convention on 6 February 2008, and the President signed it on 14 February 2008. Slovenia deposited its instrument of ratification on 1 April 2008.

### B. Legal system of Slovenia

The Republic of Slovenia (Slovenia) has a continental legal system with a strong influence of German laws and legal order.

Slovenia is a democratic republic (art. 1 of the Constitution) governed by the rule of law and a social state (art. 2 of the Constitution) founded on the principle of power being vested in the people and the separation of powers (art. 3 of the Constitution). The form of government is, therefore, a republic. In terms of political organization, it is a unitary state with a parliamentary system of government balanced by the institution of the constructive vote of no confidence.

The power of the executive branch is divided between the President of the Republic, who is elected through direct elections but whose powers are per se of a representative nature, and the Government, which is the actual (substantive) holder of the executive power.

Slovenia has an “incomplete bicameral system,” which means that the upper chamber (the National Council) does not have the same competencies as the lower chamber (the National Assembly) but only supervises the work of the lower chamber.

Territorially, Slovenia is a unified and indivisible state (art. 4 of the Constitution). Slovenia is organized in a dual-rail system, which consists of the national level and the local-municipal level, to which self-government is guaranteed by the Constitution (art. 9).

#### *Legal status of international binding instruments*

Article 8 of the Constitution stipulates that generally accepted rules of international law and international agreements, when ratified and published in the Official Gazette, shall become an integral part of Slovenia’s domestic law and override any contrary provisions of domestic law. Once ratified, treaties are directly applicable. As the highest legal document, the Constitution is positioned hierarchically above international treaties, domestic laws, and regulations. The National Assembly ratifies international treaties by a simple majority of votes except where a different type of majority is provided by the Constitution or law. All laws must conform to ratified international treaties.

Accordingly, the United Nations Convention against Corruption (Convention) has become an integral part of Slovenia’s domestic law. The Convention is applicable directly where it provides for clear and concrete measures, while its general provisions shall be implemented through domestic legislations. In Slovenia’s relations with the Member States of the European Union, the legal acts of the European Union are applicable and may prevail over the provisions of the Convention. The community law has supremacy over national law. Slovenia’s Constitution is written in a single document and represents the highest legal act in the legal system. It regulates the political and legal system of Slovenia, human rights and fundamental freedoms, economic and social relations, the organization of the State, local self-government, public finance, legality, and the Constitutional Court. The main general laws in the legal system are referred to as Acts (*zakoni*). In the hierarchy of norms, Acts are under the Constitution and international treaties.

The laws are adopted by the National Assembly and enter into force after being published in the Official Gazette (usually after 15 days). Case law and judicial decisions are not recognized as sources of law and do not have the same legal force as legislation. However, in practice, lower courts often follow precedents in judging cases due to the power of the arguments. Regulations and other general acts must conform to the Constitution, ratified international treaties and Acts. Regulations (individual and general) adopted by the Government must be published in the Official Gazette before entering into force (usually after 15 days). Regulations adopted by local communities are published in the official publication determined by the community.

### *Authorities responsible for the implementation of the Convention*

The primary institutions mandated to prevent and combat corruption include:

- Commission for the Prevention of Corruption (CPC),
- Ministry of Public Administration (MPA),
- Ministry of Justice (MOJ),
- State Prosecutor's office (comprising the Specialized State Prosecutor's Office for, inter alia, corruption and organized crime),
- Police (comprising the National Investigation Bureau, a specialized criminal investigation unit for complex crime, including corruption),
- Financial Investigation Unit.

There are other bodies whose responsibilities are relevant to the implementation of the Convention. These bodies include the Agency for Public Oversight of Auditing, Bank of Slovenia, National Review Commission for reviewing public procurement procedures, Information Commissioner, Ministry of Economic Development and Technology, Ministry of Education, Science and Sport, Court of Audit, Ministry of Finance and Constituent Bodies of the Ministry of Finance - Office for Money-Laundering Prevention, Financial Administration of Slovenia, Public Payments Administration, and Budget Supervision Office, etc.

### *Court system*

All courts in Slovenia act in accordance with the principles of constitutionality, independence, and the rule of law. The unified system of courts consists of courts with general and specialized jurisdictions. Courts with general jurisdiction include 44 district, 11 regional and 4 higher courts, and the Supreme Court. In contrast, the system of specialized courts consists of 4 labour courts, 1 social court (on labour-related and social insurance disputes) and the Administrative Court (which provides legal protection in administrative affairs and has the status of a higher court). Holding a special place in the justice system, the State Prosecution Service is an independent State authority and part of the executive branch. The State Prosecutor General is appointed by the National Assembly.

### *Criminal justice system*

The criminal legislation of Slovenia primarily includes the Criminal Code (CC) of 2008 (with amendments up to 2017), the Criminal Procedure Act (CPA) of 1994 (with amendments up to 2014) and the Enforcement of Penal Sanctions Act of 2000 (with amendments up to 2015).

The fundamental principles of criminal justice in Slovenia include legitimacy, minimum use of repression, legality, humanity, a responsibility based on guilt, the individualization of criminal sanctions, and re-introduction of offenders into society as an objective of punishment (art. 45.a, CC).

The right to a fair and speedy trial is provided under Article 23(1) of the Constitution. The general rule of Article 11 of the CPA forbids extorting a confession or any other statement from the accused through threats, coercion, or any other similar method. Article 17 of the CPA requires that criminal proceedings establish material truth. On evidentiary rules, the CPA provides for the judiciary's free assessment of evidence (art. 18 (1)) and establishes a broad exclusionary rule whereby the court may not base its decision on evidence obtained in violation of human rights and fundamental freedoms provided by the Constitution, nor on evidence obtained in violation of the provisions of criminal procedure.

### *Organization of the investigation and criminal procedure*

The initiation of the criminal procedure depends on the type of criminal offence in question. Most criminal offences are prosecuted *ex officio*, which means that only a State prosecutor may initiate the criminal procedure. However, if there are no grounds to prosecute a criminal offence *ex officio*, the State prosecutor must instruct the injured party within eight days that he/she may initiate or continue the prosecution by himself/herself.

For some offences, the victim (functioning as the private prosecutor) may also initiate the procedure. Furthermore, some criminal offences may only be prosecuted upon the victim's motion. In the latter case, after the victim files a motion for prosecution, the State prosecutor becomes the competent authority, and the victim assumes the role of an injured party in the criminal procedure. Both types of criminal offences are usually the pettiest or those where the personal element is predominant (e.g., slander and spousal rape).

Slovenian criminal procedure consists of four phases: a) the pre-trial procedure, b) the filing of the charges (indictment), c) the trial, and d) the judicial review procedures (appeal against judgments of the court of the first instance and the so-called extraordinary remedies).

The pre-trial procedure consists of preliminary proceedings (with the police as the *dominus litis*) and the investigation phase (with the investigating judge in charge). The criminal procedure usually starts with filing a report of criminal conduct to the police or the State Prosecutor's Office. After the police investigation by interviews with suspects and witnesses, investigation of the crime scene, examination of evidence, search of the premises, etc., the case is transferred to the State prosecutor. The State prosecutor then decides whether there is well-grounded suspicion to call for a formal investigation (in cases of serious or complex criminal offences) or file a direct indictment (without the investigation phase).

In the former case, such an investigation is conducted by the investigating judge to gather evidence for the State prosecutor to decide whether to file an indictment or drop the case. The investigating judge, bound by the inquisitorial maxim, conducts the investigation on their own initiative. In the investigation phase, the investigating judge is granted investigative powers, although they may transfer such powers to the police to execute certain acts. The State prosecutor does not have investigative powers but may request the police to conduct certain investigative acts. After the investigation phase is concluded, the files are submitted to the State prosecutor for further action.

After filing the indictment, the defendant or the trial judge may file an objection to the charging document if there are no grounds to continue criminal proceedings. The objection is then decided by a panel of three judges (not including the trial judge). When the indictment becomes final, the case is submitted for trial. Before the main proceeding, there is a preliminary hearing when the defendant pleads guilty. If they plead guilty, a hearing for criminal sanctions can be conducted immediately. The trial is organized mainly in an accusatorial manner; however, the court is bound to seek the truth.

The trial closes after the pronouncement of the judgment, such as a finding of guilt, acquittal or rejection of the charge. If there is no appeal, the judgment becomes final in 15 days after it has been served on the accused in the case of regular proceedings and after eight days in the case of summary proceedings. Summary proceedings are used for offences for which a sentence of up to three years of imprisonment is prescribed. In this case, the State prosecutor can propose issuing a punitive order.

The appeal may be filed by the accused or their relatives, the State prosecutor, and the injured party. The appeal is decided by a court of second instance (higher courts). The final judgment may also be reviewed through extraordinary legal remedies, usually by the Supreme Court. In addition, a constitutional complaint can be filed to the Constitutional Court regarding the Supreme Court's decision by asserting the violation of human rights and fundamental freedoms. The Constitutional Court's decision is further subject to review by the European Court of Human Rights based upon the European Convention on Human Rights.

*Available assessments of anti-corruption measures, laws, and policies that have to be taken into account.*

In a separate communication addressed to the Secretariat, Slovenia has provided a list of relevant laws, policies, and other measures cited in the self-assessment checklist.

Slovenia has included direct and indirect reports, surveys, and other publications regarding corruption in Slovenia.

*Indexes and public opinion surveys:*

- CPI (annually); published by Transparency International; URL: [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016);
- Global Corruption Barometer 2013; published by Transparency International; URL: <https://www.transparency.org/gcb2013>;
- World Bank Business Environment and Enterprise Performance Survey; published by World Bank; URL: <http://www.enterprisesurveys.org/data/exploretopics/corruption>;
- Index of Public Integrity; published by European Research Centre for Anti-Corruption and State-Building; URL: <http://integrity-index.org/>;
- Eurobarometer Special Survey: Corruption, published by EU; URL:

[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_398\\_fact\\_si\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_398_fact_si_en.pdf);

- Flash Eurobarometer reports on Businesses' attitudes towards corruption in the EU; published by EU, URL: [http://ec.europa.eu/commfrontoffice/publicopinion/archives/flash\\_arch\\_374\\_361\\_en.htm](http://ec.europa.eu/commfrontoffice/publicopinion/archives/flash_arch_374_361_en.htm);
- Opinion on Corruption in Slovenia (original title: Stališče o korupciji v Sloveniji), 2002-2009, discontinued, published by Commission for the Prevention of Corruption, URL: <https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/analize-raziskave-in-statistika/raziskave-in-statistika/>;
- Corruption among journalists (original title: Pojav korupcije med novinarji), 2008, published by Commission for the Prevention of Corruption; URL: [https://www.kpk-rs.si/download/t\\_datoteke/1756](https://www.kpk-rs.si/download/t_datoteke/1756);
- Survey on business and economical ecosystem, business ethics and graft in Slovenia (original title: Raziskava o gospodarskem in poslovnem okolju, poslovni etiki in neuradnih plačilih na Slovenskem), 2002, 2004, 2006, 2009, published by various Slovenian state institutions, URL: <https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/analize-raziskave-in-statistika/raziskave-in-statistika/>;
- Global fraud survey, 2016, published by Ernst & Young, URL: [http://www.ey.com/Publication/vwLUAssets/ey-global-fraud-survey-2016/\\$FILE/ey-global-fraud-survey-final.pdf](http://www.ey.com/Publication/vwLUAssets/ey-global-fraud-survey-2016/$FILE/ey-global-fraud-survey-final.pdf).

#### *Expert reports:*

- Annual reports, 2004-2016, Commission for the prevention of corruption; URL: <https://www.kpk-rs.si/sl/komisija/letna-porocila>;
- Review of the state of the affairs, 2012-2016, Commission for the Prevention of Corruption; URL: <https://www.kpk-rs.si/sl/komisija/letna-porocila>;
- Evaluation and compliance reports, Greco, URL: <http://www.coe.int/en/web/greco/evaluations/slovenia>;
- Report on Implementation of the OECD Anti-Bribery Convention, OECD, URL: <http://www.oecd.org/daf/anti-bribery/slovenia-oecdanti-briberyconvention.htm>;
- EU Anti-Corruption Reports, 2014, European Commission; URL: [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en)

*Please see also the summary under paragraph 1 of article 5 of the Convention (examples of measures to ensure full compliance with the Convention).*

#### *Process of preparation of responses to the self-assessment checklist*

The focal point organized an introductory meeting on 18 May 2017 with all competent institutions that could share their experiences and provide input for the questionnaire. At the introductory meeting, the labour was divided (who will be responsible for what), and contact details of a minimum of two representatives of each responsible institution were collected. It was agreed at this meeting that each institution should provide its replies and answers to the questionnaire before 15 July 2017. After receiving all the information, the focal point checked and analysed all gathered data and asked for amendments, corrections, clarifications, etc. (the deadline was 11 August 2017). All the received information was combined into one document and put into the Omnibus.

Institutions that have collaborated in this process:

- Commission for the Prevention of Corruption (CPC)
- Agency of the Republic of Slovenia for Public Legal Records and Related Services
- The Slovenian Institute of Auditors
- Agency for Public Oversight of Auditing
- Bank of Slovenia
- The State Prosecutorial Council
- National Review Commission for Reviewing Public Procurement Procedures

- Information Commissioner (IC)
- Ministry of Finance (MoF)
- Constituent Bodies of the Ministry of Finance
  - Financial Administration of the Republic of Slovenia
  - Office for Money-Laundering Prevention
  - Budget Supervision Office
  - Public Payments Administration
- Ministry of Economic Development and Technology
- Ministry of Education, Science and Sport
- Ministry of Public Administration (MPA)
- Court of Audit (CoA)
- Supreme Court of the Republic of Slovenia
- Ministry of Justice (MOJ)
- Supreme State Prosecutor's Office
- Chambers of Commerce and Industry
- The Commission also asked the civil organizations to provide comments/replies to the self-assessment checklist:
  - Transparency International Slovenia
  - CNVOS (established in 2001, an umbrella network of Slovenian NGOs)<sup>2</sup>
  - EISEP

*Slovenia has pointed out the following best practices in Slovenian fight against corruption:*

#### *a) Integrity Plans*

An integrity plan is a tool for establishing and verifying the integrity of an organization in the form of risk management. The Slovenian model of the integrity plan has been developed based on international conventions, standards, and principles for corruption prevention and presents/establishes mandatory standards, under the Integrity and Prevention of Corruption Act (IPCA), for all public sector bodies. The integrity plan aims at the following:

- Identifying corruption risks and risks for violations of integrity in public sector organizations;
- Assessing the probability of occurrence and the seriousness of the consequences of the risks identified; and
- Determining measures to reduce or eliminate corruption risks.

In the sense of implementation, the integrity plan is a systematic and documented process where all employees should be actively involved. The overall formal responsibility of maintaining an efficient integrity plan lies with the head of an organization. At the same time, the head appoints an integrity plan's custodian whose duty is to administer the implementation of the organization's obligations regarding the integrity plan (reporting, etc.). Further, a working group comprising various employees is established to generate the substance and amendments to the integrity plan. While it is possible to single out several institutions that use the integrity plan in an exemplary manner, a large group of public sector entities perceive it solely as an unnecessary administrative burden.

In their integrity plan, public entities must each take a position and assess their status in relation to six categories of institutions of the IPCA (art. 47(1), IPCA)<sup>3</sup>. In this connection, checks are also made regarding not only regular public employees but also top (high) officials<sup>4</sup> as to issues related to gifts, activities that the stated subjects may or may not perform in addition to their job or official function, restrictions on business operations of public employees and their family members, and regulation of conflicts of interest, etc. The CPC conducts regular checks on whether persons under obligation have adopted integrity plans and how they are being fulfilled. The methodology and process of formulation and evaluation of integrity plans are defined in the CPC Guidelines

<sup>2</sup> Zavod center za informiranje, sodelovanje in razvoj nevladnih organizacij, for more information: <https://www.cnvos.si/>

<sup>3</sup> State Entities, self-governing local communities, public agencies, public institutes, public utility institutes and public funds.

<sup>4</sup> I.e., holders of public office (functionaries)



published online.

The CPC also manages the national Electronic Corruption Risk Register. It contains information on all institutions obliged under the IPCA to formulate and implement integrity plans and fill the Corruption Risk Register electronically with risks, measures, deadlines, and information on employees in charge of measures to prevent and eliminate corruption risks. Thus, the Electronic Risk Register serves as a vital corruption risk-management tool primarily for the institutions and the CPC as a supervisory authority. The Electronic Risk Register enables the CPC to perform a variety of analysis regarding the situation in individual institutions and/or in a specific sector, for instance, state administration, healthcare, education, social security, environment administration, spatial planning in local self-government and so forth.

#### *b) Corruption risks assessments*

Based on integrity plans adopted by different public sector bodies, an assessment may be conducted, which enables the CPC to identify both relevant corruption risks and public sector bodies to which those risks are pertinent. Such assessments allow for identifying weaknesses of specific fields and systems in the public sector and measures to address them.

So far, the CPC has conducted two such assessments: for all Slovenian municipalities (in 2015) and all Slovenian elementary and high schools (in 2016). Both assessments gave the CPC and other relevant stakeholders (i.e., the CoA, Inspectorates, and other supervisory bodies), but above all, the municipalities and the schools themselves, a good insight into the corruption risks that they face. They also enabled the CPC to tackle, by issuing recommendations, manage corruption risks and address all municipalities and schools simultaneously. The assessment also helped relevant ministries identify shortcomings in the current legislation, which may sometimes constitute a source of risks.

Currently, the CPC is working hand in hand with the Ministry of Education to implement the recommendations.

Furthermore, the Government included these measures in its Programme of the Government for Strengthening Integrity and Transparency 2017 – 2019.

*For more on the Programme of the Government for Strengthening Integrity and Transparency 2017 – 2019, see the summary under paragraph 1 of article 5 of the Convention.*

#### *c) CPC's awareness-raising projects*

The CPC regularly conducts awareness-raising projects, some of which focus on the general public, but most of them target specific groups of citizens. One of the projects that have addressed people of all ages and social groups is the Movie Against Corruption, an annual film festival held three times. Furthermore, in 2014 several libraries joined the efforts of the CPC by promoting a selected corpus of corruption-related books to their members. Addressing preadolescent children, the CPC published a picture book that presents the social consequences of corruption. Its release was accompanied by art workshops in several kindergartens, whereby children expressed their imagining of the issues raised in the book. Several creative tenders have been organized for school-age juveniles, inviting them to submit their critical works of art. So far, awards have been given out to the best drawings (2011), the best t-shirt designs (2012), the best letters to the MPs (2013), and the best short films (2016).

*For more information on the projects above, please see the summary under paragraph 2 of article 5 of the Convention.*

#### *d) Public Procurement Portal and STATIST*

Higher transparency in public procurement is, along with the mandatory use of e-Auctions for ministries, constituent bodies of ministries, and government services, guaranteed through the upgrade of the Public Procurement Portal, where public procurement contracts, concessions and public-private partnerships can be accessed. An important project on increasing transparency in public procurement is the IT solution STATIST, which has been widely available since the end of January 2016. It ensures the integrated, direct, and modified publication of information on public contracts awarded in Slovenia.

STATIST contains all information on public contracts awarded since 1 January 2013; each user can examine the data using various filters. The application displays various data sets for a selected timeframe, such as the contract value, contracting entities, largest tenderers, and most frequently awarded contracts, according to the subject and



legal basis. The data can be exported in CSV format, which enables re-use.

*e) ERAR (previously “Supervisor”)*

The ERAR is an online application that provides the public with information on business transactions of public sector bodies. These bodies include direct and indirect Budget Users (legislative, judicial and executive branch bodies, autonomous and independent state bodies, local communities and their parts with legal personality, public institutes, public funds, and public agencies, etc.). The ERAR is a project conceptually designed and prepared by the CPC in cooperation with an independent expert and other bodies which provided the relevant data and cooperated in its presentation and interpretation (the Slovenian Ministry of Finance - MOF, the Public Payments Administration of the Republic of Slovenia, and the Agency of the Republic of Slovenia for Public Legal Records and Related Services - AJPES).

The application indicates contracting parties, the largest recipients of funds, related legal entities, the date and amount of transactions, and the purpose of money transfers. It also enables the demonstration of data using graphs and printouts for specified periods and others. The ERAR represents an important step towards more transparent state operations and will be further upgraded and improved by the CPC in cooperation with other bodies. The application enables insights into financial flows among the public and private sectors by the public, the media, the profession, and other regulatory and supervisory bodies. At the same time, it implements the primary purpose of the CPC’s mission: strengthening the rule of law, integrity, transparency and mitigation of corruption risks and conflicts of interest.

Transparency of financial flows among the public sector and the private sector achieved through this application increases the level of responsibilities of public office holders for effective and efficient use of public finance, facilitates debate on adopted and planned investments and projects as well as reduces risks for illicit management and abuse of functions, and above all, limits systemic corruption, unfair competitiveness and clientage in public procurement procedures.

The ERAR application, designed and developed by the CPC, won the UN Public Service Award in 2013 (under the former name “Supervisor”), an important recognition of excellence in public service. The data on transactions from ERAR is updated daily and provided in a machine-readable format.

The ERAR can be accessed here: <<https://erar.si/>>. An article about ERAR in English is attached to the questionnaire (file name: ERAR - Slovenia)

More information and FAQ about ERAR/Supervisor can be accessed here:

- Supervisor Presentation (<[https://www.kpk-rs.si/upload/datoteke/Supervisor\\_2014\\_ENG.pdf](https://www.kpk-rs.si/upload/datoteke/Supervisor_2014_ENG.pdf)>)
- Supervisor (<[https://www.kpk-rs.si/upload/datoteke/Supervisor\(1\).pdf](https://www.kpk-rs.si/upload/datoteke/Supervisor(1).pdf)>).

Comments regarding the launch of the ERAR/Supervisor are available at:

- <http://techcrunch.com>
- <http://www.sloveniatimes.com>

*f) Proactive approach of the CPC*

*(1) Restrictions on business activities due to conflicts of interest*

IPCA restricts certain business activities. In particular, the Act contains the following provision:

**Integrity and Prevention of Corruption Act**

Article 35 (Restrictions on business activities and the consequences of violations)

*(1) A public sector body or organisation which is committed to conducting a public procurement procedure in accordance with the regulations on public procurement or which carries out the procedure for granting concessions or other forms of public-private partnership, may not order goods, services or construction works, enter into public-private partnerships or grant special and exclusive rights to entities in which the official who holds office in the body or organisation concerned or in cases where the official's family*

*member has the following role: participating as a manager, management member or legal representative; or has more than a 5% level of participation in the founders' rights, management or capital, either by direct participation or through the participation of other legal persons.*

*... (continued)*

In Slovenia, there are approximately 5000 holders of public office, and there is a constant need to periodically check if the provisions on the restriction of business activities are violated. Due to the impossibility of a small number of CPC employees to check all the transactions of public sector organizations by hand, the CPC has developed an application that helps carry out the check automatically.

The CPC can link the database of restrictions of activities in place with databases of transactions of public bodies (to detect prohibited business) and the Business registry (to identify 'officials'<sup>5</sup> who should report business restrictions but have failed to do so).

Using a web form, public sector organizations submit a list of companies to which the restriction of business activities applies. Collected data is then paired with ERAR's data on transactions of public organizations. Transactions between the public sector organizations and the companies (for which the restriction of business activities applies) reported on the list are flagged as suspicious and manually checked by the CPC's staff. In case of breach of the provisions of the above-cited article of the IPCA, the CPC can fine the offenders and request business transactions to be annulled.

The CPC identified a list of suspected violations of restrictions of operation/business from an analysis done in 2012. Further investigation has shown violations in 68 cases (429 contracts). The total value of the illicit trade was €1,436,208.28.

In 2013, the CPC repeated the analysis, and no violations were detected; in 2014, there were four violations.

## *(2) Financial Flow Analysis*

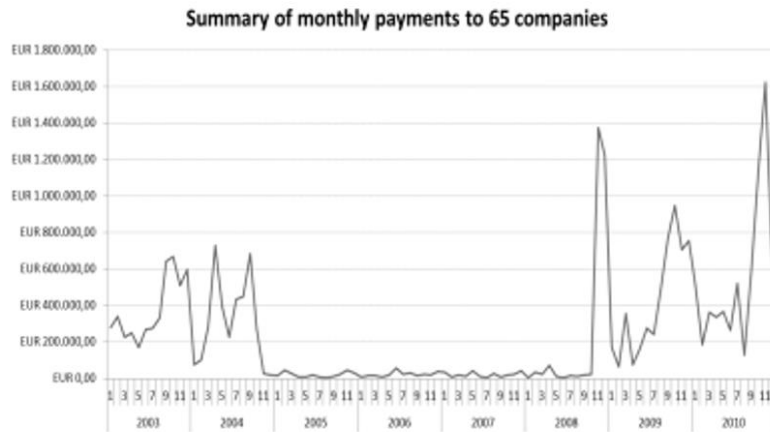
The analysis is aimed at detecting a link between individual governments and the disbursement of funds to particular companies. The analysis has shown a high correlation between the change of government in power and allocations of funds from the state budget to a limited number of companies, high market inflexibility for certain services, such as IT services, pharmaceutical products, construction works, etc., and the existence of a group of companies highly dependent on the transfers from the state budget (they receive a significant amount of their income only from the state budget), which constitutes a noticeable risk of corruption.

The chart shows the timeline of payments to 65 companies in the time of three governments: the left-wing, right-wing and again left-wing governments.

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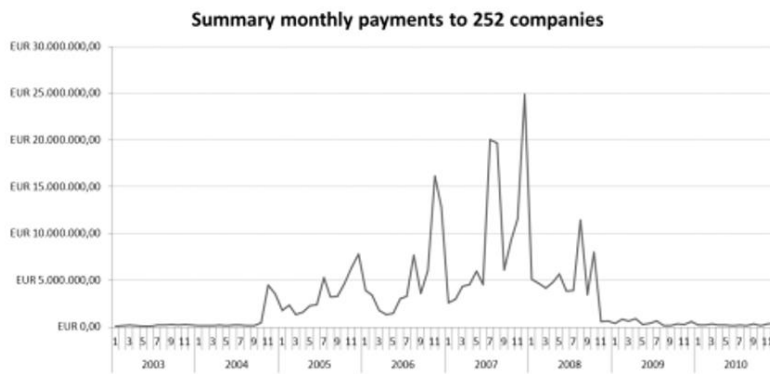
<sup>5</sup> "Officials" means deputies of the National Assembly, members of the National Council, the President of the Republic, the Prime Minister, ministers, state secretaries, judges of the Constitutional Court, other judges, state attorneys, officials in other self-governing local communities (hereinafter: local communities), members of the European Parliament from the Republic of Slovenia, unless their rights and obligations are stipulated otherwise by the regulations of the European Parliament, and other officials from Slovenia working in European and other international institutions, the Secretary-General of the Government, former officials while receiving wage compensation pursuant to the law, and officials of the Bank of Slovenia, unless their rights and obligations are stipulated otherwise by the Act governing the Bank of Slovenia and other regulations binding thereon; (Article 4, IPCA)

## Analysis

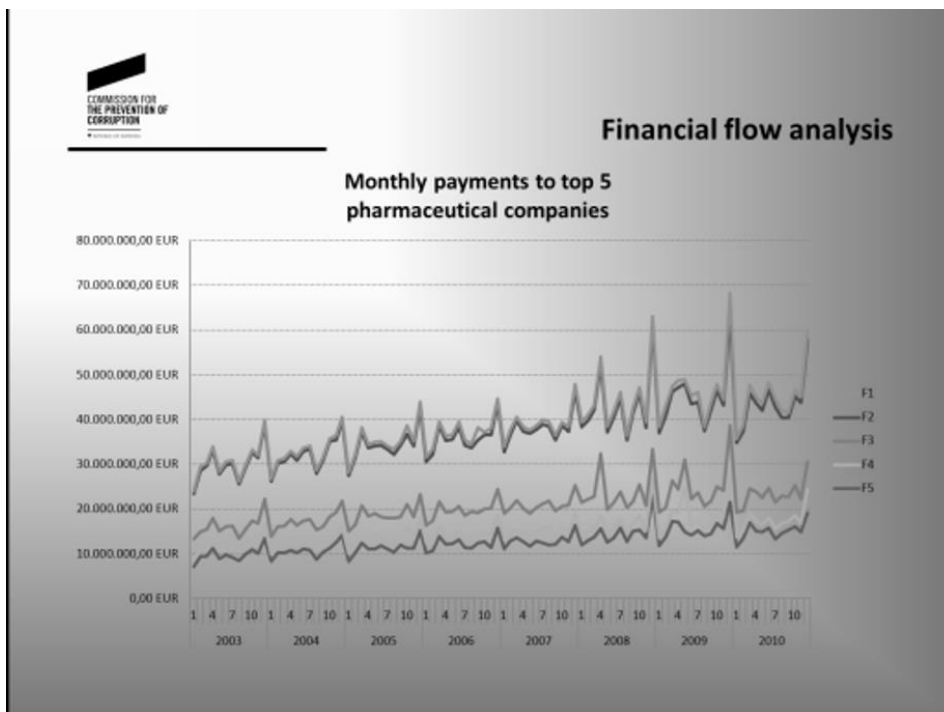


Similarly, the chart below represents summary payments to 252 companies connected with the right-wing government. The timeline again represents the left-wing, right-wing, and left-wing government mandates.

## Analysis

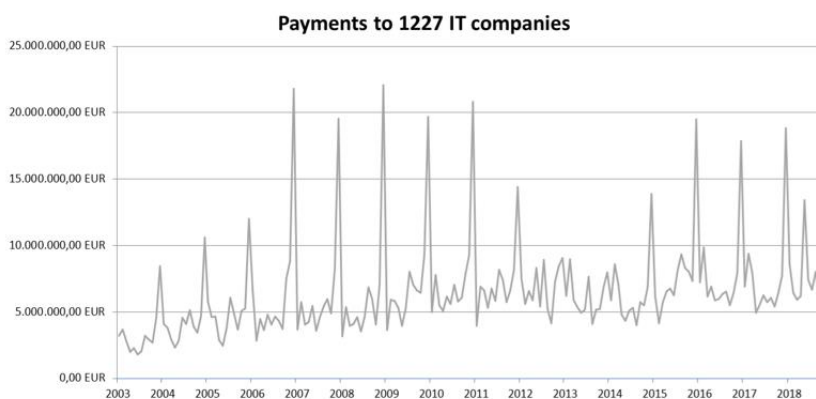


The chart below represents income from the public sector for the five biggest pharmaceutical companies. As can be seen, the market share of individual companies was almost unchanged for nine years, which was at least unusual.



The last chart (see below) represents payments from the public sector to IT companies. As can be seen from the chart, most payments are made at the end of the year. This can be due to the fact that the licenses and contracts usually expire at the end of the year and are renewed at the same time or that the Budget Users use the surplus of their budget to buy new IT equipment and supplies (printer toners, etc.) for the pure purpose of using up their budget. The budget for the next year usually depends on the implemented budget of the previous year.

## Analysis



## C. IMPLEMENTATION OF SELECTED ARTICLES

### II. Preventive measures

#### *Article 5. Preventive anti-corruption policies and practices*

##### *Paragraph 1 of article 5*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

##### *(a) Summary of information relevant to reviewing the implementation of the article*

Slovenia ranks the commitment to fighting against corruption and strengthening the public sector integrity among the vital and fundamental principles of restoring trust in the State. The current government's Coalition Agreement stresses the principle of transparency of the entire public sector operation and zero tolerance of corruption.

##### *Legislation and policies framework*

Slovenia has legislation in place to prevent corruption comparable with the other European Union States. In this regard, the first systemic anti-corruption law was the Prevention of Corruption Act prepared by the Commission for the Prevention of Corruption (CPC) and adopted in 2004. The Act provided a legal basis for establishing the CPC as an independent and autonomous State body. The law also defined the categories of public officials required to report their assets. In 2010, a new law was adopted - the Integrity and Prevention of Corruption Act (IPCA), which provides a systemic basis for strengthening the functioning of the State based on the rule of law, transparency, and integrity.

Together with the MPA, the MOJ has been working on the draft Act amending the IPCA since September 2016. In November 2016, the draft was submitted for public debate and expert consultations, including consultations with non-governmental organizations and associations of municipalities. Most opinions and proposals were taken into consideration. In April 2017, the draft Act was submitted for the second round of expert consultations and the first round of interdepartmental consultations. Submitted opinions and proposals were considered, and in June 2017, the draft was submitted for the second round of interdepartmental consultations. By the time of the country visit, the draft was at its final stage of consultations before the National Assembly's adoption.

In light of a national anti-corruption policy document, initial steps were taken following recommendations issued by the Group of States against Corruption (GRECO) in 2000. As a result, the Office of the Government of the Republic of Slovenia for the Prevention of Corruption was established in 2001 with two primary tasks: designing the critical regulation on preventing corruption and creating a national anti-corruption strategy.

In addition to the legislation, the CPC developed the Resolution on the Prevention of Corruption (Resolution), adopted by the National Assembly in 2004. As the national anti-corruption strategy, the Resolution aims to prevent corruption through 172 measures in various areas and for different players. As the designated body for monitoring the implementation of the Resolution, the CPC further prepared an Action Plan to facilitate the implementation process.

##### *Implementation of the Resolution and the Action Plan*

Although the Resolution and the Action Plan were supposed to be implemented by the CPC and relevant bodies designated for the implementation, communication between them was suspended due to the submission of a proposal to disband the CPC to the National Assembly in 2005. As a result, from 2005 to 2008, the CPC was the only body, within its limited ability, to consistently implement the Resolution.

At the end of 2008, the CPC finally reached an agreement with the MPA to jointly revise the Resolution and the

Action Plan, taking into account that both documents had not been fully implemented or adapted to cope with Slovenia's situation in the preceding four years. Given the new economic and social circumstances, the CPC and the MPA decided to review their applicability and identify necessary changes to be put forward to the National Assembly.

The review entailed a detailed analysis of the implementation of the Resolution and Action Plan and the establishment of a system for their future implementation, which required all governmental bodies to appoint contact persons responsible for implementing measures for corruption prevention under the leadership and coordination of the CPC and the MPA. The CPC would further coordinate with other non-governmental designated bodies and organizations and report to the National Assembly on the implementation of the Resolution. As a result of the review, the Action Plan was amended in 2009. The changes were made primarily to the existing measures, including modifying or supplementing them and/or extending the deadlines for their implementation.

In order to present the Resolution and the Action Plan, a meeting was later convened and attended by 75 representatives from the designated public sector entities, private sector, unions, and universities. It turned out that the designated public sector entities had not been aware of the measures, or they had never implemented them before this meeting.

In 2010, the new IPCA was adopted, according to which the CPC could hold the competent bodies responsible for the failure to report on the implementation of the measures provided in the Action Plan.

Articles 51 to 55 of the IPCA refer to the Resolution, which aims to take realistic, gradual, and considered measures to eliminate corruption. The CPC is the designated body for monitoring the implementation of the Resolution on the basis of the Action Plan. It is authorized to define guidelines for sector-based anti-corruption programs, set up clear objectives for individual measures, designate bodies for implementing those measures, develop methods, priorities, and deadlines for their implementation, and establish costs, risk factors, success criteria etc. Pursuant to article 52 of the IPCA, the CPC also cooperates with the non-profit public and private sector organizations, non-profit organizations governed by private law in the field of prevention of corruption, and citizens.

## **Integrity and Prevention of Corruption Act**

### Article 51 (Purpose and objective)

- (1) The resolution is a document adopted by the National Assembly upon the proposal of the Government.*
- (2) The resolution is aimed at taking realistic, gradual and considered measures to eliminate corruption; its fundamental objectives focus on preventive action: the long-term and permanent elimination of conditions for the occurrence and development of corruption, the establishment of an adequate legal and institutional environment for the prevention of corruption, consistent enforcement of accountability for illegal actions, the establishment of a generally acceptable system of zero tolerance for all acts of corruption through different forms of education, and the effective application of internationally recognised standards in this area.*
- (3) The Commission shall monitor the implementation of the resolution on the basis of an action plan that it shall adopt within three months of the adoption of the resolution or its amendments in cooperation with the authorities responsible for the measures contained in the resolution.*
- (4) In order to meet the obligations referred to in the preceding paragraph, the Commission may make proposals for the adoption of and amendments to regulations, and provide guidelines on the manner in which the measures contained in the resolution are implemented and on plans for the implementation of the resolution.*

### Article 52 (Activities)

- (1) In the implementation of the resolution and the plans for doing so, the Commission shall cooperate with non-profit public and private sector organisations, non-profit organisations governed by private law in the field of prevention of corruption, and citizens.*
- (2) The cooperation referred to in the preceding paragraph shall apply to joint activities for the implementation of the resolution and the plans for doing so, analysing the situation in the field of corruption,*

*conducting media campaigns and other activities relevant to strengthening integrity and preventing corruption.*

#### Article 53 (Action plan)

*(1) The public sector authorities responsible for the measures contained in the action plan for the implementation of the resolution shall report annually to the Commission by the end of February on the activities undertaken during the previous year to implement these measures.*

*(2) The Commission shall prepare a report on the implementation of the resolution containing key achievements, problems, risk factors and a performance assessment within three months of receipt of the reports referred to in the preceding paragraph, and shall include it in the annual report on work referred to in Article 19 of this Act.*

*(3) If any failure to implement measures contained in the action plan for the implementation of the resolution should arise, the Commission may propose that the competent authority calls the persons responsible for the implementation of measures to account.*

#### Article 54 (Modifications and amendments to the resolution)

*(1) If the authorities responsible for the measures contained in the resolution and the plans for its implementation propose modifications and amendments to the resolution in their reports, the Commission shall adopt an opinion on the proposed amendments and shall inform the National Assembly of the proposals of the authorities responsible for the measures, and of its own proposals contained in the report referred to in paragraph 2 of the preceding Article.*

*(2) If the Commission finds that immediate corrigenda to the resolution are required or that other urgent measures for its implementation need to be implemented, it shall call on the competent authorities to commence with the implementation of the measures and shall inform the National Assembly immediately.*

*(3) If the Commission disagrees with the proposals of the authorities responsible for the measures referred to in paragraph 1 of this Article, it shall inform them of this and provide reasons for its decision.*

#### Article 55 (Modifications to the resolution)

*Every three years, the Commission shall check whether the resolution needs to be modified. It shall include its findings and proposals in the next regular report to the National Assembly.*

According to article 53 of the IPCA, the designated public sector authorities responsible for the measures contained in the Action Plan should report annually to the CPC on the activities undertaken in this regard in the previous year. The CPC should then prepare a report on the implementation of the Resolution containing key achievements, problems, risk factors, and a performance assessment and should include it in the annual report submitted to the National Assembly. The CPC's report should also include an evaluation of the Resolution's implementation and proposals for further measures, and if necessary, proposals on the accountability procedures with regard to non-implementation or poor implementation of the Resolution by the designated reporting bodies.

In addition, if any failure in the implementation arises, the CPC may propose that the competent authority calls the responsible persons to account (art. 53(3), IPCA). The IPCA also prescribes a fine for non-reporting on measures undertaken to implement the Action Plan. According to paragraph 16 of article 77, a penalty between €400 and €4,000 is imposed on a responsible person from a State body or a local community body who fails to report to the CPC.

### **Integrity and Prevention of Corruption Act**

#### Article 77 (Offences by natural persons)

*(16) A fine of between EUR 400 and EUR 4 000 shall be imposed on a responsible person of a State body, local community body, and holder of public authority as an authority responsible for the implementation of measures contained in the action plan for the implementation of the resolution which, in contravention of paragraph 1 of Article 53 of this Act, fails to report to the Commission on activities undertaken to implement these measures.*



Provisions regarding the modifications and amendments to the Resolution are contained in the IPCA (arts. 54 and 55). The public bodies responsible for implementing the measures contained in the Resolution and the Action Plan may propose amendments to the Resolution in their reports to the CPC. The CPC should adopt an opinion on the proposed amendments and inform the National Assembly of the proposals from different authorities, including itself, through the annual report.

If the CPC finds that immediate corrigenda to the Resolution are required or that other urgent measures for its implementation need to be put in place, it calls on the competent authorities to commence with implementing the measures and informs the National Assembly immediately. If the CPC disagrees with the proposals made by the authorities responsible for the implementation of measures contained in the Resolution and the Action Plan, it should inform them and provide reasons accordingly. Under article 55 of the IPCA, the CPC must check whether the Resolution needs to be modified every three years. The CPC's findings and proposals should be included in the next regular report to the National Assembly.

The CPC also took steps towards revising the Action Plan in 2015 by conducting a detailed analysis of its implementation, based on which the measures being successfully implemented were removed. Furthermore, it was identified by the CPC, in coordination with the MPA, that the measures in the Action Plan were still outdated to some extent. In order to align those measures with the actual anti-corruption requirements in Slovenia, a further revision of the Action Plan as well as the Resolution is needed.

#### *Programme of Government Measures to Prevent Corruption*

On 8 January 2015, the Government adopted the Programme of Government Measures to Prevent Corruption 2015-2016. The Programme contained specific measures to fight corruption and defined the bodies in charge of implementing those measures, particularly the line ministries in cooperation with the independent State authorities (such as the CPC) and the non-governmental organizations. The Programme also set deadlines for the implementation of the measures. Three interim reports and the final report regarding the implementation of the Programme are accessible at:

[http://www.mju.gov.si/en/media\\_room/news/article/1328/8182/](http://www.mju.gov.si/en/media_room/news/article/1328/8182/)

The measures set out were primarily completed. The transparency and integrity framework was established with its positive effects being widely recognized, particularly through the corruption perception index by Transparency International.

On 8 June 2017, the Government adopted the new Programme of Government Measures for Integrity and Transparency 2017-2019. The new Programme represents a continuation of the improvement of the functioning of the public sector. It contains measures to improve the integrity of institutions and public officials and increase transparency of operations in the wider public sector. The objective is to establish a system in which the authorities regularly improve the coherence of their operations, strengthen the integrity of individuals, and act transparently and openly, thus providing citizens and businesses with better quality services.

The measures in the Government Programme 2017-2019 are divided into four areas of action:

- Strengthening and raising the awareness of public officials (including public sector employees) in the field of integrity and transparency through training and other measures;
- Public finances - management and control mechanisms, such as measures on recasting the arrangements for granting concessions, strengthening the integrity of the business environment and the management of the State-owned enterprises, register of beneficial owners, etc.);
- Transparency, cost-effectiveness, and efficiency in the use of public funds, including measures relating to public procurement procedures, management of State-owned real estate and others; and
- Increasing transparency and efficiency in drafting regulations, managing procedures, e.g., strengthening the normative framework on the publicity of the trial and the legislative trail in the preparation of local government regulations, etc.

*More information can be assessed at the MPA website:*

[http://www.mju.gov.si/si/novinarsko\\_sredisce/novica/browse/1/article/12447/8544/](http://www.mju.gov.si/si/novinarsko_sredisce/novica/browse/1/article/12447/8544/)

<http://www.mju.gov.si/en/>



In 2015, the Government also adopted the Public Administration Development Strategy 2015-2020, a single overarching strategic government document that presents the development orientation for the upcoming six years. The Government envisions organizing a modern public administration that will adhere to the following principles and values:

*Lawfulness and the rule of law, expertise and professionalism, participation, transparency, integrity and prevention of corruption, responsiveness and a focus on users, an orientation towards consensus and inclusion, justice and inclusion, innovation, success and efficient use of resources, responsibility as the basis for measures and performance indicators, accommodating the public interest, satisfaction of citizens, enterprises and other stakeholders, etc.*

### **Slovenia provided the following examples of the implementation of the provision:**

#### *Anti-corruption policy documents:*

- The Resolution on the Prevention of Corruption in the Republic of Slovenia (2004). The document is only available in Slovene language.<sup>6</sup>
- The Action plan for the implementation of the Resolution on the Prevention of Corruption in the Republic of Slovenia (2009). The document is only available in Slovene language.<sup>7</sup>
- The Action plan for the implementation of the Resolution on the Prevention of Corruption in the Republic of Slovenia (2016). The document is only available in Slovene language.<sup>8</sup>

#### *Government regulations, decrees etc.:*

- The Integrity and Prevention of Corruption Act\* (Official Gazette of the Republic of Slovenia no. 45/10, 26/11 and 43/11).<sup>9</sup>

#### *Progress reports on the implementation:*

- Annual Reports on the work of the CPC for the Prevention of Corruption.<sup>10</sup>
- Annual Reports on the Work of the CPC from 2004-2016.

#### *Annual Reports on the situation regarding corruption in Slovenia:*

The reports were part of the regular annual reports on the work of the CPC until 2012. Since 2012, the reports have been published separately. The reports are published on the official website of the CPC: <<https://www.kpk-rs.si/sl/komisija/letna-porocila>>.

#### *Public surveys of the extent of corruption in various sectors:*

Public surveys of the extent of corruption in Slovenia were conducted annually from 2002 to 2009 upon the request of the CPC. Reports are only available in Slovene language and are published on the official website of the CPC:

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<sup>6</sup> The official title in Slovene language: Resolucija o preprečevanju korupcije v Republiki Sloveniji; Published on the official website of the CPC: <[https://www.kpk-rs.si/upload/datoteke/Resolucija\(1\).pdf](https://www.kpk-rs.si/upload/datoteke/Resolucija(1).pdf)>.

<sup>7</sup> The official title in Slovene language: Akcijski načrt uresničevanja Resolucije o preprečevanju korupcije v Republiki Sloveniji. Published on the official website of the Commission: <[https://www.kpk-rs.si/upload/datoteke/Akcijski\\_nacrt\\_034-1\\_09\\_1\(1\).pdf](https://www.kpk-rs.si/upload/datoteke/Akcijski_nacrt_034-1_09_1(1).pdf)>.

<sup>8</sup> Official title in Slovene language: Akcijski načrt uresničevanja Resolucije o preprečevanju korupcije v Republiki Sloveniji. Published on the official website of the Commission under the name »Prečiščen akcijski načrt o uresničevanju Resolucije o preprečevanju korupcije v Republiki Sloveniji«: <<https://www.kpk-rs.si/sl/preventiva-in-nacrt-integritete>>.

<sup>9</sup> The official title in Slovene language: Zakon o integriteti in preprečevanju korupcije (Ur. list RS, št. 69/11 -UPB2). Published on the official website of the Commission: <https://www.kpk-rs.si/upload/datoteke/IPCA-ENG.pdf> <<https://www.kpk-rs.si/upload/datoteke/ZintPK-ENG.pdf>>.

<sup>10</sup> All the reports are published on the official website of the CPC: <<https://www.kpk-rs.si/sl/komisija/letna-porocila>>.

<https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/analize-raziskave-in-statistika/raziskave-in-statistika>.<sup>11</sup>

Public surveys on business and economic environment, business ethics and graft in Slovenia have also been conducted upon the request of the CPC in 2002, 2004, 2006 and 2009. Final reports are only available in the Slovene language and published on the CPC website: <https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/analize-raziskave-in-statistika/raziskave-in-statistika>.<sup>12</sup>

Another survey conducted upon the request of the CPC in 2008 was a public survey on corruption among journalists in Slovenia. The report is published on the official website of the CPC: <https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/analize-raziskave-in-statistika/raziskave-in-statistika>. The report is only available in the Slovene language.<sup>13</sup>

*Risk assessments of areas or sectors particularly susceptible to corruption:*

- All integrity plans and Risk Register
- Annual reports on implemented measures referring to the integrity plans.

The Programme of Measures of the Government of the Republic of Slovenia for the Prevention of Corruption 2015-2016 - Zero Tolerance Towards Corruption

- Official document, available in English language, published on the official website of the MPA:  
[http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/IJZ/Program\\_ukrepov\\_Vlade\\_RS\\_za\\_preprevanje..\\_2015-16-\\_ang\\_verzija.pdf](http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/IJZ/Program_ukrepov_Vlade_RS_za_preprevanje.._2015-16-_ang_verzija.pdf)
- Official press releases about the programme:  
[http://www.vlada.si/en/media\\_room/newsletter/slovenia\\_weekly/news/article/zero\\_tolerance\\_towards\\_corruption\\_50636/](http://www.vlada.si/en/media_room/newsletter/slovenia_weekly/news/article/zero_tolerance_towards_corruption_50636/)  
[http://www.mju.gov.si/nc/en/media\\_room/news/article/1328/5855/](http://www.mju.gov.si/nc/en/media_room/news/article/1328/5855/)

*The information on the implementation of the Programme 2015-2016:*

The Government monitored the implementation of measures through intermediate reports submitted by bodies responsible for the implementation of the relevant measures of the Programme, which are accessible on the website of the MPA:

- On 28 August 2015: First intermediate report on the implementation of the Programme. It summarizes the activities from January to June 2015:  
[http://www.mju.gov.si/en/media\\_room/news/browse/4/article/12447/6477/](http://www.mju.gov.si/en/media_room/news/browse/4/article/12447/6477/)
- On 25 February 2016: Second intermediate report. It summarizes the state of the implementation of the

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<sup>11</sup> Titles of reports in Slovene language with links to documents, published on the website are as follows:

- Stališče o korupciji v Sloveniji 2002;
- Stališče o korupciji v Sloveniji 2003;
- Stališče o korupciji v Sloveniji 2004;
- Stališče o korupciji v Sloveniji 2005;
- Stališče o korupciji v Sloveniji 2006;
- Stališče o korupciji v Sloveniji 2007;
- Stališče o korupciji v Sloveniji 2008;
- Stališče o korupciji v Sloveniji 2009.

<sup>12</sup> These reports are also included in the attached documents. Titles of reports in Slovene language with links to documents, published on the website are as follows:

- Raziskava o gospodarskem in poslovnem okolju, poslovni etiki in neuradnih plačilih na Slovenskem 2002
- Raziskava o gospodarskem in poslovnem okolju, poslovni etiki in neuradnih plačilih na Slovenskem 2004
- Raziskava o gospodarskem in poslovnem okolju, poslovni etiki in neuradnih plačilih na Slovenskem 2006
- Raziskava o gospodarskem in poslovnem okolju, poslovni etiki in neuradnih plačilih na Slovenskem 2009

<sup>13</sup> Official title of the report in Slovene language: Pojav korupcije med slovenskimi novinarji. Title of the report in Slovene language with link to the document, published on website: Pojav korupcije med novinarji.

measures by the end of 2015:  
[http://www.mju.gov.si/en/media\\_room/news/browse/3/article/12447/7047/](http://www.mju.gov.si/en/media_room/news/browse/3/article/12447/7047/)

- On 1 September 2016: Third intermediate report. It contains the activities and measures implemented in the first half of 2016:  
[http://www.mju.gov.si/en/media\\_room/news/browse/3/article/12447/7603/](http://www.mju.gov.si/en/media_room/news/browse/3/article/12447/7603/)
- Final Report on the implementation of the Programme 2015-2016.  
<[http://www.mju.gov.si/en/media\\_room/news/browse/1/article/12447/8182/](http://www.mju.gov.si/en/media_room/news/browse/1/article/12447/8182/)>

*The new Programme of Government Measures for Integrity and Transparency 2017-2019.*

Information on the preparation of the Programme 2017-2019:

<[http://www.mju.gov.si/si/novinarsko\\_sredisce/novica/archive/2017/3/select/sporocilo\\_za\\_javnost/articla/12447/8250/](http://www.mju.gov.si/si/novinarsko_sredisce/novica/archive/2017/3/select/sporocilo_za_javnost/articla/12447/8250/)>

The Public Administration Development Strategy 2015- 2020:

<[http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/JAVNA\\_UPRAVA/Kakovost/Strategija\\_razvoja\\_ANG\\_final\\_web.pdf](http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/JAVNA_UPRAVA/Kakovost/Strategija_razvoja_ANG_final_web.pdf)>

Along with the Public Administration Development Strategy 2015-2020, the Modern Public Administration Progress and Quality Policy were adopted by the Government in 2015:

<[http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SOJ/STRATEGIJA\\_JU2020\\_IN\\_AK\\_CIJSKI\\_PLAN/Appendix\\_3\\_Politika\\_EN.docx](http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SOJ/STRATEGIJA_JU2020_IN_AK_CIJSKI_PLAN/Appendix_3_Politika_EN.docx)>

According to Transparency International's Corruption Perception Index, Slovenia has been showing continuous improvement in its ranking over the last few years.

Reports on the implementation:

- The Report on the Implemented Anti-Corruption Measures in 2014 (only available in the Slovene language):  
[http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/IJZ/Prvo\\_vmesno\\_porocilo\\_Vlade\\_RS\\_za\\_preprecevanje\\_korupcije\\_maj\\_2014.pdf](http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/IJZ/Prvo_vmesno_porocilo_Vlade_RS_za_preprecevanje_korupcije_maj_2014.pdf)

#### ***(b) Observations on the implementation of the article***

Slovenia has in place a wide range of laws and policy documents for the prevention of corruption. It adopted an overarching anti-corruption legislation, the IPCA, in 2010, replacing the previous Prevention of Corruption Act (2003). In 2004, Slovenia adopted the Resolution on the Prevention of Corruption as its national anti-corruption strategy, which has also been referred to in the IPCA (arts. 51-55) with a subsequent Action Plan for its implementation.

The Action Plan was adopted in 2005 and further revised in 2009. Measures in the Action Plan have been determined by the CPC in cooperation with other authorities responsible for the measures contained in the Resolution pursuant to paragraph 3 of art. 51, IPCA.

In connection with the Resolution, Slovenia also adopted, inter alia, the Programme of Government Measures for Integrity and Transparency 2017-2019 and the Public Administration Development Strategy 2015-2020.

It was reported that a new draft Act amending the current IPCA was pending before the National Assembly at the time of the country visit, and further amendments to the Resolution and the Action Plan were under discussion.

**It is recommended that Slovenia consider ways to ensure the Resolution and Action Plan are kept up to date to reflect the current preventive anti-corruption practices.**

## **Paragraph 2 of article 5**

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

### **(a) Summary of information relevant to reviewing the implementation of the article**

The CPC is the main responsible body in Slovenia for preventing corruption. It has adopted a series of measures to promote integrity and prevention of corruption:

- The CPC's website summarizes all requirements arising from the IPCA, including the objective for regulating a particular topic, obligations imposed on different groups of persons, deadlines for fulfilling obligations, sanctions that can be imposed, etc. In addition, the website publishes the most common questions and answers in this regard.
- The CPC publishes a monthly newsletter, "KPK Vestnik" (*details are listed below*).
- The CPC has prepared several brochures on various issues, such as business restrictions, lobbying, conflicts of interest, gifts, etc., and has disseminated them at different events and on the CPC's website and premises. It has also organized different roundtables and training for public officials and supervisory bodies, which outline legal requirements and best practices in risk management, corruption prevention, avoidance of conflicts of interest, asset declaration, lobbying, and incompatibility of office.
- The CPC publishes its yearly report (submitted to the National Assembly) on the website, including its main findings, breaches of duties by public officials, cases investigated, etc. Furthermore, it publishes the final documents on investigations of cases of conflicts of interest, corruption, and integrity violations. Press conferences are also held concerning major cases. The CPC also publishes a yearly review of the state-of-the-affairs in the field of corruption and submits it to the National Assembly.
- The CPC oversees the implementation of the Integrity Plan, a mandatory nationwide risk-management tool for the public sector. For this purpose, it also trains the designated custodians of the Integrity Plan in each public sector entity and collects an annual report on the use of this tool.
- Finally, the CPC organizes various public events to promote awareness of corruption and various preventive measures among the public in this regard. With the long-term goal of changing the mentality of the population, special focus is given to the youth, in particular primary school pupils and preschool children.

*Concrete examples of preventive measures/projects/practices in the fight against corruption:*

#### **a) Anti-Corruption Week**

The CPC marks the Anti-Corruption Day with a celebration of Anti-Corruption Week. In 2014, 2015, and 2016, in partnership with the local cinema "Kinoteka," the CPC organized an anti-corruption film festival entitled "Film against Corruption."

In 2016, the Anti-Corruption Week included an announcement of the winner of the tender "Shoot a Movie, Wipe Out Corruption," a presentation of the project "Familiarizing with integrity through picture and play" designed for kindergartens, a round table on "Whistleblowing in Slovenia - an Efficient Tool or a Scam," and a seminar for journalists on ERAR (Application for the portrayal of public money used in the Republic of Slovenia)<sup>14</sup> - the CPC's online tool for the supervision of expenditures of public funds.

In 2014, the Anti-Corruption Week also referred to the 10th anniversary of the CPC. A round table themed on the future of the CPC was organized. Additionally, a project called "Fighting Corruption with a Book" took place in the Slovenian libraries, where an array of books on corruption were selected and displayed, thus raising awareness of this issue.

In cooperation with the Slovenian Faculty of Economics and Chambers of Commerce and under the auspices of the Embassy of the United Kingdom of Great Britain and Northern Ireland, a round table entitled "The State - an (ir)responsible owner" was organized with the aim to publicly present the results of the research

<sup>14</sup> ERAR - Application for the portrayal of public money use in the Republic of Slovenia. Official name in Slovene: Erar - Aplikacija za prikaz porabe javnega denarja v Republiki Sloveniji. Available in Slovene at: <https://erar.si/>

“The Process of Ownership Transformation in the Companies in Slovenia and the Development of the Corruption Practices” conducted by the Faculty of Economics.

In 2013, the Anti-Corruption Day was marked by a public exhibition and an announcement event of the winners of the tender “Letters to the Parliamentarians,” held at the National Assembly.

In 2012, the Anti-Corruption Day entailed an exhibition at the National Assembly of winning creations of a tender, “Say It With a T-Shirt,” targeted at primary school children. The CPC printed the winning designs on T-shirts and distributed them to the winners and their mentors. A similar exhibition was also held to mark the Anti-Corruption Day in 2011.

b) Creative tenders for children and youth

- “Shoot a Movie, Wipe Out Corruption” - creative tender in 2016

In 2016, a creative tender entitled “Shoot a Movie, Wipe Out Corruption” for primary school children was conducted. The children were invited to shoot up to two-minute movies depicting corruption as per their understanding. Ninety children from nine primary schools participated in the tender and finalized 18 movies. The winners were announced at the Anti-Corruption Day celebration, and all the movies were publicly displayed at the celebration’s site for a week. Additionally, a special page was dedicated to the project on the CPC’s website, where all the videos are publicly available.<sup>15</sup>

- “Letters to the Parliamentarians” - creative tender in 2013

In 2013, the form of the tender for primary school children was changed. Instead of art creations, the pupils were asked to write a letter to a member of the National Assembly. The tender aimed to further encourage pupils’ contemplation on integrity, honesty and fairness with an additional focus on democracy and active participation. The tender also provided the school children with an opportunity to transmit their thoughts and feelings to the members of the legislative body, which has the ability to advocate for the values mentioned and shape society’s attitudes towards them.

- “Say it with a T-Shirt”- creative tender in 2012

The 2011 creative tender project was repeated in 2012, with an additional feature of printing the winning creations on T-shirts. Eighteen schools took part in the tender. The tender aimed to encourage the youth to contemplate values, such as honesty, equality, integrity, and consequences when society does not follow these values. The primary schools dedicated at least one hour of the civil education and ethics class to these topics. Further, the pupils expressed their thoughts on the subject in their art classes in various forms. The exhibition of the creations was held at the National Assembly.

- Creative tender for primary schools in 2011

In 2011, the first creative tender took place, which invited all the primary schools to participate with pupils’ creations designed in the art classes in the schools. The tender aimed to raise awareness of the schoolteachers and the pupils on integrity and the need for a common agreement on society’s founding values. The winning creations were exhibited in a public library in Celje (a Slovenian city).

- “Familiarizing with integrity through picture and play” - creative tender in kindergartens

In 2015, the CPC launched a pilot project introducing the concept of integrity to even younger children. The project was based on a children's picture book created for the purpose of this project, which familiarized the children with the concept of good and evil with a simple corruption case story adapted to the children’s comprehension abilities. The pilot project was performed in one Slovenian kindergarten and proved to be a success. Therefore, in 2016, a creative tender was organized, which invited kindergartens to include the project in their curricula and hold an Anti-Corruption Day exhibition of children’s creations to mark the conclusion of the project. Four groups of kindergartens (including 300 children) participated in this project.

c) The CPC’s newsletter, “KPK Vestnik.”

When addressing the issue of corruption prevention and awareness-raising, the CPC has developed a

<sup>15</sup> <<https://www.kpk-rs.si/sl/preventiva-in-nacrt-integritete/projektipreprecevanje-korupcije/posnemi-filmcek-zatri-korupcijo>>



newsletter, “KPK Vestnik,” which was first issued in April 2011 and is published monthly (except during summer months). The newsletter attempts to, inter alia, address the issues that the CPC finds most intriguing from time to time, inform its readers of the CPC activities and different mechanisms, gather the local and international news that relates to the topics of corruption and integrity, remind relevant stakeholders of the important reporting deadlines and integrity plans, and summarize the CPC’s main operations based upon its yearbook. The newsletter also promotes awareness-raising events organized by the CPC, such as the yearly anti-corruption film festival “Film Against the Corruption” (always held in December to commemorate the International Anti-corruption Day). To date, 44 issues of the “KPK Vestnik” have been published, and they are distributed via a mailing list of 2620 subscribers.<sup>16</sup>

d) Integrity trainings

Awareness-raising for public employees and top (high) officials in this regard has been provided through trainings. These trainings have been organized regularly for all public sector employees, including those holding public offices, by the CPC, the Administrative Academy of the MPA and the Judicial Training Centre (under the MOJ). In 2016, the Administrative Academy organized the following seminars involving the prevention of corruption: IPCA (twice); Integrity and ethics in public sector management (once); Mobbing - psychological aggression in the workplace (thrice) and Ethics in public sector management (twice). All state administration employees were invited to the seminars, while public bodies could also request relevant trainings.

In addition, public officials not only can acquire information on their obligations and responsibilities in the area of integrity and prevention of corruption from the MPA and CPC official websites but also can obtain clarifications and replies in this regard through telephone and e-mail from Transparency, Integrity and Political System Office (under the MPA), the CPC and the MoJ. Other online applications are also available to promote transparency and integrity in the public sector, such as:

- Public Sector Authorities Register – RZIJZ

Managed by the Agency of the Republic of Slovenia for Public Legal Records and Related Services, the register offers an overview of all business entities that use public funds<sup>17</sup> or operate with assets owned by the State or municipalities.<sup>18</sup> The information contained in the register is free of charge and can be accessed at:

[http://www.ajpes.si/Registri/Drugi\\_registri/Zavezanci\\_za\\_informacije\\_javnega\\_znacaja](http://www.ajpes.si/Registri/Drugi_registri/Zavezanci_za_informacije_javnega_znacaja).

- Publication of public sector transactions by the Public Payments Administration

In accordance with article 10 of the Access to Public Information Act (APIA), the Public Payments Administration of Slovenia is authorized to publish account transactions of obliged bodies. The Public Payments Administration developed an application, TZIJZ<sup>19</sup>, which offers an insight into the public information on transactions carried out by public economic institutions, public corporations, business entities wholly owned by public sector entities and other users of budget resources registered in the Public Sector Authorities Register.

- ERAR – *please refer to point e) in the description of the practices that Slovenia considers to be good practices in the implementation of the chapters of the Convention.*

- Public Procurement Portal and STATIST

Transparency in public procurement is ensured by the mandatory use of E-Auctions for ministries, constituent bodies of the ministries and government services and further guaranteed through the upgrade to the Public Procurement Portal,<sup>20</sup> where public procurement contracts, concessions and public-private partnerships can be accessed. An important project on increasing public procurement transparency is the IT solution STATIST<sup>21</sup>,

<sup>16</sup> The newsletter is available at: <<https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/arhiv-kpk-vestnik>>.

<sup>17</sup> State authorities, local community authorities, public agencies, public funds and other entities of public law, holders of public authorizations and public service providers.

<sup>18</sup> Companies largely owned by the State or municipalities.

<sup>19</sup> Available at: <<https://www.ujp.gov.si/>>

<sup>20</sup> Available at: (<https://www.enarocanje.si/>)

<sup>21</sup> Available at: <https://ejn.gov.si/statist>

which has been widely available since January 2016. It ensures an integrated, direct and modified publication of information on public contracts awarded in Slovenia. STATIST contains all information on public contracts awarded since 1 January 2013, where users can examine the data using various filters. In terms of the contract value, the application displays the ten largest contracting entities and ten largest tenderers, most frequently awarded contracts, according to the subject and legal basis for the chosen timeframe. The data can be exported in a CSV format for re-use purposes.

- Online publication of financial reports on the funding of election campaigns and political parties

Transparency in the funding of election campaigns and political parties is ensured by publishing the financial reports of election campaign organizers<sup>22</sup> and annual financial reports of political parties<sup>23</sup> on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services.

Other effective practices for preventing corruption include the Anti-Corruption Programme, Zero tolerance for corruption 2015-2016 and the new Programme of Government Measures for Integrity and Transparency 2017-2019.

*Please also refer to the summary provided under paragraph 1 of article 5 and paragraph 1 of article 8 of the Convention.*

Transparency International Slovenia has reported that it considers Slovenia implemented the provision only partially.

#### **Slovenia has provided the following information on the examples of the implementation of the provision**

The information on the IT tools for transparency and integrity in the public sector and links to the tools can be accessed at:

[http://www.mju.gov.si/en/areas\\_of\\_work/transparency\\_and\\_open\\_data/](http://www.mju.gov.si/en/areas_of_work/transparency_and_open_data/).

The Anti-corruption Programme – “Zero tolerance for corruption 2015-2016” was adopted by the Government in 2015. The Programme entailed concrete measures to fight corruption, implemented by competent ministries in cooperation with independent State bodies (e.g., the CPC) and NGOs. It also contained deadlines for the implementation of the measures.

In August 2015, the *First Interim Report of the Government on the Implementation of the Programme of Anti-corruption Measures for 2015-2016 - Zero tolerance for Corruption* was adopted. The Second and Third Interim Reports were adopted respectively in February 2016 and September 2016.

Below are more details regarding these reports, which illustrated preventive activities in the field of transparency and integrity:

*The Third Interim Report: A summary of some of the measures taken and tasks performed in the first half of 2016:*

The Administration Academy of the MPA carried out many training sessions in the public sector on the integrity and prevention of corruption. Trainings were also conducted by the CPC, which paid particular attention to trainings on combating bribery of foreign public officials in international business transactions.

In the first half of 2016, several training sessions were organized on ethics and integrity by the Administration Academy of the MPA in cooperation with the CPC. On 1 March 2016, a seminar on the knowledge of the IPCA took place with 85 participants. In line with the Management and Administration Programme, a training session took place on 17 April 2016 in Ethics in Public Administration Management with 32 participants. Ethics and integrity issues were also addressed in the mandatory training sessions for the newly appointed public officials. In total, seven training sessions were organized with 546 participants.

In April 2016, the Ministry of Foreign Affairs organized, together with the CPC, a training session on integrity, prevention of corruption, tax havens, and the financing of terrorism for its employees, particularly

<sup>22</sup> Available at: <https://www.ajpes.si/eObjave/default.asp?s=57>

<sup>23</sup> Available at: [https://www.ajpes.si/Letna\\_porocila/Javna\\_objava](https://www.ajpes.si/Letna_porocila/Javna_objava)

economic counsellors and diplomats responsible for the financial sector posted abroad. The purpose of this training was to raise awareness and strengthen the preventive action of public employees who dealt with Slovenian businesses in foreign markets.

Based on the recommendations of the OECD Working Group, the Judicial Training Centre (under the MOJ) organized a seminar on 21 March 2016 titled “Bribery of Foreign Public Officials in International Business Transactions.” The event targeted judges, public prosecutors, detectives and other public employees. The event aimed to inform the participants of the cases, good practice and practical experience in the field of detection, investigation, and prosecution of foreign corruption. In the first half of 2016, the CPC also organized several training sessions on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The MPA also developed a series of lectures on ethics and integrity based upon the new EU financial perspective beginning in the second half of 2016:

- On 1 April 2016, the Public Procurement Act (PPA) entered into force. It ensures timely implementation of the EU directives by the national legislation. The MPA delivered free presentations of the Act to relevant public employees on several occasions.

- In April 2016, the Government adopted a new Decree on the Provision and Re-use of Information of Public Character, which ensures a higher level of transparency in relation to public tenders.

- The Public Payments Administration of Slovenia provided data on the E-Invoices for an online application of financial transactions in the public sector.

#### *The Final Report on the implementation of the Programme of Government Measures to Prevent Corruption 2015-2016*

On 2 March 2017, the Government accepted the Final Report on the Implementation of the Programme of Measures of the Government to Prevent Corruption 2015-2016 - Zero Tolerance Towards Corruption (Programme). The objectives of the Government were largely met, whereas further actions in the fight against corruption were foreseen.

This two-year Programme enabled the Government to carry out many activities in the prevention of corruption, including, inter alia, some of the most important measures as listed below:

- During the two-year period, the priority of the police was economic crimes, together with the detection and investigation of criminal offences in conducting bank transactions at the national and local levels. Out of 245 suspicions of criminal offences since 1 January 2013, the police were still investigating 52 suspicions with a total of €417.5 million of material damage at the end of 2016.

- The GRECO recommendations from the fourth assessment round of Slovenia were adopted by amending the three acts concerning the organization of the judicial authorities: the Act Amending the Courts Act, the Act Amending the Judicial Service Act, and the Act Amending the State Prosecutor Act. Based on the GRECO recommendations, the Judicial Council and the State Prosecutorial Council adopted the Ethics Code and formed the Ethics and Integrity Committees. More information can be found at:

[http://www.mju.gov.si/en/media\\_room/news/article/1328/8141/](http://www.mju.gov.si/en/media_room/news/article/1328/8141/)

- In the new Banking Act, a provision on establishing a notification system on the infringement of banking regulations was included. The system is already in place at the Bank of Slovenia and is designed mainly for bank employees. For reporting an infringement, the information on the protection of personal data of the informants and the internal investigation procedures of the received reports of infringement can be found at:

<https://vsebina.bsi.si/prod/brm/>.

- In relation to public procurement in the health sector, a joint public procurement project managed by the MPA and the Ministry of Health was conducted, which carried out procedures of awarding joint public procurement on medication, diapers, gloves, needles, supplies, and dilation material and catheters. In 2017, the joint public procurement project expanded, where the Ministry of Health prepared a comprehensive database for all medicines and medical devices procured by hospitals.



- The Ethics Code for Functionaries of the Government and Ministries was adopted. It aims to promote functionaries' proper conduct, particularly in moral and ethical dilemmas.

- The ministries responsible for the areas where the chambers operated were requested to consider increasing transparency of the chambers when amending the legislation in accordance with the approved guidelines

- Report of the Working group for the preparation of the analysis of the chamber system in Slovenia and the recommendations of measures for a more transparent and effective functioning of the chambers (5 May 2015).

- Since February 2015, greater transparency of public procurement has been ensured by the online publication of contracts on the Public Procurement Portal.<sup>24</sup>

- With the amendment of the Access to Public Information Act (APIA), the obligatory online publication of certain documents by public institutions has expanded to public tenders concerning the allocation of resources, grants and loans from the State or municipal budget.

- In August 2016, the Public Sector Salary Portal was established.<sup>25</sup> It contains publicly accessible data on salaries regarding the public administration authorities.

The new Programme for Integrity and Transparency 2017-2019 represents a continuation of work towards the improvement of the functioning of the public sector. It emphasizes measures to improve the integrity of institutions and public officials (including functionaries – holders of public office and other public sector employees<sup>26</sup>) and increase the transparency of operations in the wider public sector. With the new two-year programme, the government emphasizes the importance of continuous action in this field and concrete measures to achieve a commitment to the principles and values of integrity and transparency.

#### **Slovenia has provided the following information on the examples of the implementation of the provision**

- In 2017, the CPC collected approximately 660 integrity plan reports on the implemented corruption-prevention measures in public sector entities.

- In 2016, the CPC held 46 trainings and related awareness-raising events, collectively attended by 1810 public sector employees. In the first half of 2017, the CPC held 16 trainings and related awareness-raising events, collectively attended by 805 public sector employees. *Please also refer to the information provided under article 8, Paragraph 1.*

Regarding the CPC's obligation to provide written opinions on legal drafts to strengthen integrity and reduce the risks of corruption in the public and private sectors, please refer to the following table:

	2012	2013	2014	2015	2016	total
<b>Number of written opinions regarding CoI</b>	106	118	94	164	120	602
<b>Number of written opinions regarding Gifts</b>	14	13	11	11	8	57
<b>Number of written opinions regarding incompatibilities of functions</b>	82	73	132	58	36	381
<b>Number of written opinions regarding restrictions of business activities</b>	153	73	124	57	36	443

<sup>24</sup> Available at: <<http://www.enarocanje.si/objavaPogodb/>>

<sup>25</sup> Available at: <<http://www.pportal.gov.si/>>

<sup>26</sup> "Public sector employees" means officials, public servants, and employees in public undertakings and private companies in which the controlling interest or a dominant influence is held either by the State, a local community, or other employees working in the public sector; (Article 4, IPCA)

The CPC also issued publications with the aim of informing the public of anti-corruption issues, which are available at:

-<<https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/publikacije-in-multimedija/55>>

-<<https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/publikacije-in-multimedija/multimedija>>

-<[https://www.kpk-](https://www.kpk-rs.si/upload/datoteke/Zbornik_Javna_etika_in_integriteta_odgovornost_za_skupne_vrednote.pdf)

[rs.si/upload/datoteke/Zbornik\\_Javna\\_etika\\_in\\_integriteta\\_odgovornost\\_za\\_skupne\\_vrednote.pdf\(1\).pdf](https://www.kpk-rs.si/upload/datoteke/Zbornik_Javna_etika_in_integriteta_odgovornost_za_skupne_vrednote.pdf)>

### **(b) Observations on the implementation of the article**

Slovenia has developed a wide range of practices aimed at preventing corruption. Being designated for monitoring the implementation of the Resolution, the CPC has taken various anti-corruption preventive measures, including awareness-raising programmes, training sessions, and oversight on the use of integrity plans by public entities.

The awareness-raising programmes organized by the CPC include various measures against corruption, such as the film festival, anti-corruption week, competitions for the youth, and newsletters.

### **Paragraph 3 of article 5**

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

### **(a) Summary of information relevant to reviewing the implementation of the article**

The CPC endeavours to check all legislation submitted by the Government for enactment in the National Assembly for any corruption risks, conflicts of interest, or any other perceived threats to the public interests. The comments are submitted to the legislative body, which may or may not act upon them. Unfortunately, the CPC does not receive the act proposals automatically. As a result, several bills have never undergone the legislative proofing process. The CPC thus informed the public of such cases and wrongdoings.<sup>27</sup>

The IPCA provides that CPC has the option to submit initiatives to the National Assembly and the Government to regulate a particular matter by adopting a law or any other regulation in accordance with its tasks and powers (art. 12). Besides, the CPC provides advice, such as written “legal” opinions/answers, on strengthening integrity and reducing corruption risks in the public and private sectors.

#### **Integrity and Prevention of Corruption Act**

##### Article 12 (Tasks and powers of the Commission)

(1) *The Commission shall have the following tasks and powers:*

...

- *to provide advice on strengthening integrity and preventing and eliminating the risks of corruption in the public and private sectors;*

...

- *to provide its opinion on proposals for laws and other regulations before they are discussed by the Government, particularly in respect of the conformity of the provisions contained within these proposals for laws and other regulations with the laws and regulations regulating the prevention of corruption, and the prevention and elimination of conflicts of interest;*

- *have the option available to submit initiatives to the National Assembly and the Government to regulate*

<sup>27</sup> For example, the last media report was issued on 7 August 2017, which can be found at:

<<https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/novice/08/2017/sprejemanje-zakonov-pod-krinko>>.

*a particular area by adopting a law or any other regulation in accordance with its tasks and powers;*

**Slovenia provided the following examples on the implementation of the provision under review:**

The CPC examined 15 laws/Acts in 2014 and 19 in 2015, respectively, in terms of the prevention of corruption.

In 2016, the CPC received 30 legislative proposals for review, in response to which it submitted comments regarding eight proposals to the Government. Comments on other acts received were unnecessary since these proposals were prepared with due consideration of anti-corruption measures. All legislative proposals and the CPC's comments are available on the web page (only in Slovene):

<https://www.kpk-rs.si/sl/komisija/pripombe-komisije-na-predloge-predpisov/2016-97>.

In 2017 (by September), the CPC received 21 legislative proposals and issued comments on nine drafts. All legislative proposals and CPC's comments for 2017 are available on the web page (only in Slovene):

<https://www.kpk-rs.si/sl/komisija/pripombe-komisije-na-predloge-predpisov/2017-96>

These substantive comments were mainly related to the corruption risks in the scope of conflicts of interest, incompatibility of functions, anti-corruption clauses, gifts, restrictions on operations, control over assets, and lobbying.

In 2017, the CPC also examined the websites of the national authorities and identified many press releases announcing the publication of the texts of the proposed regulations. Though these drafts were not shared for corruption proofing, the CPC proactively examined six regulations, among others, until 25 August 2017 and provided comments accordingly.

The CPC was also involved in drafting various ethical codes for public officials.

***(b) Observations on the implementation of the article***

The legislative process includes public consultations where citizens can comment on draft legislations and regulations. Slovenia has a legal framework for reviewing the laws to reduce or eliminate corruption risks. For this purpose, the CPC is assigned the task of conducting corruption proofing of draft legislations under article 12 of the IPCA. Nevertheless, this process is not mandatory as not all draft laws are automatically transferred to the CPC. Thus, without mandatory measures for submission of draft legislation for proofing of corruption risks, the CPC only conducts corruption proofing where it deems appropriate.

**It is recommended that Slovenia consider ways to ensure that draft legislation is shared automatically with the CPC for its consideration in relation to the prevention of corruption.**

***Paragraph 4 of article 5***

*4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.*

***(a) Summary of information relevant to reviewing the implementation of the article***

The CPC actively participates in international cooperation in the prevention of corruption through collaborating with relevant international and regional organizations and joining different initiatives:

- *Organization for Economic Cooperation and Development (OECD)*

Established in 1994, the OECD Working Group on Bribery in International Business Transactions (Working Group) is responsible for monitoring the implementation and enforcement of the OECD Anti-Bribery Convention, the 2009 Recommendation on Further Combating Bribery of Foreign Bribery in International Business Transactions (2009 Anti-Bribery Recommendation) and related instruments. This peer-review

monitoring system is conducted in successive phases. Slovenia, as a member of OECD since 2010, was evaluated as follows:

2005 Phase 1 report; 2007 Phase 2 report; 2009 Follow-up on Phase 2 report; 2014 Phase 3 report; 2016 Follow-up to Phase 3 report;

Besides, Slovenia is also the evaluator of other countries.

- *Working Party of Senior Public Integrity Officials (OECD SPIO)*

The CPC represents Slovenia in SPIO, which promotes the design and implementation of integrity and anti-corruption policies that support good public governance and strengthen the core values, credibility, and capacity of the institutions involved in policymaking and the underlying conditions shaping the policymaking process. The SPIO pays specific attention to emerging issues related to risk areas at the interface between the public and private sectors, including conflicts of interest, lobbying, and the role of money and influence in decision-making and integrity and accountability mechanisms.

- *Anti-corruption Network for Eastern and Central Asia (OECD ACN)*

The CPC also represents Slovenia in the OECD Anti-Corruption Network for Eastern Europe and Central Asia. In April 2016, a CPC representative attended the ACN High-Level Meeting, where participants were briefed on the countries' responses to the programme adopted by the ACN in 2015. In the framework of ACN, the CPC also participated in the preparation of a report on international cooperation in the persecution of corrupt acts.

- *United Nations (UN)*

Slovenia became a member of the UN on 22 May 1992. The CPC has also actively cooperated with the UNODC.

- *Council of Europe (Group of States against Corruption, GRECO)*

The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor States' compliance with the organization's anti-corruption standards. GRECO was set up by the following 17 founding members: Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Spain and Sweden. The CPC has represented Slovenia in the GRECO since its establishment in 2004. GRECO's objective is to improve the capacity of its members to fight corruption by monitoring their compliance with the Council of Europe's anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting necessary legislative, institutional and practical reforms. GRECO also provides a platform for sharing best practices in the prevention and detection of corruption.

Slovenia had been evaluated in four Evaluation Rounds<sup>28</sup>, while the fifth round was still in progress by the time of the country visit.

- *International Anti-corruption Academy (IACA)*

The International Anti-Corruption Academy (IACA) is an international organization based in Laxenburg, Austria. It is the first global institution dedicated to overcoming shortcomings in knowledge and practice in the field of anti-corruption and seeking to empower professionals for the challenges of tomorrow. Slovenia was one of the first signatories which ratified the Agreement for the Establishment of IACA as an International Organization (11 May 2011). Besides, CPC's personnel also actively participate in the International Anti-Corruption Summer Academy.

- *European Partners against Corruption (EPAC)*

The EPAC is an independent and informal network bringing together more than 60 anti-corruption authorities (including the Slovenian CPC) and police oversight bodies from the Council of Europe Member Countries. Slovenia hosted the Annual Professional Conference in Nova Gorica, where EPAC Constitution was adopted. In addition, the CPC staff participated several EPAC meetings.

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<sup>28</sup> Available at: (<<http://www.coe.int/en/web/greco/evaluations/slovenia>>)

- *European Anti-corruption Training (EACT)*

The European anti-corruption training was a trilateral project of four anti-corruption institutions of three countries: the Austrian Federal Bureau of Anti-corruption, Slovak Anti-corruption Bureau, the Slovenian National Investigation Bureau and the CPC. The project lasted from 2011 to 2013, and the activities included two conferences and nine workshops in the framework of three thematic working groups: prevention (Slovenia), detection and prosecution (Austria) and international cooperation (Slovakia). Under the EACT project, several manuals were issued with an emphasis on case studies and the exchange of practical experience.

Example of the workshops:

*The workshop on the use of technology as a tool for effectively combating and preventing in Slovenia in March 2012*<sup>29</sup>

During this project, more than 50 investigators and state prosecutors from over 20 European countries attended the various working groups and discussed their experiences and relevant cases. Many lecturers and experts provided valuable presentations and input to the groups. This led to fruitful discussions among the participants and an intensive exchange of practices in combating corruption and organized crimes at national, transnational and international levels. The shared experiences and contributions facilitated the establishment of various best practice models and are available at:

[http://www.bak.gv.at/cms/BAK\\_en/eact/start.aspx](http://www.bak.gv.at/cms/BAK_en/eact/start.aspx).<sup>30</sup>

- *The European Network of Integrity Practitioners (ENIP)*

The ENIP is an initiative of the Dutch National Integrity Office. The members of ENIP are practitioners working for a national or regional integrity entity. With the focus on the public sector, the network arose from the need to exchange knowledge and experiences among peers to promote integrity. The ENIP includes the Federal Bureau of Anti-Corruption (Austria), the Commission of Public Service Ethics (Estonia), the Flanders (virtual) Integrity Office, the CPC (Slovenia), and the Dutch National Integrity Office (Netherlands).

- *Regional Anti-Corruption Initiative (RAI)*

RAI<sup>31</sup> is a regional intergovernmental organization, which deals solely with anti-corruption issues, including nine member states: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania and Serbia. Slovenia is not a member, but the CPC has been actively involved in different projects within the work of RAI.

**Slovenia provided the following examples on the implementation of the provision under review:**

The CPC signed and ratified the following international instruments:

*Council of Europe*

- Civil Law Convention on Corruption (Signature: 29 November 2001; Ratification: 17 March 2003; Entry into force: 1 November 2003)
- Additional Protocol to the Criminal Law Convention on Corruption (Signature: 9 March 2004; Ratification: 11 October 2004; Entry into force: 1 February 2005)
- Criminal Law Convention on Corruption (Signature: 7 May 1999; Ratification: 12 May 2000; Entry into force: 1 July 2002)

*European Union*

- Convention drawn up on the basis of article K.3 (2) (c) of the Treaty on European Union on the fight against

<sup>29</sup> Relevant information can be found at: <http://www.policija.si/eng/index.php/component/content/article/13-news/1289-slovenia-hosting-first-international-european-anti-corruption-training-workshop->>.

<sup>30</sup> More information about this project can be found on the CPC's web page (only in Slovene): <https://www.kpk-rs.si/sl/komisija/mednarodna-dejavnost/eact>.

<sup>31</sup> Available at: (<http://www.rai-see.org/secretariat.html>)

corruption involving officials of the European Communities or officials of the Member States of the European Union

- The Act Ratifying the Convention drawn up on the basis of article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union

#### *United Nations*

- The United Nations Convention against Transnational Organized Crime
- The United Nations Convention against Corruption

#### *OECD*

- The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

#### *Other:*

- Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (Signature: 2 September 2010; Ratification: 11 May 2011; Entry into force: 10 July 2011)

The CPC has also signed memorandums of understanding with its counterparts and international institutions/organizations, as follows:

- MoU between the United States Office of Government Ethics (USA) and the Commission for the Prevention of Corruption, Republic of Slovenia (Ljubljana, 12 April 2005),
- MoU between the Conflict of Interest Commission of Montenegro and the Commission for the Prevention of Corruption of the Republic of Slovenia (Podgorica, 29 April 2007),
- MoU in the Fight against Corruption between the United Nations Development Programme (UNDP), the Bratislava Regional Centre and the Commission for the Prevention of Corruption of the Republic of Slovenia (Ljubljana, 14 January 2008),
- Cooperation Agreement between the Directorate for Anti-Corruption Initiative of Montenegro and the Commission for the Prevention of Corruption of the Republic of Slovenia (Podgorica, 29 April 2008),
- MoU between the National Integrity Agency, the Republic of Romania and the Commission for the Prevention of Corruption, Republic of Slovenia (Ljubljana, 17 October 2008),
- MoU between the Commission for the Prevention of Corruption of the Republic of Slovenia and the High Inspectorate for Reporting and Controlling the Property of the Republic of Albania (Ljubljana, 29 May 2009),
- MoU between the Commission for the Prevention of Corruption of the Republic of Slovenia and the Commission for Determining the Conflicts of Interest of the Republic of Croatia (Zagreb, 9 September 2011).

All memorandums are publicly available on the CPC's web page.<sup>32</sup>

#### ***(b) Observations on the implementation of the article***

Slovenia has actively participated in a variety of anti-corruption initiatives and programmes, including the European Partners against Corruption, the European Anti-Corruption Training project, the European Network of Integrity Practitioners, and the Regional Anti-Corruption Initiative. It is also a member of the Organization for Economic Cooperation and Development and the Group of States against Corruption, and a State party to the agreement establishing the International Anti-Corruption Academy (IACA). In addition, Slovenia has concluded several Memorandums of Understanding with other countries and international initiatives or organizations.

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<sup>32</sup> Available at: <<https://www.kpk-rs.si/sl/komisija/mednarodna-dejavnost/sporazumi-o-sodelovanju>>



## **Article 6. Preventive anti-corruption body or bodies**

### **Paragraph 1 of article 6**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
- b) Increasing and disseminating knowledge about the prevention of corruption.

### **(a) Summary of information relevant to reviewing the implementation of the article**

The CPC, the main preventive anti-corruption body, established in 2004 in Slovenia, is an autonomous and independent State body with investigative and sanctioning powers (arts. 5 and 12, IPCA).

#### ***Integrity and Prevention of Corruption Act***

##### Article 5 (Legal Status)

*The Commission for the Prevention of Corruption (hereinafter: the Commission) is an autonomous and independent State body which, for the purpose of strengthening the effective functioning of the rule of law and safeguarding it from being threatened by corrupt practices, autonomously implements its powers and carries out the tasks set out herein and in other Acts within the framework and on the basis of the relevant legislation.*

##### Article 12 (Tasks and powers of the Commission)

*(1) The Commission shall have the following tasks and powers:*

- to prepare expert groundwork for strengthening integrity and training programmes;*
- to provide training for the persons responsible for integrity plans;*
- to prepare, together with the representatives of equivalent public law entities or their associations, models of their integrity plans;*
- to provide advice on strengthening integrity and preventing and eliminating the risks of corruption in the public and private sectors;*
- to monitor and analyse data on the development and accomplishment of tasks aimed at preventing corruption in the Republic of Slovenia;*
- to monitor the state of affairs in the field of international corruption, and to monitor and analyse data on the number and manifestations of all forms of criminal offences involving elements of corruption in the Republic of Slovenia;*
- to perform lobbying-related tasks;*
- to adopt principled opinions, positions, recommendations and explanations in respect of issues connected with the contents of this Act;*
- to ensure the implementation of the resolution regulating the prevention of corruption in the Republic of Slovenia;*
- to draft amendments to the resolution regulating the prevention of corruption in the Republic of Slovenia and propose that they be discussed by the Government, who then in turn submits them to the National Assembly for adoption;*
- to give consent to the action plans of the individual authorities defined in the resolution, these plans relating to the implementation of the resolution regulating the prevention of corruption in the Republic of Slovenia;*
- to call on the competent authorities in the Republic of Slovenia to meet the obligations arising from international instruments relating to the prevention of corruption, and to provide them with proposals regarding the method of implementation of these obligations;*

- to cooperate with the competent State bodies in drafting regulations on the prevention of corruption;
- to monitor the implementation of the regulations referred to in the preceding indent and to propose initiatives for amendments to them;
- to provide its opinion on proposals for laws and other regulations before they are discussed by the Government, particularly in respect of the conformity of the provisions contained within these proposals for laws and other regulations with the laws and regulations regulating the prevention of corruption, and the prevention and elimination of conflicts of interest;
- have the option available to submit initiatives to the National Assembly and the Government to regulate a particular area by adopting a law or any other regulation in accordance with its tasks and powers;
- to cooperate with the corresponding authorities of other countries and international structures, and with international non-profit private sector organisations engaged in the prevention of corruption;
- to cooperate with scientific, professional, media and non-profit organisations from the private sector in the prevention of corruption;
- to prepare starting points for codes of conduct;
- to publish professional literature;
- to perform, upon the receipt of payment, expert tasks related to the preparation and development of integrity plans and the preparation of measures for the prevention of corruption for private sector users;
- to keep records pursuant to this Act; and
- to perform other tasks set out by this Act and other relevant laws.

(2) Within the context of the implementation of tasks under indent 6 of the preceding paragraph, the Police, the State Prosecutor's Office and the competent court are under an obligation to notify the Commission of the completed proceedings related to the criminal offences of corruption, in respect of which the Slovenian and foreign citizens or legal entities established in the Republic of Slovenia and abroad have been simultaneously suspected, accused, charged or convicted, within 30 days following the conclusion of the relevant cases. The police shall do this by way of a notification on the manner in which the case was completed, the State Prosecutor's Office by way of a document on the rejection of the accusation or the abandonment of the prosecution and the court by way of a judgment or decision. The duty to notify shall also apply in cases where, within the framework of international cooperation, the aforementioned bodies are informed by foreign police or judicial authorities on a concluded case in a foreign country in which a citizen of the Republic of Slovenia has been accused, charged or convicted.

(3) The tariff for the implementation of the tasks referred to in indent 21 of paragraph 1 of this Article shall be determined by the Commission and published on its website. In calculating the costs and in determining the mode of payment for the implementation of the aforementioned tasks, the rules adopted pursuant to the law regulating public finance shall be observed.

With the adoption of the IPCA in 2010, the mandates and powers of the CPC have been significantly expanded, including, inter alia, on investigative and sanctioning powers, lobbying oversight, whistle-blower protection, and integrity in both public and private sectors. The IPCA also strengthened the CPC's independence, including by introducing objective standards and additional safeguards in the appointment and dismissal of the CPC's leadership, such as the Chief Commissioner and the two Deputy Commissioners.

The amendments to the IPCA, adopted in June 2011, further strengthened the CPC's powers to subpoena financial documents from the public and private sectors and to hold magistrates, public officials, management, and boards of public enterprises accountable for corruption, conflicts of interest or breach of ethics.

### *Jurisdiction*

The CPC, although it does not have powers to conduct criminal investigations of corruption cases, has rather broad



legal powers to access and subpoena financial and other documents (notwithstanding the confidentiality level), interview public officials, conduct administrative investigations and proceedings, and instruct law enforcement bodies to gather additional information and evidence within the limits of their authority. The CPC can also issue, under its jurisdiction, fines to natural and legal persons in the public and private sectors for various violations. Its tasks, among others, include:

- Conducting administrative investigations into allegations of corruption, conflict of interest and illegal lobbying;
- Protection of whistle-blowers;
- Monitoring the financial status of high-ranking public officials in the executive, legislature and judiciary through the assets declaration and monitoring system;
- Maintaining the central register of lobbyists;
- Adopting and coordinating the implementation of the National Anti-corruption Action Plan;
- Assisting public and private institutions in the development of integrity plans (tools and internal control mechanisms aimed at identification and curbing of corruption risks within the given organization) and monitoring their implementation;
- Designing and implementing different anti-corruption preventive measures (awareness-raising, training, education, etc.);
- Serving as a national focal point for international anti-corruption cooperation on the systemic level (GRECO, OECD, UN, EU, etc.).

### *Independence*

Although it is part of the public sector, the CPC is not subordinate to any State institution and does not receive direct instructions from the executive or the legislature. It has a similar status as the Court of Audit, the Ombudsman, and the Information Commissioner.

To strengthen CPC's independence, the IPCA provides a special procedure for the appointment and dismissal of the leadership of the Commission. The Chief Commissioner and the two Deputy Commissioners are appointed by the President of Slovenia following an open recruitment procedure and nomination by a special selection board. Candidates, obliged to meet high professional and integrity standards, are interviewed and screened by a selection board comprising representatives from the Government, the National Assembly, non-governmental organizations, the Independent Judicial Council, and the Independent Officials Council (art. 9, IPCA). The term of office of the Chief Commissioner is six years, while that of the deputies is five years. The commissioners of the CPC can serve up to two terms (art. 7, IPCA) and can only be dismissed from office by the President on their own motion or on the motion of the National Assembly if the commissioners act in breach of the Constitution or the laws (art. 22, IPCA).

## **Integrity and Prevention of Corruption Act**

### Article 7 (Appointment of the Commissioners)

*(1) The Commission shall comprise the chair (Chief Commissioner) and two deputy chairs (Deputy Commissioners). The chair and deputy chairs of the Commission are officials.*

*(2) The Commission's chair and his deputies must be citizens of the Republic of Slovenia. At the very least they must have completed higher education under the second-level study programmes or education which corresponds to the second-level of higher education under the law governing higher education, and at least ten years of work experience in performing tasks requiring the aforementioned education, and must not have been sentenced to imprisonment by way of a final judgment.*

*(3) The chair of the Commission and his deputies must be persons for whom it may reasonably be concluded that, in respect of their previous work, conduct or behaviour, they will perform their function in the Commission by observing the law and pursuant to the rules of the profession.*

*(4) The office of the chair or deputy must not be carried out in addition to the performance of a function or work in any other entity governed by public or private law that operates in areas where*

*the Commission exercises its powers pursuant to this Act.*

*(5) The chair of the Commission and his deputies shall cease to perform any work or function referred to in the previous paragraph no later than one month after assuming office.*

*(6) The chair of the Commission shall be appointed for a period of six years and deputy chairs for a period of five years; they may be appointed to their respective office for two years in succession.*

#### Article 8 (Conditions for the operation of the Commission)

*(1) The chair and deputy chairs of the Commission shall perform their respective functions on a full-time basis.*

*(2) The Commission shall employ the necessary number of public servants. The categories and number of public servant posts shall be defined by the document on job classification.*

#### Article 9 (Appointment of the Commission)

*(1) Six months before the expiry of the term of office of the chair and deputy chairs of the Commission, the chair shall notify the President of the Republic accordingly, who in turn shall invite the proposers for members of the selection committee to appoint the members in question within 30 days of receipt of the notice from the President of the Republic. Along with the invitation to appoint members of the selection committee, the President of the Republic shall carry out a public call for the collection of candidacies for the chair and deputy chairs of the Commission. The period for collecting candidacies to be stipulated by the President of the Republic shall be not shorter than 14 days and not longer than 30 days in duration. The candidacies collected shall then be submitted to the selection committee.*

*(2) The selection procedure for the choice of appropriate candidates for the posts of chair and deputy chairs shall be carried out by the selection committee which comprises five members. The following shall each appoint one member to the selection committee:*

- the Government of the Republic of Slovenia (hereinafter: the Government);*
- the National Assembly of the Republic of Slovenia (hereinafter: the National Assembly);*
- non-profit private sector organisations engaged in the prevention of corruption from among their members;*
- the Judicial Council from among its members; and*
- the Council of Officials from among its members.*

*They shall then notify the Office of the President of the Republic of Slovenia (hereinafter: Office of the President of the Republic) of their appointments.*

*(3) The first sessions of the selection committee shall be convened by the Secretary-General of the Office of the President of the Republic within seven days following the expiry of the period referred to in the third sentence of paragraph 1 of this Article. At its first session, the selection committee shall define its work methodology and unless members of the selection committee decide otherwise, the session shall be chaired by the member who is the most senior in age.*

*(4) In the event that the proposers for members of the selection committee fail to appoint members to the selection committee within the period laid down in paragraph 1 of this Article, the Secretary-General of the Office of the President of the Republic shall invite them to do so within the five days following receipt of the invitation and instruct them that, in the event that this does not occur, the selection committee will begin its work comprising the previously appointed members. In such a case, the selection committee shall adopt a decision by way of a majority vote of the appointed members.*

*(5) The selection committee shall examine whether the conditions referred to in paragraph 2 of Article 7 of this Act have been met and assess the suitability of the candidates pursuant to paragraph 3 of Article 7 of this Act. The selection committee shall within 30 days following the expiry of the period referred to in the preceding paragraph submit to the President of the Republic a list of candidates who meet the conditions and are suitable for appointment.*

*(6) The President of the Republic shall from among the candidates proposed to him by the selection*

*committee appoint the chair and deputy chairs of the Commission within 30 days following receipt of the names of the candidates.*

*(7) In the event that the President of the Republic does not appoint any candidate from among the candidates proposed for the posts of the chair or deputy chairs of the Commission, he shall notify the selection committee accordingly and repeat the public call procedure for the collection of candidacies without delay. In such cases, the period for the collection of proposals shall be not less than 14 days and not more than 30 days. The selection committee shall carry out the procedure for the selection of suitable candidates within 14 days following the expiry of the period for the collection of candidacies. In the event that the repeat procedure is also unsuccessful, it shall be repeated until the chair and both deputy chairs of the Commission have been appointed, whereby the durations referred to in this paragraph are to be observed.*

*(8) The official of the Commission whose term of office has expired shall perform his function until a new official has been appointed to replace him.*

*(9) The tasks under this Article that are required to carry out the collection of candidacies and the selection of suitable candidates shall be performed by the Office of the President of the Republic.*

#### Article 22 (Dissolution of the Commission)

*(1) The President of the Republic shall relieve the chair or deputy chair of the Commission of his duties in the following circumstances:*

- if the chair or deputy chair of the Commission requests to be relieved of his duties;*
- if the chair or deputy chair of the Commission has been convicted by way of a final judgment and sentenced to imprisonment;*
- if the chair or deputy chair of the Commission has permanently lost the capacity to perform the duties of his office; and*
- if the chair or deputy chair of the Commission has failed to act in accordance with paragraph 5 of Article 7 of this Act.*

*(2) The chair or deputy chair of the Commission shall notify the President of the Republic of the facts referred to in the second and third indents of the preceding paragraph within three days of the date of their occurrence.*

*(3) If it has been established that the chair or deputy chair of the Commission has failed to act in accordance with paragraph 5 of Article 7 of this Act, the President of the Republic shall relieve the chair or deputy chair of his duties upon the proposal of the National Assembly.*

*(4) The President of the Republic may relieve the chair or deputy chair of the Commission of his duties upon the proposal of the National Assembly if the chair or deputy chair of the Commission fails to perform the duties of his office in accordance with the Constitution and the law.*

*(5) If the chair or deputy chair of the Commission is prematurely relieved of his office, a new official shall be appointed for the term of office in accordance with the procedure referred to in Article 9 of this Act.*

#### *Financial and human resources*

The budget of the CPC is determined yearly by the National Assembly upon a proposal made by the CPC. The CPC is autonomous in allocating and organizing its financial and human resources and priorities within its budget (art. 6, IPCA).

### **Integrity and Prevention of Corruption Act**

#### Article 6 (Funding)

*The funds for the work of the Commission shall be provided by the budget of the Republic of Slovenia upon a proposal made by the Commission. The Commission shall decide autonomously on the use of the budget funds.*

While the legal framework safeguarding the independence of the CPC and the material conditions for its operations are generally satisfactory, the CPC remains understaffed due to fiscal restraints. This is also exacerbated given its broad mandates granted by the IPCA. As a result, the CPC has been facing significant backlogs of cases.

Date	Number of CPC's staff (including officials, i.e. chair and two deputy chairs)
31th of December 2013	40
31th of December 2014	35
31th of December 2015	41
31th of December 2016	39
1st of July 2017	39

	2015	2016	2017	2018
Total annual amount of funds	1,626,500.00 EUR	1,703,169.00 EUR	1,716,340.00 EUR	1,716,340.00 EUR
Wages and salaries	1,227,842.00 EUR	1,310,359.00 EUR	1,332,406.00 EUR	1,332,406.00 EUR
Material costs	388,658.00 EUR	355,010.00 EUR	348,034.00 EUR	338,847.00 EUR
Investments	10,000.00 EUR	37,800.00 EUR	35,900.00 EUR	45,087.00 EUR

#### Accountability

Substantive decisions of the CPC, such as its rulings on corruption, conflicts of interest, and violations of lobbying regulations, are subject to judicial review by the High Administrative Court. Under the IPCA, the CPC is subject to periodic external audits, with the audit reports being submitted to the National Assembly and the President and made publicly available (art. 20). The CPC must also present yearly reports to the National Assembly for elaboration. In addition, it is obliged to publish its decisions on the internet with few exceptions and to publicize its work and findings (art. 19, IPCA).

#### **Integrity and Prevention of Corruption Act**

##### Article 19 (The Commission's obligation to report on its work)

*The Commission shall report once a year to the National Assembly on its work. It shall submit the annual report for the previous year by no later than 31 May of the current year.*

##### Article 20 (Supervision over the Commission)

*(1) The supervision of the Commission's performance of its tasks shall be exercised by the National Assembly. The chair of the Commission shall report once a year to the National Assembly on the content and scope of the Commission's work, decisions, findings, and opinions related to the Commission's powers, being careful not to give any information that would result in the 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 conflicts of interest.*

*(2) At least every three years, the Commission shall conduct an internal audit of its operations regarding the use of material and financial resources, and personnel matters, which shall be carried out by an external auditing authority. The Commission shall send the audit report to the President of the Republic and the National Assembly for their information.*

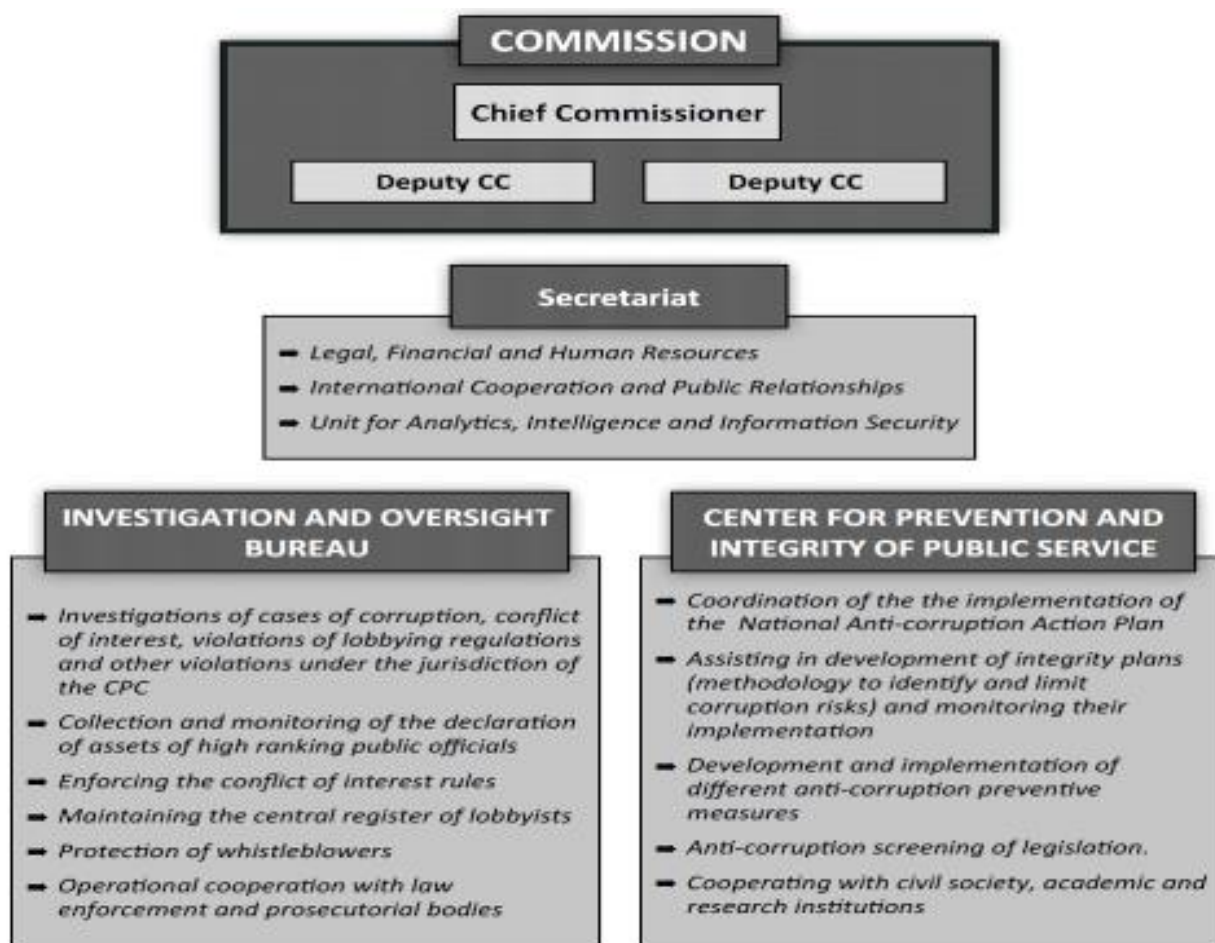
#### Organization and Staff

The decision-making level of the CPC consists of three members - Chief Commissioner and two deputies.

Functioning as a collegial body, they decide on substantial matters with a majority of votes, such as rulings on corruption, conflicts of interest, breach of ethics, and recommendations adopted. They are supported by a number of professional staff with different expertise in the field of law, economics, audit, social science, information technology, and investigations.

Employees of the CPC work in three main units: the Secretariat, the Investigation and Oversight Bureau and the Centre for Prevention and Integrity of Public Service. These employees are recruited directly by the CPC in an open and competitive recruitment procedure or through secondment from other State institutions. They are public employees and are bound by the salary scheme and regulations governing the public service.

*Organizational chart*



Slovenia has taken a holistic approach to the prevention of corruption, and for this purpose, many public institutions and the CPC have been involved in this process.

*For examples of the implementation of the provision under review, please see the summary under paragraphs 1 and 2 of article 5 of the Convention.*

***(b) Observations on the implementation of the article***

The CPC, the main preventive anti-corruption body established in 2004, is an autonomous and independent State body with investigative and sanctioning powers (arts. 5 and 12, IPCA). It leads other State institutions in the prevention of corruption.

## **Paragraph 2 of article 6**

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### *Independence*

Please refer to the information provided under paragraph 1 of article 6 of the Convention.

To ensure the independence of the CPC, the IPCA provides:

- The chair and deputy chairs of the Commission perform their functions on a full-time basis (art. 8, IPCA);
- Special procedure for appointment and dismissal of the leadership of the CPC (arts. 9 and 22, IPCA);
- Supervision over the CPC (arts. 20 and 21, IPCA).

The CPC is obliged to submit an annual report to the National Assembly on the content and scope of its work, decisions, findings, and opinions related to its powers and to provide an assessment of the current situation concerning the prevention of corruption, including prevention and elimination of conflicts of interest. Besides, the CPC shall conduct an audit of its operations regarding the use of material and financial resources and personnel matters at least every three years. The CPC shall send the audit report to the President and the National Assembly for their review (art. 20, IPCA). In addition, the National Assembly is authorized to supervise the chair of the Commission for the Prevention of Corruption and both deputy chairs (art. 21, IPCA).

#### **Integrity and Prevention of Corruption Act**

##### Article 20 (Supervision over the Commission)

(1) *The supervision of the Commission's performance of its tasks shall be exercised by the National Assembly. The chair of the Commission shall report once a year to the National Assembly on the content and scope of the Commission's work, decisions, findings, and opinions related to the Commission's powers, being careful not to give any information that would result in the 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 conflicts of interest.*

(2) *At least every three years, the Commission shall conduct an internal audit of its operations regarding the use of material and financial resources, and personnel matters, which shall be carried out by an external auditing authority. The Commission shall send the audit report to the President of the Republic and the National Assembly for their information.*

##### Article 21 (Powers of the National Assembly in exercising supervision)

*By applying, mutatis mutandis, the provisions of this Act, the National Assembly shall supervise the chair of the Commission for the Prevention of Corruption and both deputy chairs in terms of their assets, the acceptance of gifts, conflicts of interest, and the incompatibility of holding office with the pursuit of gainful activity.*

#### *Financial and human resources*

The CPC has a similar budget status as the Constitutional Court and the Court of Audit. Data for the last ten years show that despite the fiscal constraints that apply to the entire public sector, CPC has been allocated, on average, more funds than needed. Data on the implementation of the CPC's budget show that in the period of six years between 2007 and 2012, labour costs increased by 208.8%, from €0.41 million in 2007 to €1.26 million in 2012. From 2013 to 2016, realized labour costs were lower than planned as per the CPC financial plan. For 2017, €1.33 million was planned, the highest amount over the preceding ten years. In this regard, Slovenia stressed that it is in full compliance with the provision under review.

As a budget user, the CPC devises its financial plans within the framework of the adopted Resolution on Budgetary

Expenditure (*for more about the national budget adoption procedure, please see paragraph 2 of article 9 of the Convention*). The CPC plans its spending to the extent that allows the fulfilment of all legal obligations, and in this regard, it carefully plans and prepares to account for the activities and the objectives on which the funds are to be used.

The draft financial plan is prepared in accordance with the CPC's specific policy and program. It echoes the objectives that are in line with the mission of the CPC (for example: dealing with suspicions of corrupt conduct, avoiding conflicts of interest, incompatibility, business restrictions, gifts, prevention measures, etc.). After the CPC prepares the proposed budget, the proposal is then submitted to the MoF, which incorporates it into the national budget for adoption by the National Assembly.

Assessments of human and material resources needed in the CPC are conducted and included in the Act of the Job Classification and Systemisation of the CPC and the draft budget plan, which need to be prepared in advance (*see the Act of the Job Classification and Systemisation of the CPC*).

*Please see the summary and links provided under paragraphs 1 and 2 of article 5 of the Convention for studies, analysis, and different reports. Please also see the summary under paragraph 1 of article 6 of the Convention.*

#### *Organization and Staff*

The CPC's Act on the Organization and Job Classification determines the positions and conditions for individual posts, tasks, obligations, etc., of a particular position according to the CPC's needs and working processes. The CPC's Act on the Organization and Job Classification was last updated and amended in June 2017, which increased the number of job positions (from 66 to 72 systematized posts. *Please see attached up-to-date act (Act of the Job Classification and Systemization)*).

In the case of new recruitment, the CPC is primarily bounded by the HR plan, which currently does not allow the same number of personnel as set by the Act of the Job Classification and Systemization. The HR plan for 2017 permitted 42 filled positions (41 positions actually filled, with two positions filled in 2017). For 2018, the CPC's plan was to add four positions and another four for 2019. However, due to financial allocations, in 2017, the CPC had funding for only two new positions, while in 2018, it was not possible to recruit new employees.

*Please also see the summary under paragraph 1 of article 6 of the Convention.*

#### *Trainings*

The budget for education and trainings of the CPC's public employees is relatively limited since the mandatory training scope is narrow, which only includes professional training upon initial appointment, misdemeanour and general administrative procedures, safety at work, etc. The CPC's staff could also attend training courses provided by the Police Academy. Meanwhile, employees who had participated in free seminars on specific topics are expected to deliver the same training to new employees.

Below is a table regarding trainings for CPC's staff in the previous three years:



Course	Number of personnel	Year
How to control effectiveness of risk management	2	2014
Operational excellence of state-owned companies	1	2014
Classified information and protection of personal data	16	2014
Fraud – how to identify and prevent it	4	2014
Ethical hacking	2	2014
Risk management and internal controls	1	2014
Public Procurement	1	2014
Anti - fraud and anti - corruption measures in relation to the European structural and investment funds	2	2014
Corruption risks in banking sector	4	2014
Misdemeanour procedure	16	2014
Classified information and protection of personal data	5	2015
Public procurement	5	2015
THEMIS	3	2015
What the Auditor's report tells us and what the supervisor should ask the auditor	3	2015
Fraud in EU investments	2	2015
Exam for becoming inspector	4	2015
Corporate management	2	2015
Self-defence	35	2015
Preventing fraud risks	6	2015
Compliance and ethic in business	3	2015
Counterfeiting of medicines	1	2015
Corporate integrity	1	2015
Traps in the financial statements and how can be avoided.	1	2016
Microsoft Excel	6	2016
Bribery of civil servants in international business	8	2016
Managing stress in workplace	28	2016
Classified information and protection of personal data	35	2016
Techniques for data analysing	1	2017
Exam for becoming inspector	2	2017
Tax crime: criminal aspects	3	2017
Dealing with difficult clients	13	2017
Etc.		

Reports prepared by the CPC, including budgetary submissions and expenditure reports, are available on the CPC's website.<sup>33</sup>

***(b) Observations on the implementation of the article***

The chair of the CPC is appointed by the President with a term of six years with a possible extension for another term and can be relieved by the President under certain circumstances, including upon conviction and imprisonment (arts. 7 and 22, IPCA). The annual budget of the Commission is determined by the National Assembly, while funds allocation and human resources are within CPC's mandate. During the country visit, it was reported that the CPC is understaffed and specialized trainings are inadequate, though with an increased budget.

**It is recommended that Slovenia take measures to ensure that the CPC is allocated the resources required to ensure its mandated duties, including the provision of adequate trainings for its staff to carry out their**

<sup>33</sup> In Slovene only: <https://www.kpk-rs.si/sl/komisija/letna-porocila>.



functions.

### **Paragraph 3 of article 6**

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The National Assembly adopted the Act amending the Act on Ratifying the United Nations Convention against Corruption on 16 June 2009.

#### **Act amending the Act on Ratifying the United Nations Convention against Corruption**

##### New Article 3a:

*The Republic of Slovenia informs the Secretary-General of the United Nations about the following statement:*

*“In accordance with Article 6 (3) of the Convention, the anti-corruption authority of the Republic of Slovenia is the Commission for the Prevention of Corruption.*

*Address: Commission for the Prevention of Corruption DUnajska 56*

*1000 Ljubljana Phone: +386 1 478 84 83 Fax.: + 386 1 478 84 72*

*E-mail: anti.korupcija@kpk-rs.si”.*

##### New Article 4:

*The Commission for the prevention of corruption is responsible for the implementation of the convention.*

Ministry of Foreign Affairs, Sector for International Law, sent the notification to the UN. Slovenia received confirmation from the UN that the UN received the above-mentioned information on 27 July 2009.

#### **(b) Observations on the implementation of the article**

The Act of 16 June 2009, amending the Act on Ratifying the United Nations Convention against Corruption (new article 3a and new article 4), stipulates that the CPC is the designated preventive authority under article 6, paragraph 3, of the Convention.

### **Article 7. Public sector**

#### **Paragraph 1 of article 7**

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

- (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
- (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
- (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

#### (a) Summary of information relevant to reviewing the implementation of the article

##### Structure of the public service

According to the Public Employees Act (art. 1(2), PEA, effective in June 2003), the public sector is composed of:

- State bodies and administrations of self-governing local communities;
- Public agencies, public funds, public institutions, and public commercial institutions;
- Other entities governed by public law that are indirect users of the state budget or the budgets of local communities.

##### Public Employees Act

###### Article 1 (Public Employees)<sup>34</sup>

1) Individuals employed in the public sector shall be considered public employees.<sup>35</sup>

2) For the purposes of this Act, the public sector shall comprise:

- state authorities and the administrations of self-governing local communities,
- public agencies, public funds, public institutions, and public commercial institutions,
- other entities governed by public law that are indirect users of the state budget or the budgets of local communities.

###### Article 6 (Definition of terms)

For purposes of this Act, the following definitions shall apply:

1. "state authority" shall mean a state administration authority or other state authority;
2. "state administration authority" shall mean a ministry, a body within a ministry, a government office or an administrative unit of the State administration;
3. "other state authority" shall mean the National Assembly, the National Council, the Constitutional Court, the Court of Audit, the Human Rights Ombudsman, a judiciary authority, or a state authority other than a state administration authority.

Under paragraph 1 of article 1 of the PEA, public employees shall be individuals employed in the public sector. Public companies and commercial companies, where the state or local communities are controlling shareholders or have prevailing influence, shall not be a part of the public sector under the PEA (para. 3). Holders of public office (functionaries) in state authorities and local community authorities shall not be considered as public employees (para. 4).

<sup>34</sup> Translations of the term "javni uslužbenec" in the laws provided for the review employed the term 'civil servant' and 'public employee' interchangeably. In addition, the term 'public servant' is also used elsewhere for the same purpose. The terms such as 'official(s)', 'official person(s)', etc., used in this report are to be understood as defined by relevant laws discussed in various parts of the report. Where relevant and appropriate, the Executive Summary of this report uses the term 'public official' rather than those varying terms, which is normally used in the Convention and other relevant documents, while this report, where otherwise stipulated, uses the term 'public official' loosely to capture persons covered under the Integrity and Prevention of Corruption Act of 2011 (IPCA), including public employees.

<sup>35</sup> There are two distinct groups of staff within the Slovenian public sector: holders of public office (**functionaries**) and **public employees**. While 'holders of public office' are not explicitly defined, the term refers to political staff, i.e. ministers, state secretaries and political advisors, etc., all other personnel within the public sector are referred to as 'public employees'. Public employees are subdivided into three groups: 1) officials (as defined in art. 23 of the PEA, those are public employees that perform public tasks within individual authorities, 2) public employees (officials) who hold managerial positions, and 3) other public employees performing other ancillary work in the bodies - ancillary public employees.

## Public Employees Act

### Article 1 (Public Employees)

1) Individuals employed in the public sector shall be considered public employees.

3) Public enterprises and commercial companies in which the state or local communities are the controlling shareholders or have a prevailing influence shall not be considered a part of the public sector under this Act.

...

4) Holders of public office in state authorities and local community authorities [functionaries] shall not be considered public employees .

5) The terms "official", "employee", "head", and other terms written in the masculine grammatical form shall be applied in a neutral manner for both men and women .

FUNCTIONAL LEVEL	TITLE	PART OF SCS?	POLITICAL APPOINTMENT
1st Level	Minister and Secretary of State	No	Yes
2nd Level	Top Managers; Secretary-General and Director-General in Ministries and Public Bodies; Head of the Cabinet and Head of Administrative Unit.	Yes	No – Partially
3rd Level	Head of Sector, Head of Committee and Head of Service	No	No
4th Level	Head of Department/ Division	No	No

### Principles

Article 122 of the Constitution provides that “employment in the State administration is possible only on the basis of open competition, except in cases provided by law.”

### Constitution

#### Article 122 (Employment in the State Administration)

*Employment in the state administration is possible only on the basis of open competition, except in cases provided by law.*

Open competition and equal access are also provided in the PEA regarding the new employment of public employees.

## Public Employees Act

### Article 7 (Equal access principle)

*Public employees shall be employed by granting equal access to posts to all interested candidates under equal conditions and by ensuring the selection of candidates with the best professional qualifications for the performance of the tasks of the respective posts.*

### Article 23 (Officials and other public employees)

1) Officials shall be public employees that perform public tasks within individual authorities. Public tasks

*performed within individual authorities shall be the tasks that are directly linked to the exercise of power or to the safeguarding of the public interest. The criteria for determining the posts in which public tasks are performed in state administration authorities, judicial authorities and local community administrations shall be defined in more detail by a Government Decree, while other authorities shall set the criteria for determining the posts in which public tasks are performed by their general acts.*

*2) The posts in which the tasks referred to in paragraph one of this Article are performed shall be the posts of officials.*

*3) Public employees performing ancillary work within individual authorities shall be ancillary public employees (hereinafter: ancillary public employees). Ancillary work shall be work in the field of personnel management and material and financial operations, technical and similar services and other work required for the smooth performance of an authority's public tasks.*

*4) The posts in which the work referred to in paragraph three of this Article is performed shall be ancillary posts.*

*5) Public employees employed in ancillary posts may also perform simple administrative tasks determined by the minister responsible for administration.*

#### Article 27 (Principle of open competition)

*1) Officials shall be selected in an open competition unless otherwise provided by an Act.*

*2) Candidates shall be treated equally in the open competition procedure; the selection shall be made on the basis of demonstrated better professional qualifications.*

Besides, the PEA establishes the principles of the employee system, which aims at setting standards of quality, including:

- principle of legality (art. 8);
- principle of professionalism (art. 9);
- principle of honourable behaviour (art. 10);
- restrictions and duties regarding the receiving of gifts (art. 11);
- principle of confidentiality (art. 12);
- principle of responsibility for results (art. 13);
- principle of due care and diligence (art. 14);
- prohibition of harassment (art. 15a)

Pursuant to the PEA, professionalism is a prerequisite for the appointment of public employees, including those who hold managerial positions. Any new recruitment and promotion of public employees should take place in accordance with relevant legal bases and under the same conditions.

*With regard to the definition of the principles above, please see paragraph 1 of article 8 of the Convention.*

#### *Recruitment procedure*

The PEA is divided into two parts. The first part applies to all public employees in the public sector, whereas the second part regulates matters regarding public employees (officials), specifically in the state bodies and local community administrations. The recruitment procedure is regulated in the second part of the PEA, which is only applicable to public employees in State bodies and local community administrations, including senior public employees – 2<sup>nd</sup> level. Senior public employees are understood as defined in para. 4 of article 60 of the PEA.

### **Public Employees Act**

#### Article 60 (Implementation of open competition)

...

*4) Open competitions for the managerial position of director-general, secretary-general, head of a body*

*within a ministry, head of a government office or head of an administrative unit shall be run by a special selection board appointed by the Officials' Council for each particular case.*

Guided by the principle of open competition for new employment, vacancies are advertised publicly in the Official Gazette, newspapers or with the Employment Service of Slovenia by each Government body. In addition to the general selection conditions laid down in the labour law and regulations, further conditions may be set for the recruitment of public employees, such as education or vocational qualifications, functional or special skills and other requirements if applicable. Candidates with satisfied qualifications will be tested through a selection procedure, including a review of documents, written tests, oral interviews, and other forms of testing if necessary. Selected candidates will receive a probationary contract. However, before deciding on external recruitment, the hiring manager must verify whether it is possible to fill the vacancy through an internal transfer using a competitive procedure.

Under article 60(2) of the PEA, the method of servicing and notifying candidates and the method of handling incomplete applications shall be regulated by a Government Decree. The head of the authority may authorise a public employee or appoint a selection board to conduct the selection procedure (art. 60(3), PEA).

## **Public Employees Act**

### Article 60 (Implementation of open competitions)

*1) The provisions of the Act governing the general administrative procedure, with the exception of the provisions on verbal hearings, shall apply, mutatis mutandis, to open competition procedures.*

*2) Notwithstanding the provision of paragraph one of this Article, the method of servicing and notifying candidates and the method of handling incomplete applications shall be regulated by a Government Decree.*

*3) The head of the authority may authorise a public employee or appoint a selection board to conduct the selection procedure.*

As mentioned earlier, senior public employees are also selected through an open and public competition. In the case of senior-level officials (public employees who hold managerial positions) stipulated in article 60(4) of the PEA, the procedure is supervised by an independent body, the Officials Council of the MPA, which comprises 12 members elected or appointed for a term of six years (arts. 175 and 176, PEA). The Council is responsible for determining the standards of professional competence,<sup>36</sup> selection criteria, and verification methods for the qualifications of candidates for positions listed in article 60(4) of the PEA and appoints special competition commissions (special selection boards) for the selection of candidates for those positions.

In 2010, the Officials Council adopted a specific document to help special competition commissions (special selection boards) assess the suitability of selected candidates and provide a uniform approach to selecting candidates. The document was amended in 2013 and 2016, respectively.

Meanwhile, the members of the Officials Council also serve as chairmen for different special competition commissions (special selection boards) and regularly discuss problems and experiences encountered in this process. These discussions are conducive to ensuring a uniform approach in the recruitment of officials.

Upon completion of tests and evaluations carried out by a special competition commission (special selection boards), the final candidate will be selected by the top decision-making level from a shortlist prepared by the Officials Council. Senior public employees (who hold managerial positions) are appointed for a period of five years.

### *Appeal against recruitment decision*

Pursuant to article 63 of the PEA, all candidates who have participated in the selection procedure will receive the final selection decision. Under the supervision of an official of the respective body, the candidates may inspect

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<sup>36</sup> Available at: ([http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/NOVO\\_STANDARDS\\_OF\\_PROFESSION\\_AL\\_QUALIFICATIONS\\_2016.pdf](http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/NOVO_STANDARDS_OF_PROFESSION_AL_QUALIFICATIONS_2016.pdf))

application documents submitted by the selected candidate and all other materials in relation to the selection procedure.

Article 65 of the PEA allows for appeals against the decisions of the public competitions. Aggrieved candidates have the right to appeal to the Employment Appellate Commission (EAC), and such an appeal could suspend relevant decisions. The candidate may also request a judicial review of the decision of the EAC in an administrative dispute.

## **Public Employees Act**

### Article 63 (Decision on selection)

*1) Each candidate for the post of an official that participated in the selection procedure shall be issued and served a decision on the selection or non-selection of a candidate .*

*2) After the decision on the selection or non-selection has been issued, under the supervision of an official of the relevant authority, every candidate who has participated in the selection procedure shall be allowed access to all data that the selected candidate provided in the application in the open competition and that prove that the competition conditions have been fulfilled, and to access other materials used in the selection procedure.*

### Article 65 (Rights of candidates not selected)

*1) Candidates not selected in an open competition shall have the right to lodge an appeal with the competent appellate employment commission if they opine the following:*

- 1. that the selected candidate did not fulfil the competition conditions;*
- 2. that they fulfil the competition conditions, but were not given the opportunity to participate in the selection procedure;*
- 3. that the selected candidate manifestly failed to achieve the best results according to the criteria of the selection procedure;*
- 4. that there were substantial violations of the open competition procedure or of the selection procedure.*

*2) Notwithstanding the provisions of the Act governing the general administrative procedure, unselected candidates may lodge an appeal within eight days of being served the decision.*

*3) Candidates who did not participate in individual procedural acts of the selection procedure and failed to excuse their absence in spite of having been duly invited shall not be allowed to appeal.*

*4) An appeal shall stay the appointment of the selected candidate to a title and the conclusion of an employment contract.*

*5) An administrative dispute may be filed against the decision of the appellate employment commission. In the event the administrative court finds that the action is well founded on the grounds referred to in point 1 of paragraph one of this Article, the aggrieved party may be awarded damages in an amount of no less than one and no more than three minimum gross monthly salaries for the post for which the aggrieved party applied. In the case referred to in point 1 of paragraph one of this Article, the administrative court may set aside the decision on selection and instruct the competent appellate employment commission to annul the act on appointment and the employment contract and instruct the relevant authority to repeat the selection procedure following the annulment of both acts. The court shall award damages with due consideration of the gravity of the violation and the consequences suffered by the plaintiff.*

*6) No appeal shall be allowed against a decision of the special selection board referred to in paragraphs four and five of Article 60 of this Act; however, an administrative dispute may be filed. Unselected candidates may initiate an administrative dispute on the grounds specified in points 1, 2 and 4 of paragraph one of this Article and also if the selection board finds a candidate to be unsuitable for the managerial position due to his or her professional qualifications while the candidate is of the opinion that he or she is suitable.*

The personal data of all candidates would be kept until the end of the period for appeal (art. 21, the Personal Data Protection Act). The selection procedure documents (for instance, appointment to the competition commission, criteria of selection, report of competition commission, and orders etc.) are to be stored in accordance with the relevant provisions regarding documentary and archive material.

Anyone wishing to compete for a position in State bodies and local community administrations must enclose a statement indicating that the candidate has no criminal record. Such a statement by a candidate should include:

- He/she has not been convicted by a judgment of a criminal offence prosecuted ex officio,
- He/she has not been sentenced to an unconditional prison sentence of more than six months,
- No final indictment has been lodged against him/her for the purpose of a deliberate criminal offence being prosecuted ex officio, and
- He/she authorizes the body to verify relevant information submitted from the official records.

#### *Termination of employment*

The employment relationship with a public employee can be terminated if he/she has been sentenced by a final judgment for an intentionally committed criminal offence prosecuted ex officio with an unconditional punishment of more than six months in prison.

### **Public Employees Act**

#### Article 154 (Methods of terminating employment contracts)

*1) The employment contract of a public employee shall terminate in the manner determined by the Employment Relationship Act and, in accordance with an Act itself, also in the following cases:*

*1. if the official concerned fails to pass the professional certification exam that was set as a condition by the employment contract, unless the failure to pass the exam is due to reasons beyond his or her control; the official's employment relationship shall terminate on the next day following the expiry of the time limit determined by the employment contract;*

*2. if an official is convicted by a final judgment for an intentionally committed criminal offence prosecuted ex officio and sentenced to an unconditional sentence of imprisonment exceeding six months, his or her employment relationship shall terminate by a decision issued by the head of the authority, but no later than within 15 days of the service of the final judgment on the employer;*

*3. in some other manner if so determined by this Act or a sector-specific Act governing the employment relationships of public employees in authorities.*

*2) On the date of the termination of his or her employment contract, an official shall cease to hold his or her title and managerial position.*

*3) Unless otherwise provided by this Act, the Employment Relationships Act shall apply to individual methods of terminating employment contracts.*

#### *Public positions especially vulnerable to corruption*

There is no procedure to determine public positions considered especially vulnerable to corruption, and hence no rotation system for individuals holding such positions is available. However, some areas in the public sector are naturally exposed to higher risks of corruption, such as public procurement, Granting of State aid and subsidies, and allocation of funds in general. Public positions to decide on important issues of public interest are also exposed to higher risks of corruption. Therefore, public employees whose positions may be subject to higher corruption risks are recommended to attend special trainings to raise awareness of relevant risks.

#### *Salary scale*

The salary scale for the public sector is composed of salary classes attached to the Public Sector Salary System Act (SSPSA). This Act has been amended several times since 2002. The nominal amounts of basic wages reflected in the salary classes change based on the agreement between the social partners.



The salary classes are generally adjusted once a year. The level of harmonization of the value of salary classes for public employees is determined by the Collective Agreement for the Public Sector, whereas for holders of public office (functionaries)<sup>37</sup>, it is determined by the SSPSA after prior coordination. The salary scale determines the lowest and highest salary classes of the basic salary in the public sector.

The basic salaries of public employees are based on the salary scale applicable since 1 September 2016, which is between €440.38 (1<sup>st</sup> salary class) and €5,419.540 (65<sup>th</sup> salary class). The elements to deciding salary classes include: the complexity of the position, the required level of education, additional knowledge, experience, responsibilities, and powers; the psychophysical and mental efforts; the environmental impact. In addition to the basic salary, public employees are entitled to additional benefits.

Financial plans of Budget Users are determined in each financial year. The final budget is allocated to each user, taking into account the number of public employees, their basic salaries, allowances and other payments, and their prospect of promotions.

#### *Promotion*

Public employees can be promoted in the title or in the assigned salary class. If promotion in the title is not possible, public employees can then be promoted for a maximum of ten salary classes. If meeting the prescribed conditions, a public employee can be promoted for one or two salary classes every three years. The promotion period is counted from the last promotion or the first employment in the public sector. In this period, public employees acquire three annual grades pursuant to their performance assessment based on autonomy, creativity, reliability, cooperation, organization, and other relevant factors. A public employee can appeal against the received grade.

#### *Training*

The CPC has organized trainings for public officials twice yearly, with over 100 participants each. Evaluation forms have been circulated, and attendees have generally given positive feedback on the content and the delivery of these trainings. Additional trainings are provided upon request by public sector entities, including local community bodies, but are subject to the availability of CPC staff.

In 2015, the CPC delivered specially designed workshops for the drafting, implementing, and using of Integrity Plans in public sector entities. 730 integrity plan custodians attended fifteen workshops in total.

Other trainings, mainly for public sector employees, include awareness-raising on integrity, ways to achieve greater public integrity, use of the Integrity Plans, and the scope of the IPCA. In 2015, 65 such trainings were attended by approximately 3700 public sector employees. In 2016, the CPC conducted 46 similar trainings, collectively attended by approximately 1800 public sector employees. By 15 August 2017, the CPC carried out 16 trainings with a total attendance of 805 public sector employees.

The CPC also published several leaflets, accessible both online and in paper form, on the obligations of public officials to prevent corruption as required by the IPCA, such as “There’s a lobbyist at the front desk!”, “Lobbying,” “Integrity Plan,” and “Asset Declaration.”

Since 2016, public employees have been obliged to participate in the programme/module entitled “Integrity, Ethics and Anti-corruption,” which aims to:

- encourage participants to develop an ethical culture for the organization;
- limit corruption risks;
- acquaint participants with the provisions of the IPCA.

The programme/module includes trainings on the concept of integrity, common values, standards and decision-making in public administration, ethics and human rights.

#### **Slovenia provided the following examples of the implementation of the provision under review:**

As indicated above, the Appellate Commission is competent to decide on appeals against the decisions on the rights and obligations arising from the employment relationship of public employees. 556 appeals were filed in

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<sup>37</sup> As defined in article 1(4) of the PEA, holders of public office (functionaries) in state bodies and local community bodies shall not be deemed as public employees.



2015, 1438 appeals in 2016, and 252 appeals as of June 2017. The appellants were successful in 133 cases in 2015, 80 cases in 2016, and 31 cases as of June 2017. 121 appeals in 2015 were filed against the selection decisions, with this figure being 124 in 2016 and 32 as of June 2017.

At the time of the country visit, it was introduced that a special software application would be used to collect data in relation to the appeals in 2018.

***(b) Observations on the implementation of the article***

The principle of open competition for public officials (employees) is enshrined in the Constitution (art. 122) and endorsed by the Public Employees Act (art.27, PEA).

The recruitment, retention, and retirement of public officials (employees) are regulated by the PEA. The recruitment generally takes place through a public competition that ensures the principles of transparency and equal accessibility. Vacancies are advertised publicly in the official gazette, newspapers, or with the Employment Service of Slovenia by each government body (art. 58, PEA). For posts of officials, candidates are selected based on their qualifications and competition results (arts. 27 and 62, PEA). There is a general policy preference for internal rotation over external recruitment.

The selection of officials holding managerial positions is also conducted through open competition, for which the Officials Council (OC) is designated to determine relevant requirements, and a special competition commission (special selection board) is appointed by the OC in each instance to run the selection process (art. 60, PEA).

There is an appeal mechanism for unsuccessful candidates for lower-ranking positions to challenge a recruitment decision at the competent appellate commission (art. 65, PEA). Judicial review of the decision of the appellate commission is also allowed. For selection of officials holding managerial positions, no appeal is available, but the unsuccessful candidate may directly file a petition for judicial review in an administrative dispute (art. 65, PEA).

Public sector employees are provided with trainings by the CPC and MPA on the prevention of corruption. However, Slovenia has not identified which public positions are especially vulnerable to corruption, and therefore no special selection rules for such positions exist. The remuneration of public officials (employees) is regulated by the Public Sector Salary System Act.

**It is recommended that Slovenia consider identifying positions that are especially vulnerable to corruption and formulating clear rules for the selection of staff for such positions and, where appropriate, strengthening the system for relevant rotation.**

***Paragraph 2 of article 7***

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

***(a) Summary of information relevant to reviewing the implementation of the article***

Slovenia has prescribed criteria concerning candidature for and election to public office in different laws, such as acts on the deputies of the National Assembly, president, ministers and so on.

*Deputies of the National Assembly*

**The Constitution**

Article 82 (Deputies)

*Deputies of the National Assembly are representatives of all the people and shall not be bound by any instructions.*

*The law shall establish who may not be elected a deputy, and the incompatibility of the office of deputy with*

*other offices and activities.*

*The National Assembly confirms the election of deputies. In accordance with the law, an appeal may be made before the Constitutional Court against a decision of the National Assembly.*

Under the Law on Elections to the National Assembly (art. 7), every citizen of Slovenia who has reached 18 by the election day shall have the right to vote and to be elected as a deputy.

## **Law on Elections to the National Assembly**

### Article 7

*Each citizen of the Republic of Slovenia of 18 years of age on the day of the election has the right to vote and stand for election as a deputy.*

*Notwithstanding the preceding paragraph, a citizen of the Republic of Slovenia who reached the age of eighteen but their business capacity is non-existent due to mental illness, retardation or impairment, or the parental rights or other persons' rights were extended after the age of their adulthood because they are not able to understand the meaning, purpose and effects of elections, does not have the right to vote and be elected.*

*The court specifically decides in proceedings for the withdrawal of business capacity or extended parental rights after the time of the adulthood, on the deprivation of the right to vote and be elected.*

*A voter has the right to vote in the constituency in which he has permanent resident status.*

*A voter without permanent resident status in the Republic of Slovenia has the right to vote in the constituency where they or one of their parents last had permanent resident status.*

*In the event that this is not possible to ascertain, the voter has the right to decide in which constituency and electoral district they shall vote.*

The grounds for the termination of office for a deputy are provided under article 9 of the Deputies Act.

## **Deputies Act<sup>38</sup>**

### Article 9

*The term of office of a Member shall terminate:*

- *if he loses his right to vote,*
- *if he becomes permanently incapacitated,*
- *if, by a final judgment, he is sentenced to an unconditional sentence of imprisonment exceeding six months,*
- *if, within three months of the confirmation of the parliamentary term, he ceases to pursue an activity incompatible with the office of Member,*
- *if he takes up office or engages in an activity incompatible with the office of Member,*
- *if he resigns.*

*The term of office of a deputy shall expire when the National Assembly determines that the reasons referred to in the preceding paragraph have arisen.*

*In the case referred to in the third indent of the first paragraph of this Article, the deputy shall not terminate his / her term of office if the National Assembly decides that he / she may perform the parliamentary function.*

*President of the Republic*

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<sup>38</sup> Zakon o poslancih

## **Constitution**

### Article 103 (Election of the President of the Republic)

*The President of the Republic is elected in direct, general elections by secret ballot.*

*The candidate who receives a majority of the valid votes cast is elected President of the Republic.*

*The President of the Republic is elected for a term of five years and may be elected for a maximum of two consecutive terms. If the term of office of the President of the Republic expires during a war or state of emergency, the President's term shall expire six months after the cessation of such war or state of emergency.*

*Only a citizen of Slovenia may be elected President of the Republic. Elections to the office of President of the Republic are called by the President of the National Assembly. The President of the Republic must be elected no later than fifteen days before the expiry of the term of the incumbent President.*

### *Local elections and members of municipal councils*

Citizens of Slovenia who have reached the age of 18 by the election day and who have permanent residence in the municipality in which they are candidates for the mayor can be nominated as mayors. The same conditions are prescribed for candidates for members of the municipal councils (art. 5, Law on Local Elections).

## **Local Elections Act**

### Article 5

*All citizens of the Republic of Slovenia who on the polling day have reached 18 years of age and have not been deprived of business capacity shall have the right to vote for and be elected as members of municipal councils.*

*Citizens shall have the right to vote in the municipality in which they have permanent residence.*

### Article 103

*Each resident who has the right to vote in elections to the municipal council shall have the right to vote for and be elected as mayor.*

### Article 104

*Regular elections of mayors shall be conducted at the same time as regular elections to the municipal council.*

*Regular elections of mayors shall be called by the speaker of the National Assembly of the Republic of Slovenia.*

*If a municipality is established following the conduct of regular elections to the municipal council, the first mayoral elections shall be conducted in accordance with the provisions of this law on early elections to municipal councils.*

### Article 105

*Subsequent mayoral elections shall be conducted if the mandate of the mayor expires before the expiry of the mandate period.*

*Subsequent mayoral elections shall be called by the municipal electoral commission.*

### Article 106

*The provisions of this law on candidacies for majority elections to the municipal council shall apply mutatis mutandis to the selection of candidates for mayor, excepting the provisions of article 54 of this law which concern the number of signatures of voters for selecting candidates for members of the municipal council.*

*Whenever a group of voters select a candidate for mayor, no fewer than 50 voters with permanent residence*

*in the municipality must select the candidate for mayor.*

#### Article 107

*The candidate who received the absolute majority of votes cast shall be elected mayor.*

*If no candidate receives an absolute majority of votes, a second round of elections shall be conducted between the two candidates receiving the most votes. If multiple candidates receive the same highest number of votes, or if two or more candidates receive the same second highest number of votes, the candidates for the second round of elections shall be decided by drawing lots. The ballot paper shall list the candidates in the order of number of votes received in the first round of elections. If the number of votes received is equal, the order shall be determined by drawing lots.*

*The second round of elections shall be called by the municipal electoral commission.*

#### Article 108

*The provisions of the law on elections to municipal councils shall apply mutatis mutandis to issues not specially governed by this section.*

Grounds for the termination of mandates for municipal council members, the mayor, or the vice-mayor are provided in the Local Self-Government Act.

### **Local Self-Government Act**

#### Article 37a

*The mandate of a member of the municipal council, the mayor and the vice-mayor shall be terminated if he or she:*

- loses the right to vote,*
- becomes permanently incapable of performing the duties;*
- is sentenced in a final ruling to a prison sentence without remission for a term longer than six months;*
- does not cease the performance of an activity which is incompatible with the duties of a member of the municipal council, the mayor and the vice-mayor within three months of the confirmation of the mandate,*
- accepts duties or starts an activity which is incompatible with the duties of a member of the municipal council, the mayor and the vice-mayor;*
- resigns.*

*The terms of office of a member of the municipal council, the mayor and the vice-mayor shall cease on the day the reasons specified in the preceding paragraph applying to the cessation of a term of office exist.*

*Irrespective of the provision of Article 30 of the Law on Local Elections, a member of the municipal council whose mandate has been terminated for reasons stated in indents one to five shall be replaced by the next candidate on the appropriate list of the highest number of remaining votes in a constituency in respect of the quotient in this constituency.*

#### Article 42

*The mayor shall be elected by citizens having permanent residence in the municipality by direct and secret ballot. The mandate of the mayor shall last for four years.*

### *Prime Minister and ministers*

The election of the Prime Minister and the appointment of ministers are governed by the Constitution (arts. 110 - 115). The Prime Minister is elected by the National Assembly through a majority vote of all deputies unless otherwise provided by the Constitution (art. 111). Ministers are appointed and removed from office by the National Assembly on the proposal of the Prime Minister, and before the appointment, a proposed minister must present himself/ herself to the competent commission of the National Assembly and answer its questions (art. 112,

Constitution).

## **Constitution**

### Article 110 (Composition of the Government)

*The Government is composed of the president and ministers. Within the scope of their powers, the Government and individual ministers are independent and accountable to the National Assembly.*

### Article 111 (Election of the President of the Government)

*After consultation with the leaders of deputy groups the President of the Republic proposes to the National Assembly a candidate for President of the Government.*

*The President of the Government is elected by the National Assembly by a majority vote of all deputies unless otherwise provided by this Constitution. Voting is by secret ballot.*

*If such candidate does not receive the necessary majority of votes, the President of the Republic may after renewed consultation propose within fourteen days a new candidate, or the same candidate again, and candidates may also be proposed by deputy groups or a minimum of ten deputies. If within this period several candidates have been proposed, each one is voted on separately beginning with the candidate proposed by the President of the Republic, and if this candidate is not elected, a vote is taken on the other candidates in the order in which they were proposed.*

*If no candidate is elected, the President of the Republic dissolves the National Assembly and calls new elections, unless within forty-eight hours the National Assembly decides by a majority of votes cast by those deputies present to hold new elections for President of the Government, whereby a majority of votes cast by those deputies present is sufficient for the election of the candidate. In such new elections a vote is taken on candidates individually in order of the number of votes received in the earlier voting and then on the new candidates proposed prior to the new vote, wherein any candidate proposed by the President of the Republic takes precedence.*

*If in such elections no candidate receives the necessary number of votes, the President of the Republic dissolves the National Assembly and calls new elections.*

### Article 112 (Appointment of Ministers)

*Ministers are appointed and dismissed by the National Assembly on the proposal of the President of the Government.*

*Prior to appointment a proposed minister must appear before a competent commission of the National Assembly and answer its questions.*

### Article 113 (Oath of Office of the Government)

*Upon election and appointment respectively, the President of the Government and ministers shall swear before the National Assembly the oath of office provided by Article 104.*

### Article 114 (Organization of the Government)

*The President of the Government is responsible for ensuring the unity of the political and administrative direction of the Government and coordinates the work of ministers. Ministers are collectively accountable for the work of the Government, and each minister is accountable for the work of his ministry.*

*The composition and functioning of the Government, and the number, competencies, and organisation of ministries shall be regulated by law.*

### Article 115 (Termination of Office of the President of the Government and Ministers)

*The President of the Government and ministers cease to hold office when a new National Assembly convenes following elections; ministers also cease to hold office whenever the President of the Government ceases to hold office and whenever such ministers are dismissed or resign; ministers must, however, continue to*

*perform their regular duties until the election of a new President of the Government or until the appointment of new ministers.*

In addition to the Constitution, the appointment of ministers is regulated by the Government Act, which provides that the Prime Minister must propose the appointment of ministers within 15 days from the moment of his or her election to the office (art. 11). If the Prime Minister does not submit the composition of the Government within that period, the National Assembly may set a deadline within which the Prime Minister must submit the proposed Government composition. If the Prime Minister does not submit the proposed appointments of members of the Government after the expiry of that deadline, the National Assembly decides that the Prime Minister no longer holds the office. The Government is deemed to have taken office if more than two-thirds of ministers, not including ministers without portfolios, are appointed. Within ten days of taking office, the Prime Minister must also propose the ministers awaiting the appointment or notify the National Assembly which departments the Prime Minister will take over personally or entrust to another minister temporarily, albeit for no longer than three months. If the National Assembly fails to appoint the remaining ministers within three months of taking office, the National Assembly determines that the Prime Minister and ministers no longer hold the office.

## **Government Act**

### Article 11

*The Prime Minister must propose the appointment of the ministers by no later than fifteen days following his election.*

*If, during the period referred to in the preceding paragraph, the Prime Minister fails to propose the composition of the Government, the National Assembly may set a deadline by which the Prime Minister must submit the proposal in question. Should the Prime Minister fail to submit a proposal for the appointment of the members of the Government by that deadline, the National Assembly shall establish that the Prime Minister has ceased to hold office.*

*It shall be deemed that the Government has taken office if more than two-thirds of the ministers have been appointed, not including the Minister without Portfolio referred to in the second paragraph of Article 8 of this Act (hereinafter: the Minister without Portfolio). By no later than ten (10) days following the date the Government has taken office, the Prime Minister must propose the ministers who have not yet been appointed or inform the National Assembly which ministries he will temporarily – but for no longer than three months – head himself or entrust to another minister.*

*If, within three months following the date the Government has taken office, the National Assembly fails to appoint the ministers who have not yet been appointed; it shall establish that the Prime Minister and the ministers have ceased to hold office*

State Secretaries are appointed and removed from office by the Government on the proposal of the Prime Minister or a minister, and their term of office ceases on the day the minister's term of office ends (art. 24, Government Act).

## **Government Act**

### Article 24

*On the proposal of the Prime Minister or a minister without portfolio, the Government may appoint a state secretary to assist the Prime Minister or a minister without portfolio in the performance of his or her office within the powers conferred thereon.*

*A state secretary competent for establishing dialogue with civil society and for coordinating citizen initiatives shall be appointed to the Prime Minister's Office.*

*A minister without portfolio may not have more than one state secretary.*

*A state secretary shall cease to hold office upon his or her dismissal, resignation, or upon the termination of the office of the proposer of his or her appointment.*



### *The voting system in Slovenia*

The voting system for parliamentary elections is comprehensively delineated to have incorporated certain fundamental principles that also apply to other elections in this country. Although the legal provisions for other elections are formulated separately, they draw and rely on the provisions governing elections to the National Assembly.

The right to vote is universal and equal. It is the right of every citizen who has reached 18 years of age to vote and be elected regardless of social class, ethnicity, race, economic status, or any other kind of affiliation. Voting rights are regulated in detail by the National Assembly Elections Act.<sup>39</sup>

### **The National Assembly Elections Act**

#### Article 1

*Members of the National Assembly are elected on the basis of universal and equal suffrage in free and direct elections by secret ballot.*

#### Article 2

*Members shall be elected by election unit.*

*Members shall be elected in accordance with the principle of one member to be elected for approximately the same number of inhabitants, and on the principle that political interests are proportionally represented in the National Assembly.*

*The Italian and Hungarian national communities elect one member each to the National Assembly.*

#### Article 3

*As this Act does not have specific provisions for the election of the members of the Italian or Hungarian national community, the provisions of this Act governing the election of other Members shall apply.*

#### Article 12

*General elections to the National Assembly shall be regular and early elections.*

*Regular elections shall be held every four years.*

*Early elections shall be held in the event of the dissolution of the National Assembly prior to the end of its four-year term.*

#### Article 13

*Regular elections shall be held not earlier than two months and not later than 15 days before four years have passed since the first session of the outgoing National Assembly.*

*In the event of a prolonged term, the due term shall be deemed to be the day on which the prolonged term expires.*

*Early elections shall be held not later than two months after the dissolution of the National Assembly.*

*The term of the outgoing National Assembly shall expire with the first session of the new National Assembly. The first session of the new National Assembly shall be deemed to be the session at which more than one half of elected deputies are confirmed.*

#### Article 14

*The President of the Republic shall call general elections.*

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<sup>39</sup> Zakon o volitvah v državni zbor - ZVDZ

*Early elections shall be called by the President of the Republic with the Dissolution of the National Assembly Act.*

*The Calling of Elections Act shall be published in the Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia).*

#### Article 15

*Regular elections shall be called not earlier than 135 days and not later than 75 days before four years have passed since the first session of the outgoing National Assembly.*

*The period between the day elections are called and the Election Day itself must not exceed 90 days or be less than 60 days.*

*Early elections may be held, at the earliest, 40 days after the day on which elections were called.*

Under the Deputies Act, a deputy may not perform any activity incompatible with their office (art. 11). There are also other provisions in this Act regulating potential conflicts of interest of candidates for deputies, as cited below.

### **Deputies Act**

#### Article 11

*On the day of confirmation of election as deputy, the deputy shall cease to hold any office which is not compatible with the office of deputy and to perform any work in a state body.*

#### Article 12

*A deputy may not perform a profitable activity which is incompatible by law with the performing of public office.*

*A deputy may not be a member of the supervisory board of a company. A deputy must cease to perform the activities referred to in the preceding paragraphs within three months of confirmation of election as a deputy. If they fail to do so, their office as a deputy shall terminate.*

#### Article 13

*A deputy may, upon notifying the competent working body of the National Assembly, perform an activity independently or in an employment relationship, yet up to an extent not exceeding one-fifth of the full time required or specified for the normal performance of the activity, if they perform a complex professional, scientific, educational, or research activity. On the proposal of the competent working body, the National Assembly shall deny to a deputy the performance of an activity or work if it affects the performance of the office as deputy or hinders an objective performance of office independent of any outside influence.*

#### Article 14

*If a deputy is elected Prime Minister or appointed minister or state secretary, during the time they hold such office they may not perform the office of deputy. During this period, the office of deputy shall be held by the candidate from the same list of candidates who would have been elected if the candidate from the preceding paragraph had not been elected. If no such candidate exists, the office of deputy shall be performed by the candidate from the list of the same name in the constituency in which the list had the greatest remainder of votes in proportion to the quotient in the constituency.*

#### *The State Election Commission<sup>40</sup>*

As the highest electoral authority, the State Election Commission performs tasks provided by the National Assembly Elections Act (art. 37) and other acts concerning electoral legislation. Within the scope of its tasks, the State Election Commission:

- works to ensure the legality of elections and the uniform application of electoral laws relating to the

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<sup>40</sup> Državna volilna komisija

electoral process;

- appoints members of electoral commissions in constituencies and local electoral commissions;
- coordinates the work of electoral commissions in constituencies and local electoral commissions, and provides technical instructions concerning the implementation of electoral legislation, and supervises their work;
- prescribes forms for the implementation of electoral laws;
- sets uniform standards for election materials and determines other material conditions for carrying out election tasks;
- publishes the outcome of elections;
- issues confirmations of election;
- ensures ballots are held at diplomatic and consular representative offices of Slovenia;
- organizes training for members of other electoral bodies;
- appoints the director of the office of the commission.

The State Election Commission also performs other tasks provided by electoral laws, and it has its own service department or office. The Office of the State Election Commission performs professional, administrative and technical tasks for the Commission. The Office has the following functions:

- Performing professional, advisory, organizational, administrative and technical tasks for the duties of the State election commission;
- Performing professional and administrative tasks for the preparation and conducting of sessions of the State Election Commission and its working bodies, international activities and protocol;
- Performing professional and coordination tasks related to the cooperation of the State Election Commission with other State authorities and organizations;
- Performing analytical tasks for the State Election Commission;
- Implementing decisions of the State Election Commission and orders of the chairperson of the Commission;
- Providing the State Election Commission with opinions on proposed Acts and other regulations governing the area of elections and referendums;
- Ensuring the public nature of the work of the State Election Commission in accordance with the rules of procedure.

#### *The Local Self-Government Act<sup>41</sup>*

In addition to the Constitution, the Local Self-Government Act (LSGA), accompanied by the Local Elections Act and Local Finance Act, is the most important act. It provides the legal basis for the functioning of local self-government in Slovenia.

The authorities of a municipality comprise a mayor, a municipal council, and a supervisory committee, with the municipal council being the highest decision-making body (arts. 28 and 29, LSGA). The mayor, a directly elected official, represents and acts on behalf of the municipality and presides over the municipal or town council (art. 33, LSGA). The function of the mayor shall not be compatible with the function of municipal council members, the function of the vice-mayor, membership of the supervisory committee, work in the municipal administration, and other functions if so determined by law (art. 37a, LSGA). The supervisory committee supervises the disposal of municipal property and public expenditure. Members of the municipal council, the mayor, and the vice-mayor shall be deemed as municipal functionaries (art. 32). Municipal functionaries shall perform their functions on a non-professional basis (art. 34A, LSGA). The mayor may decide to perform his functions on a professional basis. With consent from the mayor, the vice-mayor may also decide to perform functions on a professional basis (art. 34a, LSGA).

### **Local Self-Government Act**

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<sup>41</sup> Zakon o lokalni samoupravi

## Article 28

*The bodies of a municipality shall be a municipal council, a mayor and a supervisory board.*

## Article 29

*The municipal council shall be the highest decision-making body on all matters concerning the rights and duties of the municipality.*

*Within its jurisdiction the municipal council shall:*

- adopt the statute of the municipality;*
- adopt decrees and other municipal acts;*
- adopt land and other development plans of the municipality;*
- adopt the budget and final account of the municipality;*
- give consent when the state vests duties and functions from its jurisdiction in the municipality;*
- appoint or dismiss members of the supervisory committee and members of commissions and committees of the municipal council;*
  
- supervise the activities of the mayor, deputy mayor and municipal administration regarding the implementation of the decisions of the municipal council;*
  
- express its opinion on the appointment of deputies of state administrative units;*
- appoint and dismiss the representatives of the municipality in the deputy council of a state administrative unit;*
  
- decide on the acquisition and disposal of municipal property, if not otherwise stipulated by this Law;*
  
- appoint and dismiss the members of the board for the protection of consumers;*
- decide on other matters determined by law and the statute of the municipality.*

*The municipal council shall also decide on matters vested from state jurisdiction in the municipality by law, unless the law determines that these matters shall be decided on by another municipal body.*

## Article 32

*The supervisory committee is the highest organ of supervision of public expenditure in the municipality. In the framework of their competency the supervisory committee shall:*

- perform supervision of the disposal of municipal property;*
- oversee the purposefulness and sense of the use of budgetary funds;*
- supervise the financial operations of the users of budgetary funds.*

*If within its competence the supervisory committee determines a more severe violation of regulations or irregularities in the municipality's operations, where these violations and irregularities shall be set out in their standing orders, it must notify the competent ministry and the Court of Auditors of the Republic of Slovenia of these violations within fifteen days.*

*All members of the supervisory committee shall have the right to request and obtain data from the municipality if this data has not been requested by the supervisory committee at the proposal of an individual member.*

*Supervision includes the ensuring of the legality and correctness of the business operations of competent bodies, bodies and organisations of users of the municipal budget and authorised personnel with municipal public funds and municipal public property and assessing the efficiency and effectiveness of the use of municipal budgetary funds.*

*The work of the supervisory committee shall be public. In its work, the supervisory committee shall be obliged to protect personal data and national, official and business secrets which are defined by law, by other regulations or by acts of the municipal council and organisations of users of budgetary funds and to respect the dignity, good name and integrity of individuals.*

*The supervisory committee shall issue reports with recommendations and proposals on its findings, estimates and opinions. The municipal council, the mayor and organs of users of municipal budgetary funds shall be obliged to discuss the reports of the supervisory committee and to take into account their recommendations and proposals in accordance with their competence.*

*The duties, processes and work methods of the supervisory committee, the form of the supervisory committee, the principles of work organisation and presentation of the supervisory committee, obligations and rights of municipal bodies with regard to work and the recommendations and proposals of the supervisory committee, and the public nature of the work of the supervisory committee shall be determined in the municipal statute. The supervisory committee shall pass their own rules in accordance with the municipal statute.*

### Article 33

*The mayor shall represent and act on behalf of the municipality.*

*The mayor shall represent the municipal committee and shall convene and chair the sessions of the municipal council, but shall not have the right to vote.*

*The mayor shall propose that the municipal council adopt the municipal budget and the final account of the budget, decrees and other acts within the competence of the municipal council, and shall be responsible for the implementation of decisions passed by the municipal council.*

*The mayor shall be responsible for the publication of the statute, decrees and other municipal general acts.*

*The mayor shall withhold the publication of a municipal general act if he believes that this act is unconstitutional or illegal, and shall propose that the municipal council adopt a new decision on this act at the next session; at this session the mayor must state his reasons for withholding the act. If the municipal council insists on its decision, the general act shall be published, while the mayor may file a request for an assessment of the act's compliance with the Constitution and with the law at the Constitutional Court.*

*The mayor shall withhold the implementation of a decision by the municipal council if he believes that this decision is illegal or in conflict with the statute or other municipal general acts, and shall propose that the municipal council adopt a new decision at the next session; at this session the mayor must state his reasons for withholding the implementation of this decision. Once he withholds the implementation of the decision by the municipal council, the mayor must notify the competent ministry of the allegedly illegal decision. If the municipal council adopts the same decision again, the mayor may file a procedure at the administrative court.*

*If the decision by the municipal council refers to a matter which has been transferred to municipal jurisdiction by law, the mayor shall notify the competent ministry of the allegedly illegal or inappropriate decision.*

### Article 34a

*Members of the municipal council, the mayor and the vice-mayor shall be deemed to be municipal functionaries.*

*Municipal functionaries shall perform their functions on a non-professional basis. The mayor may decide to perform his functions on a professional basis. On condition that he obtains consent from the mayor, the vice mayor may also decide to perform his functions on a professional basis.*

### Article 37a

*The mandate of a member of the municipal council, the mayor and the vice-mayor shall be terminated if he or she:*

- loses the right to vote,*
- becomes permanently incapable of performing the duties;*
- is sentenced in a final ruling to a prison sentence without remission for a term longer than six months;*

- *does not cease the performance of an activity which is incompatible with the duties of a member of the municipal council, the mayor and the vice-mayor within three months of the confirmation of the mandate,*
- *accepts duties or starts an activity which is incompatible with the duties of a member of the municipal council, the mayor and the vice-mayor;*
- *resigns.*

*The terms of office of a member of the municipal council, the mayor and the vice-mayor shall cease on the day the reasons specified in the preceding paragraph applying to the cessation of a term of office exist.*

*Irrespective of the provision of Article 30 of the Law on Local Elections, a member of the municipal council whose mandate has been terminated for reasons stated in indents one to five shall be replaced by the next candidate on the appropriate list of the highest number of remaining votes in a constituency in respect of the quotient in this constituency.*

The municipal council shall be elected on the basis of a universal and equal franchise by direct and secret ballot (art. 37). All citizens who have permanent residence in a municipality and are more than 18 years old shall be entitled to vote (art. 37).

### **Local Self-Government Act**

#### Article 37

*The municipal council shall be elected on the basis of universal and equal franchise by direct and secret ballot.*

*All citizens who have permanent residence in a municipality shall be entitled to vote.*

*Elections to the municipal council shall be regulated in detail by a special law.*

#### *Declaration of interests and assets*

Regarding declarations of assets and interests, declarations prior to or upon entry into the office are required. The Slovenian system of assets declarations stipulates that certain categories of public officials, including professional officials, 'high-ranking civil servants' (senior public employees), managers, and persons responsible for public procurement etc., are under obligation to report information on their assets to the CPC immediately or within one month of taking or ceasing to hold the office or post, and one year after ceasing to hold the office or post (para. 2 of art. 41, IPCA). Any change to the assets that exceeds €10,000 has to be reported by 31 January of the current year for the previous year (para. 2 of art. 43, IPCA). The CPC may, at any time, request the person with obligations to submit the data referred to in article 42 of the IPCA. The person shall submit this data no later than within 15 days of receipt of the request (para. 4 of art. 43, IPCA). All these mean that public officials subject to the application of IPCA do not have an obligation to declare assets and interests before taking office. They also do not need to demonstrate compliance with tax obligations.

*For more information on the asset declaration, as well as the prevention of conflicts of interest, please see the summary under paragraph 5 of article 8 of the Convention.*

### **Slovenia provided the following examples of the implementation of the provision under review:**

The general information on the electoral system, including the criteria for eligibility for candidature for elections, is available at the following websites:

- The State Election Commission: <http://www.dvk-rs.si/index.php/en>
- The Electoral System in Slovenia: <http://www.dvk-rs.si/index.php/en/where-and-how-to-vote/the-electoral-system-in-slovenia>



## **(b) Observations on the implementation of the article**

Criteria and appointment procedures for elected/appointed public officials, including the President, ministers, parliamentarians and mayors, are established in the Constitution (arts. 82, 103, 111, and 112), the Government Act (art. 11), the National Assembly Elections Act (arts. 1-3 and 12-16), the Local Elections Act (arts. 103-108) and the Local Self-Government Act (art. 42).

### **Paragraph 3 of article 7**

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### ***The legal definition of what constitutes a donation or contribution to a political party***

According to the Political Parties Act (PPsA), a contribution to a political party may consist, in addition to a pecuniary contribution, of a gift or any other non-pecuniary contribution, any free service for the party or performing services for the party or selling products to the party under conditions that are more beneficial for the party than for any other users of services provided by legal entities, natural persons and private citizens or, for the buyers of products of such entities and persons. Work performed by a natural person for the party is not considered a contribution to the party if the person is not obliged to issue an invoice for the work performed (art. 22, PPsA).

#### **Political Parties Act**

##### Article 21

*A party shall obtain funds from:*

- 1. membership fees;*
- 2. contributions from natural persons;*
- 3. income from property;*
- 4. the budget.*

*In addition to the funds referred to in Articles 23 and 26 of this Act, a party may obtain up to 50 per cent of funds from the national budget earmarked for the education of deputies, administrative and expert assistance in the work of deputy groups, and the organisation of deputy offices (hereinafter referred to as 'earmarked funds'). A party may obtain earmarked funds from deputy groups and deputies who were elected to the National Assembly of the Republic of Slovenia from the same lists of candidates. To obtain earmarked funds, a party and the National Assembly of the Republic of Slovenia shall conclude an agreement. A proposal for the conclusion of an agreement shall be made by the leader of a deputy group or deputy. An agreement shall be concluded following a negotiation procedure without prior publication, as stipulated by the law governing public procurement.*

*The annual income referred to in point 3 of the first paragraph of this Article may not exceed 20 per cent of the party's total annual income.*

*Within 30 days of the adoption of the financial report on the operations of a party for the previous year, the party must assign any surplus income referred to in point 3 of the first paragraph of this Article to charitable causes, as stipulated by the act governing humanitarian organisations.*

*A youth organisation referred to in the third paragraph of Article 6 of this Act having the status of an organisation in the public interest in the youth sector may obtain public funds to co-finance programmes in the youth sector, in accordance with the regulations governing public interest in the youth sector.*

*A women's organisation having the status of an organisation in the public interest in the field of gender equality may obtain public funds to co-finance projects and programmes, in accordance with the regulations governing public interest in the field of gender equality.*

*Parties may not obtain funds from contributions from foreign legal persons and natural persons, and foreign sole traders and individuals performing an activity independently, from income derived from the assets of the party abroad, or obtain any other funds for the party abroad.*

*The prohibition referred to in the preceding paragraph shall not apply to membership fees and contributions obtained by the party from its members.*

## Article 22

*Natural persons may make contributions to a party. The contributions of an individual natural person in cash in the year for which a party's annual report is compiled may be a maximum of EUR 50, while higher contributions in cash may be paid through banks, savings banks or other legal persons which, in accordance with the regulations governing payment services, provide payment services (hereinafter referred to as 'payment service providers'). When making a contribution, a natural person, in addition to the amount allocated to the party, must submit the name, surname, personal identification number and address of the natural person.*

*Pursuant to this Act, a contribution to a party, in addition to cash, may also be a gift or any other non-monetary contribution, a service for the party free of charge, assuming obligations of the party or performing services for the party or selling goods to the party under conditions which put the party in a more favourable position in comparison with other service users or buyers of goods of these persons. Work performed for a party by a natural person who is not obliged to issue an invoice shall not be considered a contribution to a party.*

*A party and a natural person who performs a service for the party or sells goods to it must conclude a suitable written contract.*

*The total contributions of an individual natural person referred to in this Article in the year for which a party's annual report is compiled must not exceed ten times the average monthly gross wage per employee in the Republic of Slovenia according to the figures of the Statistical Office of the Republic of Slovenia for the previous year (hereinafter referred to as 'average monthly gross wage').*

*Parties may acquire loans only from banks and savings banks under the same conditions as other legal persons. A loan may be acquired by a party also from a natural person under the condition that the loan agreement is concluded in writing. The amount of loan for individual natural persons must not exceed ten times the average annual gross wage. Pursuant to this Act, loans given shall not be considered to be intended for the financing of parties.*

*If the contributions of a natural person referred to in this Article in the year for which a party's annual report is compiled exceed the amount of the average monthly gross wage, the data about the personal name and address of the natural person, and the total annual amount contributed to the party by the natural person must be stated in the party's annual report.*

*The data about the amount, interest rate and repayment period of all individual loans made to a party by a bank or savings bank, including a statement of the data about the company and its head office, business address and the registration number of the bank or savings bank where the party acquired the loan, regardless of its amount, must be stated in the party's annual report. For loans acquired by a party from natural persons, the data which facilitate the identification of the persons who provided the loan (name, surname, tax ID number and the address of the natural person), and the data about the amount, interest rate and repayment period of each individual loan must be stated in the party's annual report.*

*Payment service providers that, in accordance with the regulations governing payment services, perform payment transactions, must submit to a party when paying contributions, in addition to the amount given, the data which facilitate the identification of a person who made the contribution (name, surname, tax ID number and the address of the natural person or an individual performing an activity independently, or the data about the company, company registration number, head office and the address of the legal person or sole trader), and other information submitted together with the payment transaction.*

*Contributions acquired by a party in contravention of this Act must be assigned by the party to charitable causes, as stipulated by the act governing humanitarian organisations within 30 days of receiving said contributions.*

#### Article 24

*A party must compile an annual report for the previous financial year in accordance with this Act, and accounting regulations and standards. An annual report must include data about:*

*– total income by individual types and their values (membership fees, contributions from natural persons, income from property, income from gifts, income for other non-monetary contributions, income from the budget of the Republic of Slovenia, income from the budget of a self-governing local community (hereinafter referred to as 'local community budget'), income referred to in the second paragraph of Article 21 of this Act, extraordinary income and the transferred surplus income),*

*– total expenditure of the party by individual types broken down in accordance with accounting regulations,*

*– all individual contributions of natural persons if total contributions in the year for which a party's annual report is compiled exceed the amount of the average monthly gross wage, including a statement of the data referred to in the sixth paragraph of Article 22 of this Act,*

*– all individual loans made to a party by a bank, savings bank or a natural person, including a statement of the data referred to in the seventh paragraph of Article 22 of this Act,*

*– costs of elections and referendums shown in a manner stipulated by the act governing election and referendum campaigns,*

*– all individual contributions made to a party in contravention of this Act and their values, including a statement of data about the company or name, head office and business address of a legal person or sole trader, or data about the personal name and address of an individual performing an activity independently or a natural person who contributed to the party,*

*– all transfers of surplus income by a party referred to in the fourth paragraph of Article 21 and of contributions made to the party in contravention of this Act to charitable causes,*

*– a party's assets and specifically described changes in the assets, including a statement of the sources of funds for an increase in the assets if such increase exceeds the sum total of five times the average monthly gross wage,*

*– any other legal person in which a party owns half the capital or has a prevailing influence on decision-making or managing the legal person, and annual reports of such legal persons must also be attached to the annual report.*

*If an organisation referred to in the fifth or sixth paragraph of Article 21 of this Act is organised within a party, the annual report for the previous financial year must separately include data about their income and expenditure.*

*For the purpose of public notice and the national statistics, the annual report for the previous financial year which is equal to a calendar year must be submitted by a party to the Agency of the Republic of Slovenia for Public Legal Records and Related Services (hereinafter referred to as 'AJPES') by 31 March of the current year, and in the case of a change in status or termination, within two months following the change in status or termination, via the AJPES web portal.*

*Annual reports of parties shall be published by AJPES on its website.*

*The minister with responsibility for internal affairs shall issue an executive act whereby they shall determine the content and manner of the submission of parties' annual reports. Particularities regarding the manner of using accounting standards may also be determined in the executive act.*

*The laws, rules and regulations applicable to the funding of candidatures for elected public office:*

Elections and Referendum Campaign Act<sup>42</sup> (ERCA) regulates the issues related to election campaigns for the election of deputies to the National Assembly, members of the Republic of Slovenia to the European Parliament, the President of the Republic, members of representative and individually elected bodies of local communities, and issues relating to referendum campaigns. The election campaign is also regulated by the Rules on the Content and Forms of Reports on the Funds Collected and Spent for Election and Referendum Campaigns.<sup>43</sup> The Rules define the content and forms of reports on the funds collected and spent for election and referendum campaigns and the manner of submission and publication of the reports.

## **Elections and Referendum Campaign act**

### Article 18

*(1) Within 15 days after the closing date of a special transaction account, the organizer of the elections campaign for the elections to the National Assembly, the European Parliament, for the President of the Republic or referendum at the national level shall be obliged to submit to the National Assembly and the Court of Auditors a report on:*

- 1. the total amount of funds raised and utilized for the elections campaign,*
- 2. data on the total amount of contributions to the elections campaign organizer exceeding on the voting day the triple value of average gross monthly salary of the workers in the Republic of Slovenia according to the data of the Statistical Office of the Republic of Slovenia for the past year, in order to provide transparency of the elections campaign,*
- 3. total amount of credits granted to the elections campaign organizer where the amount of the granted credits exceeds the value referred to in the preceding point, including the name of the lender,*
- 4. all deferred payments to the elections campaign organizer, where the amount of deferred payment exceeds the value referred to in point 2 of this paragraph, including the indication of the legal or natural entity who approved deferred payment.*

*(2) The contributions from point 2 of the preceding paragraph shall not be included in the funds that the legal or natural entities devote to the financing of political party in compliance with the provisions of the act regulating the financing of political parties.*

*(3) Deferment of payment as referred to under point 4 of the first paragraph of this Article shall not exceed 90 days following the performed service or supply of goods. All payments carried out after the expiry of 30 days following the performed service or supply of goods shall be deemed deferred payment.*

### Article 19

*(1) The organizer of elections campaign for members of representative and individually elected bodies of local communities or referendum in a local community shall, within 15 days following the closing of transaction account, submit to the representative body of the local community and the Court of Auditors a report on the total amount of funds raised and utilized for the elections campaign.*

*(2) The report referred to in the preceding paragraph must contain the data as referred to in Article 18 hereof on the sources of funds and the manner of their use and all data referred to in Article 18 hereof.*

*Sanctions for the violation of any relevant laws, rules and regulations applicable to political candidates or political parties*

As for sanctions, the Political Parties Act (PPsA) provides an adequate upper limit of the fine for the most severe offences (€30,000), while less severe offences are defined separately (arts. 28 – 31b). It also lays down that the

<sup>42</sup> Official Gazette of the RS, No. 41/07 <<http://www.uradni-list.si/1/objava.jsp?sop=2007-01-2221>>, 103/07 <<http://www.uradni-list.si/1/objava.jsp?sop=2007-01-5133>> - ZPoIS-D, 11/11 <<http://www.uradni-list.si/1/objava.jsp?sop=2011-01-0448>>, 28/11 <<http://www.uradni-list.si/1/objava.jsp?sop=2011-01-1309>> - odl. US in 98/13 <<http://www.uradni-list.si/1/objava.jsp?sop=2013-01-3490>>

<sup>43</sup> (Official Gazette of the RS, No. 36/14 <<http://www.uradni-list.si/1/objava.jsp?sop=2014-01-1471>>)

minor offence authority (the inspectorate responsible for internal affairs and AJ PES as per article 31b) may impose a fine following a fast-track procedure in the amount higher than the lowest prescribed fine. Fines for responsible persons of the party are also defined (up to €4,000), as are the minor offences of entities giving donations prohibited under the PPsA to the party (art. 29). The PPsA lays down that the party must transfer contributions obtained contrary to the PPsA to charity within 30 days from their receipt as defined in the act governing humanitarian agencies (para. 9 of art. 22 and paras. 4, 5, and 8 of art. 28, PPsA).

## **Political Parties Act**

### Article 22

*... Contributions acquired by a party in contravention of this Act must be assigned by the party to charitable causes, as stipulated by the act governing humanitarian organisations within 30 days of receiving said contributions.*

### Article 28

*A fine between EUR 6,000 and EUR 30,000 for a misdemeanour shall be imposed on a party which:*

*4. within thirty days of the adoption of the financial report on the operations of the party for the previous year fails to assign any surplus income to charitable causes (fourth paragraph of Article 21);*

*5. obtains funds, contributions or other proceeds from prohibited sources, and fails to assign them to charitable causes within thirty days of their receipt (seventh paragraph of Article 21 and Article 25 in relation to the ninth paragraph of Article 22);*

*8. receives from the same natural person in one year contributions which exceed ten times the average monthly gross wage and fails to assign the surplus to charitable causes within 30 days of their receipt (fourth and ninth paragraphs of Article 22);*

According to the PPsA, the Ljubljana Local Court has the jurisdiction to decide on minor offences upon accusatory instruments submitted by the CoA (art. 23 člen, PPsA). A party that has received unlawful donations is subject to other sanctions, such as suspension of entitlement to funds from the national or local budget for the period of one year or the halving of funds for the period of six months, which is decided on by the court in a minor offence ruling (para. 3 of art. 24a and art. 24c, PPsA). Unlawfully gained funds are seized from the party in a minor offence procedure as proceeds obtained through a minor offence.

For the most severe violations of election campaigns, the ERCA provides the highest limit of fine in the amount of €20,000 (arts. 38 and 38a), and less serious offenses are separately treated (arts. 38b, 38c and 39).

## **Elections and Referendum Campaign Act**

### Article 38

*(1) A fine of EUR 10,000 to EUR 20,000 shall be imposed on the elections campaign organiser – a legal person, sole trader or self-employed person that does not submit the report on financing the elections campaign in the given time according to Articles 18 and 19 hereof, or that deliberately submits a false report on financing the elections campaign, or opens a special bank account too late or fails to open it, or does not collect all funds for the elections campaign in this account, or does not pay all expenses for the elections campaign from this account (Article 16), or does not transfer the surplus of collected funds for humanitarian purposes (Article 22).*

*(2) A fine of EUR 1,500 to EUR 3,000 shall be imposed on the responsible person of the organiser that commits the offence referred to in the preceding paragraph.*

*(3) A fine of EUR 400 to EUR 1,500 shall be imposed on the elections campaign organiser – an individual person who commits the offence referred to in the first paragraph of this Article.*

### Article 38.a

*(1) A fine of EUR 6,000 to EUR 20,000 shall be imposed on the elections campaign organiser – a legal person, sole trader or self-employed person that:*

- 1. Obtains from the same person the contributions exceeding ten times the average gross monthly salary per employee in the Republic of Slovenia according to the data of the Statistical Office of the Republic of Slovenia for the previous year, and does not transfer the surplus for humanitarian purposes within 30 days (the first paragraph and the second sentence of the fifth paragraph in conjunction with the tenth paragraph of Article 14),*
- 2. Does not receive cash contributions higher than EUR 50 through payment service providers (first paragraph of Article 14),*
- 3. Receives contributions from prohibited sources and does not transfer them within 30 days from the date of receipt for humanitarian purposes (the fifth and sixth paragraphs in conjunction with the tenth paragraph of Article 14),*
- 4. Does not enter into an appropriate contract in writing with a natural person for the provision of services or sale of goods in accordance with the third paragraph of Article 14 hereof,*
- 5. Does not obtain the loan only through banks and loans undertakings (fourth paragraph of Article 14),*
- 6. Transfers the funds from their bank account to a special bank account in contravention with the seventh paragraph of Article 14 hereof,*
- 7. Within 30 days following the publication of the audit report on the website of the Court of Audit and the National Assembly or local community does not transfer the surplus of collected funds for humanitarian purposes (second paragraph of Article 22),*
- 8. On request of the Court of Audit does not give or submit explanations, information or documents that are necessary to carry out the audit, or does not allow access to their books and records (fourth paragraph of Article 29),*
- 9. Does not submit completion of the report on request and in the deadline set up by the Court of Audit (second paragraph of Article 30).*

*(2) A fine of EUR 1,500 to EUR 4,000 shall be imposed on the responsible person of the organiser that commits the offence referred to in the preceding Article.*

*(3) A fine of EUR 600 to EUR 1,500 shall be imposed on the elections campaign organiser – an individual person who commits the offence referred to in the first paragraph of this Article.*

#### Article 38.b

*(1) A fine of EUR 5,000 to EUR 10,000 shall be imposed on the legal person, sole trader or self-employed person that:*

- Acts in contravention with the fifth paragraph of Article 14 hereof,*
- Gives a loan to an elections campaign organiser in contravention with the fourth paragraph of Article 14 hereof,*
- On request of the Court of Audit does not give or submit explanations, information or documents or does not allow access to their books and records (fourth paragraph of Article 29).*

*(2) A fine of EUR 1,000 to EUR 3,000 shall be imposed on the responsible person of the legal person, sole trader or self-employed person that commits the offence referred to in the preceding paragraph.*

*(3) A fine referred to in the preceding paragraph shall be also imposed on the responsible person of the state body or local community that commits the offence referred to in the first paragraph of this Article.*

*(4) A fine of EUR 600 to EUR 1,000 shall be imposed on the natural person acting in contravention with the first paragraph of Article 14 or the second or third indent of the first paragraph thereof.*

(5) A fine of EUR 600 to 1,500 for an offence shall be imposed on the natural person that does not enter into an appropriate contract in writing for the provision of services or sale of goods in accordance with the third paragraph of Article 14 hereof.

#### Article 38.c

(1) A fine of EUR 1,500 to EUR 15,000 shall be imposed on the payment service provider that in payment of contributions to the elections campaign organiser does not communicate the amount of the contribution or the data allowing identification of the payer, and other information communicated together with the payment transaction (ninth paragraph of Article 14).

(2) A fine of EUR 350 to EUR 1,000 shall be imposed on the responsible person of the payment service provider that commits the offence referred to in the preceding paragraph.

#### Article 39

(1) A fine of EUR 7,000 to EUR 20,000 shall be imposed on the elections campaign organiser – a legal person, sole trader or self-employed person that in financing the elections campaign for the election of deputies to the National Assembly, members of the European Parliament or for the election of President of the Republic exceeds the limits referred to in Article 23 hereof.

(2) A fine of EUR 3,500 to EUR 15,000 shall be imposed on the elections campaign organiser – a legal person, sole trader or self-employed person that in financing the elections campaign for the election of members of representative and individually elected bodies of local communities in the local community exceeds the limits referred to in Article 23 hereof.

(3) A fine of EUR 3,500 to EUR 15,000 shall be imposed on the referendum campaign organiser – a legal person, sole trader or self-employed person that exceeds the limits referred to in Article 23 of this Act.

(4) A fine of EUR 700 to EUR 1,500 shall be imposed on the responsible person of the elections campaign organiser or the individual person – the elections campaign organiser that commits the offence referred to in this Article.

Among the most serious violations in connection with the financing of the election campaign, it is considered primarily receiving illegal contributions (excessive contributions, contributions from prohibited sources) and illicit loans, failure to submit a report on financing the election campaign, failure to open a special bank account on time or failure to open it and/or exceeding the permitted amount for spending in a particular election campaign (art. 38a). The ERCA also stipulates sanctions for natural and legal persons, which give election campaign organizers contributions in breach of the ERCA (art. 38b).

#### *The laws, rules and regulations relevant to the funding of political parties*

The rules on the funding of political parties are defined in articles 21 to 26 of the PPsA. Article 21 defines the sources from which the party may obtain funds. Article 22 defines contributions by natural persons, the upper limit of these contributions and loans. Article 23 defines funding from the state budget. Article 24 defines the obligation to produce an annual report on the party's operation and publish it. Article 24a obliges the Court of Audit (CoA) to review the annual report and the deadline for its supplementation. Article 24b provides that the CoA should perform the external audit. Article 24c sets out additional penalties for cases where a party is liable for a minor offence related to party funding. Article 25 lays down that state and local community authorities, legal persons under public or private law and sole traders must not fund parties. Article 26 governs the funding of political parties from the local community budget.

### **Political Parties Act**

Article 21 (please see above)

Article 22 (please see above)

Article 23



*Parties that entered candidates at the last elections to the National Assembly shall have the right to receive funds from the national budget if they received at least 1 per cent of the vote nationwide.*

*If more than one party entered a joint list of candidates at the elections they shall have the right to receive funds from the national budget if they received at least 1.2 per cent of the votes nationwide (if the joint list was entered by two parties) or at least 1.5 per cent of the votes (if the joint list was submitted by three or more parties).*

*The parties referred to in the first and second paragraphs of this Article shall be entitled to 25 per cent of the funds allocated in the budget for the financing of political parties in equal shares, and shall be entitled to the remaining 75 per cent of the funds in proportion to the number of votes which they receive in all constituencies. Parties which entered a joint list of candidates shall divide the funds obtained on a proportional basis by agreement, and if no agreement has been concluded then in equal shares.*

*Funds allocated for the financing of political parties shall be determined in the budget of the Republic of Slovenia and may not exceed 0.017 per cent of the gross domestic product achieved in the year prior to the adoption of the budget. The amount of funds due to each particular party shall be determined in the financial plan of the National Assembly.*

*The funds shall be paid to the parties in twelfth parts.*

#### Article 24 (please see above)

##### Article 24 a

*On the basis of the published reports referred to in the third paragraph of Article 24 of this Act, the Court of Audit of the Republic of Slovenia (hereinafter referred to as 'the Court of Audit') shall verify that the annual report is compiled in accordance with Article 24 of this Act.*

*The Court of Audit may request the annual report to be supplemented if the report has not been compiled in accordance with Article 24 of this Act, and set a time limit which must not be shorter than 15 days and longer than 30 days within which the party must supplement and re-submit the annual report to AJPES.*

*A party which fails to submit the annual report for the previous financial year to AJPES within the deadline referred to in the third paragraph of Article 24 of this Act, or fails to supplement the annual report within the deadline referred to in the preceding paragraph of this Article, shall be issued a decision by the Court of Audit suspending financing from the national budget and local community budgets until the obligations have been met. The decision of the Court of Audit may not be appealed, while an administrative dispute shall be permitted.*

##### Article 24 b

*The Court of Audit shall carry out an audit of the accuracy of operations of a party which has received funds from the national budget or local community budgets, and received, or were entitled to receive, over EUR 10,000 of such funds in previous years. In an individual year, the Court of Audit must perform an audit of the accuracy of operations of at least one third of the parties referred to in the first sentence of this paragraph. Thus it performs an audit of all parties in four years. The Court of Audit may also perform an audit of the accuracy of operations of a party proposed by the Commission for the Prevention of Corruption or any other supervisory authority which, in conducting their tasks, establishes irregularities, or if, upon a review as referred to in the preceding Article, the Court of Audit questions the authenticity of the data in the annual report or establishes other irregularities. In performing an audit of the accuracy of operations of parties, the Court of Audit shall act in accordance with its powers and the procedure stipulated by this Act and the act governing the competence of the Court of Audit.*

*The audited party, state authorities, local community bodies, AJPES, banks and savings banks where the party has its bank accounts, service providers and sellers of goods that performed services or supplied goods to the party must submit to the Court of Audit at its request the documents required to implement the audit, provide explanations and enable an insight into its books and records. If the Court of Audit establishes a risk that a party's annual report does not show, or incorrectly shows, all data, it may request from third persons explanations, data or documents required to implement the audit.*

*To implement an audit, the Court of Audit shall collect personal data which facilitate the identification (personal name, personal identification number, nationality address of a natural person or individual performing an activity independently) directly from the persons referred to in the preceding paragraph and from collections of personal data held at the ministry with responsibility for internal affairs.*

*When the audit report by the Court of Audit is final, it shall be published on the website of the Court of Audit.*

*The Court of Audit shall send the final audit report to the National Assembly.*

#### Article 24 c

*With the decision of the court on a misdemeanour, which establishes that a party is responsible for a misdemeanour as referred to in point 4, 5 or 8 of the first paragraph of Article 28 of this Act, the party shall be denied the right to funds from the national budget and local community budgets for a period of one year.*

*With the decision of the court on a misdemeanour, which establishes that the party is responsible for a misdemeanour as referred to in point 6, 7, 9 or 10 of the first paragraph of Article 28 of this Act, the party's funds to which it is entitled from the national budget and local community budgets shall be reduced by half for a period of six months.*

*A temporary loss or restriction of the right to financing as referred to in the first and second paragraphs of this Article shall begin in the last month prior to the finality of the decision on a misdemeanour.*

#### Article 25

*A state body, local community body, legal persons of public and private law, sole traders and individuals performing an activity independently must not finance a party, unless otherwise provided by law.*

#### Article 26

*Local communities may finance parties in compliance with this Act.*

*The competent body of a municipality may determine with a decision on financing parties that a party which entered candidates at the previous elections for the municipal council may obtain funds from the local community budget in proportion to the number of votes which it received at the elections. If the elections are held in accordance with a majority voting system, the number of votes which the parties received at the elections in an individual constituency shall be divided by the number of members of the council of the local community that are elected in that constituency.*

*A party may obtain funds from the local community budget if it received at least half of the votes required for the election of one member to the council of the local community, which is acquired by dividing the number of valid votes by the number of seats on the municipal council. The amount of funds allocated to the financing of political parties shall be determined in the local community budget for an individual budget year. The amount of funds must not exceed 0.6 per cent of the funds that the local community has set aside in accordance with the regulations governing the financing of municipalities and with which it can provide for the implementation of constitutional and statutory tasks for this year.*

Candidates are required to submit a report on financing the elections campaign to the Agency of the Republic of Slovenia for Public Legal Records and Related Services (art. 18, ERCA) and the Court of Audit (CoA) (art. 19, ERCA).

### **Elections and Referendum Campaign Act**

#### Article 18

*(1) In order to ensure transparency, legal implementation and effective supervision, organisers of elections campaigns for elections to the National Assembly, the European Parliament, President of the Republic or for a referendum at national level shall submit a report on financing the elections campaign to the Agency*

of the Republic of Slovenia for Public Legal Records and Related Services (hereinafter referred to as: AJPES) through the AJPES web portal, no later than 15 days after closing the special bank account.

(2) In the report on financing the elections campaign, elections campaign organisers shall report about the following:

1. Total amount of funds raised and used for the elections campaign,
2. Amount of contributions transferred by the elections campaign organiser from their bank account to a special bank account in accordance with the seventh paragraph of Article 14 hereof,
3. All individual contributions from natural persons exceeding on the voting day the average gross monthly salary per employee in the Republic of Slovenia according to the data of the Statistical Office of the Republic of Slovenia for the previous year, including the natural person's name, family name and address, and the amount of the contribution,
4. All individual items of expenditure intended by the elections campaign organiser for financing the elections campaign, including their amount, irrespective of its volume, together with the purpose and the service provider or product vendor,
5. All individual loans provided to the elections campaign organiser by any bank or loans undertaking, including information about the name, headquarters, business address and registration number of the bank or loans undertaking where the loan was obtained, interest rate, repayment period and the amount of the loan, irrespective of its volume,
6. All individual contributions given to the elections campaign organiser in contravention with this Act, and their values, including information about the trade name or name, registered office and business address of the legal entity or individual trader or information about personal name and address of the self-employed person or the natural person who made any contribution to the elections campaign organiser,
7. All transfers for humanitarian purposes of the surplus funds referred to in the first paragraph of Article 22 hereof collected by the elections campaign organiser, and of the contributions given to the elections campaign organiser in contravention of this Act.

(3) When the elections campaign organiser is a political party, the report on financing the elections campaign shall separately include also the costs incurred for the acts of the elections campaign of the political party's internal organisational units, in accordance with the third paragraph of Article 15 hereof.

(4) Referendum campaign organiser shall also report on all individual contributions from legal entities referred to in the fifth paragraph of Article 14 hereof, which on the voting day exceed the average gross monthly salary per employee in the Republic of Slovenia according to the data of the Statistical Office of the Republic of Slovenia for the previous year, including the legal entity's name and registered office and the amount of the contribution.

(5) Notwithstanding the provisions of the first paragraph of Article 19 hereof, the organiser of an elections campaign for the elections of members to representative and individually elected bodies of local communities or a referendum in a local community shall submit a report on financing the elections campaign to AJPES through the AJPES web portal.

#### Article 19

(1) Organiser of an elections campaign for the members of representative and individually elected bodies of local communities or a referendum in a local community shall provide the representative body in local community and the Court of Audit with a report on all the funds collected and used for the elections campaign, within 15 days after closing the bank account.

(2) The report referred to in the previous paragraph shall include the data referred to in Article 18 hereof about the sources of funds and the purpose of their use, and all the data referred to in Article 18 hereof.

*The Rules on the content and method of the submission of political parties' annual reports*<sup>44</sup> lays down the content,

<sup>44</sup> (Official Gazette RS, no. 50/14)

forms and method for the submission of a political party's annual report to the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES), and the manner of its publication.

*Description of any specific requirements aimed at enhancing transparency in the funding of candidatures for elected public office and political parties*

- (i) In article 25, the PPSA expressly stipulates that state and local community authorities, legal persons under public or private law, sole proprietors and self-employed persons may not finance parties unless otherwise determined by law (*for article 25, see above*).

The prohibition of funding by legal persons, sole proprietors and self-employed persons aims at preventing the funding of parties by companies directly or indirectly majority-owned by the state and at avoiding disclosure of information on persons giving a contribution to a party and the possibility that by contributing to a party, the legal persons, sole proprietors or self-employed persons would get an undue advantage (for example in the awarding of public contracts). It also aims at reducing corrupt acts connected to party funding.

Election campaign organizers may raise funds for election campaigns only from natural persons. Funding for election campaigns from foreign natural and legal persons is prohibited. An exception is the elections for the European Parliament, where organizers of an election campaign may raise funds for the election campaign from contributions provided by citizens of the Member States of the European Union under the conditions and the manner applicable to domestic natural persons pursuant to relevant law.

- (ii) Pursuant to paragraph 1 of article 24 of the PPSA, political parties must reveal, inter alia, all their revenue, expenditures, and loans in their annual report. The paragraph sets out other data, which should also be included in the annual report (*for article 24, see above*).

Paragraph 2 of article 24 of the PPSA includes a special provision on the party's obligation to separately include the revenues and expenditures of the party's sub-units in its annual report.

Paragraph 3 of article 24 of the PPSA provides that the annual reports are made public by the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) on its website.

Reports on campaign financing (either at the local or national level) are published on the website of AJPES.<sup>45</sup> The AJPES launched an application for the needs of campaign reporting in February 2015. Through this application, the annual reports of political parties and reports of election campaigns can be electronically submitted, not only for the purpose of central record keeping but also for facilitating the subsequent electronic transmission of data to all interested users (journalists, researchers, etc.). In the report on financing the election campaign, election campaign organizers shall report the following:

1. Total amount of funds raised and used for the election campaign,
2. Amount of contributions transferred by the election campaign organizers from their bank accounts to a special bank account for election or referendum,
3. All individual contributions from natural persons of which the amount as per the voting day exceeds the average gross monthly salary per employee in Slovenia according to the data of the Statistical Office of Slovenia for the previous year. The name, family name and address of the natural person, and the amount of the contribution should be included,
4. All individual items of expenditure incurred by the election campaign organizer for financing the election campaign, setting out their amount, the purpose, and the service provider or product vendor,
5. All individual loans provided to the election campaign organizer by any bank or financial institution, including the name, address of the headquarters and branch(es), registration number of the bank or financial institution where the loan was obtained, interest rate, repayment period and the amount of the loan,
6. All individual contributions given to the election campaign organizer in contravention with the ERCA provisions and their values, including information of the trade name, registered office and business address of the legal entity or individual trader, or, as the case may be, information of personal name and

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<sup>45</sup> See webpage: <https://www.ajpes.si/eObjave/default.asp?s=57> for annual reports of political parties, and <https://www.ajpes.si/jolp> for reports of election campaigns

address of the self-employed person or the natural person who made any contribution to the election campaign organizer,

7. All transfers for humanitarian purposes of the surplus funds collected by the election campaign organizer and the contributions given to the election campaign organizer in contravention of the ERCA provisions.

- (iii): The funding of election campaigns and the keeping of a separate bank account is governed by the ERCA. Indent five of paragraph 1 of article 24 of the PPsA sets out the party's duty to include the costs of election and referenda in their annual report according to the act governing election and referendum campaign (*for article 24, see above*).

The election campaign organizer (also political party as election campaign organizer) shall open a special bank account labelled "for the election campaign" no later than 45 days before the voting day in the election, respectively, and shall indicate the election, for which the campaign is organized (art. 16). The election campaign organizer shall use this bank account to collect all the funds provided by them or obtained from any other legal or natural persons for the financing of the election campaign. The election campaign organizer shall pay all the costs of the election campaign exclusively from this account and close this account within four months after the voting day, at the latest. The maturity date of the loan shall not be later than 30 days before the account closure date.

## **Elections and Referendum Campaign Act**

### Article 16

*(1) Elections campaign organiser shall open a special bank account labelled by „for the elections campaign“ or „for the referendum campaign“ no later than 45 days before the voting day in the election and no later than 25 days prior to the voting day in the referendum, respectively, and shall indicate the election or referendum, for which the campaign is organised. When the referendum implementation date is set at more than 45 days after adopting the decision by the National Assembly or by the representative body of a local community, referendum organisers may open a bank account and raise the funds as of the day when the National Assembly or the representative body of a local community fixed the date of voting in the referendum. Elections campaign organiser shall use this bank account to collect all the funds provided by them or obtained from any other legal or natural persons for the financing of the elections campaign. Elections campaign organiser shall pay all the costs of the elections campaign exclusively from this account. Elections campaign organiser shall close this account within four months after the voting day, the latest. The maturity date of the loan referred to in Article 18, item 5 of the second paragraph hereof, shall not be later than 30 days before the account closure date.*

*(2) Notwithstanding the provision in the preceding paragraph, an elections campaign organiser shall open a special bank account designated for an elections or referendum campaign before carrying out the first financial transaction intended for the elections campaign.*

- (iv): In compliance with indent 6 of paragraph 1 of article 24 of the PPsA, the annual report of a political party must include all the individual contributions which the party received in breach of this act, and their amounts, including the name/title, place of establishment and business address of the legal entity or sole proprietor, and/or the personal name and address of the self-employed individual or natural person who has made a contribution to the party. It is prohibited for a party to acquire funds from state authorities, local community bodies, entities governed by public and private law, sole proprietors and self-employed persons (art. 25). It is also prohibited for a party to acquire funds from the contributions of foreign legal entities and natural persons, and sole foreign proprietors and self-employed individuals, from foreign political parties or any other sources of funding from abroad (para. 7 of art. 21). This prohibition does not apply to membership fees or contributions that the party receives from its members (para. 8 of art. 21). *For articles 21 and 24 of the Political Parties Act, please see above.*

As already mentioned, donations by foreign donors and legal entities for the election campaign are prohibited. The election campaign organizer is obliged to report these contributions in the report (a report on election campaign funding submitted to the AJ PES and CoA under articles 18 and 19 of the ERCA), with the following information to be included: values of the contribution, name or title, place of establishment and

business address of the legal entity or sole proprietor, and/or the personal name and address of the self-employed person or the natural person who made any contribution to the election campaign organizer (para. 2 of art. 18, ERCA).

- (v): Pursuant to paragraph 1 of article 24 of the PPsA, the party has an obligation to prepare its annual report on its operation for the preceding business year pursuant to the act and in line with accounting regulations and standards. The annual report must include the data specified under item (ii) above.

Election campaign organizers shall submit a report on financing the election campaign to the AJPES through the AJPES web portal no later than 15 days after closing the special bank account (para. 1 of art. 18, ERCA).

- (vi): For the purpose of reporting, the election campaign organizers must identify all individual and corporate donors. Insofar as the obligations on reporting about donations are concerned, the PPsA lays down special requirements for the individual donors and financial entities processing the donations (paras. 6 and 8 of art. 22, PPsA):

- If the total contributions of a natural person exceed the amount of the average gross monthly salary, the personal name and address of the natural person and the total annual amount contributed to the party by that natural person must be stated in the party's annual report (para. 6 of art. 22).
- Upon the payment of contributions to the party, payment service providers of the recipient operating in accordance with the regulations governing payment services are bound to inform the party, in addition to the amount received, of data facilitating the identification of the person who made contributions to the party (name, surname, and the number of the payment account of the natural person or self-employed person, and information about the name/title and the number of payment account of the legal entity or sole-entrepreneur), and other information accompanying the payment transaction.

According to para. 1 of article 14 of the ERCA, contributions in cash from an individual natural person for each election campaign shall not exceed a maximum amount of €50, while higher cash contributions shall be paid through banks, savings banks or other legal entities providing payment services in accordance with the regulations governing payment services. When contributing in cash, the natural person shall inform the election campaign organizer, in addition to the amount contributed, about details of the natural person's name, family name, personal identification number and address. The financial report of the election campaign organizer must include the data as specified under item (ii) above.

## **Elections and Referendum Campaign Act**

### Article 14

*(1) Elections campaign organiser may raise funds for elections campaign from natural persons. Total contributions of an individual natural person for each elections campaign shall not exceed ten average gross monthly salaries per employee in the Republic of Slovenia according to the data of the Statistical Office of the Republic of Slovenia for the previous year. Contributions in cash from an individual natural person for each elections campaign shall not exceed a maximum amount of EUR 50, while higher cash contributions shall be paid through banks, savings banks or other legal entities providing payment services in accordance with the regulations governing payment services (hereinafter referred to as: payment service providers). When contributing in cash, the natural person shall inform the elections campaign organiser, in addition to the amount contributed, about details of the natural person's name, family name, personal identification number and address.*

- (vii): Article 19 of the PPsA acknowledges that a party possesses its own statute and programme. It also stipulates that a party's articles of association/charter should determine the responsibility for material and financial operations of the party.

Election campaigns can be organized by the candidate, a representative of the person proposing the candidates or lists of candidates, a political party, or any other legal or natural person. The election campaign organizer shall be responsible for the legal implementation of the election campaign.

- (viii): There is no special mechanism or government institution set up to independently monitor the financing of the election campaign or the political parties.

The PPsA and the ERCA provide that the CoA carries out an external audit. The relevant provisions are as

follows:

Article 24(a) of the PPsA authorizes the CoA to review the published and publicly accessible annual reports of political parties and verify their compliance with article 24 of the same act. If a party fails to complete or submit its annual report to the AJPES within the prescribed deadline, the CoA holds power to issue a decision suspending the funding from the national budget and the budget of local communities until the obligation has been complied with by the party.

Article 24(b) of the PPsA provides that the CoA has the power to audit the operation of political parties which receive funds from the national budget or local communities' budgets if the total amount they received or are entitled to receive from these sources exceeds €10,000. The CoA must review at least one-third of such fund-receiving parties every year and must meet the target of reviewing all such fund-receiving parties in four years. The CoA may also carry out a regularity audit of a political party following a proposal submitted by the CPC or by another oversight authority that fulfils its mandate and identifies irregularities. If the CoA, during the review of a political party's annual report, raises doubts as to the authenticity of data in the annual report or finds out any other irregularities, it may also carry out a likewise regularity audit on that political party. In performing the regularity audit, the CoA acts in line with its mandate and follows the auditing procedure as delineated in the PPsA and the act governing the authority of the CoA. In reviewing a political party, the CoA may require documents and clarifications from the subject under review, inspect their books of account and records, or acquire such information from state authorities, local government authorities, AJPES, banks and savings banks where the party has opened an account, as well as from service providers and manufacturers who have rendered services or provides products for the party. Where the CoA identifies risks indicating that the annual report does not contain all the required data or that some data are presented incorrectly, it may ask other persons for clarification, new data or documents necessary for the completion of the audit.

For the purpose of the audit, the CoA shall collect personal data which facilitates the identification (full name, personal identification number, nationality and address of the natural person or self-employed person) directly from the persons referred to in paragraph 3 of article 24b as well as from the personal database of the ministry responsible for internal affairs.

By the Elections and Referendum Campaign Act, the CoA is responsible for the supervision of the implementation of the provisions relating to the financing of the election campaign. The CoA shall carry out a financial audit of the election campaign organizers who are entitled to partial reimbursement of expenses for an election campaign on the national level (defined in the arts. 24 and 26) within six months after the date set for the closure of the bank account. The CoA may also audit the elections campaign organizer for the elections for members of representative and individually elected bodies of local authorities and the referendum at the national or local level.

Through the last amendment to the ERCA in 2013, the CoA assumed additional powers and responsibilities relating to the audit of the election campaign organizers. The election campaign organizer (concerning which an audit is carried out) state authorities, local community bodies, AJPES, banks and savings banks, with which election campaign organizers opened special bank accounts, service providers and vendors of goods that rendered services and supplied goods to the election campaign organizer, shall provide the CoA, on its request and free of charge, with documents necessary to carry out the audit, provide explanations and access to their books and records. If the CoA identifies the risk that the election campaign organizer has failed to show all the data or has not demonstrated it adequately in the report, it may also require explanations, information or documents necessary to carry out the audit from other people. The CoA shall collect personal information directly from persons and individual databases of the ministry responsible for internal affairs to carry out the audit.

On the basis of the publicly available reports, the CoA may request from the election campaign organizer within a reasonable time to complete the report if it is not prepared in line with the ERCA and to resubmit it to AJPES.

In a case of exceeding the allowed amount for the election campaign, the CoA shall adopt the decision on the reduction or loss of the right to reimbursement of expenses for organizing and financing the elections, or the temporary reduction or temporary loss of the political party's right to the funds from the state budget or local community budget.



The CoA performs supervision within the powers laid down by the ERCA and the law governing the jurisdiction of the CoA. Article 30 of the ERCA provides that by the audit referred to in article 29, the CoA shall examine:

- Amount of funds raised and used for the election campaign,
- Whether the election campaign organizer obtained and used the funds for the election campaign in line with the law,
- Whether the data indicated by the election campaign organizer in the reports referred to in articles 18 and 19 of the ERCA was accurate.

If by an audit, the CoA establishes a surplus of the collected funds exceeding the amount indicated by the election campaign organizer in their report, the election campaign organizer shall transfer from their bank account the difference of the surplus for humanitarian purposes as set out in the law governing humanitarian organizations, within 30 days following the publication of the audit report on the websites of the CoA, the National Assembly and the local community respectively. The election campaign organizer shall also report accordingly to the CoA, the National Assembly or the representative body of the local community. The funds obtained for partial reimbursement of election campaign expenses shall not be taken into account when calculating the surplus of the collected funds.

## **Elections and Referendum Campaign Act**

### Article 29

*(1) The Court of Audit shall carry out an audit of the elections campaign organisers entitled to partial reimbursement of expenses for an elections campaign pursuant to this Act, within six months after the deadline for closing the bank account expires.*

*(2) The Court of Audit may carry out an audit in organisers of an elections campaign for a referendum at national level within six months after the deadline for closing the bank account expires.*

*(3) Within the deadline referred to in the first and second paragraphs of this Article, the Court of Audit may carry out an audit also in the organiser of an elections campaign in the elections for members of representative and individually elected bodies of local authorities, and for the referendum at local level.*

*(4) The elections campaign organiser, in which an audit is carried out, state authorities, local community bodies, AJPES, banks and savings banks, with which elections campaign organisers opened special bank accounts, service providers and vendors of goods that rendered services and supplied goods to the elections campaign organiser, shall provide the Court of Audit, on its request and free of charge, with documents necessary to carry out the audit, provide explanations and access to their books and records. If the Court of Audit identifies the risk that the elections campaign organiser failed to show all the data or has not shown it properly in the report referred to in Articles 18 and 19 hereof, it may also require explanations, information or documents necessary to carry out the audit from other people. For the purpose of carrying out the audit, the Court of Audit shall collect personal information directly from persons and from personal databases of the ministry responsible for internal affairs.*

### Article 30

*(1) By the audit referred to in Article 29 hereof, the Court of Audit shall examine:*

*Amount of funds raised and used for the elections campaign,  
Whether the elections campaign organiser obtained and used the funds for elections campaign in line with the law,*

*Whether the data indicated by the elections campaign organiser in the reports referred in Articles 18 and 19 hereof, was accurate.*

*(2) On the basis of the publicly available reports referred to in Articles 18 and 19 hereof, the Court of Audit may request from the elections campaign organiser within a reasonable time, which shall not be less than 15 days and no longer than 30 days, to complete the report, if it is not prepared in line with Articles 18 and 19 hereof, and to resubmit it to AJPES.*

*(3) When the audit report of the Court of Audit is final, it shall be published on the website of the Court of Audit and the National Assembly or the local community, respectively.*

*(4) The Court of Audit shall send the final audit report to the National Assembly and the local community, respectively.*

- (ix): The PPsA provides for the distinction of supervision duties between the Internal Affairs Inspectorate of the Republic of Slovenia, the CoA and the AJPES. Pursuant to article 27, the supervision of the implementation of the provisions defining the violations of any such provisions as an offence falls under the purview of the Internal Affairs Inspectorate, except for the implementation of the provisions, which are otherwise stated as the remit of the CoA and AJPES. According to article 23 člen (*for the text of the article, please see above*), the Local Court of Ljubljana has full authority over decisions related to violations of the funding provisions.

## **Political Parties Act**

### Article 27

*Supervision of the implementation of the provisions of this Act, non-compliance with which has been defined as a misdemeanour by this Act, shall be carried out by the Inspectorate of the Republic of Slovenia with responsibility for internal affairs, except for supervision of the provisions laid down in Articles 21, 22, the first and second paragraphs of Article 24, Articles 24 a and 25 of this Act, which shall be carried out by the Court of Audit, and for supervision of the provision of the third paragraph of Article 24 of this Act, which shall be carried out by AJPES.*

*The Court of Audit shall carry out supervision within its competences stipulated by this Act and the act governing the competence of the Court of Audit.*

*Inspection and other state authorities, and holders of public authority that, in performing their tasks, establish violations of the provisions of the Act as referred to in the first paragraph of this Article must file a motion with the minor offence authority to initiate misdemeanour proceedings.*

Responsible bodies for the supervision of the implementation of the provisions of the Elections and Referendum Campaign Act are the Internal Affairs Inspectorate, the Culture and Media Inspectorate, the Local Community Inspection or Local Community Constabulary and the CoA. The Court shall provide the offence body with a proposal on initiating offence proceedings on the offences, the supervision of which is under the jurisdiction of the CoA (art. 40, ERCA). The accusatory instrument shall be filed by the CoA, and the ruling on the offence shall be under the jurisdiction of the District Court in Ljubljana.

## **Election and Referendum Campaign Act**

### Article 28

*Notwithstanding the provisions of the law governing offences, the Court shall decide on the offences referred to in the first paragraph of Article 40 hereof, the supervision of which is under the jurisdiction of the Court of Audit, before the amended law governing offences and determining the jurisdiction to rule on offences in the field of elections and referendum campaign enters into force. Accusatory instrument shall be filed by the Court of Audit, and ruling on the offence shall be under the jurisdiction of the District Court in Ljubljana.*

### Article 40

*(1) Supervision of the implementation of the provisions of this Act, the violations of which are defined by this Act as offences, shall be the responsibility of the internal affairs inspectorate, except in the cases referred to in Articles 5 and 6 and the first paragraph of Article 7 hereof, where the responsibility will belong to the culture and media inspectorate, Articles 8, 9 and 11 hereof, where the responsibility belongs to the local community inspection or local community constabulary, and in parts of the provisions referred to in Articles 4, 14, 16, 18, 19, 22, 23, 29 and 30 hereof relating to financing, which shall be the responsibility of the Court of Audit.*

(2) *The Court of Audit shall perform supervision within the powers laid down by this Act and the law governing the jurisdiction of the Court of Audit.*

(3) *The inspectorate responsible for internal affairs, inspectorate responsible for culture and media, responsible local community inspection or local community constabulary shall be allowed to impose fines for offences under this Act within the range prescribed hereof, where under an expedited procedure, they may impose fines also in the amounts exceeding the minimum prescribed fine.*

(4) *If it is established during supervision that an opinion poll or a survey was published during the period of 24 hours before the voting day and the closure of polling stations on the voting day, an official of the body responsible for supervision may order by a decision the removal of the opinion poll or survey. An appeal shall be allowed against this decision. An appeal shall not stay the execution. The appeal shall be decided by the ministry of culture.*

(5) *Inspection and other state bodies, and holders of powers conferred by public law, which establish during exercise of their tasks any violation of the provisions of the Act referred to in the first paragraph of this Article, shall provide the offence body with a proposal on initiating offence proceedings.*

The TI Slovenia added that transparency, accountability, and sanctions for the breaches of election laws have been enhanced in recent years but are still not adequate. Further, it pointed out that TI Slovenia has been highly involved in the procedure and prepared research on the integrity of<sup>46</sup> election campaigns and conducting independent supervision over local elections.<sup>47</sup>

*Slovenia further clarified the following points during the process of the review:*

A contribution from legal persons is considered an illegal donation.

The contributions of an individual natural person in cash in the year for which a party's annual report is compiled may be a maximum of the amount set by the law governing the tax procedure, while higher contributions in cash may be paid through banks, savings banks or other legal persons who provide payment services in accordance with the regulations governing payment services.

The Political Parties Act (PPsA) does not explicitly define anonymous contributions, but according to paragraph 1 of article 22, a natural person, when making a contribution, in addition to the amount allocated to the party, must submit the name, surname, personal identification number and address of the natural person.

### **Slovenia provided the following examples of the implementation of the provision under review:**

*The legal definition of what constitutes a donation or contribution to a political party:*

In order to ensure transparency, full implementation and adequate supervision, organizers of election campaigns for elections to the local communities, the National Assembly, the European Parliament, the President of the Republic of Slovenia, and referendums at both the local and national level shall submit a report on the financing of the election campaign to the AJPES. According to paragraph 3 of article 24 of the PPsA, the political party shall also submit the annual report to the AJPES.<sup>48</sup>

*The laws, rules and regulations applicable to the funding of candidatures for elected public office:*

After the new legislation was adopted in 2013, the CoA issued:

- 23 audit reports on the financial management and financial reporting of the organizers of election campaigns at the national level and one audit report relating to an election campaign at the local level. It has also issued four post-audit reports relating to the organizers of election campaigns;

<sup>46</sup> Available at: <http://crinis.integriteta.si/>

<sup>47</sup> Available at: ([http://transparency.si/images/publikacije/national\\_report\\_monitoring\\_slovenia\\_eng.pdf](http://transparency.si/images/publikacije/national_report_monitoring_slovenia_eng.pdf)).

<sup>48</sup> All reports on financing the election and referendum campaigns from the beginning of the year 2015 onward are published on the AJPES's web portal (<https://www.ajpes.si/eObjave/default.asp?s=57>). Additionally, all the annual reports of the Political Parties starting from 2013 are also publicly available (<https://www.ajpes.si/jolp>). Some copies of the reports are attached to this questionnaire (File name: Attachment for para. 3 of Art. 7 of the Convention).

- 19 audit reports on the financial management of the political parties in the years 2014, 2015, and 2016; additional seven audit reports on the financial management of the political parties were issued by the end of 2017. It also issued one post-audit report on a political party.

The objectives of the audits of election campaigns were to express an opinion on the regularity of reporting and operations in accordance with the ERCA. By carrying out the audits concerned, the CoA defines the amount of a partial reimbursement of election campaign costs, to which the election campaign organizers are entitled (e.g., subject to the audit carried out by the CoA, the amount of the partial reimbursement of the expenses for election campaign to which the election campaign organizer is entitled will be determined). Additionally, the election campaign organizer has a prescribed time limit to open and close a special transaction account and submit the report on financing the election campaign to the CoA.

Under the PPsA, the audits performed by the CoA serve to maintain the regularity of the operations of political parties. The CoA may request further clarification to the extent necessary for carrying out its duties. The CoA also has broad discretion to define narrowly specific objects for its audits and pose detailed audit questions in this regard. Thus, in 2014, 2015, and 2016, the CoA focused specifically on the disclosure of illegal financing and borrowing of political parties, outstanding liabilities for election campaigns, and record-keeping of the register of political parties' members and illegal citizenship holders. In 2014, the CoA audited the following political parties whose representatives were elected to the National Assembly: TRS (Party for Sustainable Development of Slovenia), IDS (Initiative for Democratic Socialism), DSD (Democratic Labour Party), SDS (Slovenian Democratic Party), SD (Social Democrats), DeSUS (Democratic Party of Pensioners of Slovenia), SMC (Modern Centre Party), PS (Positive Slovenia), DL (Civic List), NSi (New Slovenia), SLS (Slovenian People's Party) and ZaAB (Alliance of Alenka Bratušek). The CoA gave an unqualified opinion to SLS and ZaAB and a qualified opinion to the remaining political parties. In 2017, the CoA issued an audit report on the operations of the political party KJN (Koper is Ours) but rejected to give an opinion thereon.

As a corrective measure, the CoA requested the political parties and organizers of election campaigns to assign illegally obtained contributions to charity. Some auditees already implemented such corrective actions during the audit, while some disclosed the implementation in their response reports. As a follow-up, the CoA was required to issue post-audit reports.

The CoA provided the management of the political parties with recommendations on the improvement of their business operations and financial reporting, as well as other recommendations.

The CoA lodged a request with the Constitutional Court to review the legality of implementing regulations concerning the compliance of five municipal ordinances with the provisions of the PPsA and the ERCA.

On the CoA's website, a letter to the National Assembly is published where the CoA provided comments regarding the applicable manner of financing political parties and election campaigns as prescribed by law:

<http://www.rs-rs.si/rsrs/rsrs.nsf/I/K3532E1FBB09A1701C1257FB700388A8E?openDocument&appSource=46E3594471E3F026C1257147003B9860> .

All audit reports and post-audit reports of the CoA, including the audit reports on election campaign organizers and political parties, are published on its web portal:<sup>49</sup>

<http://www.rs-rs.si/rsrs/rsrs.nsf/PorocilaArhivW?SearchView&query=%5BsTip%5D=Drugi%20uporabniki%20javnih%20osredstev%20AND%20%5BPodtip%5D=Organizatorji%20volilnih%20kampanj&SearchOrder=3&Count=10&appSource=91F2455D38551D7CC1257155004755A7&start=1&appSource=91F2455D38551D7CC1257155004755A7>>.

*Sanctions for the violation of any relevant laws, rules and regulations applicable to political candidates or political parties:*

After concluding the audit, the CoA provides the offence authority with a proposal for instituting offence

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<sup>49</sup> Some copies of the audit reports on the election campaign organizers and political parties and one post-audit report are attached to this questionnaire (File name: Attachment for Article 7 para 3)

proceedings. According to the Act Amending the Elections and Referendum Campaign Act of 2013, the CoA has sent more than 20 proposals on instituting offence proceedings at the District Court in Ljubljana. In some cases, the CoA has the right to appeal against the judgment of the District Court. Due to low amounts (generally a few hundred euros) related to irregularities disclosed in the audit report and also substantial fines imposed for offences in accordance with the PPsA and the Elections and Referendum Campaign Act, the District Court in Ljubljana does not, as a rule, impose penalty payments. If, however, they are imposed, the amounts set are within the statutory prescribed limits, namely lower fines.

*The laws, rules and regulations relevant to the funding of political parties:*

In accordance with article 26 of the PPsA, decisions of municipalities on the financing of political parties are, as a rule, published and made publicly available. The same also applies to annual reports of political parties, where the political parties are required to disclose the amounts of funds obtained from the state and municipal/local budgets. Also made publicly available are the audit reports prepared by the CoA concerning the financing of election campaigns in which the amount of partial reimbursement of election campaign costs entitled by the organizer of an election campaign is disclosed.

There are no special public reports prepared by the government institutions which provide the political parties with public funding.

However, the MoF (Public Payments Administration of the Republic of Slovenia) can, upon request, provide the data on public funding granted to all political parties or an individual political party from the state and local budgets. On the web portal ERAR, managed by the CPC, the public can obtain information about public funding for each political party and election campaign organizer.

The CoA is provided with all the necessary documents and data from relevant entities, including the state bodies and municipalities, regarding the financing of political parties from the state and local budgets.

In 2015, political parties received €6,000,655 from the state and local budgets. In 2015, 25 political parties were allocated more than €10,000 from the state and local budgets - a threshold whereby an audit is mandatory pursuant to paragraph 1 of article 24b of the PPsA. The political parties listed below obtained in total €5,889,487 of public funds. Please refer to the table below for the breakdown figures.

Table: Political parties allocated more than €10,000 of public funds in 2015.

	Political party	2015 (in EUR)
1	ZaAB (now Zavezništvo socialno-liberalnih demokratov)	52,979.92
2	SDS	1,215,166.51
3	NSi	482,362.45
4	SD	561,078.36
5	IDS	103,574.93
6	DeSUS	674,278.39
7	SMC	1,534,125.84
8	TRS	104,403.73
9	SLS	475,992.05
10	PS	126,425.41
11	DSD (now Združena levica – Demokratična stranka dela)	79,323.25
12	Pirati	84,892.68
13	SNS	117,144.16
14	Zagorje gre naprej	19,713.45
15	Zveza za Primorsko	15,310.07
16	Več za Kranj	21,125.10
17	Koper je naš	57,109.20
18	Lista Marjana Šarca – Naprej Kamnik	41,159.35
19	LTD – Toni Dragar – Lista za vse generacijet	20,275.43
20	Naša Notranjska	13,083.61
21	Oljka	11,563.70
22	Solidarnost, za pravično družbo	35,423.85
23	DROT -- za razvoj	11,608.68
24	Županova lista (now Nova ljudska stranka Slovenije)	13,157.69
25	Slovenija za vedno	18,209.79
		<b>5,889,487.60</b>

Source: Public Payment Administration of the Republic of Slovenia

In paragraph 66 of GRECO report, Addendum to the Second Compliance Report on Slovenia, “Incriminations (ETS 173 and 191, GPC 2)”, “Transparency of Party Funding,” (<https://rm.coe.int/16806ca7f1>) published on 26 June 2014, it is stated that “*In so far as transparency of political funding is concerned, Slovenia has now substantiated commendable progress with the amendments of the Political Parties Act as well as the Elections and Referenda Act at the end of 2013. The new legislation is, to a large degree, in conformity with the recommendations issued by GRECO more than six years ago and it provides for more transparency of political financing provided the law is applied as intended...*”

The copies of the Elections and Referendum Campaign act<sup>50</sup> and the Political Parties Act<sup>51</sup> are attached to the SACL.

<sup>50</sup> (File name: ZVRK-NPB3-angleški)

<sup>51</sup> (File name: ZPoIS-NPB3-angleški)



## ***(b) Observations on the implementation of the article***

The funding of candidatures for elected public office is regulated in the Elections and Referendum Campaign Act (ERCA), where candidates are required to submit a report to the representative bodies and the Court of Audit (CoA) on the funds raised and utilized during the campaigns (arts. 18 and 19). The Political Parties Act (PPSA) governs the funding of political parties, according to which only natural persons are eligible to make contributions to political parties (art. 22) and funding from foreign sources is prohibited (art. 21). The PPSA and ERCA lay down sanctions relating to illegal contributions. Political parties are obliged to disclose revenue, expenditures and loans in their annual reports, which are reviewed by the CoA (art. 24, PPSA).

### ***Paragraph 4 of article 7***

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

### ***(a) Summary of information relevant to reviewing the implementation of the article***

#### *Conflicts of Interest*

In Slovenia, the CPC is the main responsible body for strengthening transparency and preventing conflicts of interest, incompatibilities of functions, and restrictions relating to official duties, described under article 5 and paragraph 1 of article 6 of the Convention.

Regarding the existence of a possible conflict of interest, the provisions of the IPCA provide that 'official persons'<sup>52</sup> (which includes public employees throughout the public sector) must be mindful of any actual or possible conflict of interest and must make every effort to avoid it. Official persons may not use their office or work in such a way that would advance any illicit private interest for themselves or any other person (art. 37).

#### **Integrity and Prevention of Corruption Act**

##### Article 37 (Obligation to avoid a conflict of interest)

*(1) An official person shall pay attention to any actual or possible conflict of interest and shall make every effort to avoid it.*

*(2) An official person may not use his office or post to advance his personal interests or the personal interests of another person.*

Pursuant to the same law, a conflict of interest is defined as a circumstance where the private interest of the official person influences or gives the impression of influencing the impartial and objective performance of their public tasks. Private interests are defined as material or non-material benefits for the official person, their family members, and other individuals or legal entities with whom that person has or has had personal, business or political connections. Concerning the possible existence of a conflict of interest, the official person's superior (e.g., head of department, etc., where they are informed of the existence or possibility of a conflict of interest) or the CPC (if the official person does not have a superior) decides the matter within 15 days and informs the official person of the result (art. 38, IPCA). In order to determine whether there is a conflict of interest, the head of the department or the CPC makes the determination in accordance with the stated provisions.

If there is a possibility that a conflict of interest has arisen during the official conduct of the official persons, the CPC may initiate a procedure to establish the actual existence of the conflict of interest and its consequences (art. 39, IPCA). If a conflict of interest is found, on the basis of the procedure carried out, the CPC shall inform the competent authority or the employer and set the time limit by which the authority or the employer is obliged to inform it of the measures taken to eliminate the conflict of interest and its consequences. If the CPC finds that, in

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<sup>52</sup> "Official persons" means officials, high-ranking civil servants, and other public servants [public employees], as well as managers, and members of the management and supervisory boards of public sector entities; (Article 4, IPCA)



the situation addressed, an official person knew or should have or could have known that the conflict of interest existed but, despite this, acted in contravention of the provisions on the prevention of conflicts of interest, the CPC shall inform all other competent authorities. The CPC may initiate a procedure referred to in paragraph 1 of this article within two years of the performance of the official acts.

### **Integrity and Prevention of Corruption Act**

#### Article 39 (Procedure for establishing a conflict of interest)

- (1) If there is a possibility that a conflict of interest has arisen in the official conduct of official persons, the Commission may initiate a procedure for the establishment of the actual existence of the conflict of interest and its consequences.*
- (2) If it is established, on the basis of the procedure carried out, that a conflict of interest has arisen, the Commission shall inform the competent authority or the employer and set the time limit by which the body or the employer is obliged to inform it of the measures taken in this respect.*
- (3) If the Commission finds that, in the situation addressed, an official person knew or should have or could have known that the conflict of interest existed but, despite this, acted in contravention of the provisions on the prevention of conflicts of interest, the Commission shall inform all other competent authorities.*
- (4) The Commission may initiate a procedure referred to in paragraph 1 of this Article within two years of the performance of the official acts.*

Where the findings relate to officials<sup>53</sup>, 'high-ranking civil servants'<sup>54</sup>, 'public servants' or managers<sup>55</sup>, the CPC should send the findings to the head of the relevant authority or the authority responsible for the direct supervision of the work of the person in question or his/her appointment and dismissal. Within 30 days, that authority must initiate supervisory and disciplinary procedures and adopt appropriate measures in accordance with the law, the codes of conduct and the integrity plan, and notify the CPC accordingly (para. 9 of art. 13, IPCA).

### **Integrity and Prevention of Corruption Act**

#### Article 13 (Power to request supervision)

- (9) Where the findings relate to officials, high-ranking civil servants, public servants or managers, the Commission shall send the findings to the Head of the relevant authority or to the authority responsible for the direct supervision of the activities of the person in question or for his appointment and dismissal. Either one or the other shall within 30 days assess the adverse consequences for the reputation of the function or the position, or for the reputation of the authority or entity where the person in question is employed, as well as initiate supervisory and disciplinary procedures and adopt appropriate measures pursuant to the law, the codes of conduct and the integrity plan. It shall inform the Commission on the measures implemented.*

For public employees in state bodies and local community administrations, the PEA prohibits performing official

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<sup>53</sup> "Officials" means deputies of the National Assembly, members of the National Council, the President of the Republic, the Prime Minister, ministers, state secretaries, judges of the Constitutional Court, other judges, state attorneys, officials in other self-governing local communities (hereinafter: local communities), members of the European Parliament from the Republic of Slovenia, unless their rights and obligations are stipulated otherwise by the regulations of the European Parliament, and other officials from Slovenia working in European and other international institutions, the Secretary---General of the Government, former officials while receiving wage compensation pursuant to the law, and officials of the Bank of Slovenia, unless their rights and obligations are stipulated otherwise by the Act governing the Bank of Slovenia and other regulations binding thereon; (Article 4, IPCA)

<sup>54</sup> "High-ranking civil servants" means directors-general, secretaries-general of ministries, heads of ministerial departments, heads of government offices, heads of administrative units, and the directors or secretaries of municipal administrative bodies; (Article 4, IPCA)

<sup>55</sup> "Managers" means the directors and members of the collective management bodies of the following: public agencies, public funds, public institutes, public utility institutes, and other entities governed by public law which are indirect users of the government budget or the local community budget, as well as public undertakings and private companies in which a controlling interest or a dominant influence is held either by the State or a local community; (Article 4, IPCA)

activities when a conflict of interest arises (para. 7 of art. 100).

## **Public Employees Act**

### Article 100 (Performance of other activities and conflicts of interest)

*1) Officials shall not perform other activities:*

*1. if the activity violates the prohibition on competition or the non-competition clause in accordance with the Act governing employment relationships;*

*2. if the performance of the activity could affect the impartial performance of work;*

*3. if the performance of the activity could result in an abuse of data that may be accessed during the performance of their work and that are not available to the public;*

*4. if the performance of the activity is harmful to the reputation of the authority.*

*2) Officials shall notify the head of the authority of activities that they deem to be contrary, or could be contrary, to the provisions of paragraph one of this Article before commencing such activities.*

*3) The head of the authority shall issue a decision prohibiting officials from performing the activities referred to in paragraph one of this Article.*

*4) The duty of notification and the restrictions referred to in this Article shall not apply to activities relating to scientific and educational work, work in associations and organisations in the field of culture, art, sport, humanitarian activities and other similar associations and organisations, work in the area of journalism, or to membership and engagement in political parties.*

*5) Officials holding the managerial position of director-general, secretary-general, head of a body within a ministry, head of a government office, head of an administrative unit, director of a municipal administration or municipal secretary shall not engage in any gainful occupation with the exception of activities in the field of science, research, education, art, journalism and culture.*

*6) Legal entities in which the officials in a managerial position referred to in paragraph five of this Article, or their spouses, their relatives in a direct line or their collateral relatives up to three degrees removed have an interest exceeding 20% shall not enter into business relations with the authorities in which the official concerned is employed. Contracts concluded contrary to the provision of this Article shall be void.*

*7) Officials who deem that circumstances have arisen in which their personal interests could affect the impartial and objective performance of their tasks, or where circumstances could raise doubt as to their impartiality and objectivity, shall, without delay or as soon as practicable given the circumstances, notify thereof the head of the authority and act in accordance with his or her instructions. In the event of such, the head of the authority shall ensure that the tasks are performed in a lawful, impartial and objective manner and verify whether the tasks have been performed in this manner.*

A public employee who believes that a situation has arisen in which his personal interest might affect the impartiality and objectivity of the performance of his tasks, or where the circumstances of the situation might cast doubt as to his impartiality and objectivity, must, immediately or as soon as practicable under the circumstances, notify the head of the authority and act in accordance with the head's instructions. In such a case, the head of the body must ensure that the tasks are performed lawfully, impartially and objectively and must verify that the tasks were performed in such a manner.

If serious corrupt conduct of an official, a 'high-ranking civil servant' or a manager has been established, the CPC should send to the authority responsible for the appointment and dismissal of the person in question a proposal for his dismissal and inform the public accordingly (para. 10 of art. 13, IPCA).

## **Integrity and Prevention of Corruption Act**

### Article 13 (Power to request supervision)

...

*(10) Notwithstanding the preceding paragraph, in the event that the seriously corrupt conduct of an official, a high-ranking civil servant or a manager has been established, the Commission shall send to the authority responsible for the appointment and dismissal of the person in question, a proposal for his dismissal and inform the public accordingly. The competent authority shall take a position on the Commission's proposal for dismissal within 30 days.*

Based on the information provided above, the Slovenian regime of “interest” disclosure can be divided into the following types:

*“Preliminary” interest disclosure:*

a) ‘Officials’<sup>56</sup> must disclose entities in which he/she holds office or his/her family members are participating as a manager, management member or legal representative or have more than a 5% level of participation in the founders’ rights, management or capital, either by direct participation or with the involvement of other legal persons. According to article 35 of the IPCA, such an entity should not conduct business with the public sector body or organization. The declaration must be submitted to the body in which the official holds office no later than one month after taking office and within eight days of any change thereafter.

b) According to article 26 of the IPCA (*for the text, please see below*), a professional official holding a public office may not engage in any professional or other activity aimed at generating income or proceeds, except for pedagogical, scientific, research, artistic, cultural, sports and publishing activities, management of his farm or his own assets. An official who obtains permission from his employer or enters into a contract to engage in pedagogical, scientific, research, artistic or cultural activities should notify the CPC. Such a notice should be made at least eight days before the engagement in the activity mentioned above.

c) There is no obligation for other ‘official persons’<sup>57</sup> to preliminarily disclose their interests (meaning before entering the office).

*Ad hoc interest disclosure:*

d) Any ‘official person’ who, upon taking up a post or office or during the performance of the duties of the post or office, finds that a conflict of interest has arisen or might arise must immediately declare such a private interest. The rules governing the ad hoc disclosure of interests are stipulated in special procedural acts (e.g., Administrative Procedure Act (arts. 35-41), the CPA (art. 39), Employment Relations Act (arts. 34-36), and Public Procurement Act (art. 91). If no such rules exist, general conflict of interest rules stipulated in the IPCA apply. Despite the fragmentation of the ad hoc interest disclosure rules, there are no significant differences among them.

The ad hoc interest declaration rules apply to ‘official persons.’ The term “official person” includes elected and appointed officials, senior public employees (‘high-ranking civil servants’) and other public employees, as well as managers, members of management and supervisory boards, and employees of state-owned enterprises.

The preliminary declarations of interest are collected and kept by the CPC. The ad hoc declarations are stored by the body or organization responsible for carrying out the official task to which the situation of conflict of interest relates. Such declarations are not publicly available. However, they can be received (accessed) under the system of free access to the information (*explained in detail below*).

The IPCA also lays down fines for violations of the aforementioned provisions:

- A fine of between €400 and €1,200 shall be imposed on an individual who fails to immediately inform his superior or the CPC of a conflict of interest or a possibility that a conflict of interest may arise (para. 1 of art. 77, IPCA).

## **Administrative Procedure Act**

### Article 35

*The head or an authorised official person of an authority may not decide or perform individual actions in a procedure:*

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<sup>56</sup> As defined in article 4 of IPCA.

<sup>57</sup> As defined in article 4 of IPCA.

*if he or she is a party, a co-entitled person or a co-obliged person, a witness, an expert witness, an authorised person or a statutory representative of a party in the case considered in an administrative procedure;*

*if a party or their statutory representative or authorised person is his or her blood relative in a direct line or a collateral line up to the fourth degree, or if he or she is married to such party or their relative in law up to the second degree, even if the marriage has ended, or if he or she lives or has lived with them in a non-marital cohabitation;*

*if he or she is a guardian, an adoptive parent, an adopted child or a foster parent of the party, their statutory representative or authorised person;*

*if he or she has been involved in a procedure at the first instance or has participated in deciding.*

#### Article 36

*An official person who is to decide or perform some procedural action in a particular administrative case, must immediately cease carrying out any further activities in the case when they learn of some reason for recusal referred to in Article 35 of this Act, and shall notify thereof the authority which is responsible for deciding on recusal. If the official person believes that there are any other circumstances which justify their recusal, they shall notify thereof the above authority but may not cease carrying out their work.*

#### Article 37

*(1) A party may request that an official person be recused for reasons stated in Article 35 of this Act, as well as when other circumstances cast doubt on the impartiality of the official person. When this is the case, the party must indicate the circumstances which, in their opinion, provide a reason for recusal.*

*(2) The official person whose recusal has been requested by the party for whatever reason stated in Article 35 of this Act may not, until a procedural decision on such a request is issued, perform any procedural actions, except for those which may not be postponed.*

#### Article 38

*(1) The Government shall decide on the recusal of a minister. Ministers shall decide on the recusal of heads of authorities and organisations within ministries and of official persons in the ministry.*

*(2) The head of an authority or organisation shall decide on the recusal of official persons in authorities and organisations within ministries.*

*(3) The minister responsible for public administration shall decide on the recusal of the head of an administrative unit.*

*(4) The head of an administrative unit shall decide on the recusal of an official person of the administrative unit.*

*(5) The recusal of official persons who are bearers of public authority shall be decided on by the head of the authority, who is responsible for deciding on appeals filed against decisions issued by the organisation; if no appeal is allowed, the minister who heads the ministry into whose field of work the administrative case at issue falls, shall decide.*

*(6) The secretary or director governing the administration of a self-governing local community shall decide on the recusal of official persons of the self-governing local community administration.*

*(7) The mayor shall decide on the recusal of the secretary or director governing the administration of a self-governing local community.*

*(8) The representative body of a self-governing local community shall decide on the recusal of the mayor.*

*(9) In cases where jurisdiction has been delegated from the state to a self-governing local community, the competent ministry shall decide on the recusal of an official person and the appointment of another official person.*

*(10) The recusal shall be decided by a procedural decision.*

#### Article 39

*(1) The procedural decision regarding recusal shall define the official person who is to perform individual actions or conduct the entire procedure and decide on the case instead of the recused person.*

*(2) An appeal shall be allowed against the procedural decision by which a party's request for recusal has been refused.*

#### Article 40

*The provisions of this Act on recusal shall also apply mutatis mutandis to members of collegiate authorities and other high officials and to other persons who would be authorised to decide on administrative cases or perform procedural actions.*

#### Article 41

*(1) The provisions of this Act on recusal shall also apply mutatis mutandis to typists.*

*(2) The procedural decision regarding the recusal of a typist shall be issued by the official person conducting the procedure.*

### **Employment Relations Act**

#### Article 34 (Obligation of Informing)

*(1) The worker shall inform the employer of relevant circumstances which affect or might affect the fulfilment of his contractual obligations.*

*(2) The worker shall inform the employer of any threatening danger to life or health or to the occurrence of material damage he should notice at work.*

#### Article 35 (Prohibition of Harmful Actions)

*The worker is obliged to refrain from all actions which in view of the nature of work, which he carries out at the employer, cause material or moral damage or might harm the business interests of the employer.*

#### Article 36 (Safeguarding Business Secrets)

*(1) A worker should not exploit for his private use nor disclose to a third person employer's business secrets defined as such by the employer, which were entrusted to the worker or of which he has learnt in any other way.*

*(2) Data which would obviously cause substantial damage if they were disclosed to an unauthorised person are regarded as business secret. The worker is liable for the violation, if he knew or should have known for such nature of data.*

### **Criminal Procedure Act**

#### Article 39

*A judge or juror judge may not perform judicial duties:*

*1) if he himself has suffered harm through the criminal offence;*

*2) if he is married to or lives in a domestic partnership with the accused, the defence counsel, the prosecutor, the injured party and their legal representatives or attorneys, or if he is related to the aforesaid persons by blood in direct line at any remove or collaterally up to four removes, or related through marriage up to two removes;*

*3) if his relationship with the accused, the defence counsel, the prosecutor or the injured party is that of a custodian or a ward, adopter or adoptee, foster parent or foster child;*

4) if he had conducted acts of investigation in connection with the same criminal offence, or took part in determining objections to the charge sheet or a request of the presiding judge referred to in Articles 271 and 284 of this Act, or conducted the preparatory procedure as a judge for juvenile offenders and a motion for punishment has been submitted, or took part in the proceedings as prosecutor, defence counsel, legal representative or attorney of the injured party or plaintiff, or was examined in the matter as a witness or an expert;

4.a) if in the course of determining any question within the proceeding he became acquainted with evidence which under this Act must be excluded from the files (Article 83), he may not in the same matter decide on the charge or appeal or extraordinary legal remedy against the decision that determined the charge, unless the content of evidence is of such nature that it obviously could not influence his decision;

5) if he took part in the passing in a lower court of a decision in the same matter or took part in the passing in the same court of a decision challenged by an appeal or a request for the protection of legality;

(6) if circumstances exist that give rise to doubts over his impartiality.

## **Public Procurement Act**

### Article 91 (prevention of conflicts of interest):

(1) The contracting authority/entity shall ensure the effective prevention, detection and correction of conflicts of interest in carrying out public procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

(2) The person conducting the procurement procedure shall inform all persons involved in the preparation of procurement documents or parts thereof, or at any stage of the procurement procedure, in writing, to whom the contract is to be awarded, before the decision to award a contract is taken.

(3) Where a person who conducts a procurement procedure, involved in the preparation of procurement documents or parts thereof, or acts at any stage in a procurement procedure, is connected directly or indirectly to the successful tenderer in such a way that the connection or its private, financial or economic interest may influence the objective and impartial performance of the tasks relating to the contract or give rise to doubts as to its objectivity and impartiality, that person shall inform as soon as possible, at the latest before the award of the contract, his superior or the contracting entity for which he is acting or is otherwise involved in the procurement procedure, in accordance with his instructions. The head of the contracting authority must ensure in this context that any tasks are carried out in keeping with the law and impartially.

(4) There is a direct or indirect link with the provider referred to in the preceding paragraph if the person referred to in the preceding paragraph is affiliated by marriage, a consensual union, a registered partnership of same-sex partnerships, a common household, or blood related to the type, blood related to the lateral range up to the third degree involved, being blood related to marriage to the second degree of marriage up to the second degree of marriage, an adoptive parent, a foster parent, or is in a private commercial or employment relationship with the provider, its members with more than 5 % equity, the legal representative or the procurator.

(5) Where the legal representative of the contracting entity is in conflict in the context referred to in the third paragraph of this article, that person shall notify the supervisory authority in writing as soon as possible, but no later than before the award of the contract. In this case, the authority must ensure that the tasks are performed lawfully and impartially.

(6) Within eight days of receipt of the subscriber's request, the successful tenderer shall provide information on:

- its founders, members, shareholders, limited or other owners and information on the ownership interests of those persons;

- economic operators for whom, in the light of the provisions of the act governing companies, they are deemed to be affiliated companies.

## *Incompatibilities of functions*

The IPCA defines “incompatibility of functions” as follows:

### Article 26 (Incompatibility of office and exceptions)

- (1) A professional official holding a public office may not be engaged in any professional or other activity aimed at generating income or proceeds.*
- (2) Notwithstanding the provision of the preceding paragraph, professional officials may engage in pedagogical, scientific, research, artistic, cultural, sports and publishing activities, manage a farm and their own assets, unless otherwise provided by another Act. An official who obtains permission from his employer or enters into a contract to engage in one of the aforementioned activities, except in the cases of sports and publishing activities and of managing a farm or one's own assets, shall notify the Commission of this in writing within eight working days of the commencement of the activity and enclose with the notification of the employer's permission and the contract under which he may perform the activity or profession.*
- (3) The Commission may within fifteen working days of receipt of the notification referred to in the preceding paragraph initiate a procedure for assessing the incompatibility of office if it considers that the performance of the activity, given the actual scope and nature of the activity in question and the office held by the professional official, is likely to present a disproportionate risk to the objective and impartial discharge of the duties of the office, or jeopardise its integrity. In this case, the Commission may issue a decision prohibiting the official from performing an additional activity or imposing conditions or restrictions on the official that must be complied with when performing the activity.*
- (4) Unless otherwise provided by another Act, the Commission may allow a professional official to perform a professional or other activity aimed at generating income, taking into account the public interest and the level of risk the performance of the activity poses to the objective and impartial discharge of the duties of the office or to its integrity. If a professional official wishes to obtain income from the body in which he holds office, the Commission shall not issue an authorisation. If the Commission issues an authorisation, it may impose conditions and limitations on the official that must be complied with when performing another activity.*
- (5) If the Commission finds that the official has not complied with the conditions and restrictions imposed by the decision referred to in paragraph 3 or the authorisation referred to in the preceding paragraph, or that the official performs a professional or other activity in a manner that interferes with the objective and impartial discharge of the duties of his office, it shall issue a decision revoking the authorisation. The official shall immediately or no later than after the decision on revocation of the authorisation has become final cease to perform the professional or other activity in question.*
- (6) In an administrative dispute against the Commission's decision on the revocation of the authorisation, the Administrative Court shall give priority to the matter.*
- (7) If the official does not cease to perform the professional or other activity after the decision on the revocation of the authorisation has become final, the Commission shall inform the body responsible for the appointment and dismissal of the official. The body shall take appropriate measures against the official within 30 days in accordance with the law and its integrity plan and shall inform the Commission of this.*

### Article 27 (Prohibition of membership and activities)

- (1) A professional official may not be a member of a company, economic interest grouping, cooperative, public institute, public fund, public agency, or other entity governed by public or private law, or engaged in management, supervision or representation activities in these entities, the exceptions being societies, institutions and political parties.*
- (2) A non-professional official may not be a member of any entity governed by public or private law referred to in the preceding paragraph, or engaged in management, supervision or representation activities in these entities if the duties of his office include direct supervision of their work.*
- (3) The prohibition under paragraph 1 of this Article regarding the membership of public institutes, public funds, public agencies and other entities governed by public or private law, and the performance of*



*management, supervision or representation activities in these entities, if the entity governed by private law is a holder of public authority or a public service provider, shall also apply to non-professional mayors and deputy mayors who hold their office in the municipality that is related to the entities referred to in this paragraph in terms of founding, ownership, supervision and finance.*

Article 28 (Termination of activity, office or membership)

*(1) An official who, prior to taking office, performed an activity or held an office that is incompatible with his office under this Act or is contrary to the preceding Article shall cease to perform the activity or hold office no later than within 30 days of the date of his election or appointment or the approval of his mandate.*

*(2) An official who, prior to taking office, was a member of bodies whose membership is incompatible with his office under this Act or is contrary to the preceding Article, shall immediately submit his resignation or make a request to have his membership terminated; the membership shall be terminated within 30 days of the date of his appointment to office.*

Article 29 (Warning by the Commission and the consequences of a failure to comply)

*(1) If an official does not cease to perform an activity, hold membership, or hold an office that is incompatible with his office under this Act within the time limit referred to in the preceding paragraph, the Commission shall warn the official and set the time limit by which the official must cease to perform the activity or hold office. The time limit set by the Commission may not be shorter than 15 days or longer than three months. The Commission shall warn the official who, after taking office, commences an activity, gains membership or takes an office which is incompatible with his office under this Act on incompatibility and shall set the time limit by which the official must eliminate the incompatibility in question. This time limit may not be shorter than 15 days or longer than three months.*

*(2) If the Commission establishes that the official continues to perform the activity, hold a membership, or hold an office after the time limit set by the Commission has expired, it shall inform the relevant authority competent to propose or commence a procedure for the removal of the official from office. The competent authority shall inform the Commission of its final decision.*

*(3) The provisions of the preceding paragraph do not apply to directly elected officials. If the Commission establishes that the facts referred to in the preceding paragraph in connection with directly elected officials are true then it shall inform the public of its findings and publish them on its website.*

The IPCA (para. 1 of art. 77) also defines fines for violating the aforementioned provisions:

- A fine of between €400 and €1,200 shall be imposed on an individual who:
  - o fails to inform the Commission that he is carrying out a professional or other activity;
  - o fails to comply with the Commission's decision on the prohibition of the performance of an additional activity or with the conditions or restrictions imposed on him by the Commission's decision;
- A fine of between €1,000 and €2,000 (para. 2 of art. 77) shall be imposed on an individual who:
  - o fails to cease to perform a professional or other activity after the decision made on the revocation of the authorization has become final;
  - o fails to cease to hold an incompatible office, perform an incompatible activity, or revoke his membership.

*Restriction of operations:*

The IPCA defines “restrictions of operations” as follows:

Article 35 (Restrictions on business activities and the consequences of violations)

*(1) A public sector body or organisation which is committed to conducting a public procurement procedure in accordance with the regulations on public procurement or which carries out the procedure for granting concessions or other forms of public-private partnership, may not order goods, services or construction*

works, enter into public-private partnerships or grant special and exclusive rights to entities in which the official who holds office in the body or organisation concerned or in cases where the official's family member has the following role:

- participating as a manager, management member or legal representative; or
- has more than a 5% level of participation in the founders' rights, management or capital, either by direct participation or through the participation of other legal persons.

(2) The prohibition referred to in the preceding paragraph shall also apply to the public sector body or organisation's business dealings with the official or the official's family member as a natural person.

(3) The prohibition of operation within the scope detailed in paragraph 1 and the preceding paragraph of this Article shall not apply to other procedures or ways of obtaining funds that are not covered in paragraph 1 of this Article, providing that the provisions of this or any other Act relating to conflicts of interest and the obligation to avoid any conflicts of interest are duly complied with, or that the official is consistently excluded from all stages of decision-making on the performance and entering into of procedures or transactions. If the official or the official's family member violates the provisions on the avoidance of conflicts of interest or exclusion, the consequences shall be the same as those specified for the prohibition of operation.

(4) The prohibition of operation referred to in paragraph 1 of this Article and the prohibition referred to in the preceding paragraph shall also apply to smaller parts of a municipality (village, local and quarter communities), which have their own legal personality, if the municipal official is a member of the council of a smaller part of the municipality or if a particular transaction may be entered into only with the municipal official's consent.

(5) Officials shall communicate the name, registration number and head office of those entities with which they or their family members have a relationship, as specified in paragraph 1 of this Article, to the body in which they hold office within one month after taking office and then no later than within eight days of any change occurring. The body shall submit the list of entities referred to in the preceding sentence of this Article to the Commission no later than within 15 days of receipt of information on or a notification of changes regarding the entities. The Commission shall publish the list of entities referred to in the first sentence of this paragraph on its website every month.

(6) The restrictions under the provisions of this Article do not apply to operation on the basis of contracts concluded prior to the official taking office.

(7) A contract or other forms of obtaining funds that are in conflict with the provisions of this Article shall be null and void.

#### Article 36 (Temporary prohibition of operation after the termination of office)

(1) An official may not act as a representative of a business entity that has established or is about to establish business contacts with the body in which the official held office until two years have elapsed from the termination of his office.

(2) The body in which the official held office may not do business with the entity in which the former official has a 5% participation in the founders' rights, management or capital, either by direct participation or through the participation of other legal persons until one year has elapsed from the termination of the office.

(3) The body in which the official held office shall immediately, or within 30 days at the latest, inform the Commission of the situation referred to in paragraph 1 of this Article.

Besides rendering the contracts and other forms of obtaining funds null and void, article 77 of the IPCA also defines fines for disobeying the aforementioned provisions:

- A fine of between € 400 and € 1,200 shall be imposed on an individual who:
  - o fails to provide to the body in which he holds office information details on the entities with which he or his family members have a relationship, as specified in paragraph 1 of article 35 of this Act;
  - o within two years of the termination of the office in relation to the body in which he held office, acts as a representative of a legal person that has established or is about to establish business contacts

with the aforementioned body, in contravention of the provision of paragraph 1 of article 36 of this Act;

- A fine of between € 400 and € 4,000 shall be imposed on a responsible person of a body or organization of the public sector or a smaller part of a municipality that acts in contravention of paragraphs 1, 2 or 4 of article 35 of this Act, and on a responsible person of a body who fails to submit a list of the entities referred to in paragraph 5 of article 35 of this Act to the CPC.
- A fine of between €400 and €4,000 shall be imposed on a responsible person of a body in which the official has held office which does business with the official's business entity in contravention of paragraph 2 of article 36 of this Act.
- A fine of between €400 and €4,000 shall be imposed on a responsible person of a body in which the official has held office which, in contravention of paragraph 3 of article 36 of this Act, fails to inform the CPC of conduct by an official that is contrary to paragraph 1 of article 36 of this Act.

#### *Verification / control regarding conflict of interests / incompatibilities / restriction on operations:*

The CPC may, on its motion, following a report submitted by any legal or natural person, or upon a request of certain state bodies, initiate proceedings relating, inter alia, to violations of the rules on conflicts of interest or restrictions on business and other activities. Such proceedings involve evaluating whether a person has failed to fulfil their obligation to submit a preliminary or ad hoc declaration.

Additionally, the truthfulness and legal relevance of ad hoc declarations are mandatorily subjected to examination by a head of the body or organization of the public sector within which the reporting official performs their public duties.

The investigative powers of the CPC are relatively broad. A finding that an official person has omitted their duty to declare private interest may be considered that the person has acted under the circumstances of a conflict of interest or even corruptly. The investigation is conducted under a slightly modified administrative procedure. The CPC may request information and documentation from other bodies and organizations of the public sector, legal persons of the private sector, and other law enforcement bodies.

In case of violations, the CPC may propose the discharge of the official person to their supervisor and inform the public of its findings. Besides, the CPC can also issue fines for violating the provisions under the IPCA, as already explained above.

#### *Disciplinary offences*

A public employee (this term is narrower than an “official person” as it does not include officials<sup>58</sup> and employees in state-owned companies) may be subjected to one of the following disciplinary measures:

- an admonition;
- a fine which may amount to up to 20-30 percent of monthly salary as of the month when the serious violation was committed;
- divestment of or dismissal from the position;
- dismissal from the title and demote to a title that is one grade lower;
- termination of the employment contract.

There is no explicit mention of an omission of a declaration of interests as a rationale for imposing the above measures. However, the PEA permits the imposition of such measures for any illegal conduct related to the performance of public duties.

A judge may be subjected to one of the following disciplinary sanctions:

- a written admonition;
- suspension of promotions in the forthcoming three years;
- reduction of salary up to 20% in the forthcoming year;
- relocation to a different court;
- dismissal from office.

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<sup>58</sup> As defined in article 4 of IPCA.

Omissions of the declaration of interests, both preliminary and ad hoc, are explicitly mentioned as grounds for imposing a disciplinary sanction.

There are no disciplinary sanctions for high officials.

**Statistical data:**

*a) Conflict of interests*

Please find in the table below - the number of cases the CPC investigated relating to allegations of failure to declare conflicts of interest and the data on the outcome of the investigation.<sup>59</sup>

	2011	2012	2013	2014	2015	2016
Number of cases (opened based on received report and on own motion)	NA	NA	109	105	86	83
Number of concluded cases	30	49	94	100	87	75
Number of cases with identified violations	3	15	21	15	8	12
Number of opened misdemeanour cases	NA	NA	17 misdemeanour acts with decisions (payment order) 2 reprimands, 1 written warning	19 misdemeanour acts with decisions 1 written warning	6 misdemeanour acts with decisions 2 written warnings, 1 payment order 1 official notice of not issuing a written decision	16 misdemeanour acts with decisions 6 reprimands, 4 written warnings, 9 payment order
Number of written opinions regards Col	136	106	118	94	164	125

Cases where the CPC found violations (*please see the above statistics*) were not made public. The only case that went public was a case against the Minister of Economy (whose company received funds from his ministry, and the Minister acted in a transparent manner and excluded himself from all activities connected with his own company) due to a media inquiry to which the CPC had responded.

However, according to the Guidelines for dealing with cases of conflict of interests adopted since 28 March 2013,

<sup>59</sup> Please note that although these numbers are not limited to cases where the person under the investigation had the status of a public official - Slovenia does not keep such detailed statistics - the majority of the cases are related to such persons. Additionally, these statistics do not represent verification conducted in appeal procedures in concrete cases, nor do they represent supervisory/inspection procedures conducted by other state bodies (e.g. administrative inspection).

the CPC informs the public of the statistics and its work regarding the conflict of interests (without disclosing the names) quarterly on its webpage. Such information/report consists of the following information:

- provisions of the IPCA and work method regarding the conflict of interest;
- the number of cases the CPC analyzed in the previous four months;
- the results of the analysis (number of violations, referrals to other bodies, dismissals etc.);
- description of cases (anonymized) where violations were identified;
- analysis of cases that were dismissed (not concerning case details - only reasons for the dismissal (e.g., lack of case substance, cases previously dealt with; lack of jurisdiction by CPC; mere criticisms<sup>60</sup>; and implausible allegation; etc.);
- procedures of dealing with possible misdemeanours and the outcomes;
- legal opinions that were issued.

*b) Incompatibilities of functions*

The table below refers to the number of cases investigated by the CPC concerning the incompatibilities of functions:

	2013	2014	2015	2016
Number of cases (opened based on received report and on own motion)	22	6	12	33
Number of concluded cases	18	6	12	25
Number of cases with identified violations	8	2	4	11
Number of opened misdemeanour cases	0	0	4 misdemeanour acts with decisions: 4 written warnings	6 misdemeanour acts with decisions: 4 written warnings, 2 payment order
Number of written opinions regards Col	73	132	58	36

*c) Restrictions of operation*

Please find in the table below - the number of cases investigated by the CPC concerning the restrictions of operations:

<sup>60</sup> E.g., reports containing only criticism without any other substance were not considered as reports, therefore they were dismissed.

	2013	2014	2015	2016
Number of cases (opened based on received report and on own motion)	127	28	39	48
Number of concluded cases	119	28	39	40
Number of cases with identified violations	68	5	11	20
Number of opened misdemeanour cases	59 cases: 9 payment order (from 400 – 8800 EUR), 41 written warnings,	3 misdemeanour acts with decisions 1 written warnings	7 misdemeanour acts with decisions 3 written warnings	17 misdemeanour acts with decisions: 12 written warnings, 5 payment order
Number of written opinions regards Col	153	124	57	36

*Description of training or advisory services to public officials regarding regulations of conflict of interest:*

Please see the information provided above under subparagraph 1(d) of article 7 of the Convention.

### ***Public access to information***

The bodies of executive power and state administration bodies in Slovenia operate in accordance with the fundamental principles set out in the Public Administration Act. The following principles are laid down:

- lawfulness and independence - the administration performs its work independently within the framework and on the basis of the Constitution, laws and other regulations (art. 2);
- professionalism, political neutrality, and impartiality - the administration performs its work according to the professional rules. In performing its work, it must be politically neutral, act impartially, and may not provide unwarranted benefit and advantage to individuals, legal persons or special interest groups (art. 3); and
- the public nature of work - the administration is bound to ensure the public nature of its work, taking into account the restrictions deriving from regulations governing the protection of personal and secret data, as well as other regulations (art. 6).

### ***General information on the regulatory framework of transparency and access to public information***

The fundamental law providing a basis for open and transparent functioning of the Government, state bodies, public administration bodies, and also the broader public sector is the Access to Public Information Act (APIA).

The right of access to information of a public nature is enshrined in article 39 of the Constitution and represents a vital asset in the pursuit of a public administration operating in an open, transparent, and responsible manner. The purpose of the APIA is to ensure that the work of the bodies is public and open and to enable natural and legal persons to exercise their rights to obtain information held by public authorities. The APIA sets two commitments for public sector bodies, namely:

- a) proactively disseminate public information; and
- b) enable access to information and the re-use of information upon individual requests. The relevant regulation governing this area is the Decree on communication and re-use of public sector information.<sup>61</sup>

The public nature and openness of operations are required for state bodies, local community bodies, public agencies, public funds and other persons of public law, holders of public authority and providers of public services, and in a certain narrow scope, it also binds commercial companies in which a majority interest is held by the state, a self-governing local community or another person of public law (art. 1a, APIA).

## **Access to Public Information Act**

### Article 1a (Liable business entities subject to dominant influence of entities of public law)

*(1) This Act also governs the procedure which ensures everyone free access to and re-use of public information held by companies and other legal entities of private law and subject to direct or indirect dominant influence, individually or jointly, of the Republic of Slovenia, self-governing local communities and other entities of public law. (Hereinafter: business entities subject to dominant influence of entities of public law).*

*(2) The dominant influence referred to in the preceding paragraph is ensured when the Republic of Slovenia, self-governing local communities or other entities of public law, individually or jointly:*

*- are able to exercise dominant influence on the basis of the majority proportion of the subscribed capital, or have the right to supervise the majority, or are entitled to naming more than half of the members of management body or supervisory authority in a company, directly or indirectly through another company or other legal entity of private law, or*

*- act as founders in another legal person governed by private law that is not a company, directly or indirectly through another company or other legal entity of private law.*

*(3) A bank is also considered to be subject to dominant influence as referred to in the paragraph 1 of this Article, if subject to legal measures under the law governing the measures of the Republic of Slovenia to strengthen banking stability.*

*(4) According to paragraph 1 of this Article it shall be considered that, also after cessation of the dominant influence referred to in paragraph 2 of this Article, the business entity is liable to provide public information, created when the business entity was subject to dominant influence, for a period of five years after its cessation.*

*(5) A business entity subject to the dominant influence of entities of public law is liable to enable access to public information, as referred to in Article 4.a of this Act, which was created at any time during the existence of dominant influence of entities of public law.*

*(6) In addition to the purpose referred to in Article 2 of this Act, the purpose of this Act is also to increase transparency and responsible management of public resources and financial resources of business entities subject to dominant influence of entities of public law.*

*(7) All provisions of this Act applying to bodies shall also apply to business entities subject to dominant influence of entities of public law unless otherwise specified by this Act.*

*(8) If a holder of a public mandate or a public service operator is liable under both Article 1 of this Act and paragraph 2 of this Article, the provisions of this Act regulating access to information applying to bodies shall apply in the part regulating the execution of public mandate or public service, otherwise, the provisions regulating access to information applying to business entities subject to dominant influence of entities of public law shall apply.*

The simplest and most direct way of ensuring the public's access to information is publishing information on the internet. Information of a public nature that official bodies must post on the internet is defined in article 10 of the APIA.

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<sup>61</sup> (Official Gazette of the Republic of Slovenia, No. 24/16)



## Access to Public Information Act

### Article 10 (Transmission of information to the World Wide Web)

*(1) Each body is obliged to transmit to the World Wide Web the following public information:*

*1. Consolidated texts of regulations relating to the field of work of the body, linked to the state register of regulations on the Web;*

*2. Programmes, strategies, views, opinions and instructions of general nature important for the interaction of the body with natural and legal persons and for deciding on their rights or obligations respectively, studies, and other similar documents relating to the field of work of the body;*

*3. Proposals for regulations, programmes, strategies, and other similar documents relating to the field of work of the body;*

*4. All publications and tendering documentation in accordance with regulations governing public procurements;*

*5. Information on their activities and administrative, judicial and other services;*

*6. All public information requested by the applicants at least three times;*

*7. Other public information.*

*(2) Each body should facilitate, free of charge, access to information referred to in the preceding paragraph.*

*(3) The Ministry also enables access to information from the first paragraph via the joint government portal e-uprava. (4) The provisions of this Article do not apply to business entities subject to dominant influence of entities of public law.*

Each body must publish and regularly update its Catalogue of Public Information (Catalogue). The purpose of the Catalogue is to provide the public with information on the types of data a specific body holds, the services it performs as part of its public duties, and the relevant legal basis.

The framework of “information of a public nature” involves all documents created by or in possession of state authorities. In the procedure under the APIA, applicants (natural or legal persons) may request access to individual documents without having to demonstrate any particular legal interest (para. 3 of art. 17, APIA). Upon receipt of the application for access to information, it is dealt with by an official specially authorized to assess the request in accordance with the procedures under the APIA, including but not limited to articles 5.a and 6 of the APIA, after which the official decides on whether to entertain the application and on the extent to which a given document is to be accessed by the public. The above-stated articles provide exceptions to public access for the purpose of protecting certain private or public interests (e.g., secret data, personal data, and protection of information in the event that court or administrative proceedings are not yet concluded). For the questions concerning the procedures with written requests of access to information under the APIA, the Administrative Procedure Act rules are applied in subsidiarity (para. 2 of art. 15, APIA).

In terms of comparative law, the exceptions to access are similar to the provisions that exist in other member states or in EU Regulation 1049/2001 regarding public access to documents from three EU institutions. In comparative legal terms, Slovenian legislation on the access to information of a public nature is relatively transparent. Slovenian law is rated highly by international non-governmental organizations.<sup>62</sup>

Notwithstanding the exceptions to access under article 5.a or paragraph 1 of article 6 of the APIA, the official body must provide the applicants with information when it comes to:

- (i) public spending,
- (ii) execution of public functions or the employment relationship of a public employee, or
- (iii) environmental emissions, waste, dangerous substances in factory or information contained in safety report and also other information if the Environmental Protection Act so stipulates (i.e., an exception to exceptions

<sup>62</sup> <https://www.balkanicaucaso.org/eng/Areas/Slovenia/Slovenia-and-the-access-to-public-information>

**Developments after the country visit:**

[https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2020-June-9-10/Contributions2/Slovenia\\_EN.pdf](https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2020-June-9-10/Contributions2/Slovenia_EN.pdf)

pursuant to para. 3, art. 6 of the APIA).

Moreover, despite the existence of the aforementioned exceptions, article 21 of the APIA stipulates that official bodies must accommodate a request for access to information if the public interest in the disclosure of the requested information outweighs the public interest or the interest of other persons in restricting access to such information (para. 2, art. 6 of the APIA), except in cases involving confidential data at the highest level, the confidential data of a foreign state or international organization, tax data submitted by a foreign state and data whose disclosure would breach the confidentiality of statistical data on reporting units or the tax procedure or tax secrecy. In these cases, a test of public interest may not be carried out (i.e., these data are not accessible).

### **Access to Public Information Act**

#### Article 5.a (Exceptions to Limiting the Rights of Parties, Participants or Victims in Proceedings and Protection of Confidential Source)

*(1) The body denies the applicant access to requested information if the request refers to information, access to which is forbidden or restricted under law even to parties, participants or victims in legal or administrative proceedings, or inspection procedure as governed by the law.*

*(2) The body denies access the applicant to requested information if the request refers to information on which the law stipulates protection of confidential source.*

#### Article 6 (Exceptions)

*(1) The body shall deny the applicant access to requested information if the request relates to:*

- 1. Information which, pursuant to the Act governing classified data, is defined as classified;*
- 2. Information which is defined as a business secret in accordance with the Act governing companies;*
- 3. Personal data the disclosure of which would constitute an infringement of the protection of personal data in accordance with the Act governing the protection of personal data;*
- 4. Information the disclosure of which would constitute an infringement of the confidentiality of individual information on reporting units, in accordance with the Act governing Government statistics activities;*
- 5. Information the disclosure of which would constitute an infringement of the tax procedure confidentiality or of tax secret in accordance with the Act governing tax procedure;*
- 6. Information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution, or misdemeanors procedure, and the disclosure of which would prejudice the implementation of such procedure;*
- 7. Information acquired or drawn up for the purposes of administrative procedure, and the disclosure of which would prejudice the implementation of such procedure;*
- 8. Information acquired or drawn up for the purposes of civil, non-litigious civil procedure or other court proceedings, and the disclosure of which would prejudice the implementation of such procedures;*
- 9. Information from the document that is in the process of being drawn up and is still subject of consultation by the body, and the disclosure of which would lead to misunderstanding of its contents;*
- 10. Information on natural or cultural value which, in accordance with the Act governing the conservation of nature or cultural heritage, is not accessible to public for the purpose of protection of (that) natural or cultural value;*
- 11. Information from the document drawn up in connection with internal operations or activities of bodies, and the disclosure of which would cause disturbances in operations or activities of the body.*

*(2) Without prejudice to the provisions in the preceding paragraph, the access to the requested information is sustained, if public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information, except in the next cases:*

- for information which, pursuant to the Act governing classified data, is denoted with one of the two*

*highest levels of secrecy;*

*- for information which contain or are prepared based on classified information of other country or international organization, with which the Republic of Slovenia concluded an international agreement on the exchange or transmitting of classified information.*

*- For information which contain or are prepared based on tax procedures, transmitted to the bodies of the Republic of Slovenia by a body of a foreign country;*

*- For information from point 4 of paragraph 1 of this Article;*

*- For information from point 5 of paragraph 1 of this Article, unless the tax procedure is final or the person liable for tax discovered the liability in the tax return and did not pay the tax in the prescribed time.*

*(3) Without prejudice to the provisions in the first paragraph, the access to the requested information is sustained:*

*- if the considered is information related to the use of public funds or information related to the execution of public functions or employment relationship of the civil servant, except in cases from point 1. and points 5. to 8. of the first paragraph and in cases when the Act governing public finance and the Act governing public procurement stipulate otherwise;*

*- if the considered is information related to environmental emissions, waste, dangerous substances in factory or information contained in safety report and also other information if the Environment Protection Act so stipulates.*

*(4) If the applicant holds, that information is denoted classified in violation of the Act governing classified data, he can request the withdrawal of the classification according to the procedure from the Article 21 of this Act.*

*(5) The body can choose not to provide the applicant with the requested information, if the latter is available in freely accessible public registers or is in another way publicly accessible (publication in an official gazette, publications of the body, media, professional publications, internet and similar), and can only issue instructions as to the location of the information.*

*(6) The body shall deny the applicant's request to re-use information if the request relates to:*

*1. Information from the paragraph 1 of this Article, or*

*2. Information protected by the intellectual property rights of third parties, or*

*3. information held by bodies performing public services of public radio-television or bodies performing public service in fields of education, research and cultural activities, or*

*4. Information, for which another Act stipulates accessibility only to authorized persons.*

#### Article 21 (Deciding on the request)

*(1) A representative or an official referred to in Article 9 of this Act shall conduct and decide on the procedure regarding a request for or re-use of access to public information within the body, according to the provisions of the Act governing general administrative procedure.*

*(2) When the applicant in his request appeals to the prevailing public interest for the disclosure according to second paragraph of the Article 6 of this Act or if the representative or the official judges, this provision has to be used, the matter is, based on the suggestion of the representative, decided on by the:*

*- Government, when the body liable is a government administration body, public prosecutor's office, attorney general's office, entity of public law, the founder of which is the state, public powers holder or public service contractor on a state level; - Supreme Court, when the body liable is a court;*

*- Council of local self-governing community, when the body liable is a body of local selfgoverning community, entity of public law, the founder of which is a self-governing community, public powers holder or public service contractor on a local self-government level.*

*- The body itself, when not one of the bodies stated in the previous indents*

*(3) Provisions on procedure and jurisdiction from the previous paragraph also apply for a request for withdrawal of the classification according to the fourth paragraph of Article 6 of this Act.*

*(4) In the case referred to in the second and third paragraph of this Article an appeal is allowed in accordance with Article 27 of this Act.*

#### Article 27 (The right of appeal)

*(1) The applicant has the right of appeal against the decision by which the body has refused the request, as well as against the order by which the body has dismissed the request.*

*(2) The applicant also has the right of appeal in the case referred to in the fourth paragraph of Article 25 or when the information received is not in the form, requested in accordance with the second and fourth paragraph of Article 17 of this Act.*

*(3) The Commissioner for Access to Public Information shall decide on the appeal.*

*(4) Appellate proceeding shall be implemented in accordance with the provisions laid down in the Act governing general administrative procedure.*

*(5) In appeal proceedings based on the appeal referred to in paragraph 4 of Article 26.a of this Act the Commissioner for Access to Public Information shall demand from the business entity subject to dominant influence of entities of public law all the documents concerning the matter or that reasons be provided for the lack of decision within the period prescribed by law.*

*(6) If the Commissioner for Access to Public Information in the appeal procedure from the previous paragraph establishes the appeal to be substantiated, it shall also decide on the business entity's request to access the public information.*

#### Article 31 (Administrative dispute)

*An administrative dispute may begin against the decision by the Commissioner in accordance with the statute.*

The first instance body must make a decision under the APIA within 20 working days (art. 23, APIA). In the event of no response from the body, it is assumed that access has been denied. In the area of access to information of a public nature, the supervisory authority is the Information Commissioner (IC). An applicant may appeal against the decision of the first instance body with the Slovenian IC. A legal suit may then be lodged against the decision of the IC with the Slovenian Administrative Court. To date, the IC and the Administrative Court have acquired extensive experience in this area. IC decisions and generally those of the Administrative Court are published online.

In line with the APIA, all information on the spending of public funds, i.e., including data on spending by ministries and the central government, is publicly accessible. Official bodies proactively publish these data on certain dedicated websites, whereby the financial transactions of a specific public sector body are subject to constant public scrutiny.

#### *Transparency of the work of the Government*

According to the Rules of Procedure of the Government of the Republic of Slovenia, the transparency of work of the Government is promoted primarily by press releases and conferences, web publishing, and the APIA. The Government and the Prime Minister respond to questions, suggestions and proposals submitted by the ministries and government departments.

The body in charge of the transparency of the Government work is the Government Communication Office. Prime Minister, Secretary-General, and government representatives for public relations communicate to the public about the government's work and decisions. Ministers further inform the public of those government decisions which fall under their respective purviews.

Mandated by the Government or ministers, the public state secretaries and heads of government departments may also inform the public of the decisions within the scope of their work. The work of the Government is published on the websites of the Government, where the whole legislative process is publicly accessible: from the materials under consideration (*gradiva v obravnavi*), the hearing at the Government committee meetings and Government sessions (*agendas and adopted decisions*), until the Government submits the adopted materials to the National Assembly and publishes the legislations in the Official Gazette.

After each Government meeting, the Government Communication Office prepares a press release about the details of the decisions adopted by the Government and publishes the same on its official websites.

The official websites that publish Government materials are intended to be visited by public groups and persons with a special interest, particularly non-governmental and other civil society organizations, whom the Government seeks as far as possible to involve in the process of preparing and adopting its decisions. All those involved in creating materials can, in this way, verify how the competent ministries and departments heeded their comments, initiatives and proposals in drawing up the Government decisions. At the same time as publishing specific materials in the Government information system, the Government General Secretariat publishes the materials on its website.

*For the list of information portals of the Government General Secretariat and more on the access to information by the media and the public, please see subparagraph (a) of article 10 and subparagraph 1 (a) of article 13 of the Convention.*

*For transparency in the adoption of laws and regulations, please see subparagraph 1 (a) of article 13 of the Convention.*

TI Slovenia also added that the IPCA is a subsidiary law and does not apply, for example, to public procurement procedures. It further noted that Slovenia faces many challenges in a number of sectors, such as the regulation of electronic communications and regulation in the health sector. etc.

### **Slovenia provided the following examples of the implementation of the provision under review:**

The best practices in the field of proactive transparency in Slovenia are:

- a) Publication of public sector transactions by the Public Payments Administration of the Republic of Slovenia.
- b) The CPC's public sector financial transactions records - ERAR <http://erar.kpk-rs.si/>
- c) Public Procurement Portal and STATIST.

*For a description of the best practices, please refer to paragraph 2 of article 5 of the Convention.*

### ***(b) Observations on the implementation of the article***

Conflict of interest is clearly defined in the IPCA (art. 37). Public officials are obliged to submit two types of interest disclosures: preliminary interest disclosures for public officials who hold or have family members holding positions or business interests in private entities (art.35, IPCA) and public officials who may be engaged in certain activities (art. 26, IPCA); and, ad hoc interest disclosure applicable when a potential conflict of interest arises upon taking office or during their performance of official duties (arts. 35-41 of the Administrative Procedure Act, art. 39 of the CPA, art. 100 of the PEA, and art. 91 of the Public Procurement Act (PPA)). The CPC can also initiate investigation procedures to determine whether a conflict of interest exists (art. 39, IPCA).

## ***Article 8. Codes of conduct for public officials***

### ***Paragraph 1 of article 8***

*1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

*Laws, policies, administrative regulations or instructions or other practices aimed at promoting integrity, honesty*

### *and responsibility among public officials*

The PEA establishes the principles of the employee system, which aims at setting standards of quality. The act is divided into two parts. The first part applies to all public employees in the public sector, and the second part to public employees in state bodies and local community administrations. The principles in the first part of the PEA are as follows:

- legality (art. 8), which provides that a public employee performs public tasks on the basis and within the framework of the Constitution, ratified and published international treaties, laws and implementing regulations;
- professionalism (art. 9), according to which public employees must perform public tasks professionally, conscientiously and promptly. In their work, they must follow the rules of the profession, and for this purpose, they continuously learn and enhance their skills and knowledge while the employer provides the conditions for professional education and training;
- honourable behaviour (art. 10), which provides that public employees shall act in the performance of their public duties in accordance with the rules of professional ethics;
- restrictions and duties regarding receiving gifts (art. 11), which provides that a public employee performing public tasks may not accept gifts in connection with the performance of the service, except for protocol and ad hoc gifts of lesser value;
- confidentiality (art. 12), which requires that public employees must protect classified information regardless of how they have learned of such information. The obligation to confidentiality also applies after the termination of the employment relationship. The duty to protect classified information shall remain in force until the employer of a public official removes this duty;
- responsibility for results (art. 13), according to which public employees are held responsible for the quality, quick and efficient execution of public tasks entrusted to them;
- good management (art. 14), according to which a public employee must use public funds economically and efficiently, with the aim of achieving the best results at the same costs and equal results at the lowest costs;
- prohibition of harassment (art. 15a), which prohibits any physical, verbal or non-verbal behaviour of a public employee that creates a frightening, hostile, humiliating, embarrassing or offensive working environment for their co-workers and dishonours their dignity.

For public employees employed in state bodies and local community administrations, in addition to the above-stated principles, the principle of openness to the public applies (art. 32, PEA). The principle of openness to the public is one of the most important principles of the civil service system. It stipulates that the public authority or local community body shall inform the public of its activities and the results of the work performed by officials in the manner prescribed by law and executive regulations. The systematic regulation of the issue of open administration is the Access to Public Information Act (APIA), which regulates more precisely the type of data accessible to the public, as well as the exceptions to the general principle of free access (for example, personal data, classified information, business secrets). *For more information on these points, please see the summary under paragraphs 1 and 4 of article 7, article 10, and paragraph 1 of article 13 of the Convention.*

For public employees in state bodies and local community administrations, the PEA also regulates the prohibition on performing certain activities and preventing conflicts of interest (para. 7 of art. 100). *Please see the summary under paragraph 4 of article 7 of the Convention.*

The ethical conduct of public employees depends, first and foremost, on themselves, their personal characteristics, values and moral principles, and their determination in the engagement in and promotion of good conduct.

Furthermore, the ethical conduct of public employees also depends on rules and principles, which are defined as norms and laid down by law and code in accordance with which they are obliged to act at all times.

The Code of Conduct for Public Employees, adopted by the Government in 2001 on the proposal of the Council of Europe, applies to all public employees. The then Government decided that the Code should also apply to high officials in state bodies by adopting the Code. The main reason for adopting and implementing the Recommendation of the Committee of Ministers of the Council of Europe and the Model Code of Conduct for Public Officials was to fight against corruption, raise public awareness, and promote ethical values as a means of

preventing corruption.

The content of the Code of Conduct for Public Employees of 2001 was incorporated into the provisions of the PEA in that all principles contained in the Code were included in the Public Employees Act adopted in 2002 and entered into force in 2003 (Chapter II: Common Principles of the Public Employee System).

Also, the Employment Relationship Act, which governs employment relationships for all persons employed in Slovenia, is directly applicable to the procedure to be followed in a disciplinary proceeding and the sanctions to be imposed if disciplinary violations are found. The Employment Relationship Act provides that a worker (a public employee) must fulfill the contractual and other obligations arising from the employment relationship and assumes disciplinary responsibility for violating such obligations. If a public employee violates the provisions of the PEA, which set out the principles of conduct for public employees, it may lead to extraordinary termination of their employment contract in accordance with the provisions of the Employment Relationship Act.

After entering into force, the PEA established (by article 174) the Officials Council<sup>63</sup> tasked with the selection of officials (public employees that perform public tasks within individual authorities)<sup>64</sup> in line with the positions specified in the PEA and the provision of its opinion to the Government and the National Assembly on regulations governing the officials' system and the situation of officials.

In 2011, based on the aforementioned provision, the Officials Council (in cooperation with representatives of trade unions in the body and professional associations of public employees in state bodies and local community administrations) adopted the Code of Ethics for Public Employees in State Bodies and Local Community Administrations, which applies to all public employees in state bodies and local community administrations, but excluding the high officials, i.e. holders of public office (functionaries).

The latter are subject to the Code of Ethical Conduct and Behaviour of Officials in the Slovenian Government and the Ministries, which the Government adopted in December 2015. The Code is based on the constitutional oaths of high-level government officials and takes into consideration the integrity and corruption prevention requirements of the legislation in force, the desired behaviour and conducts expected of high-level government and ministry officials deriving from the universally accepted values of the contemporary Slovenian society, similar codes for officials in other countries, and the codes of other professional associations in Slovenia. The Code also includes a brief explanation of individual standards. The content of the Code is explicit, relatively brief (10 standards), topical and contemporary. High-level government and ministry officials have a moral responsibility to act in accordance with the standards of the Code.

In addition, the IPCA is an important instrument to combat corruption in a holistic manner. The prevention of conflicts of interests, lobbying control, prohibitions and restrictions regarding the acceptance of gifts, and the supervision of assets possessed by high officials etc., are defined and included in the IPCA. According to the penal provisions of the IPCA, a fine is imposed on functionaries who are found to have acted in contravention of the rules (Chapter 10, art. 77 - offences by natural persons).

## **Public Employees Act**

### Article 8 (Principle of legality)

*Public employees shall perform public tasks on the basis and in the framework of the Constitution, ratified and published international treaties, Acts and implementing regulations.*

### Article 9 (Principle of professionalism)

*Public employees shall perform public tasks in a professional, conscientious and timely manner. In the performance of their work, public employees shall act in accordance with the rules of the profession, and shall, to this end, undergo continuous training and further training, for which the conditions shall be provided by the employer.*

### Article 10 (Principle of honourable conduct)

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<sup>63</sup> (Uradniški svet)

<sup>64</sup> As defined in article 23(1) of PEA.



*In the performance of public tasks, public employees shall act honourably and in accordance with the rules of professional ethics.*

Article 11 (Restrictions and duties in respect of the acceptance of gifts)

*1) Public employees who perform public tasks may not accept gifts relating to their work, except for protocol and occasional gifts of lower value. Gifts not exceeding a value of 15,000 tolar, or gifts received from the same person not exceeding a total value of 30,000 tolar in a given year shall be deemed to be gifts of lower value. Gifts received from holders of public office or public employees of other states or international organisations on the occasion of visits, when hosting events or on other occasions, and other gifts given in similar circumstances, shall be deemed to be protocol gifts.*

*2) The prohibition and restriction referred to in paragraph one of this Article shall also apply to the spouses of public employees, persons living with public employees in a consensual union, their children, parents, and persons living with public employees in shared households.*

*3) Public employees shall warn the giver of the gift that gifts exceeding the value referred to in paragraph one of this Article shall become the property of the employer. If a giver of a gift insists on giving a gift, the public employee or person referred to in paragraph two of this Article shall surrender the gift to the employer or to the authority of the employer authorised to deal with the gifts.*

*4) Data on the accepted gifts, their value, the giver of the gift and other circumstances shall be entered in a list of gifts. Public employees accepting gifts shall report the data to be entered. Public employees shall also report the relevant data in the cases referred to in paragraph two of this Article.*

*5) The manner of dealing with the gifts referred to in paragraph three of this Article, the method of keeping the list referred to in paragraph four of this Article and other issues relating to the implementation of the restrictions and duties referred to in this Article, for state administration authorities, judicial authorities, local community administrations and entities governed by public law, shall be determined by a Government Decree. The Decree may provide that gifts not exceeding a specific value shall not be entered in the list.*

Article 12 (Principle of confidentiality)

*Public employees shall safeguard confidential data notwithstanding how they became aware of such data. The obligation to safeguard confidential data shall continue to apply after the termination of employment relationships. The duty to safeguard confidential data shall continue to apply until public employees are relieved of such duty by their employer.*

Article 13 (Principle of responsibility for results)

*Public employees shall be held responsible for the high-quality, rapid and efficient performance of the public tasks entrusted to them.*

Article 14 (Principle of due care and diligence)

*Public employees shall use public funds in an effective and efficient manner with a view to achieving the best possible results at the same cost or the same results at the minimum possible cost.*

Article 15 (Safeguarding of professional interests)

*(1) Employers shall protect public employees from harassment, threats and similar actions that interfere with the performance of their work duties.*

*(2) Employers shall provide paid legal assistance to public employees or to former public employees against whom criminal proceedings or an action for damages has been instituted in relation to the performance of public tasks if the employer deems that the public tasks have been performed lawfully and in compliance with the rights and obligations arising out of the employment relationship. If the legal assistance costs are reimbursed to a public employee in judicial proceedings, the public employee shall repay them to the*

*employer. The method of providing paid legal assistance referred to in this paragraph shall be determined by the Government.*

#### Article 15a (Prohibition of harassment)

*Any physical, verbal or non-verbal action or behaviour of a public employee that is based on any personal circumstance or that creates an intimidating, hostile, humiliating, shameful or offensive working environment for a person and offends such person's dignity shall be prohibited.*

#### Article 32 (Public nature principle)

*An authority shall keep the public informed of its operations and of the work performance of its officials in the manner determined by an Act and implementing regulations.*

#### Article 60 (Implementation of open competitions)

*1) The provisions of the Act governing the general administrative procedure, with the exception of the provisions on verbal hearings, shall apply, mutatis mutandis, to open competition procedures.*

*2) Notwithstanding the provision of paragraph one of this Article, the method of servicing and notifying candidates and the method of handling incomplete applications shall be regulated by a Government Decree.*

*3) The head of the authority may authorise a public employee or appoint a selection board to conduct the selection procedure.*

*4) Open competitions for the managerial position of director-general, secretary-general, head of a body within a ministry, head of a government office or head of an administrative unit shall be run by a special selection board appointed by the Officials' Council for each particular case.*

*5) In other state authorities, open competitions shall be conducted in accordance with an Act or the general acts of the state authority concerned.*

#### Article 174 (Tasks of the Officials Council)

*1) The Officials' Council shall be established pursuant to this Act.*

*2) The Officials' Council shall provide for the selection of the officials in a managerial position referred to in paragraph four of Article 60 of this Act, and shall provide to the Government and to the National Assembly its opinion as to the regulations governing the system governing officials and the status of officials.*

*3) In cooperation with representative trade unions within the authority and professional associations of public employees in state authorities and local community administrations, the Officials' Council shall adopt a code of ethics of public employees in state authorities and local community administrations.*

*4) The Officials' Council shall be independent in the performance of its work. The members of the Officials' Council shall be entitled to an attendance fee determined by the Officials' Council.*

*Description of the oath of office or other forms of assurances by public officials upon induction that addresses the values above (i.e., upon entering service or periodically)*

In the Slovenian Constitution, an oath is expressly prescribed only for the President of the Republic of Slovenia. According to article 104 of the Constitution, before taking office, the President of the Republic shall swear the following oath before the National Assembly: "I swear that I shall uphold the constitutional order, that I shall act according to my conscience and that I shall do all in my power for the good of Slovenia."

Although the article concerns only the President, similar oaths are also taken by the Prime Minister and ministers. They take the "oath" to commit themselves to the following:

1. to respect the constitutional order, the constitution itself and the laws that come out of it,

2. to act according to their conscience, but not, for example, according to some external instructions, and
3. with all their powers, they must act for the well-being of Slovenia.

*Any positive incentives offered to public officials for the promotion of integrity, honesty and responsibility, such as annual integrity awards*

Slovenia does not have a system that awards public employees for acting with integrity, honesty and responsibility. Such an attitude is expected and set by regulations.

TI Slovenia noted that although the Government adopted the codes of ethics for public officials, there was no sufficient training organized for public officials and that training was not mandatory. TI Slovenia further added that it believed at least basic training should be provided to candidates before taking public office.

### **Slovenia provided the following examples of measures on the implementation of the provision:**

Over the past few years, the following courses on ethics, integrity, and prevention of corruption were organized by the Administration Academy:

#### **YEAR 2017 – including up to June**

Date	Seminars	No. of participants
16 February 2017	Integrity and Prevention of Corruption Act	70
20 March 2017	Mobing – psychological violence in the workplace	28
6 April 2017	Integrity and ethics in public administration management	30
11 April 2017	Integrity and ethics in public administration management	31
24 May 2017	ESS: Public procurement and management of corruption risks	18
1 June 2017	ESS: Public procurement and management of corruption risks	28
6 June 2017	ESS: Public procurement and management of corruption risks	18
13 June 2017	ESS: Public procurement and management of corruption risks	20
		<b>total 243</b>

	<b>Compulsory training for appointment to a title</b> (topics are included in individual content sections)	<b>No. of participants</b>
	<b>carried out 7 times</b>	<b>total 448</b>

#### **YEAR 2016**

Date	Seminars	No. of participants
1 March 2016	Integrity and Prevention of Corruption Act	85
22 September 2016	Integrity and ethics in public administration management	47
11 October 2016	Mobing – psychological violence in the workplace	34
15 October 2016	Integrity and Prevention of Corruption Act	75
8 December 2016	Mobing – psychological violence in the workplace	15
8 December 2016	Mobing – psychological violence in the workplace	16
		<b>total 272</b>

Date	Programme management in administration	No. of participants
7 April 2016	Ethics in public administration management	32
21 October 2016	Ethics in public administration management	19
		<b>total 51</b>

	<b>Compulsory training for appointment to a title</b> (topics are included in individual content sections)	<b>No. of participants</b>
	<b>Carried out 15 times</b>	<b>total 1014</b>

**YEAR 2015**

Date	Seminars	No. of participants
28 January 2015	Mobing – psychological violence in the workplace	19
19 March 2015	Integrity and Prevention of Corruption Act	103
23 April 2015	Convention on fight against corruption	30
27 May 2015	Institutes IPCA and the Convention on the Combat of Bribery of Foreign Officials in International Business	32
15 October 2015	Integrity and Prevention of Corruption Act	77

Date	Training programme for middle management	No. of participants
24 February 2015	Code of conduct for Civil Servants and Code of Ethics of Civil Servants	58
6 March 2015	Integrity and ethics in public administration management	27
22 May 2015	Integrity and ethics in public administration management	28
28 September 2015	Integrity and ethics in public administration management	29

Date	Programme management in administration	No. of participants
20 March 2015	Ethics in public administration management	21
29 May 2015	Ethics in public administration management	16

Date	Compulsory training for appointment to a title (topics are included in individual content sections)	No. of participants
	Carried out 5 times	330

**YEAR 2014**

Date	Seminars	No. of participants
27 February 2014	Mobing – psychological violence in the workplace	11
16 April 2014	Counselling and assistance to victims of workplace violence	21
3 June 2014	Integrity and Prevention of Corruption Act	78
9 June 2014	Integrity and Prevention of Corruption Act	38
16 September 2014	Mobing – psychological violence in the workplace	29
1 October 2014	Counselling and assistance to victims of workplace violence	14

***(b) Observations on the implementation of the article***

The Public Employees Act establishes a list of principles that public employees need to follow (lawfulness; professionalism; honorable behavior; restrictions and duties regarding receiving gifts; confidentiality; responsibility for results; good management; and prohibition of harassment (arts. 8 – 14, and 15a)). Public employees in State bodies and local communities are also committed to being open to the public and adhering to the regulations on conflicts of interest (art. 32, PEA).

The Officials Council is a special body responsible for the selection of senior public employees (para. 4 of art. 60, PEA) and the provision of opinions on regulations governing the officials' system and the situation of officials (public employees that perform public tasks within individual authorities) (para. 2, art. 174, PEA).

***Paragraphs 2 and 3 of article 8***

*2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.*

*3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.*



*(a) Summary of information relevant to reviewing the implementation of the article*

In 2001, the Government adopted the *Code of Conduct for Public Employees*, which the Council of Europe recommended for all members of the Council of Europe. The purpose of the Code is to define the principles of performing public duties that public employees must adhere. The Code applies to public employees (civil servants) employed in state bodies, the administrations of self-governing local communities, public funds, public agencies, and other persons of public law who mainly perform administrative tasks (art. 1, PEA). The Government recommended that unions and professional organizations of public administration employees abide by the Code by drawing up their own codes of conduct and ordered ministries and government services to abide by the Code on various fronts, including the procedures of recruitment and drafting acts in the field of organization and labour law. At the same time, it undertook to apply the Code *mutatis mutandis* to ministers and other office-holders.

*Code of Ethics for Public Employees in State Bodies and Local Community Administrations*

Adopted by the Officials Council in 2011 under the PEA (para. 3 of art. 174), the Code encompasses the values and tradition of the functioning of public administration in Europe, namely operating lawfully and for the public good, and is designed to include the basic guidelines and minimum standards by which public employees should be bound in their work. The Code is based on the mutual respect of public employees, both in terms of co-workers and internal and external clients. The Code contains general principles of the ethical behaviour of public employees that will guide them in all dimensions of their work. The Code also provides specific guidelines by setting out restrictions on public employees in the performance of their work under specific circumstances (for instance, guideline 7, which sets a limit regarding the acceptance of benefits that may influence their decisions).

*Code of Ethical Conduct and Behaviour of Officials in the Slovenian Government and Ministries*

The Code was adopted by the Government in December 2015. The content of the Code is made up in such a way that it takes into account the status of officials (functionaries) regarding their legal obligations of integrity and prevention of corruption. The Code constructs standards denoting the desired forms of behaviour and actions expected of the officials (functionaries) in the Government and ministries while incorporating the generally accepted values of modern Slovenian society.

The Code substantively takes into account and models itself on comparable codes in other countries and the codes of other professions and professional associations in Slovenia. The Code also contains a statement by officials (functionaries) that they accept the standards of conduct and behaviour and act according to them in performing their duties.

The Code also takes into account European and international documents, including the International Code of Conduct for Public Officials adopted by the General Assembly of the United Nations in 1997 and the CPC's proposals of 2013 for the prevention of corruption.

During its formulation, the Code also took into account the fact that the Slovenian legal regulation of the position of officials (in the Law on Officials and Special Regulations) and regulations of specific institutes, which are governed by the IPCA, require a somewhat different approach from the above-mentioned codes adopted in Europe. Issues such as the prevention of conflicts of interest, lobbying control, property supervision and incompatibility in performing a function are covered by the IPCA – a systemic regulation currently in place to address the areas of integrity and prevention of corruption. Therefore, issues of the same kind should not be duplicated in the Code. At the same time, the Code was drafted in a way to ensure compatibility with the relevant acts governing the conduct and behaviour of officials in Slovenia. Given the political and decision-making powers they possess, the misuse of such powers would undermine the public interest. Therefore, placing a higher standard of conduct and behaviour on them is a means to avoid the abuse of power. Nevertheless, as with the codes for other groups, the Code is not meant to punish but to raise the awareness of the subject officials to act in accordance with the principles or standards set out in the Code. The Code cannot be the basis for action against someone. Rather, it is the basis for a person to act in accordance with the established principles and standards and live up to the expectations of others who have adopted the same principles and standards.

The Code entails generally accepted values of the behaviour of government officials and ministries expected by the current Slovenian society, and the standards set out in the Code are characterized by the following features:

- clarity and unambiguity;
- applicability to every government official in ministries;

- encompassment of general values and principles acceptable by society, taking into account the fact that there is a greater possibility of influencing public decisions by the officials (functionaries).

*Other measures in this field*

In addition to the preventive and repressive measures, Slovenia, like other UN member States, has committed itself to continue developing and transposing anti-corruption knowledge according to the provisions of the UN Convention against Corruption. Slovenia also developed public ethics and promoted the integrity and responsibility of public sector employees and public confidence in the institutions of the rule of law.

Recommendation No. R (2000) 10 of the Committee of Ministers to the Member States on codes of conduct for public officials is also annexed to the Code of Ethics for Public Employees, which is not explicitly applicable to officials. The Recommendation asked the governments of the EU Member States to establish appropriate codes of ethics for public administration employees in accordance with this Recommendation and take into account the domestic law and the principles of public administration. The model code of conduct for public officials of the Council of Europe combines standards of integrity and behaviour that are considered desirable, acceptable, and justifiably expected of public officials by the public. The Code covers the guidelines of desirable and acceptable behaviour of public employees as follows:

- lawful
- transparent
- socially responsible
- the expression of the effort for the good of Slovenia
- responsible to the natural and social environment
- fair
- awareness of the institution's reputation
- respectful
- trustworthy
- honorable
- dedicated to the values and mission of the work
- conscientiousness and responsibility
- high standards of integrity
- professional, responsive, accessible, and also efficient and effective in the interests of excellence in public administration
- economical with resources, data and other sources
- non-acceptance of benefits that could affect decisions
- professional, impartial and independent of private interests
- Respect colleagues and parties based on trust and cooperation
- Honest and reliable
- Respect the personal dignity of people.

Even before the Recommendation of the Council of Europe, in 1998, the OECD Council adopted a Recommendation on Improving Ethical Conduct in the Public Service, which aims to help the Member States establish appropriate ethical standards in public administration. Against this backdrop, the OECD principles so derived were therefore coloured with the diversity of the then cultural and political sphere and various organized public administrations amongst the Member States.

The following are the principles that underpin the high standards of ethical behaviour, which include:

- clearly define what behaviour in the public administration is desirable and acceptable
- compliant with the legally prescribed restrictions, prohibitions and principles;
- published in such a way as to enable all employees in the public sector to become acquainted with;
- determined and published in advance before a public official is prosecuted for its violation;
- provide clear guidelines for dealing with public-private relations;
- generally accepted and supported by officials in an individual body that encourage subordinate public employees to respect the principles.

As the above-mentioned OECD recommendations indicate, the leaders in the bodies should support and promote the ethical conduct of public officials and endeavour to create an environment and relationships that will reinforce

integrity and ethics with themselves as role models.

Various other codes of professional ethics are adopted and implemented in Slovenia, for example, the Code of Military Ethics of the Slovenian Armed Forces, the Code of Ethics of Physiotherapists of Slovenia, the Code of Ethics of Social Workers and Workers of Slovenia, the Code of Ethics for Doctors, the Code of Ethics for Nurses, and the Slovenian Code of Police Ethics.

The arrangements for public employes, including officials in relation to the prevention of corruption are also regulated in the PEA, whereas the IPCA applies to certain issues, including conflict of interests, which do not concern only corrupt actions but also other unethical issues. Furthermore, violations of the principles of ethics and integrity by public employees can also be sanctioned, as provided in the relevant legal provisions.

The Public Sector Inspectorate under the MoPA is responsible for the inspection of the implementation of the provisions of the PEA and its related regulations, collective agreements, and general acts of the employer governing the employment relations of public employees.

**Slovenia provided the following examples of the implementation of the provision under review:**

*Internal or external studies on the measures taken to promote integrity, honesty and responsibility among public officials*

Most of the information was already provided above and under paragraph 1 of article 8 of the Convention.

In addition to carrying out the activities of raising public awareness about corruption and its consequences, the Centre for Integrity and Prevention of the CPC (the Centre), as the guardian of the Resolution on the Prevention of Corruption in Slovenia and the Action Plan for the implementation of this Resolution, is tasked with the responsibility for implementing policies of preventing corruption and strengthening integrity.

At the same time, the Centre is also a bearer of activities to implement integrity plans, including the provision of advice on how to design these plans better. The Centre is also the focal point between the CPC and civil society. Private entities can approach the Centre for advice on developing a code of ethics.

Among other things, the Centre is also responsible for the publicity of the CPC. For example, the Centre issues information leaflets on the CPC's jurisdiction to prevent corruption.<sup>65</sup>

The MoPA has not yet conducted any special studies to evaluate the effectiveness of applicable codes or standards of conduct for public employees.

***(b) Observations on the implementation of the article***

Slovenia has three main codes of conduct for public officials. First, the Code of Conduct for Public Employees, adopted in 2001, the content of which has been incorporated in the PEA and the Employment Relationship Act. Second, the Code of Ethics for Public Employees in State Bodies and Local Community Administrations (2011) applicable to civil servants (public employees); Lastly, the 2015 Code of Ethical Conduct and Behaviour of Officials in the Slovenian Government and Ministries is applicable to ministers and State secretaries on the basis of their constitutional oaths, ideal behaviour and conduct. Various sectoral codes of professional ethics have also been adopted. Slovenia reported that all codes were duly incorporated in different legislation, and non-compliant public officials would therefore be subject to disciplinary sanctions.

When drafting national instruments, Slovenia considered a number of international mechanisms, such as the Recommendations of the Council of Europe and OECD.

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<sup>65</sup> Available at: <<https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/arhiv-kpk-vestnik>>



### **Paragraph 4 of article 8**

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The national legislation incorporated proper channels that ensure direct and safe access to the competent authorities, which possess the power and knowledge to handle reports of corrupt wrongdoings. The IPCA includes provisions regarding the protection of reporting persons in line with the UNCAC (arts. 23 and 25). The act affords reporting persons protection against threats, all forms of physical violence and psychological intimidation, provided that such reporting persons act in good faith to make an effort to prevent and detect all acts of corruption and their perpetrators.

Insofar as the administrative investigation of corruption allegations is concerned, the reports can be submitted to the CPC via classic mail, e-mail, telephone or in-person at the CPC headquarters. In addition, the CPC website<sup>66</sup> allows the reporting person to submit a report, with an option to remain anonymous through a secure system. Aside from this, the reporting person can opt to call the CPC through a direct telephone line where an on-duty employee of the CPC would provide all the necessary information regarding the submission of the report and advice for potential reporting persons for their future activities.

The IPCA adopts a two-tier approach for reports made by public officials. An 'official person' who has reasonable grounds to believe that he has been requested to engage in illegal or unethical conduct or has been subject to psychological or physical violence may report such practice to the superior or the person authorized by the superior (art. 24). If there is no such a responsible person, or if the responsible person fails to respond to the report in writing within five working days, or if it is the responsible person himself who requests that the official should engage in illegal or unethical conduct, the report should be forwarded to the CPC.

The existing legal framework consists of two objectives: firstly, it encourages the creation of an internal reporting system, and secondly, it suggests that breaches of state regulation and internal rules or a violation of due conduct are primarily handled within the place of employment, i.e., the place where the wrongdoing was noticed/discovered. In the long run, it is in the employer's best interest to resolve such matters in a fair and efficient way before greater harm is caused. The law also allows direct submission of a report to the CPC (without previously notifying the person within the organization), which is especially welcoming in cases where the reporting person is coming from a simple-structured work environment or does not trust the employer's internal system.

### **Integrity and Prevention of Corruption Act**

#### **Article 23 (Reporting of corruption and protection of reporting persons)**

(1) Any person may report instances of corruption in a State body, local community, by a holder of public authority or other legal persons governed by public or private law, or a practice by a natural person for which he believes that it contains elements of corruption, to the Commission or any other competent body. At the reporting person's request, the Commission and other competent authorities shall notify the reporting person of the measures or the course of action taken in this respect. This provision shall not encroach on the reporting person's right to inform the public of the corrupt practice in question.

(2) The provisions of the law regulating access to public information shall not apply to documents, files, records and other documentary material relating to a procedure conducted by the Commission with regard to the reported suspicion of corruption until the procedure before the Commission has been concluded. The information on the protected reporting person shall not be made public after the procedure has been concluded. This provision shall also apply in the event that the material referred to in this paragraph has been referred to another body for consideration. The reporting person may send the report that contains information that is defined by law as classified information only to criminal law enforcement authorities or to the Commission.

<sup>66</sup> Available at: ([www.kpk-rs.si](http://www.kpk-rs.si) <<http://www.kpk-rs.si>>)

(3) *If the Commission finds that the report referred to in the preceding paragraphs contains elements of a criminal offence for which the offender is prosecuted ex officio, it shall inform the law enforcement authorities of this in accordance with the law governing the criminal procedure and request that they keep it informed of any further courses of action.*

(4) *The identity of the reporting person referred to in paragraph 1 of this Article, who has made a report in good faith and has reasonably believed that the information he has provided with regard to the report is true, which shall be assessed by the Commission, shall not be established or disclosed. The filing of a malicious report shall be an offence punishable under this Act if no elements of a criminal offence have been established.*

(5) *In assessing whether the report has been made in good faith, or whether the reporting person has reasonably believed that the information he provided is true, the Commission shall take into account, in particular, the nature and gravity of the practice reported, the threat of damage posed by that practice or the actual damage caused as a result, a possible breach of the reporting person's duty to protect specific information, and the status of the body or person to which the report has been made.*

(6) *If in connection with the report of corruption, the conditions for the protection of the reporting person or his family members are fulfilled under the law on witness protection, the Commission may submit a proposal to the Commission on the Protection of Witnesses Risk to include them in the protection programme or may propose that the State Prosecutor General take urgent safeguarding measures.*

(7) *When the Commission on the Protection of Witnesses considers the Commission's proposal, its session may also be attended by the chair of the Commission.*

(8) *Only the court may rule that any information on and the identity of the persons referred to in paragraph 4 of this Article be disclosed if this is strictly necessary in order to safeguard the public interest or the rights of others.*

#### Article 24 (Reporting unethical or illegal conduct)

(1) *An official person who has reasonable grounds to believe that he has been requested to engage in illegal or unethical conduct, or has been subject to psychological or physical violence to that end, may report such practice to the superior or the person authorised by the superior (hereinafter: the responsible person).*

(2) *If there is no responsible person, or if the responsible person fails to respond to the report in writing within five working days, or if it is the responsible person himself who requests that the official should engage in illegal or unethical conduct, the report referred to in the preceding paragraph and the procedure pertaining to it shall fall within the competence of the Commission.*

(3) *The responsible person or the Commission shall assess the actual situation on the basis of the report, issue appropriate instructions on further action to be taken if necessary, and take all necessary steps to prevent any illegal or unethical requests and adverse consequences that may ensue.*

#### Article 25 (Measures to protect the reporting person)

(1) *If the reporting persons have been subject to retaliatory measures as a consequence of filing the report referred to in Articles 23 and 24 of this Act, and this has had an adverse impact on them, they have the right to claim compensation from their employer for the unlawfully caused damage.*

(2) *The Commission may offer reporting persons assistance in establishing a causal link between the adverse consequences and retaliatory measures referred to in the preceding paragraph.*

(3) *If during the course of the procedure referred to in the preceding paragraph the Commission establishes a causal link between the report and the retaliatory measures taken against the reporting person, it shall demand that the employer ensure that such conduct is discontinued immediately.*

(4) *If the reporting persons referred to in paragraph 1 of this Article are public servants, and if they continue to be the focus of retaliation despite the Commission's demand referred to in the preceding paragraph, making it impossible for them to continue work in their current work post, they may request that their employer transfer them to another equivalent post and inform the Commission of this.*

(5) *If a reporting person cites facts in a dispute that give grounds for the assumption that he has been*

*subject to retaliation by the employer due to having filed a report, the burden of proof shall rest with the employer.*

*(6) The public servant's employer shall ensure that the demand under paragraph 4 of this Article is met within 90 days at the latest and shall inform the Commission of this.*

When there is a suspicion of activity that constitutes a criminal offense, all state agencies and organizations having public authority are bound by article 145 of the CPA to report criminal offences liable to public prosecution of which they have been informed or which were brought to their notice in the performance of their functions. When submitting crime reports, the agencies and organizations must indicate evidence known to them and shall undertake steps to preserve traces of the crime, objects on which or by means of which the crime was committed and other items of evidence.

## **Criminal Procedure Act**

### Article 145

*(1) All state agencies and organisations having public authority shall be bound to report criminal offences liable to public prosecution of which they have been informed or which were brought to their notice in some other way.*

*(2) In submitting crime reports the agencies and organisations from the preceding paragraph shall indicate evidence known to them and shall undertake steps to preserve traces of the crime, objects on which or by means of which the crime was committed and other items of evidence.*

The safety and security of persons who submit the report are crucial for enabling further communication and cooperation. Offering and guaranteeing confidentiality reassures public officials that the focus remains on the substance of the disclosure and not on the individual who made it. The protection of the reporting persons' identity is one of the basic measures in the fight against corruption. The CPC protects the identity of all reporting persons, regardless of whether they request it or not. During and after the proceedings, the identity of the reporting person is not considered public information and does not fall under the Access to Public Information Act. The said measure also applies in cases forwarded to other competent state bodies. The law clearly states that it is forbidden to reveal the identity of a reporting person who submitted the report in good faith and had reasonable grounds to believe the information submitted was true. The individual who acts against this provision could be subjected to misdemeanour proceedings and sentenced to a fine in the range of €400 to €4,000. Only the court can rule that the identity of the reporting person be disclosed if it is strictly necessary to safeguard the public interest or the rights of others. If the reporting person requests special protection regarding his identity, he gains the status of a "concealed reporting person," who is given a codename/pseudonym in his first contact with the CPC (usually the employee that handles his report). By means of this, the identity of the reporting person is known only to the employee (not to his colleagues or his boss), which fosters a relationship of trust necessary for cooperation in further proceedings.

If the reporting persons have been subjected to retaliatory measures as a consequence of filing the report, and this has had an adverse impact on them, they have the right to claim compensation from their employer for the unlawfully caused damage. The CPC can offer assistance in establishing a causal link between the adverse consequences and retaliatory measures (art. 25, IPCA). If the reporting persons are public employees and continue to be the focus of retaliation, which makes it impossible for them to continue work in their current work post, they can request their employer to transfer them to another equivalent post. The public employee's employer must ensure that the demand for transfer is met within 90 days and must inform the CPC of it. If in connection with the report of corruption, the conditions for the protection of the reporting person or his family members are met under the Witness Protection Act, the CPC may submit a proposal to the Commission for the Protection of Witnesses to include them in the protection programme or may propose that the State Prosecutor General take urgent safeguarding measures.

The activity of the CPC with regard to the protection of reporting persons is shown in the following table:

Measure	2011	2012	2013	2014	2015	2016
<b>Identity Protection (determining a pseudonym)</b>	13	14	10	5	2	1
<b>Demanding that threats and retaliation cease</b>	1	1 (for 3 persons)	/	/	/	/
<b>Assessing good faith</b>	/	4	/	/	1	/
<b>Protection of public servants/public officials</b>	/	5	/	/	/	/
<b>Establishing a causal link</b>	/	4	/	/	1	/
<b>Malicious report</b>	2	/	2	/	/	1

Additional protections for public employees are found in the PEA and a Code of Ethics, both of which prohibit retaliation against public employees who report wrongdoings. The PEA extends as far as to prohibit humiliation, intimidation and insulation of one's dignity.

The IPCA does not differentiate reporting persons on the grounds of their employment status. Therefore the CPC does not produce statistics on the number of reports made by public officials. However, since the inception of the IPCA in 2010, the CPC has provided public officers with constant education and conducted several workshops and lectures on the topic of reports of corruption and the protection of reporting persons.

Criminal offences, including corruption offences, can be reported to the Slovenian Police in various ways, including:

- in writing or verbally to the police,
- by calling the police phone number 080-1200 anonymously,
- anonymous electronic report of corruption on the official web pages:
  - o <http://www.policija.si/index.php/component/content/article/291-anonimna-e-prijava/9207-anonimne-e-prijave> (main web page)
  - o <https://e-uprava.gov.si/si/podrocja/drzava-druzba/kazniva-dejanja/prijava-korupcije> (sub-web page)

#### *Judiciary and Prosecution service*

On 29 May 2014, the Judicial Council adopted a decision whereby it would take into account the Code of Judicial Ethics, which was adopted on 8 June 2001 by the General Assembly of the Slovenian Association of Judges, in the formulation of the principles regulating judges' ethics and integrity, including incompatible activities. These principles are published on the website of the Judicial Council. The Judicial Council also recommended all judges adhere to the principles enshrined in the Code of Judicial Ethics. This recommendation is also published on the website of the Judicial Council. The recommendations and principles of the Judicial Council will serve as practical guidance and examples of (un)acceptable behaviour. Moreover, the draft legal amendments mentioned above will explicitly give the Judicial Council competence to adopt a code of ethics for all judges.

President of the Supreme Court of Slovenia adopted, on 31 March 2016, the Policy for Detecting and Managing the Risks and Vulnerabilities of Corruption in the Judiciary.<sup>67</sup> It covers judges and public employees within courts.

The main provisions of the policy regarding public employees (court staff) are as follows:

- Staff shall act in accordance with the Code of Ethics for Public Employees in State Bodies and Local Community Administrations<sup>68</sup> and the Code of Conduct for Public Employees.<sup>69</sup>
- Regarding their financial status, they shall strictly fulfil the duties specified by article 11 (Restrictions and duties in respect of the acceptance of gifts) of the PEA.

<sup>67</sup> Available at: [http://www.sodisce.si/mma\\_bin.php?static\\_id=20160405133725](http://www.sodisce.si/mma_bin.php?static_id=20160405133725)

<sup>68</sup> Available at: [http://www.mju.gov.si/fileadmin/mp.gov.si/pageuploads/SOUS/drugo/kodeks\\_etike\\_ju.pdf](http://www.mju.gov.si/fileadmin/mp.gov.si/pageuploads/SOUS/drugo/kodeks_etike_ju.pdf)

<sup>69</sup> Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG1022>

- Regarding the performance of other activities, officials shall fully comply with article 100 of the PEA (The performance of other activities and conflicts of interest), and other public employees shall fully comply with article 39 of the Employment Relationships Act (ZDR-1).

They may not perform activities:

1. that are in conflict with the prohibition on competition or a competition clause pursuant to the law governing employment;
2. if the performance of the activity might affect the impartial performance of their work;
3. if the performance of the activity might result in the abuse of data accessible during the performance of tasks at work which is otherwise inaccessible to the public;
4. if the performance of the activity is harmful to the reputation of the judicial body.

They shall notify the director and/or president of the court of the performance of activities that they believe are and could be such that they may not perform prior to the commencement of such activities. The exemptions to the above comprise activities relating to scientific and educational work, work in associations and organizations in the field of culture, art, sports, humanitarian activities or other similar associations and organizations, work in the field of journalism, and membership and activities in political parties.

If they deem that a situation has arisen in which their personal interests might affect the impartiality and objectivity of the performance of their tasks, or where the circumstances of the situation might cast doubt as to their impartiality and objectivity, they shall, immediately or as soon as practical under the circumstances, notify the director and/or president of the court and act in accordance with their instructions.

All courts draw up an Integrity Plan in accordance with the Guidelines for the drawing up, introduction and implementation of integrity plans<sup>70</sup> issued by the CPC (27 February 2014).

The Integrity plan also appoints a designated person (the responsible person) to whom employees can report detected corruption risks, conflicts of interest and illicit influence. If this person fails to act properly or if the reporting person believes that there is a risk that this person will not take the appropriate action (e.g., due to a conflict of interest), the reporting person may communicate their findings directly to the president of the court where they are employed, or directly to a higher-ranking court.

Most of the above-mentioned regulations also apply to the public employees employed by the State Prosecution Service. On 29 March 2016, the State Prosecutor General also adopted the Policy on the Discovery and Management of Corruption Risk and the Exposure of State Prosecution Service. The Policy is publicly available on the official website of the Office of the State Prosecutor General. The text of the Policy is available in English. The Policy is intended to provide guidance and coordinate protective measures within the State Prosecutor's Office as a whole so as to enhance the role of all employees at the State Prosecution Service in co-creating an institution with a high level of integrity and to inform the public of the State Prosecutor's Office's willingness to establish an internal system that disallows corruption. The Code of Ethics of State Prosecutors was adopted on 22 September 2015.<sup>71</sup>

*Please also see the summary under paragraph 2 of article 11 of the Convention.*

In fulfilment of article 47 of the IPCA, all State Prosecutor's Offices adopted integrity plans.

The State Prosecutor's Office is competent in obtaining any notifications or other information on any suspicions of corruption. According to the CPA (Criminal Procedure's Act), a state prosecutor is obliged to file a criminal charge if reasonable suspicion exists that a criminal offence has been committed. Furthermore, when the State prosecutor is unable to infer from the report (or notification) whether the allegations contained therein are probable, whether the information in the report provides a sufficient basis to require investigation, or when all the State prosecutor possesses is only hearsay information concerning a criminal offence, he or she may request the police or other competent authorities to collect the necessary information and to take other measures with an attempt to unearth the criminal offence and the perpetrator thereof.

To conclude, notwithstanding that the State Prosecutor's Office does not have a special system to facilitate the

<sup>70</sup> Available at: <[https://www.kpk-rs.si/upload/datoteke/Smernice\\_za\\_nacrt\\_integrit.pdf](https://www.kpk-rs.si/upload/datoteke/Smernice_za_nacrt_integrit.pdf)>

<sup>71</sup> Available at: <http://www.drzavnotozilski-svet.si/code-of-ethics-of-state-prosecutors>

reporting by public officials of acts of corruption, it remains the central body addressing the criminal aspect of acts of corruption.

*Internal Ethical Committees of the judiciary and prosecution service*

In the judiciary and prosecution service, there are special internal (ethical) commissions:

- Commission for ethics and integrity for State prosecutors; and
- Commission for ethics and integrity for judges.

On the basis of established principles, these commissions give opinions regarding violations of the respective codes of ethics and adopt recommendations and guidelines on the fulfilment of standards of ethics and integrity, conflicts of interest, and situations in which (former) judges and State prosecutors have moved to the private sector. They also monitor, collect and propose training events in the area of ethics and integrity.

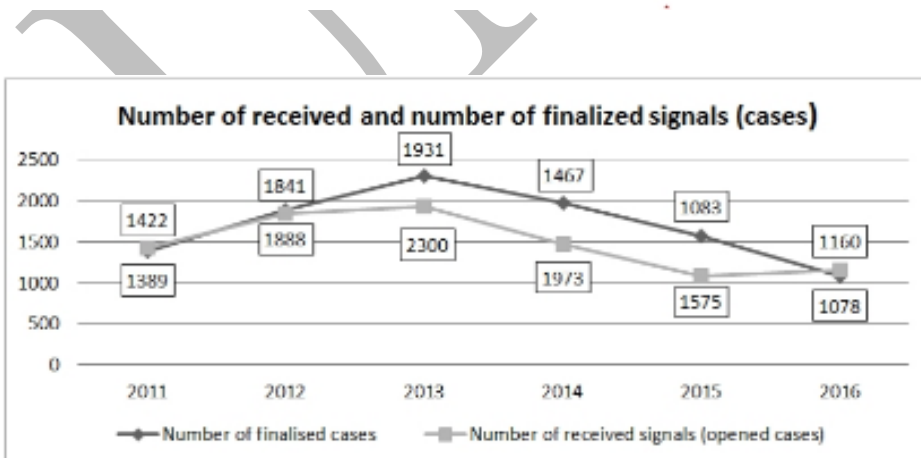
**Slovenia provided the following examples of the implementation of the provision under review:**

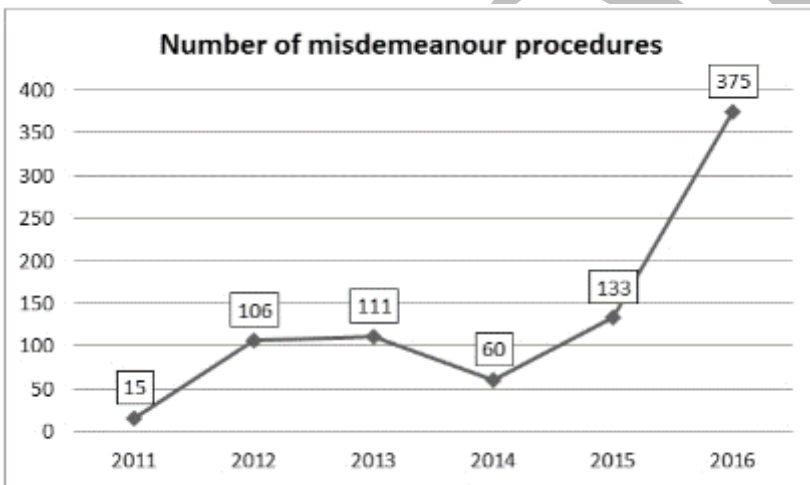
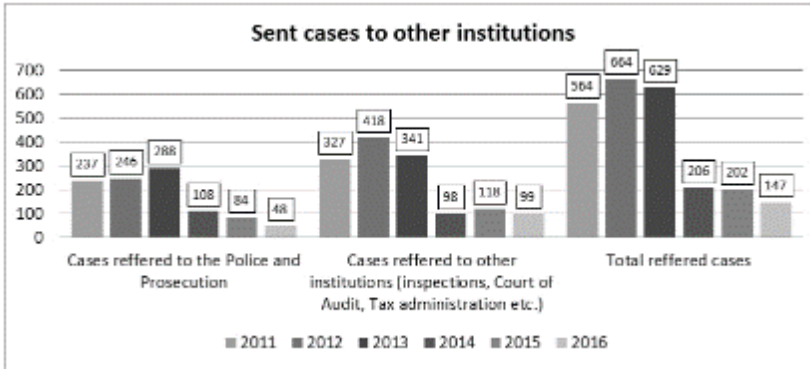
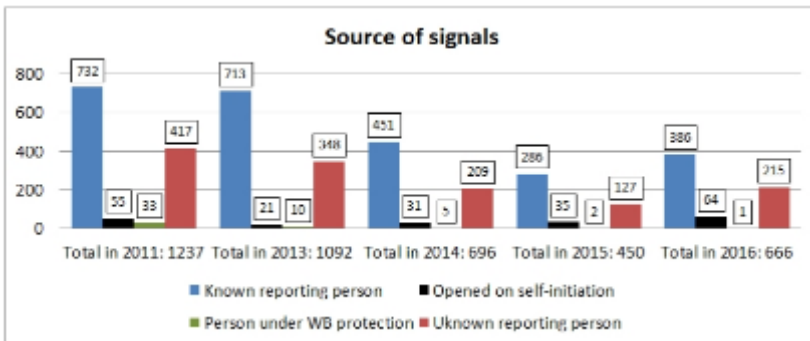
The statistics of cases of corruption reports or the unethical behaviour of public employees by individual state administration bodies are not kept at the central level (only statistics of reports to the CPC). Notwithstanding the above, public employees are informed of the procedures for the notification of such acts during the training courses organized by the Administrative Academy in cooperation with the CPC. The above-mentioned contents are also included in the mandatory training of public employees upon appointment to the title, as well as in compulsory training programmes for officials in certain official posts.

The activity of the CPC with regard to the protection of reporting persons is set out in the following table:

Statistics of the CPC regarding the received reports of possible corruption:

Measure	2011	2012	2013	2014	2015	2016
Identity Protection (determining a pseudonym)	13	14	10	5	2	1
Demanding that threats and retaliation cease	1	1 (for 3 persons)	/	/	/	/
Assessing good faith	/	4	/	/	1	/
Protection of public servants/public officials	/	5	/	/	/	/
Establishing a causal link	/	4	/	/	1	/
Malicious report	2	/	2	/	/	1





As regards the number of trainings on the reporting of acts of corruption, it is pointed out that reporting of acts of



corruption is included as part of the modules in every training on the topic of prevention, anti-corruption and integrity issues. *Please see the information on trainings provided in articles 7 and 8 of the Convention.*

*Statistics of anonymous e-reports to the police:*

Police received a total of 109 anonymous e-reports in 2013, 110 in 2014, 96 in 2015, 102 in 2016, and 71 as of July 2017.

According to the Transparency International Report on Whistle-blowing (2013), Slovenia is one of four EU countries with advanced regulations for the protection of whistle-blowers (public and private sectors included).<sup>72</sup>

*Judiciary and Prosecution service*

The Commission for Ethics and Integrity for Judges has adopted seven principled opinions regarding the participation of members of the Judicial Council in the provision of opinions on candidates to judges, the expression of opinion by judges in open cases, the engagement of judges as arbitrators, the participation of judges in the provision of training for the written part of the bar examination, the anonymous information regarding judges, actions of the inactive judges and public expression of the judge in the interviews. The principled opinions are published on the official website of the Judicial Council.

The Commission has adopted a commentary on the Code of Judicial Ethics, translated into English. Both versions are published on the official website of the Judicial Council.

The number of proceedings conducted by the Commission for Ethics and Integrity for State Prosecutors:

YEAR	2015	2016	2017
No. of received proposals		3	2
No. of received proposals that were accepted for adjudication		1	1
No. of found violations of the Code of Ethics of State Prosecutors			
No. of adopted principled opinions		1	
No. of issued recommendations		1	

Currently, there are two ongoing proceedings. The Commission for Ethics and Integrity for State Prosecutors did not receive reports of corruption in the prosecution service.

***(b) Observations on the implementation of the article***

The IPCA explicitly states that public officials may report illegal or unethical conduct to their superiors or the CPC directly if internal reporting is unavailable or unsuccessful (art. 24). Reports can be submitted to the CPC by various means, including anonymous reporting. The protection of reporting persons and their family members is well defined in the IPCA (arts. 23 and 25). All State agencies and organizations having public authority are required to report criminal offences (art. 145, CPA).

***Paragraph 5 of article 8***

*5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.*

***(a) Summary of information relevant to reviewing the implementation of the article***

**Slovenia reported the following measures**

<sup>72</sup> Available at: <[https://www.transparency.org/whatwedo/publication/whistleblowing\\_in\\_europe\\_legal\\_protections\\_for\\_whistleblowers\\_in\\_the\\_eu](https://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu)>

The IPCA defines two obligations in relation to paragraph 5 of article 8 of UNCAC:

- a) Assets declarations; and
- b) Conflict of interest declarations (*addressed under paragraph 4 of article 7 of the Convention*).

### ***Assets declarations***

Oversight of the assets of persons obliged to make a declaration is one of the basic conditions of transparency and trust in public offices. Thus it represents an indispensable part of the integrity management of the public sector. The monitoring and overseeing assets serve to promote and enhance transparency in the processes and procedures of exercising executive power, the performance of public offices, and the management of public affairs. Illicit enrichments, incompatibilities of functions, conflict of interests etc., can also be identified.

The CPC, a responsible institution for collecting and analyzing assets and interest declarations, leverages the data from declarations and performs different proactive analyses to identify possible violations.

*For more information, please refer to point e) in the description of the practices that Slovenia considers to be good practices.*

#### *a) Persons with the obligation to declare assets (art. 41, IPCA):*

Section V of the IPCA regulates the obligation to declare assets by specific classes of persons who are defined as professional officials, non-professional mayors and deputy mayors, 'high-ranking civil servants' (director generals, secretary generals of ministries, heads of constituent ministerial bodies, heads of government departments, heads of administrative units, directors and secretaries of municipal administrations), managers (directors and members of collective management bodies of public agencies, public funds, public institutes, public commercial institutes and other entities of public law that are indirect users of the national budget or self-governing local community budgets and public enterprises and commercial companies in which the State or a self-governing local community holds a majority interest and dominant influence), persons responsible for public procurement (which includes persons who participate in public procurement and are not employed by the contracting authority), 'civil servants of the National Review Commission for Reviewing Public Procurement Award Procedures', and the citizens of the Slovenia who hold office in EU institutions, other EU bodies and other international institutions to which they have been appointed or elected on the basis of secondment or a proposal from the Government or the National Assembly and whose obligation to declare their assets is not otherwise regulated by the documents of EU institutions, EU bodies and other international institutions for which they perform duties of the office.

In this regard, the IPCA stipulates the duty to report data on assets and the proactive duty to report information on any changes in assets to the CPC. It also defines the procedure if the CPC determines that the assets of a public official have grown disproportionately since the last reporting. It also lays down the public availability of data on public officials' income and assets, with exceptions under particular circumstances. Since 1 July 2011, it has been obligatory to report data on assets using the e-form, accessible on the CPC website.

## **Integrity and Prevention of Corruption Act**

### Article 41 (Obligation to declare assets)

*(1) Persons with obligations under this chapter shall be as follows: professional officials, non-professional mayors and deputy mayors, high-ranking civil servants, managers, persons responsible for public procurement, civil servants of the National Review Commission for Reviewing Public Procurement Award Procedures (hereinafter: the National Review Commission) and the citizens of the Republic of Slovenia who hold office in EU institutions, other EU bodies and other international institutions to which they have been appointed or elected on the basis of secondment or a proposal from the Government of the Republic of Slovenia or the National Assembly and whose obligation to declare their assets is not otherwise regulated by the documents of EU institutions, EU bodies and other international institutions for which they perform duties of the office.*

*(2) A professional official, non-professional mayor and deputy mayor, high-ranking civil servant, manager and citizen of the Republic of Slovenia who holds office in EU institutions, other EU bodies and other international institutions to which he has been appointed or elected on the basis of secondment or a proposal from the Government of the Republic of Slovenia or the National Assembly shall immediately, and*

by no later than within one month after taking or ceasing to hold the office or post, communicate the information on his assets to the Commission. These persons shall also communicate the information on their assets to the Commission a year after ceasing to hold the office or post.

(3) Persons responsible for public procurement shall communicate the information on their assets to the Commission once a year by 31 January of the current year for the previous year if, in the previous year, they participated in a public procurement procedure as laid down in point 11 of Article 4 of this Act. The civil servants of the National Review Commission shall communicate the information on their assets within the time limit and in the manner laid down in the preceding paragraph. Paragraph 2 of Article 43 of this Act does not apply to persons responsible for public procurement and civil servants of the National Review Commission.

(4) Information on assets referred to in paragraphs 2 and 3 of this Article shall be communicated by way of an electronic form which is available on the Commission's website.

(5) The bodies in which persons with obligations are employed, and contracting authorities that operate in accordance with regulations on public procurement, shall communicate lists of these persons to the Commission within 30 days of any change occurring. Information on the citizens of the Republic of Slovenia who hold office in EU institutions, other EU bodies and other international institutions to which they have been appointed or elected on the basis of secondment or a proposal from the Government of the Republic of Slovenia or the National Assembly shall be communicated to the Commission by the Government of the Republic of Slovenia or the National Assembly. These lists shall include the following information: the personal name, personal registration number (EMŠO), tax ID number of the person, office or position, address of permanent residence, and, in the case of officials with a limited term of office and high-ranking civil servants, the date of taking or ceasing to hold office or position.

Regarding the obligation of declaring the assets by family members of persons under the obligation:

Generally, the family members do not have an obligation to declare their assets, but as provided by paragraph 5 of article 43 of the IPCA, if upon a comparison between the information provided in asset declaration and the actual situation from which it is reasonable to infer that the person under obligation is transferring his property or income to family members for the purpose of evading supervision under the IPCA, the CPC may request that family member(s) submit the data on their assets and incomes within one month of receiving the request.

The number of persons with the obligation to declare assets throughout the years is as follows:

Year	2011	2012	2013	2014	2015	2016
<b>Number of persons obliged to submit data on their assets</b>	between 10.000 and 13.000*	between 10.000 and 12.000*	between 10.000 and 12.000*	between 10.000 and 12.000*	13.976	14.627

b) Information that must be declared (art. 42, IPCA):

Data on assets of a person with obligations shall include the following:

- personal name;
- personal registration number (EMŠO);
- address of permanent residence;
- tax ID number;
- information on the office or work;
- information on the work performed immediately before taking office;
- any other office held or activities performed;
- information on ownership or stakes, shares, management rights in a company, private institute or any other private activity with a description of the activity and a designation of the registered name or the

name of the organization;

- information on stakes, shares, and rights that the entities referred to in the preceding indent have in another company, institute or private activity with the designation of the registered name or the name of the organization (hereinafter: indirect ownership);
- information on taxable income under the law governing personal income tax that is not exempt from personal income tax;
- information on the immovable property with all the land register information on land plots;
- monetary assets deposited in banks, savings banks and savings and loan undertakings, the total value of which in an individual account exceeds €10,000;
- the total value of cash if it exceeds €10,000;
- types and values of securities if, at the time of the declaration of assets, their total value exceeded €10,000;
- debts, obligations or assumed guarantees and loans given, the value of which exceeds €10,000;
- movable property, the value of which exceeds €10 000; and
- any other information in relation to assets that the person with obligations wishes to provide.

*c) Frequency of declarations:*

The IPCA requires a list of persons under the reporting obligation to be submitted to the CPC by bodies employing such persons and contracting authorities operating under the regulations that govern public procurement. For Slovenian citizens who hold office in EU institutions or other bodies or other international bodies and are appointed or elected on the basis of the secondment or proposal of the Government or the National Assembly, such a list is submitted by the Government or the National Assembly. These lists must be kept up to date. Any change must be reported to the CPC within 30 days (para. 5 of art. 41, IPCA). These lists must contain the personal name, permanent residence address, personal registration number, tax ID number, office or position, and the date of taking or ceasing to hold office or position. Persons responsible for public procurement are required to report their assets only if they participated in a public procurement procedure as laid down in paragraph 11 of article 4 of the IPCA in the previous year. Otherwise, they are exempted from such an obligation.

Persons under obligation (except for persons responsible for public procurement and 'civil servants of the National Review Commission' under para. 3 of art. 41, IPCA) shall report information on their assets in their entirety to the CPC immediately and no later than one month after taking or ceasing to hold office or post, and one year after ceasing to hold office or post (para. 2 of art. 41, IPCA). Any change to the assets that exceeds €10,000 has to be reported by 31st January of the current year for the previous year (para. 2 of art. 43, IPCA). The CPC may, at any time, request the person under obligation to submit the data referred to in article 42 of the IPCA. The person shall submit the data no later than 15 days after receipt of the request (para. 4 of art. 43, IPCA).

*d) Submission of declaration:*

In February 2012, an online declaration system was introduced. All persons under obligation must submit their declarations in the new system (e-forms) and send a signed hard copy to the CPC. A special guideline is available for obliged public officials to fill out the forms besides the general enquiry services provided by the CPC's staff (via phone, e-mails, and in-person). The general enquiry services also cover issues such as conflicts of interest and incompatibilities of functions. Apart from the above, the CPC also issues publications and provides advice.

*Please also see the information provided under paragraph 2 of article 5 and paragraph 4 of article 8 of the Convention.*

*e) Public availability of asset declarations:*

The IPCA stipulates that the data on the income and assets of the persons under obligation, except for persons responsible for public procurement and 'civil servants of the National Review Commission', shall be publicly available in part relating to income and assets obtained during the period of holding a public office or performing an activity and within one year after the termination of the office or activity, irrespective of the restrictions stipulated in the law governing the protection of personal information and the law governing the protection of confidential tax information. The data shall remain publicly available for 24 months after the date of the

termination of the office or work. (para. 1 of art. 46, IPCA)

On its website, the CPC shall publish data on income and assets obtained during the period of holding a public office or performance of an activity and within one year after the termination of the office or activity. The data shall include the following:

- the personal name and office of the person under obligation;
- the ownership or stakes and the number of shares and rights in a company, institute or private activity with the designation of the registered name or the name of the organization;
- the ownership or stakes, shares and management rights in a company, private institute or any other private activity with the designation of the registered name or the name of the organization;
- the number and value of immovable properties without land registry information on land plots;
- the total value of monetary assets deposited in banks, savings banks and savings and loan undertakings if exceeding €10,000 in value;
- the total value of cash if exceeding €10,000 in value;
- the total value of securities if exceeding €10,000 in value;
- the total value of debts, obligations or guarantees assumed if exceeding €10,000 in value;
- the total value of loans given if exceeding €10,000 in value; and
- movable property, the value of which exceeds €10,000, in a manner that does not allow for the property's identification. (para. 2 of art. 46, IPCA)

The data referred to in the preceding paragraph shall be published in a manner that facilitates comparisons. (para. 3 of art. 46, IPCA)

In reality, the asset declarations are not made publicly available because the CPC, during its supervision of the implementation of the relevant provisions, has found that in 60% of cases, the declaration forms are filled out in an incorrect manner (e.g., some assets are not reported, assets of family members are reported while they should not be and as a consequence should not be made publicly available).

## **Integrity and Prevention of Corruption Act**

### Article 46 (Public availability of data)

*(1) Data on the income and assets of persons with obligations, with the exception of persons responsible for public procurement and civil servants of the National Review Commission, shall be publicly available in the part relating to income and assets obtained during the period of holding a public office or performing an activity and within one year after the termination of the office or activity, irrespective of the restrictions stipulated in the law governing the protection of personal information and the law governing the protection of confidential tax information. The data shall be made publicly available for 24 months after the date of the termination of the office or work. A more detailed methodology for publishing the data shall be laid down by the Commission in its Rules of Procedure.*

*(2) On its website, the Commission shall publish data on income and assets obtained during the period of holding a public office or performance of an activity and within one year after the termination of the office or activity; the data shall include the following:*

- *the personal name and office of the person with obligations;*
- *the ownership or stakes and the number of shares and rights in a company, institute or private activity with the designation of the registered name or the name of the organisation;*
- *the ownership or stakes, shares and management rights in a company, private institute or any other private activity with the designation of the registered name or the name of the organisation;*
- *the number and value of immovable properties without land registry information on land plots;*
- *the total value of monetary assets deposited in banks, savings banks and savings and loan undertakings if this exceeds EUR 10 000 in value;*
- *the total value of cash if this exceeds EUR 10 000 in value;*
- *the total value of securities if this exceeds EUR 10 000 in value;*
- *the total value of debts, obligations or guarantees assumed if this exceeds EUR 10 000 in value;*

- the total value of loans given if this exceeds EUR 10 000 in value; and
- movable property, the value of which exceeds EUR 10 000, in a manner that does not allow for the property's identification.

(3) The data referred to in the preceding paragraph shall be published in a manner that facilitates a comparison of the data.

*f) Mechanism of monitoring the asset declaration:*

The CPC is the responsible body for the implementation and supervision of the implementation of the provisions of this IPCA (art. 80, IPCA). Therefore, the CPC is responsible for reviewing and verifying whether the information in the declaration forms is complete and accurate. Information shall be communicated to the CPC by way of an electronic form.

The CPC may conduct a cross-check of the information on the declaration with other official records to verify the accuracy of the statements of the person under obligations. If the CPC finds any inconsistencies, it may request the person under obligation to adduce relevant evidence supporting the declared information (paras. 2 and 3 of art. 42, IPCA).

The CPC is responsible for reviewing the accuracy of asset declarations and currently employs two persons for this purpose. Given the great number of declarations received, the CPC uses a combined approach of random checks and selective checks based on different groups of obliged public officials each year. Checking by the latter approach yields a more thorough result. Asset declaration falls under the punctuality check<sup>73</sup>, but not all persons under the obligation of assets declaration are checked through the random checks and the targeted check (in these checks, the completion and accuracy are checked). The complete check uses the following methods: cross-checking with external databases, comparisons across years, identification of possible incompatible functions and conflicts of interest, internal consistency, etc.

The CPC does not have a special system that could provide automatic cross-check analysis. However, the procurement/setup of such a system is included in the future plan of the CPC. Currently, the CPC has:

- automated check of in-time reporting (whether public officials have declared assets or not), and
- online access to the majority of external databases (data on aircrafts, vehicles, weapons, shares, real estate ownerships, and register of companies, etc.),

The CPC can also receive bank details, records on animals<sup>74</sup>, land registers, investment funds, stock exchanges, and boats on demand.

Number of checks:

Year	2012	2013	2014	2015	2016
<b>Number of checks</b>	50*	9*	37*	103*	28*

\*Each check includes more than one person. For example the total number of persons under check in 2016, includes controls upon 980 persons under obligation.

*Additional information on illicit enrichments:*

If, during an investigation, the CPC determines that there has been a disproportionate growth of one's assets, it

<sup>73</sup> "Punctuality check" means that the CPC checks if the declaration was made in time (for example: 30 days after the beginning of the term). "Complete check" is the oversight of the veracity of the content of the declaration (checks of property).

<sup>74</sup> horse breeding, e.g.

notifies the State Prosecutor's Office, which is responsible for initiating the procedure of confiscation of illicit assets. However, such a procedure can be imposed only on a person indicted in a criminal procedure or on persons that have obtained the alleged illicit assets from the indicted person.

Slovenian legal system provides for three procedures regarding illegal enrichment:

- The first procedure is criminal, whereby assets are confiscated if a court determines that the convicted person obtained such assets from a criminal act.
- The second procedure is conducted by the CPC, through which the CPC investigates whether the increase in one's assets is disproportionate to their income. If such a growth is ascertained, the CPC may publish its findings, but it cannot confiscate the illegally obtained assets. The aim, after all, is to raise transparency and to promote the political accountability and integrity of the public sector.
- The third procedure is the litigation instituted before a civil court of law. The public prosecutor files a lawsuit against an individual, who in turn has to prove that the targeted assets have been obtained lawfully. If the defendant fails, the assets are confiscated. Such a procedure may be held only against a person indicted in a criminal procedure. However, it is not necessary for the person to be convicted for the public prosecutor to succeed. The public prosecutor may file the lawsuit after receiving a notification from the CPC that a case of a disproportionate growth of one's assets has been ascertained.

In the past five years, the CPC has conducted six cases of disproportionate growth. Two cases ended with courts of law confiscating the defendant's assets.

Although there were a few cases where illegal enrichment was ascertained in practice, the asset declaration system was a cornerstone in those cases. The above demonstrates that the Slovenian legal framework enables the monitoring of public officials' wealth to a certain extent and facilitates the identification and prosecution of illicit enrichment.

#### *g) Accountability and enforcement mechanisms*

A person under the obligation to declare assets is liable for the offence if he/she fails to provide the necessary data or provides false data in the declaration or its supplements. If on the basis of data on assets or other information, the CPC finds that, since the last declaration, the assets of the person under obligation have increased disproportionately compared to his/her income derived from the performance of his/her duties of office or an activity in accordance with the provisions and restrictions laid down in the IPCA and other acts, or that the value of the person's actual assets, which is the basis for the assessment of tax liabilities, considerably exceeds the declared value of the person's assets, it shall invite the person to explain the increase in assets or the difference between the actual value and the declared value of assets by no later than within 15 days. If the person fails to explain the increase in assets or the difference between the actual value and the declared value of assets, or fails to do so in a comprehensible manner, the CPC shall notify the body in which the person concerned holds office or the body responsible for the election or appointment of the person concerned, and, in the event of a suspicion held that other violations are being committed, it shall also notify other competent authorities (para. 1 and 2 of art. 45, IPCA).

If the CPC finds that the person has not provided data on his/her office, activities, assets or income in accordance with the IPCA, it shall invite the person to submit the data required within a time limit that may not be shorter than 15 days or longer than 30 days in duration. If the person fails to submit the required data within this time limit, the CPC shall decide that this person's salary or salary compensation should be reduced by ten percent each month after the expiry of the time limit, but to no less than the minimum salary level. This decision shall be implemented by the employer (para. 1 and 2 of art. 44, IPCA).

Liability for offence:

A fine of between €400 and €1,200 shall be imposed on an individual who:

- fails to communicate information on his/her assets to the CPC (point 11 of para. 1 of art. 77, IPCA), or
- fails to provide the necessary data, or provides false data, in the declaration of assets referred to in articles 42 and 43 of the IPCA or its supplements (point 12 of para. 1 of art. 77, IPCA).

Administrative measures based on a previously conducted procedure to decide an administrative matter pursuant to the act governing general administrative procedures are as follows:



- reduction of the salary or compensation of a person under the obligation for his/her failure to provide data on his/her offices, activities, assets or income in compliance with the law (art. 44, IPCA).

The number of minor offence decisions is shown in the table below:

Year	2012	2013	2014	2015	2016
<b>Number of minor offence decisions</b>					
failure to disclose	2	44	6	24	262
disclosing incomplete or inaccurate information	1	8	3	6	3
failure to submit a list of persons with obligations to the CPC	/	2	/	/	/
<b>Number of warnings</b>					
failure to disclose	/	3	14	9	79
disclosing incomplete or inaccurate information	/	1	/	3	24
failure to submit a list of persons with obligations to the CPC	/	/	/	/	/

#### *h) Provision of advisory services/advice on assets declaration*

By contacting the CPC via telephone during business hours (every Tuesday and Thursday), persons under the obligation to declare assets can obtain advice on rules and expected conduct. Legal opinion will be issued by the CPC and is also available on the CPC's website. Persons under obligation can also receive relevant information by attending CPC's lectures designed for the specific needs of state bodies. The CPC will also give general lectures on the IPCA twice a year or upon request.

#### *i) The number of employees at the CPC*

At the moment of the country visit, only two persons are employed to review and verify the declaration forms. They are also responsible for conducting ad hoc checks upon the decision of the CPC.

Conflict of interest: *Please see paragraph 4 of article 7 of the Convention.*

Verification/Control: *Please see paragraph 4 of article 7 of the Convention*

Receiving gifts: Article 30 of the IPCA provides that an 'official'<sup>75</sup> may not accept gifts or other benefits in connection with the discharge of the duties of the office, the exceptions being protocol gifts and occasional gifts, which are small in value. Protocol gifts are gifts given to officials by representatives of other State bodies, other countries and international organizations and institutions on the occasions of visits, guest appearances and other occasions, and other gifts given in similar circumstances. Occasional gifts of small value are gifts given on special occasions that do not exceed €75 in value and a total value that does not exceed €150 during a particular year when they are received from the same person. Under article 31 of the IPCA, protocol gifts and occasional gifts with a value greater than €75 shall become the property of Slovenia, the local community or organization in which the official holds office.

### **Integrity and Prevention of Corruption Act**

#### Article 30 (Prohibition and restrictions with regard to the acceptance of gifts by officials)

*(1) An official may not accept gifts or other benefits (hereinafter: gifts) in connection with the discharge of*

<sup>75</sup> As defined in article 4 of IPCA.

*the duties of the office, the exceptions being protocol gifts and occasional gifts which are small in value.*

*(2) Protocol gifts are gifts given to officials by representatives of other State bodies, other countries and international organisations and institutions on the occasions of visits, guest appearances and other occasions, and other gifts given in similar circumstances.*

*(3) Occasional gifts of small value are gifts given on special occasions that do not exceed EUR 75 in value, and a total value that does not exceed EUR 150 during a particular year when they are received from the same person. In no circumstances may money, securities or precious metals be accepted as a gift of small value.*

*(4) An official may not accept gifts that have affected or might affect the objective and impartial discharge of the duties of his office, irrespective of their value.*

*(5) The prohibition and restrictions referred to in this Article shall also apply to the official's family members.*

The method of disposing of gifts and the maintenance of the list of gifts are set out in the Rules on restrictions and duties of officials related to accepting gifts (Official Gazette of the Republic of Slovenia, No. 53/10, 73/10, hereinafter: the Rules). Under article 4 of the Rules, in addition to information on the official, date of the receipt of gift and title of the gift giver, the form of notification of the receipt of a gift must also include information on the type and value of the gift, if it is a protocol or occasional gift, and if the gift has become the property of the official, the State, the local community or the body where the official serves. Article 5 of the Rules defines the method of determining the value of a gift. Under that article, the value of the gift for which the market value cannot be determined is appraised through the non-expert assessment of the official, while if the gift is of artistic or historical value, its value is determined by an expert appraisal.

With the analogous application of articles 4 and 5 of the Rules, determining the value of gifts received is important both for protocol and occasional gifts. Currently, the value limit of both categories is set at €75, beyond which the gift becomes the property of the State, the local community or the body in which the official holds office. Nevertheless, the CPC believes that for gifts given to the State, the local community or the body in which the official holds office, and for gifts which the official hands over to the State, municipality or body, the determination of value does not assist in the attainment of the aims pursued by the aforementioned provisions of the IPCA and the Rules. The reasons are that where a protocol gift is one that a lay assessment cannot determine its value, or is one of artistic or historical value, the appraisal of value requires the hiring of an expert, and hence an extra cost; where the gift is handed over to the State, the local community or the body in which the official holds office, for expediency purpose the CPC will allow a statement to be made on the form that the value cannot be determined by non-expert appraisal and that if necessary, it may be determined later through the hiring of an appropriate expert.

In 2002, the Public Employees Act (PEA) was adopted, which establishes the obligatory standards of conduct for all public employees and provides the legal foundation for the Decree on the limitations and duties imposed upon public employees with respect to receiving gifts effective in 2003. Article 100 of the PEA defines the activities and work that are not compatible with the work of public employees and the sanctions for breaches of the rules. Article 100 of the PEA defines that officials (public employees that perform public tasks within individual authorities) may not perform other activities if the activity violates the prohibition of competition or the competition clause pursuant to the law governing employment; if the performance of the activity might affect the impartiality of the performance of work; if the performance of the activity might result in the abuse of data accessible at the performance of the tasks at work, that are not accessible to the public; and if the performance of the activity is harmful to the reputation of the body. The restrictions under article 100 shall not apply to activities relating to scientific and educational work, work in associations and organizations in culture, art, sport, humanitarian activities and other similar fields, work in journalism, or membership and activities in political parties.

### **Public Employees Act**

**Article 100** (The performance of other activities and conflicts of interest)

*Please see the summary under paragraph 4 of article 7 of the Convention*

Officials<sup>76</sup> holding the positions of director-general, secretary-general, the principal of a body within a ministry, the principal of a government office, the principal of an administrative unit and the director of municipal administration (municipal secretary) may not perform any profitable activities except for activities in the field of science, research, education, art, journalism and culture. Legal entities in which officials under paragraph 5 of article 100 of the PEA, or their spouses, their lineal relatives or their collateral relatives three times removed, hold a share exceeding 20 percent, may not enter business relations with bodies in which officials work. Contracts concluded contrary to the provision of this article shall be null and void.

An official that believes a situation has arisen in which his personal interests might affect the impartiality and objectivity of the performance of his tasks, or where the circumstances of the situation might cast doubt as to his impartiality and objectivity, must, immediately or as soon as practical under the circumstances, notify the principal and act in accordance with his instructions. In such cases, the principal must ensure that the tasks are performed lawfully, impartially and objectively or must verify that the tasks were performed in such a manner.

**Slovenia provided the following examples of the implementation of the provision under review:**

The most common irregularities detected from the asset declaration forms are as follows:

- wrong electronic forms are used, or data are provided without using the electronic format;
- incorrect and/or incomplete data provided in electronic forms;
- reporting on all assets instead of only changes on assets;
- providing incorrect dates of taking up and leaving the office;
- filling out forms for registration or cancellation of a person obliged to report on assets under paragraph 5 of article 41 of the IPCA, which should be done by a state body but not the person himself/herself;
- late submission or nil submission of asset declaration forms.

In 2017, the CPC prepared statistics regarding the compliance rate for filing and the irregularities detected from asset declarations for persons assuming top executive functions for the last five years. The statistics showed:

Mandate from 10 February 2012 to 20 March 2013:

ALL VIOLATIONS IN TOTAL	28
ALL DECLARATION FORMS IN TOTAL	120
ALL VIOLATIONS IN TOTAL ACCORDING TO THE PUBLICLY ACCESSIBLE** DATA IN %	23,33%

Mandate 20.3.2013-18.9.2014

ALL VIOLATIONS IN TOTAL	33
ALL DECLARATION FORMS IN TOTAL	153
ALL VIOLATIONS IN TOTAL ACCORDING TO THE PUBLICLY ACCESSIBLE** DATA IN %	21,57%

Ongoing mandate 18.9.2014-

ALL VIOLATIONS IN TOTAL	25
ALL DECLARATION FORMS IN TOTAL	150
ALL VIOLATIONS IN TOTAL ACCORDING TO THE PUBLICLY ACCESSIBLE** DATA IN %	16,67%

*A concrete example of reviewing the information provided by the persons obliged to submit data on their assets:*

In 2012, the CPC conducted an ad hoc procedure for reviewing data submitted in asset declaration forms by heads of parliamentary groups. The process was concluded at the beginning of 2013, as a result of which two cases required hearings to be conducted before the senate of the CPC. Neither of them provided sufficient additional clarifications or responded in a sufficient manner to the allegations of reporting violations presented by the CPC. During the ad hoc procedure, the CPC also identified situations with corruption risks. After the CPC issued a final

<sup>76</sup> As defined in article 23 of PEA, public employees that perform public tasks within individual authorities.

report, the subjects of both cases started an administrative dispute and resorted to other possible legal remedies. Currently, the cases are being adjudicated before the Administrative Court.

*Statistics regarding conflicts of interest, incompatibilities and restrictions on operations are provided under paragraph 4 of article 7 of the Convention.*

*Statistics regarding receiving gifts:*

	2012	2013	2014	2015	2016
Received signal / report and opened cases on self initiation	/	3	2	/	1
Identified violations	/	/	/	/	/
Number of issued advices	14	13	11	11	8

*As regards public employees:*

The MoPA does not compile records of the number of cases in which public employees are advised on the proper management of potential or actual conflicts of interest. Usually, the state or local authority seeks advice when a particular situation occurs. The answer is then published on the website of MoPA.

***(b) Observations on the implementation of the article***

Slovenia has an asset declaration system for certain types or levels of public officials, such as senior civil servants and personnel dealing with public procurement (art. 41, IPCA). Only declaring officials are required to file the declaration, excluding their spouses and minor children. Asset declarations are to be submitted to the CPC upon taking office, a year after ceasing functions, every change in office, activities, ownership or assets that exceed €10,000, and upon request by the CPC (art. 43, IPCA).

The asset declarations are open to the public during the tenure of each official until one year after departure from the public service (art. 46, IPCA). The CPC uses random checks and target selection checks of declarations. However, Slovenia also reported that there are only two officials designated with the responsibility to verify over 1,400 declarations per year and that there are plans to introduce an automated system in the future.

Acceptance of gifts is prohibited, with exceptions for low-value protocol or occasional gifts (art. 30 of IPCA). The PEA defines and restricts activities and work of public officials that are not compatible with the public function (art. 100).

**It is recommended that Slovenia:**

- **consider extending the asset declaration system to all public officials, and their immediate family members if necessary, specifying rules and strengthening methods of verification of asset declarations, including through automated or electronic systems, and**
- **assess the effectiveness of its asset declaration system, including the revision of sanctions for non-compliance in conjunction with the financial disclosure system.**

***Paragraph 6 of article 8***

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

***(a) Summary of information relevant to reviewing the implementation of the article***

The CPC has dedicated its full effort to demonstrate the benefits of codes of conduct/ethics and to encourage various state entities to adopt them. As mentioned previously, while the Judicial Council, the State Prosecutorial Council, and the National Council had adopted codes of ethics by 2016 as per GRECO's recommendations, the relevant committee of the National Assembly remains in the drafting/discussion phase. The Government also adopted a code of conduct for government ministers and their deputies in December 2015.

Most codes of conduct emphasize the expected behaviours and actions by those to whom they apply and are relatively lenient on the disciplinary measures. Even peer-to-peer assessment is something most officials are opposed to. Therefore, if an inappropriate action taken by an official does not entail a legal consequence, the codes themselves do not serve any real purpose.

As a representative of Slovenia in GRECO, the CPC acts both as a general promoter of good practices regarding the codes of ethics and as the advisory body for any public sector entity wishing to adopt a code of ethics or amend or improve an existing one.

According to the MoPA, the Employment Relationship Act, which governs employment relationships for all persons engaged in employment in Slovenia, is directly applicable. Sanctions are to be followed and applied if disciplinary violations are found. The Employment Relationship Act provides that a worker (a public employee) is obliged to fulfil the contractual and other obligations arising from the employment relationship and has disciplinary responsibility for violating such obligations. If a public employee violates the provisions of the PEA, which set out the principles of conduct for public employees, they may be subject to extraordinary termination of their employment contract in accordance with the provisions of the Employment Relationship Act.

For breaches of the rules of conduct, including conflicts of interest, restrictions on business activities and the obligation to submit data defined by law, the corresponding provisions in the IPCA are in place as explained and provided under paragraph 4 of article 7 and paragraph 5 of article 8 of the Convention.

For public employees in state bodies and local community administrations, the PEA governs the definition of disciplinary violations and the procedures for determining disciplinary liabilities. A public employee is responsible for disciplinary violations of obligations arising from the employment relationship. One of the disciplinary violations by law is behaviour contrary to the code of ethics of public employees. Disciplinary measures (reminders and fines) are imposed for such disciplinary violations if substantiated. Disciplinary measures are imposed by the principals.

The disciplinary procedure is initiated by a principal on their own initiative or at the request of a superior, an inspector (who performs supervision over the implementation of the provisions of PEA in the public employees' system) or a representative trade union. The disciplinary procedure shall be initiated by a written order which shall be served on a public official. A representative trade union shall be informed of the initiation of the disciplinary procedure. A special appeal is not allowed against the order.

The principal shall conduct the disciplinary proceedings and make the disciplinary decisions accordingly. The principal may appoint a disciplinary committee to perform the above duties. In the disciplinary procedure, a hearing is held where the public official has the right to be heard.

An appeal to the competent employment appellate commission against the decision on disciplinary responsibility and disciplinary measure(s) is allowed.

*Information on whistle-blower protection/reporting channels etc. is provided under paragraph 4 of article 8 of the Convention.*

**Slovenia provided the following examples of the implementation of the provision under review:**

On the basis of the code of conduct alone, no public official has been sanctioned in Slovenia. Even admonitions following misconducts are rare unless they represent political disciplining<sup>77</sup>. Apart from legal indictments, intense public and/or media pressure calling for resignation would play a part on some occasions.

Following the conclusion of procedures, the CPC can adopt a principled opinion or findings on a specific case.

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<sup>77</sup> For example, the head of a political party can demand the resignation of the official in question.

However, these opinions and findings do not result in an automatic decision on the criminal offence (misdemeanor), compensation, disciplinary or any other liability of legal or natural persons.

Although the CPC cannot impose any sanctions based on its opinions and findings, it can create a deterrent effect as its decisions (opinions, findings) can be published on its website.<sup>78</sup> Upon conclusion of the procedure, the CPC can forward the case, along with all gathered evidence, to other competent authorities (Tax Administration, State Prosecutor's Office, and various inspection service units) and suggest the initiation of misdemeanour proceedings. The CPC can also notify the person's superior or head of the employing organization for their consideration of initiating other (disciplinary, labour law) proceedings.

*For more information on statistics, please refer to paragraph 4 of article 7 and paragraph 5 of article 8 of the Convention.*

Given the corruption-prevention-oriented nature of the work of the CPC, the CPC does not keep statistics on public officials who have been sanctioned nor the types of sanctions imposed on them by their superiors or other supervisory bodies.

The supervision of the Public Employees Act (PEA) is performed by the Public Sector Inspectorate. The Inspectorate is a body within the MoPA and is tasked with two kinds of inspections: Inspection of the Civil Service System and Administrative Inspection. Inspection of the Civil Service System monitors the implementation of provisions and regulations applicable to the employment relations of public employees, which covers:

- conformity of the acts on the classification<sup>79</sup> with laws and implementing regulations;
- conformity of general acts in the field of the civil service system with laws and implementing regulations;
- timeliness and regularity of issuing individual acts;
- legality of contracts of employment;
- compliance of employment with personnel plans and otherwise legal correctness of employment<sup>80</sup>;
- compliance with open competition procedures;
- legality of acts on appointment to title or position;
- assessment of working and professional qualities for promotion and transfer purposes;
- reorganization procedures;
- implementation of programmes of education, training and advanced training;
- supervision of wages in the public sector.

The Inspection of the Civil Service System acts as an internal administrative control of the operations of state authorities and local government bodies. In cases of violations, the sanctioning measures, as well as recommendations, are applied against the supervising institution but not a public employee. Disciplinary violations do not fall under the purview of the Inspection.<sup>81</sup>

#### ***(b) Observations on the implementation of the article***

For public employees in state bodies and local community administrations, disciplinary violations are defined, and procedures for pursuing liabilities are determined by the Public Employees Act (PEA). Under the PEA, public employees are subject to disciplinary liabilities in case of violations of codes of conduct. The principal takes the decision of whether a violation has occurred. In some cases, a principal can appoint a disciplinary committee to decide. The decision can be appealed before the employment appellate commission.

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<sup>78</sup> Available at: ([www.kpk-rs.si](http://www.kpk-rs.si) <<http://www.kpk-rs.si>>)

<sup>79</sup> of working posts within a public sector body or unit, which have their own conditions and rules.

<sup>80</sup> compliance with classification of working posts and other internal documents relating to employment within the public sector.

<sup>81</sup> Annual reports of the Inspectorate of Public Sector can be reached on the following web page (only in Slovene): <[http://www.mju.gov.si/si/o\\_ministrstvu/inspektorat\\_za\\_javni\\_sektor\\_organ\\_v\\_sestavi/letna\\_porocila\\_ij\\_s/](http://www.mju.gov.si/si/o_ministrstvu/inspektorat_za_javni_sektor_organ_v_sestavi/letna_porocila_ij_s/)>



## **Article 9. Public procurement and management of public finances**

### **Paragraph 1 of article 9**

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

### **(a) Summary of information relevant to reviewing the implementation of the article**

On 1 April 2016, a new Public Procurement Act<sup>82</sup> (PPA), which implemented/embodied the EU Directive 2014/24/EU and Directive 2014/25/EU, entered into force. Deriving from the anti-corruption programme, the PPA was prepared to ensure additional simplifications and broader flexibility, transparency, and efficiency of public procurement.

The PPA establishes rules on the procurement procedures for contracting authorities with respect to contracts and design contests. Under the act, the organization, development, and implementation of the public procurement system shall be based on the principle of the free movement of goods, freedom of establishment, and freedom of service provision, all of which derive from the Treaty on the Functioning of the European Union (TFEU) and the principles of economy, efficiency and effectiveness, competition among tenderers, transparency of public procurement, equal treatment of tenderers, and proportionality.

The PPA shall apply to procurements with a value net of VAT estimated to be equal to or greater than €20,000 for public supply or service contracts or design contests; €40,000 for public works contracts; and €750,000 for public service contracts for social and other specific services.

### **Public Procurement Act**

#### Article 21 (Thresholds for the application of this Act)

(1) This Act shall apply to procurements with a value net of value-added tax (hereinafter: VAT) estimated to be equal to or greater than the following thresholds:

a) in the general field:

– EUR 20,000 for public supply or service contracts or design contests;

– EUR 40,000 for public works contracts;

– EUR 750,000 for public service contracts for services listed in Annex XIV to Directive 2014/24/EU and Annex XVII to Directive 2014/25/EU (hereinafter: social and other specific services), with the exception of services which are covered by CPV code 79713000-5.

b) in the infrastructure field:

<sup>82</sup> (Official Gazette, no. 91/15; hereinafter: ZJN-3). The unofficial English version of the Public Procurement Act is available at: <[http://www.djn.mju.gov.si/resources/files/Predpisi/ZJN-3\\_ang\\_prevod.pdf](http://www.djn.mju.gov.si/resources/files/Predpisi/ZJN-3_ang_prevod.pdf)>.



- EUR 50,000 for public supply or service contracts or design contests;
- EUR 100,000 for public works contracts;
- EUR 1,000,000 for public service contracts for social and other specific services, with the exception of services which are covered by CPV code 79713000-5.

(2) As regards contracts with a value estimated to be less than the thresholds referred to in the preceding paragraph, the contracting authority shall be obliged to comply with the principles of economy, efficiency and effectiveness and the principle of transparency in accordance with this paragraph. The contracting authority shall keep a record of the awarding of these contracts which is to include an indication of the subject-matter and value of the public contract, net of VAT, and shall report information regarding these contracts in accordance with Article 106 of this Act. The contracting authority shall annually, by the last day of February, publish on its website or on the public procurement portal a list of public contracts awarded in the previous year with a value estimated to be less than the thresholds referred to in the preceding paragraph and with a value equal to or greater than EUR 10,000 net of VAT, describing the subject-matter and indicating the type of subject-matter, the value of the awarded contract net of VAT and the name of the economic operator which was awarded the contract.

#### *Public distribution of information relating to the procurement procedure*

With regard to publicity and transparency, all notices regarding public contracts with a net of VAT value equal to or greater than the values referred to above shall be published by the contracting authority on the Public Procurement Portal<sup>83</sup> and in the Official Journal of the European Union (in case of public contracts with a net of VAT value equal to or greater than €1,340,000 for public supply or service contracts and €5,186,000 for public works contracts).

The PPA also specifies (art. 52) the types of notices and the form and manner of their publication (e.g., a prior information notice or periodic indicative notice; a notice on the existence of a qualification system; a contract notice or design contest notice; a voluntary ex-ante transparency notice; a contract award notice or design contest organization notice; a notice for additional information, information on incomplete procedure or corrigendum; and a notice of modification of a contract during its term).

Contracting authorities shall draw up contract notices and send them for publication on the public procurement portal. Contract notices mentioned above shall be published in full in the Slovenian language, with a summary of the important elements of each notice also being published in other official languages of the European Union. The aforementioned contract notices may be used as a means of calling for competition in respect of all procedures (except the negotiated procedure without prior publication). No later than 30 days after the conclusion of a contract or a framework agreement, following the decision to award or conclude it, contracting authorities shall send for publication a contract award notice on the results of the procurement procedure (art. 58 of the PPA). Contracting authorities shall also publish a notice of modification of a contract during its term within 30 days of the modification of the contract and notices for additional information, information on the incomplete procedure, or corrigendum when carrying out a procurement procedure (arts. 59 and 60 of the PPA).

#### *Procedures of procurement*

When awarding public contracts, contracting authorities may, in the manner and under the conditions laid down in the PPA, apply the following procedures:

- an open procedure;
- a restricted procedure;
- a competitive dialogue;
- an innovation partnership;
- a competitive procedure with negotiation;
- a negotiated procedure with publication;
- a negotiated procedure without prior publication, and
- a low-value contract procedure.

In these procedures (except in the negotiated procedure without prior publication), the contracting authority shall

<sup>83</sup> Available at: <<https://www.enarocanje.si/>>

use a contract notice as a means of calling for competition. Each procedure is fully described in an individual article (arts. 40 - 47), including who may submit a tender, the minimum time limit for the receipt of requests or receipt of tenders, and special criteria to be fulfilled when using some specific procedures (e.g., art. 42 - Competitive dialogue), etc.

## **Public Procurement Act**

### Article 39 (Choice of procedure)

*(1) When awarding public contracts, contracting authorities may, in the manner and under the conditions laid down in this Act, apply the following procedures:*

- a) an open procedure;*
- b) a restricted procedure;*
- c) a competitive dialogue;*
- č) an innovation partnership;*
- d) a competitive procedure with negotiation;*
- e) a negotiated procedure with publication;*
- f) a negotiated procedure without prior publication;*
- g) a low-value contract procedure.*

*(2) In the procedures referred to in the preceding paragraph, except in the procedure referred to in point f) thereof, the contracting authority shall use a contract notice as a means of calling for competition in accordance with Article 56 of this Act.*

*(3) For public contracts in the infrastructure field, the following may also be used as a means of calling for competition:*

*a) a periodic indicative notice pursuant to Article 54 of this Act where the contract is awarded by a restricted procedure or a negotiated procedure with publication;*

*b) a notice on the existence of a qualification system pursuant to Article 55 of this Act where the contract is awarded by a restricted procedure, a negotiated procedure with publication, a competitive dialogue or an innovation partnership.*

*(4) In the case referred to in point a) of the preceding paragraph, economic operators having expressed their interest in participating in public procurement following the publication of the periodic indicative notice shall subsequently be invited by the contracting authority, by means of an invitation to confirm their interest in accordance with Article 62 of this Act, to confirm their interest in writing.*

*(5) If the value of the most advantageous admissible tender is equal to or greater than the threshold value beyond which the contract must be published on the public procurement portal or both on the public procurement portal and in the Official Journal of the European Union, and no appropriate call for competition has been made in the procurement procedure, even though such a call should have been made, the contracting authority shall not award a contract using this procedure but shall initiate a new procedure in accordance with the provisions of this Act as appropriate.*

### Article 40 (Open procedure)

*(1) In an open procedure, any interested economic operator may submit a tender in response to a call for competition. The tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.*

*(2) The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent for publication.*

*(3) Where the contracting authority has published a prior information notice or, in the case of procurement in the infrastructure field, a periodic indicative notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the preceding paragraph may be shortened to 15 days, provided that both of the following conditions are fulfilled:*

- a) the prior information notice or the periodic indicative notice included all the information*

*required for the contract notice, insofar as that information was available at the time of its publication; and*

*b) the prior information notice or periodic indicative notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent for publication.*

*(4) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in paragraph 2 of this Article, the contracting authority may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent for publication.*

*(5) The contracting authority may reduce by five days the time limit for receipt of tenders set out in paragraph 2 of this Article where tenders may be submitted by electronic means in accordance with paragraphs 1, 8, 9 and 10 of Article 37 of this Act.*

*(6) Notwithstanding paragraph 2 of this Article, contracting authorities may fix a shorter time limit for the receipt of tenders for contracts the estimated value of which is lower than the values referred to in paragraph 2 of Article 22 of this Act.*

#### Article 41 (Restricted procedure)

*(1) In a restricted procedure, any interested economic operator may submit a request to participate in response to a call for competition. The request shall be accompanied by the information for qualitative selection that is requested by the contracting authority.*

*(2) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was sent for publication.*

*(3) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication or, where a periodic indicative notice is used as a means of calling for competition, no less than 30 days from the date on which the invitation to confirm interest is sent to candidates. In any event, this time limit shall not be less than 15 days.*

*(4) Only those economic operators invited to do so by the contracting authority following its assessment of the information provided in the request may submit a tender. The contracting authority may limit the number of suitable candidates to be invited to submit a tender.*

*(5) The minimum time limit for receipt of tenders shall be 30 days from the date on which the invitation to tender was sent.*

*(6) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the time limit for the receipt of tenders may be set by mutual agreement between the contracting authority and the selected candidates, provided that the selected candidates have equal time to prepare and submit their tenders. In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.*

*(7) Where the contracting authority has published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in paragraph 5 of this Article may be shortened to 10 days, provided that both of the following conditions are fulfilled:*

*a) the prior information notice included all the information required for the contract notice, insofar as that information was available at the time of its publication; and*

*b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent for publication.*

*(8) The contracting authority may reduce by five days the time limit for the receipt of tenders set out in paragraph 5 of this Article where tenders may be submitted by electronic means in accordance with paragraphs 1, 8, 9 and 10 of Article 37 of this Act.*

*(9) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limits laid down in this Article, the contracting authority may fix the following time limits:*

*a) a time limit for the receipt of requests to participate which shall not be less than 15 days from*

*the date on which the contract notice was sent for publication;*

*b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent to the selected candidates.*

*(10) Notwithstanding the preceding paragraphs of this Article, the contracting authority may fix shorter time limits for the receipt of requests to participate and tenders for contracts the estimated value of which is lower than the values referred to in paragraph 2 of Article 22 of this Act.*

#### Article 42 (Competitive dialogue)

*(1) The contracting authority may use a competitive dialogue in the following cases:*

*a) with regard to works, supplies or services fulfilling one or more of the following criteria:*

*– the needs of the contracting authority cannot be met without the adaptation of readily available solutions;*

*– they include design or innovative solutions;*

*– the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity, or the legal and financial make-up or because of the risks attaching to them;*

*– the contracting authority cannot establish with sufficient precision the technical specifications with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 24 to 27 of paragraph 1 of Article 2 of this Act;*

*b) with regard to works, supplies or services where, in response to an open procedure, a restricted procedure or a low-value contract procedure, only tenders which do not comply with the procurement documents, which were received late, which have been found by the contracting authority to be abnormally low, which have been submitted by tenderers that do not have the required qualifications or whose price exceeds the contracting authority's budget have been submitted. In the cases referred to in this point, in a competitive dialogue the contracting authority shall not be required to publish a contract notice where it includes in the procedure all of the tenderers which meet the selection criteria, in respect of which there are no grounds for exclusion and which, during the prior open or restricted procedure or low-value contract procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.*

*(2) With regard to public contracts in the infrastructure field, a competitive dialogue may be used regardless of whether or not the conditions referred to in points a) or b) of the preceding paragraph are fulfilled.*

*(3) In a competitive dialogue, any economic operator may submit a request to participate in response to a contract notice or, in the case of procurement in the infrastructure field, a notice on the existence of a qualification system by accompanying their request with the information for qualitative selection that is requested by the contracting authority.*

*(4) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was sent for publication.*

*(5) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication or, where a periodic indicative notice is used as a means of calling for competition, no less than 30 days from the date on which the invitation to confirm interest is sent to candidates. In any event, this time limit shall not be less than 15 days.*

*(6) Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the dialogue. The contracting authority may limit the number of suitable candidates to be invited to participate in the dialogue. Contracts shall be awarded solely on the basis of the criterion of the best price-to-quality ratio.*

*(7) The contracting authority shall set out its needs and requirements in the contract notice and shall define these needs and requirements in that notice or in a descriptive document. At the same time and in the same documents, it shall also set out and define the chosen award criteria and set out an indicative timeframe.*

(8) *With the participants selected in accordance with the provisions of Articles 75 to 81 and Article 89 of this Act, the contracting authority shall open a dialogue the aim of which shall be to identify and define the means best suited to satisfying its needs. During this dialogue, it may discuss all aspects of the procurement with the selected participants.*

(9) *During the dialogue, the contracting authority shall ensure equality of treatment among all participants and shall not provide information in a discriminatory manner which may give some participants an advantage over others. In accordance with Article 35 of this Act, the contracting authority shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without that candidate's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the information which the contracting authority intends to forward to the other candidates.*

(10) *A competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed during a particular stage by applying the award criteria laid down in the contract notice or in the descriptive document. The contracting authority shall indicate whether it intends to use such an option in the contract notice or the descriptive document.*

(11) *The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs. Having concluded the dialogue and having so informed the participants taking part in the last stage of the dialogue, the contracting authority shall ask each of the latter to submit their final tenders on the basis of the adopted solution or solutions which were presented and specified during the dialogue. Final tenders shall contain all the elements required and necessary for the performance of the project. Those tenders may be clarified, specified and optimised by tenderers at the request of the contracting authority. Such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.*

(12) *The contracting authority shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document.*

(13) *At the request of the contracting authority, negotiations with the tenderer identified by the contracting authority as having submitted the tender presenting the best price-to-quality ratio may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract. This may not have the effect of modifying the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, and may not constitute a risk of distorting competition or causing discrimination.*

(14) *The contracting authority may specify prizes or payments to the participants in the dialogue.*

#### Article 43 (Innovation partnership)

(1) *In innovation partnerships, any economic operator may submit a request to participate in response to a contract notice or, in the case of procurement in the infrastructure field, a notice on the existence of a qualification system by accompanying their request with the information for qualitative selection that is requested by the contracting authority.*

(2) *In the procurement documents, the contracting authority shall identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to submit a request to participate in the procedure.*

(3) *The contracting authority may decide to set up the innovation partnership with one partner or with several partners which will conduct separate research and development activities.*

(4) *The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice is sent for publication.*

(5) Notwithstanding the preceding paragraph, for public contracts in the infrastructure field, the minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication. In any event, this time limit shall not be less than 15 days.

(6) Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the procedure. The contracting authority may limit the number of suitable candidates to be invited to participate in the innovation partnership.

(7) In innovation partnerships, contracts shall be awarded on the sole basis of the criterion of the best price-to-quality ratio.

(8) The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the supplies, services or works which result from the innovative development, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.

(9) The innovation partnership shall be structured in successive stages following the sequence of steps in the research and innovation process, which may include the manufacturing of the products, the provision of the services or the completion of the works. The innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of remuneration in appropriate instalments.

(10) Based on these targets, the contracting authority may decide after each stage to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts. In such a case, the contracting authority shall indicate in the procurement documents such possibilities and the conditions for their use.

(11) Unless otherwise provided for in this Article, contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, with the exception of the final tender, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

(12) During such negotiations, the contracting authority shall ensure equality of treatment among all tenderers and shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. The contracting authority shall inform all tenderers invited to participate in the next stage in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements for the public contract. Following such changes, the contracting authority shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(13) Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. The contracting authority shall indicate whether it intends to use such an option in the contract notice, the invitation to confirm interest or the procurement documents.

(14) In selecting candidates, the contracting authority shall in particular apply criteria concerning the candidates' capacity in the field of research and development and of developing and implementing innovative solutions.

(15) Only those economic operators invited by the contracting authority to do so following the assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

(16) In the procurement documents, the contracting authority shall define the arrangements relating to intellectual property rights. In accordance with Article 35 of this Act, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner without that partner's agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the information which the contracting authority intends to forward to the other partners.

(17) The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different stages, reflect the degree of innovation of the proposed solution and the

*sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of supplies, services or works may not be disproportionate in relation to the investment required for their development.*

Article 44 (Competitive procedure with negotiation)

*(1) Contracting authorities may use a competitive procedure with negotiation only in the case of procurement in the general field and only with regard to the following public contracts:*

*a) with regard to works, supplies or services fulfilling one or more of the following criteria:*

*– the needs of the contracting authority cannot be met without the adaptation of readily available solutions;*

*– they include design or innovative solutions;*

*– the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;*

*– the contracting authority cannot establish with sufficient precision the technical specifications with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 24 to 27 of paragraph 1 of Article 2 of this Act;*

*b) with regard to works, supplies or services where, in response to an open procedure or a restricted procedure or a low-value contract procedure, only tenders which do not comply with the procurement documents, which were received late, which have been found by the contracting authority to be abnormally low, which have been submitted by tenderers that do not have the required qualifications, or whose price exceeds the contracting authority's budget have been submitted. In the case referred to in this point, in a competitive procedure with negotiation, the contracting authority shall not be required to publish a contract notice where it includes in the procedure all of the tenderers which meet the selection criteria, in respect of which there are no grounds for exclusion and which, during the prior open or restricted procedure or low-value contract procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.*

*c) with regard to works, supplies and services the value of which is less than the thresholds referred to in paragraph 2 of Article 22 of this Act. (2) In competitive procedures with negotiation, any economic operator may submit a request to participate in response to a contract notice. The request shall be accompanied by the information for qualitative selection that is requested by the contracting authority.*

*(3) In the procurement documents, the contracting authority shall identify the subject matter of the procurement by providing a description of its needs and the characteristics required of the supplies, works or services to be procured and specify the contract award criteria. It shall indicate which elements of this description define the minimum requirements to be met by all tenders. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.*

*(4) The minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice was sent for publication. The minimum time limit for the receipt of initial tenders shall be 30 days from the date on which the invitation to tender was sent to candidates.*

*(5) Where the contracting authority has published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders referred to in the preceding paragraph may be shortened to 10 days, provided that the following conditions are fulfilled:*

*a) all the information required for the contract notice was available at the time of the publication and was included in the prior information notice; and*

*b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent for publication.*

*(6) The contracting authority may reduce by five days the time limit for the receipt of tenders set out in paragraph 4 of this Article where tenders may be submitted by electronic means in accordance with paragraphs 1, 8, 9 and 10 of Article 37 of this Act.*



(7) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limits laid down in this Article, the contracting authority may fix the following time limits:

a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent for publication;

b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent to the selected candidates.

(8) Notwithstanding the preceding paragraphs of this Article, the contracting authority may fix shorter time limits for the receipt of requests to participate and tenders for contracts the estimated value of which is lower than the values referred to in paragraph 2 of Article 22 of this Act.

(9) Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender. This tender shall be the basis for the subsequent negotiations. The contracting authority may limit the number of suitable candidates to be invited to submit a tender.

(10) Contracting authorities shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tenders referred to in paragraph 15 of this Article and where contracts are awarded on the basis of the initial tenders, to improve the content thereof. The minimum requirements and the award criteria shall not be subject to negotiations.

(11) The contracting authority may award contracts on the basis of the initial tenders without negotiation where it has indicated in the contract notice that it reserves the right to do so.

(12) During the negotiations, the contracting authority shall ensure equality of treatment among all tenderers and shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. All tenderers invited to the next round of negotiations shall be informed by the contracting authority in writing of any changes to the technical specifications or other procurement documents other than those setting out the minimum requirements for the public contract. Following such changes, the contracting authority shall provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(13) In accordance with Article 35 of this Act, the contracting authority shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement. Such agreement shall not take the form of a general waiver but shall be given with reference to the information which the contracting authority intends to forward to the other candidates or tenderers.

(14) A competitive procedure with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice or in another procurement document. The contracting authority shall indicate whether it intends to use this option in the contract notice or other procurement document.

(15) When the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers of the final round of negotiations and set a common deadline to submit any new or revised tenders unless it has announced the number of rounds of negotiations in the contract notice or the procurement documents or unless it is negotiating with a single candidate.

(16) After the receipt of final tenders, the contracting authority, in accordance with the provisions of Articles 75 to 81 and Article 89 of this Act, shall verify that they are in conformity with the minimum requirements and shall award the contract on the basis of the award criteria.

#### Article 45 (Negotiated procedure with publication)

(1) Contracting authorities may use a negotiated procedure with publication only for procurement in the infrastructure field.

(2) In a negotiated procedure with publication, any interested economic operator may submit a request to participate in response to a call for competition. Such a request shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

(3) *The minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at no less than 30 days from the date on which the contract notice is sent for publication or, where a periodic indicative notice is used as a means of calling for competition, no less than 30 days from the date on which the invitation to confirm interest is sent to candidates. In any event, this time limit shall not be less than 15 days.*

(4) *Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender. The contracting authority may limit the number of suitable candidates to be invited to submit a tender.*

(5) *The time limit for the receipt of tenders may be set by mutual agreement between the contracting authority and the selected candidates, provided that all selected candidates have equal time to prepare and submit their tenders. In the absence of agreement on the time limit for the receipt of tenders, the time limit shall be at least 10 days from the date on which the invitation to tender was sent.*

#### Article 46 (Negotiated procedure without prior publication)

(1) *Contracting authorities may use a negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts in any of the following cases:*

a) *where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure or a low-value contract procedure for contracts in the general field, or in response to a previously conducted procedure with publication of a call for competition by the contracting authority for contracts in the infrastructure field, provided that the initial conditions of the contract have not been substantially altered and that a report is sent by the contracting authority to the European Commission should it so request. A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents. A request for participation shall be considered not to be suitable where the economic operator concerned is to be excluded on exclusion grounds or because it does not meet the selection criteria. The total price of the final tender quoted during the negotiated procedure may not exceed the price quoted by the same tenderer in the unsuccessful public procurement procedure previously conducted;*

b) *where a contract in the infrastructure field is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, provided that the award of such a contract does not prejudice the competitive award of subsequent contracts which seek those ends;*

c) *where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:*

– *the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;*

– *competition with regard to the subject-matter of the procurement is absent for technical reasons;*

– *the protection of exclusive rights, including intellectual property rights. The contracting authority shall not use the negotiated procedure without prior publication pursuant to this point if the subject-matter of the public contract is the practical completion of a project designed by an architect in the prior public procurement procedure and if it intends to include only this architect in the negotiations;*

č) *if for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedure or competitive procedure with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting entity;*

d) *if the value of the public contract does not exceed the value beyond which a contract notice must be published in the Official Journal of the European Union, provided that the contract may be executed by a previously identified and final number of qualified tenderers and provided that all tenderers are treated equally.*

(2) *The contracting authority may only apply the exceptions set out in the second and third indents of point c) of the preceding paragraph when no reasonable alternative or substitute exists and the absence of competition is not the result of an unjustified narrowing down of the elements of the procurement.*

(3) *A negotiated procedure without prior publication may also be used for public supply contracts:*

*a) where the product involved is manufactured purely for the purpose of research, experimentation, study or development, provided that contracts awarded pursuant to this point do not include quantity production to establish commercial viability or to recover research and development costs;*

*b) for additional deliveries by an original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics, which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. In the case of contracts in the general field, the duration of such contracts and that of recurrent contracts shall not, as a general rule, exceed three years;*

*c) for supplies quoted and purchased on a commodity market;*

*č) for the purchase of supplies on particularly advantageous terms, from either a supplier which is winding up its business activities or the liquidator in an insolvency procedure, by arrangement with creditors or a similar procedure under national laws or regulations;*

*d) for bargain purchases, where it is possible to award a public supply contract in the infrastructure field by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices.*

(4) *A negotiated procedure without prior publication may be used for the following public service contracts:*

*a) for the purchase of services on particularly advantageous terms, from either a supplier which is winding up its business activities, or the liquidator in an insolvency procedure, by arrangement with creditors or a similar procedure under national laws or regulations;*

*b) where the service contract concerned follows a design contest organised in accordance with this Act, and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest. Where there is more than one winner of the design contest, all winners shall be invited to participate in the negotiated procedure without prior publication.*

(5) *A negotiated procedure without prior publication may be used for new works or services consisting of the repetition of similar works or services awarded to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with the basic project for which the original contract was awarded pursuant to a procedure in which the contracting authority published a call for competition. The basic contract shall indicate the extent of possible additional works or services and the conditions under which they will be awarded. The contracting authority shall indicate the possible use of this procedure in a call for competition for the original contract and shall take into consideration the total estimated cost of subsequent works or services in calculating the estimated value of the basic contract. For contracts in the general field, this procedure may be used only during the three years following the award of the original contract.*

(6) *The contracting authority shall indicate and explain reasons for the use of the negotiated procedure without prior publication in its documents.*

(7) *In the course of the negotiations, the contracting authority shall announce the final round of negotiations in writing in advance unless it has announced the number of rounds in the procurement documents or unless it is negotiating with a single candidate.*

(8) *In a negotiated procedure without prior publication, only those economic operators invited by the contracting authority may submit a request to participate. The request shall be accompanied by the information for qualitative selection that is requested by the contracting authority. The time limit for the submission of a request or tender shall be proportionate to the requirements of the contract and shall be set by the contracting authority.*

(9) *In the case referred to in point č) of paragraph 1 of this Article, the contracting authority may require*

*the tenderer to demonstrate the fulfilment of all the requirements of the former by means of the European Single Procurement Document (hereinafter: ESPD) or any other self-declaration. Notwithstanding Article 89 of this Act, in the case referred to in point c) of paragraph 1 of this Article, the contracting authority shall not be obliged to verify the existence and content of statements provided in the tender unless it doubts the veracity of the tenderer's statements provided in the ESPD. Notwithstanding paragraph 4 of Article 61 and paragraph 3 of Article 74 of this Act, in the case referred to in point c) of paragraph 1 of this Article, the contracting authority shall not be obliged to comply with the time limit for supplying additional information regarding specifications and all additional documents or to extend the time limit for the receipt of tenders.*

#### Article 47 (Low-value contract procedure)

*(1) The contracting authority may use a low-value contract procedure for public supply and service contracts with respect to which it is not obliged to send a contract notice to the Publications Office of the European Union, for public works contracts in the general field the value of which is equal to or greater than EUR 40,000 and lower than EUR 500,000, and for public works contracts in the infrastructure field the value of which is equal to or greater than EUR 100,000 and lower than EUR 1,000,000. In a low-value contract procedure, any economic operator may submit a tender in response to a call for competition.*

*(2) The contracting authority may also include negotiations into a low-value contract procedure. If it decides to do so it shall state that intention in the contract notice and shall conduct negotiations. Article 44 of this Act shall apply, mutatis mutandis, to the conduct of negotiations.*

*(3) In a low-value contract procedure, the contracting authority may require the tenderer to demonstrate the fulfilment of all the requirements of the contracting authority by means of an ESPD or any other self-declaration. Notwithstanding paragraph 2 of Article 89 of this Act, in the low-value contract procedure, the contracting authority shall not be obliged to verify the existence and content of statements provided in the tender unless it doubts the veracity of the tenderer's statements provided in the ESPD. Notwithstanding paragraph 4 of Article 61 and paragraph 3 of Article 74 of this Act, in the low-value contract procedure, the contracting authority shall not be obliged to comply with the time limit for supplying additional information regarding specifications and all additional documents or to extend the time limit for the receipt of tenders.*

Before launching a procurement procedure, contracting authorities may conduct market consultations to prepare the procurement and inform economic operators of their procurement plans and requirements. For this purpose, contracting authorities may conduct a technical dialogue to seek or accept advice, which may be used in the preparation of the procurement documents, provided that such advice or recommendations do not have the effect of preventing or restricting competition and do not result in a violation of the principles of equal treatment of tenderers or the transparency of public procurement. Where a candidate or tenderer or an undertaking related to a candidate or tenderer has advised the contracting authority in accordance with article 64 of the PPA or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer. (arts. 64 and 65).

Contracting authorities shall publish the procurement documents on or via the public procurement portal, except where they award contracts by the negotiated procedure without prior publication or the competitive procedure with negotiation in which they apply an exception to the publication of a contract notice in accordance with point b of paragraph 1 of article 44 of the PPA. After the expiry of the time limit for the receipt of tenders, contracting authorities shall not be allowed to amend or modify the procurement documents. The information provided by the contracting authority to economic operators on or via the procurement portal shall be deemed to be an amendment to or modification or clarification of the procurement documents if its content implies that such information is to amend or modify the procurement documents or if clarification is used to eliminate the ambiguity of information (art. 67).

The technical specifications shall be set out in the procurement documents and lay down the characteristics required of work, service or supply. These characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of their life cycle even where such factors do not form part of their material substance, provided that they are linked

to the subject-matter of the contract and are proportionate to its value and its objectives (art. 68).

Grounds for excluding an economic operator from participation in a procurement procedure are set out in the PPA, e.g., prior criminal convictions, including foreign bribery (art. 75). Objective rules and criteria could also be established for selection, which may relate to suitability to pursue the professional activity, economic and financial standing, and/or technical and professional ability (art. 76).

#### *Contract award criteria*

Contracting authorities shall base the award of public contracts on the most economically advantageous tender, which shall be identified on the basis of the price or cost, using a cost-effectiveness approach such as life cycle costing, and may include the best price-to-quality ratio, which shall be assessed on the basis of criteria relating to qualitative, environmental or social aspects linked to the subject-matter of the public contract in question. In the award of contracts for computer software development, architectural and engineering services, and translation and advisory services, contracting authorities may not use price as the sole award criterion. Contract award criteria shall be non-discriminatory, proportionate and linked to the subject matter of the contract. Award criteria shall not have the effect of conferring unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified to assess how well the tenders meet the award criteria. In cases of doubt, contracting authorities shall effectively verify the accuracy of the information and proof provided by the tenderers in respect of the award criteria. In the procurement documents, the contracting authority shall specify the relative weighting that it gives to each of the criteria chosen to determine the most economically advantageous tender, except where such a tender is identified based on price alone (art. 84).

The contracting authority shall award contracts based on established criteria after it has verified that the tender complies with the requirements and conditions set out in the contract notice and in the procurement documents, and the tender comes from a tenderer in respect of which no grounds for exclusion referred to in article 75 of the PPA apply and which meets the selection criteria. Before awarding the contract, contracting authorities shall verify the existence and content of data or other information indicated in the tender of the tenderer to which they have decided to award the contract (art. 89).

A decision shall be reached by contracting authorities no later than 90 days from the expiry of the time limit fixed for the submission of tenders and shall contain the reasons for the rejection of the tender of any unsuccessful tenderer, the characteristics and advantages of the tender selected and the name of the successful tenderer or parties to the framework agreement, the reasons for the rejection of the request to participate of any unsuccessful candidate, and in the case of negotiations or dialogues, a short description of the conduct and progress of negotiations and dialogues with tenderers. A contract award decision shall become final on the date when no legal protection can be requested against it. The contracting authority shall notify tenderers and candidates of all decisions made by publishing a signed decision on the public procurement portal. In their decisions, contracting authorities shall notify tenderers and candidates of the possibility of legal protection and specify where and within what time limit a request for legal protection can be made during the contract award procedure, and the level of the fee applicable to legal protection during the contract award procedure, the number of the transaction account to which this fee is to be paid and the reference number to be indicated in this respect, and an indication that the review request is to be accompanied with the proof of payment of the fee (art. 90).

#### *Supervision and sanctions*

The implementation of the PPA shall be supervised by the National Review Commission (NRC) as a minor offence authority. Minor offence procedures shall be conducted and decided on by an authorized official of the National Review Commission who meets the conditions laid down in the law governing minor offences and regulations adopted on the basis thereof (art. 109).

Penal provisions for contracting authorities are set out in article 111 of the PPA. According to the article, a fine shall be imposed for an offence on a legal person where this person, e.g., selects the method of determining the value of the contract for the purpose of avoiding the application of the PPA on account of a lower estimated value of the contract; awards a contract without prior execution of an appropriate procedure, except where permitted by law; fails to publish notices despite being required to do so; awards a contract or enters into a procurement contract with the tenderer to which grounds for exclusion apply; fails to observe a standstill period although required to do so; and modifies the contract during its term contrary to the PPA. A secondary sanction of exclusion from

procurement procedures, i.e., from conducting, deciding on or otherwise participating in such procedures for three years, shall be imposed under the PPA on the responsible person for committing an act that is considered an offence under the PPA. A secondary sanction of exclusion from procurement procedures shall be decided by a court in accordance with the law governing minor offences.

### *Transparency*

#### *Publication of contracts in the field of public procurement, concessions and Public-Private Partnerships on the Public Procurement portal*

In 2014, the amendment of the Access to Public Information Act (APIA)<sup>84</sup> established a legal basis for enhancing the transparency of the contracting authorities in public procurement in Slovenia. The fifth paragraph of article 10 (a) of the APIA specifies that public sector bodies bound by the APIA, which act as public procurement contractors, grantors of concessions or public partners, are obliged to publish publicly accessible information within 48 days following the award of the contract, granting of a concession, or selection of a contractor in a public-private partnership. This information shall be published on a website dedicated to electronic public procurement – the e-Public procurement portal managed by the MoPA. In May 2015, the portal was duly upgraded to allow the publication of public information extracted from the contracts.<sup>85</sup>

This legislative provision aims to increase the transparency of the use of public funds in public procurement and follow the principles established in the context of the OECD and Open Government Partnership. One of the key recommendations of the Open Government Partnership is the proactive publication of essential documents and information on public procurement on the Internet.<sup>86</sup> The Rules on Publishing Contracts in the Field of Public Procurement, Concessions and Public-Private Partnerships (“the Rules”) further specify the manner and format of the online publication of public contract information. Updated every three months, the metadata on contracts is machine-readable and available in bulk for re-use.<sup>87</sup>

#### *Other measures on transparency and prevention of corruption risks:*

The Public Procurement Directorate of the MoPA, as the authority in charge of the implementation of the national public procurement law within Slovenia, is responsible for, among others, drafting public procurement legislation, providing general non-binding written interpretations of the Slovenian Public Procurement Act, ensuring the publication of useful information on public procurement, and preparing the recommendations, guidelines and manuals for procurement practitioners in different areas (such as construction, engineer services, and IT services) and sample tender documentation.

The Government also sets up an ad hoc Task Force on Public Procurement that consists of representatives of the institutions which play critical roles in the public procurement system. The role of the dedicated Task Force is to identify key problems in public procurement procedures and design solutions at the system level.

The MoPA has been providing a telephone consultation service for public procurement practitioners twice a week. Telephone consultations aim to support contracting authorities throughout the procurement procedure, from preparing tender documentation to publishing and executing the contract. Given its usefulness to contracting authorities, the Government has decided to strengthen it by developing an enhanced help desk. The help desk enables contracting authorities to receive advice on preparing tender documentation and implementing the public procurement procedure as well as the performance of contractual provisions. This will enhance professional standards in public procurement and increase administrative capacity for implementing and applying EU rules on public procurement.

The Public Procurement Directorate of the MoPA also organized several free seminars on the PPA in different locations across Slovenia in order to prepare public officials and economic operators for all the challenges and opportunities that emerged from the new legislation seeking transparent, economical and modern procurement.

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<sup>84</sup> Official Gazette RS No. 23/14

<sup>85</sup> Please see web page: <<http://www.enarocanje.si/objavaPogodb/>>

<sup>86</sup> Available at: (<<http://www.opengovguide.com/commitments/routinely-disclose-core-classes-of-documents-and-data-about-public-contracting/>>)

<sup>87</sup> please see: <<http://www.enarocanje.si/objavaPogodb/lzvozi.aspx>>.

In order to achieve greater transparency, the PPA has also established one new obligation to regulate contracts with a value estimated less than the thresholds that would trigger the application of the new act (less than €20,000, net of VAT). As a result, the contracting authority in these cases shall be obliged to comply with the principles of economy, efficiency, effectiveness, and transparency. The contracting authority shall annually publish on its website (or on the public procurement portal) a list of public contracts awarded in the previous year with a value estimated to be less than the thresholds that would trigger the application of the new act and with a value equal to or greater than €10,000 net of VAT, describing the subject-matter of the contract and its type, the value of the awarded contract net of VAT and the name of the contractor.

In order to improve transparency, the contracting authority shall notify tenderers and candidates of the decision on the award of a contract by publishing a signed decision on the public procurement portal.

Aiming to reduce corruption risks, the PPA provides that contracting authorities shall effectively prevent, identify and remedy conflicts of interest arising in procurement procedures to avoid any distortion of competition and ensure equal treatment of all economic operators. Before awarding the contract, the person conducting the procurement procedure shall notify in writing all persons involved in the preparation of the procurement documents or in the decision-making at any stage of the procurement procedure of which the tenderer is to be awarded the contract. When the person is directly or indirectly associated with the selected tenderer in such a way that this person's relationship with the successful tenderer or its private, financial or economic interests could affect the impartial and objective performance of their contract-related tasks or cast doubt on their objectivity and impartiality, they shall, as soon as circumstances allow but no later than before the contract is awarded, notify in writing their superior or the contracting authority for which they perform activities or in any other way participate in the procurement (art. 91 of the PPA).<sup>88</sup>

For illustration, in 2015, 826 contracting authorities concluded 5,396 public procurement contracts, for which notices were published on the national public procurement portal and in the Official Journal of the European Union. Total value of contracts was €1,586,152,098.

Standard documents are available at (only in Slovene):

<http://www.djn.mju.gov.si/sistem-javnega-narocanja/vzorca-razpisna-dokumentacija>

Guidance documents are available at (only in Slovene):

<http://www.djn.mju.gov.si/sistem-javnega-narocanja/smernice>

IT solution STATIST ensures public procurement transparency (*please see para. 2 of article 5*).

#### *Review of the public procurement procedures (legal protection)*

The first official body to exercise legal protection in public procurement procedures in Slovenia (a panel of twelve non-professional members appointed by the Government) was established in 1997 in accordance with the then Public Procurement Act, which was based on (then-valid) UNCITRAL model law on public procurement. Unfortunately, this review body did not meet expectations and was dissolved by the end of 1999. Following the review of Public Procurement Procedures (1999), the present National Review Commission (NRC) was founded based on the new Act, which conferred upon the NRC the status as an independent, professional and expert institution.

The 1999 Act on the Review of Public Procurement Procedures was entirely in line with (then-in-force) EU Public Procurement Directives on procurement and remedies. Since EU directives are prepared with a view to supporting the harmonization of international standards in public procurement (taking into account the provisions of the WTO Agreement on Government Procurement, and the UN Convention Against Corruption etc.), it is considered that the Slovenian public procurement review system aligns with the standards of UNCITRAL Model Law(s) on Public Procurement.

The 2011 Act on the Legal Protection in Public Procurement Procedures (ALPPP) defines the legal status of the NRC and lays down rules governing the public procurement review procedure. Procedural rules are primarily based on the requirements laid down by Directive 2007/66/EC of the European Parliament and of the Council of

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<sup>88</sup> Statistical data are available at (only in Slovene): <<http://www.djn.mju.gov.si/sistem-javnega-narocanja/letna-porocila>>



11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (Remedies Directive). The ALPPP provides quick access to the review procedure for bidders who allege that public authorities have breached material procurement laws. Its rules aim, in particular, at improving the effectiveness of pre-contractual remedies. Besides that, the ALPPP also tackles the direct allocation (award) of contracts (“ineffectiveness” of public procurement contracts) and stipulates compensation for damages. However, it is the ordinary civil court but not the NRC, which has the jurisdiction to decide on these two issues.

### **Subparagraph 1(d) of article 9**

#### Public procurement review system in the Republic of Slovenia

*Slovenian public procurement review system was, as stated by National Review Commission for Reviewing Public Procurement Award Procedures - NRC), founded over twenty years ago, during the ninety nineties, when Slovenia was preparing for the accession to EU. During the period of aligning its legislation to the requirements of the EU, Slovenia had to reorganize its public procurement system by establishing a uniform regime that would be in line with the requirements set out in European public procurement Directives.*

#### *Status and organization of the NRC*

The ALPPP defines the NRC as a specialized, independent, and autonomous national body reviewing public procurement award procedures. Although not acting as a formal court, the NRC fulfils all the requirements of a court of law set forth in the precedent judgments of the Court of Justice of the European Union (Dorsch and Salzman cases):

- it is established by law
- it is permanent
- its jurisdiction is compulsory
- a procedure before it is inter partes
- it applies rules of law and
- it is independent (status of NRC as a “court or tribunal” within the meaning of article 267 TFEU has recently been confirmed by ECJ in (pending) case C-296/15).

The NRC (as an independent and specialized tribunal) is appointed by the National Assembly. Its primary competence is hearing complaints and deciding over disputes between contracting authorities and bidders in public procurement cases. In addition to its primary competence (i.e., deciding over disputes in public procurement), the NRC also has the power to prosecute minor offences committed in public procurement procedures.

The organization of the NRC consists of the commission (four members and a president) and (currently) twelve permanently employed consultants (all of them lawyers). A special division within the NRC is responsible for running the minor offence procedure and taking appropriate decisions if any minor offence is established. The administrative support is provided by the secretariat of the accounting and personnel division. Altogether, the NRC currently employs 24 people.

#### *Locus standi*

In most cases, tenderers who have submitted their tenders submit complaints and initiate proceedings. However, any person who has an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement has standing. This means that in some cases, even a subject who did not participate in the procurement procedure can initiate a review procedure. In any case, the aggrieved party has to prove that it has a lawful interest in the award of a contract and has to provide evidence of a real probability that it has suffered a loss because of an infringement of the procurement law.

Under certain conditions which are defined by law, a proceeding before the NRC may also be brought by so-called “representatives of the public interest”, i.e.:

- MoPA,
- The CoA,
- Slovenian Competition Protection Agency, and
- The CPC.

The NRC is not entitled to commence a review procedure on its initiative (ex-officio).

Parties filing a request for review have to pay a fee ranging from €750 (small-value procurement below the EU threshold) up to €10,000 (high-value contracts published in the Official Journal of the European Communities). The applicant has to pay the fee upon lodging its protest. A principle set out in the remedies law is that a party who causes the costs bears their payment burden. Thus, a successful complainant gets its fee reimbursed.

The “representatives of the public interest” may bring a proceeding free of the fee.

#### *Suspension of a procurement procedure*

In Slovenia, the submission of a request for review has an ex-lege suspension effect - but only as regards the possibility of concluding the contract. This means that even in a case of a pending review procedure, a contracting authority can go on (continue) with the procurement procedure (e.g., bid opening, comparison and evaluation of bids etc.). Still, it does so at its own risk. Namely, if the NRC sustains the applicant’s claim, all the contracting authority’s acts performed after the submission of the request for review automatically become void.

It should be emphasized that there is an absolute prohibition on concluding a contract during the pending review procedure. A contract concluded in breach of this prohibition is automatically void. Deciding on the nullity of the contract is under the jurisdiction of the civil court.

### **Act on Legal Protection in Public Procurement Procedures**

#### Article 6 (Legal Protection of Public Interest)

*(1) Legal protection of public interest may be exercised by representatives of the public interest referred to in the second paragraph of this Article, and under conditions defined herein.*

*(2) The following representatives of public interest may demand legal protection in a public contract award procedure:*

- The ministry, responsible for public procurement,*
- The Court of Auditors of the Republic of Slovenia,*
- The body responsible for the protection of competition, and*
- The body responsible for the prevention of corruption.*

*(3) The request for legal protection of public interest may be submitted in the pre-review procedure at any stage of the public contract award procedure, but no later than when the final decision on the awarding of the public contract is issued. When the pre-review procedure is completed, the body referred to in the previous paragraph may exercise legal protection in the review procedure.*

*(4) The request for legal protection of public interest in judicial proceedings may be submitted pursuant to Article 42 of this Act.*

#### *Review procedure*

According to the ALPPP, a review of public procurement award procedures is conducted in two separate, consecutive steps: In the first step, a disappointed bidder (applicant) has an obligation to request a review with the respective contracting authority, which then has two options:

- it can grant an applicant’s request (by rectifying the alleged mistake) or
- it can reject the request for a review as unfounded (and give written reasons thereof).

Proceedings before the NRC may be initiated only after the contracting authority’s decision on the review claim. If the contracting authority decides not to grant the applicant’s request for review (rejects it as unfounded), proceedings before the NRC will continue automatically. Namely, in such a case, the contracting authority will be obliged by law to complete the procurement file and immediately send it to the NRC.

Thus, as a rule, there is no direct submission of claims to the NRC (submission of claims to contracting authorities as the first step is always necessary). Proceedings before the NRC can only be initiated after an unsuccessful review claim before the contracting authority.

The only exception to the aforementioned rule is the so-called “silence of the contracting authority.” This means

that in case the contracting authority does not decide over the applicant's request for review in a due time limit (20 days from its receipt), the aggrieved bidder can proceed with the review procedure directly before NRC. In such a case, the NRC will immediately request the procurement file from the respective contracting authority and will decide over the applicant's claim as if its request for review was denied (i.e., the inactivity of a contracting authority generates a legal presumption that the applicant's claim is denied). In practice, such cases are very rare.

## **Act on Legal Protection in Public Procurement Procedures**

### Article 24 (Submission of Review Claim)

(1) *The review claim shall be submitted directly to the contracting authority, by registered mail or by registered mail with return receipt or by electronic means. A review claim may be submitted by electronic means, if the contracting authority disposes with an information system that allows it to receive electronic applications according to the act regulating electronic transactions and electronic signature. In such case the review claim shall be signed with a secure e-signature, verified with a qualified certificate.*

(2) *Simultaneously, the claimant shall send a copy of the review claim to the ministry, responsible for public procurement.*

(3) *The contracting authority shall, within three working days following receipt of the claim, notify tenderers who submitted their tender in the public contract award procedure of the claim.*

### *Procedures before the NRC*

As a rule, the NRC renders its decisions in a senate of three members. The senates are formed for each case separately (based upon the alphabetical order of surname initials of the Commission's members - a so-called "natural judge principle") and are not permanent.

Before arriving at its decision, the NRC may attain expert opinion on technical, economic, and other aspects relevant to the case. For this purpose, NRC uses an official list of court-sworn experts from different fields of expertise - depending on the subject matter of the particular procurement case. In accordance with the procedural rules on costs of the review procedure, the party that loses the case has to bear the costs that occurred by the engagement of the expert.

The NRC has to decide on the claim and issue its decision within 15 working days from the receipt of the claim. The time may be extended in certain cases for another 15 working days (i.e., a maximum of 30 working days). Those time limits are only instructive (not obligatory), and there are no consequences for the NRC if they are exceeded. In practice, they are often fully respected.

### *Scope & types of decisions*

The NRC decides within the limits of the request for review (i.e., it must decide on all alleged breaches stated in the review claim, but it may not go beyond those limits). In case of violation of the basic principles of public procurement (e.g., free and open competition, transparency, and equal treatment etc.), the NRC has the competence to examine all evidence considered relevant to clarify the subject matter of the claim and necessary for the adoption of a legally correct decision.

The NRC decides on a claim authoritatively. Roughly, there are two types of decisions it can adopt:

- a claim can be rejected as unsubstantiated or
- a claim can be sustained, and the procedure in question partially or entirely invalidated.

It is important to stress that the NRC only has the competence of an appellate body. This means that it can annul decisions of contracting authorities, but it cannot render a new decision on the outcome of the public procurement procedure (e.g., it may not decide on questions like who wins the contract, or whether a public procurement procedure should be continued or concluded without the award etc.).

On the other hand, the NRC is bound to give a binding instruction to a contracting authority on how to implement the procedure regarding the invalidated element(s). The NRC may also (in certain circumstances even must) demand from the contracting authority a response report on the performed procurement procedure, which was under review.

Decisions of the NRC are sent to the parties by mail. The public has access to the decisions through the Commission's website.<sup>89</sup>

A decision of the NRC is final and cannot be challenged at any court of any instance. Legal protection against the NRC's decisions is provided only through possible litigation for damages in civil courts of general jurisdiction.

### **Act on Legal Protection in Public Procurement Procedures**

#### Article 42 (Contract Nullification Proceedings):

*In accordance with the conditions of this act, nullification of the contract or individual contract awarded by the contracting authority on the basis of a framework contract or in the dynamic purchasing system (hereinafter: individual contract) may be exercised by a person with legal interest and the representative of public interest. A person who has or had an interest to be awarded a public or individual contract and who incurred or could have incurred damages due to the alleged infringement shall be deemed to have legal interest. Nullity of the contract or individual contract may be exercised by a representative of public interest if the contracting party is not the Republic of Slovenia, its body or administrative organisation within a structure which is a legal person. In such a case, nullity of a contract or individual contract is exercised by the Republic of Slovenia, represented by the Office of the Attorney-General of the Republic of Slovenia.*

#### Article 43 (Temporary Suspension and Temporary Decree):

*(1) The plaintiff may propose to suspend performance of the contract or individual contract by issuing a temporary decree or to temporarily remedy the situation.*

*(2) At the plaintiff's request, the Court shall prohibit performance of the contract or individual contract until the final decision is issued, providing the implementation of the contract or individual contract would cause damages to the plaintiff, another stakeholder or the public interest. When deciding, the Court shall, in compliance with the principle of proportionality, take into account whether the interests of the contracting authority, the successful tenderer and public interest shall be damaged.*

*(3) The plaintiff may, for reasons referred to in the previous paragraph, also request a temporary decree be issued to temporarily remedy the situation regarding the disputed contract or individual contract, providing he can demonstrate that such remedy is necessary to prevent damage which is hard to repair, particularly in long-lasting contracts and individual contracts.*

*(4) The Court shall decide on the request to issue a temporary decree within five working days of its receipt. The Court may condition the temporary decree upon the plaintiff providing security for damages which may occur to the opposite party due to its issuing.*

*(5) Parties to the judicial proceedings may lodge a complaint, within three days, against the decision referred to in the previous paragraph. The complaint shall not withhold execution of the issued temporary decree. The competent court shall decide on the complaint against the decision immediately, in any case no later than within ten working days of receipt of the complaint.*

*(6) In the complaint procedure referred to in the previous paragraph, provisions of the act regulating the litigious procedure shall apply unless they oppose the previous paragraph.*

#### Article 44 (Reasons for Contract Nullity):

*(1) A contract shall be null and void:*

*1. If it is concluded as a consequence of a criminal offence committed by the contracting authority or successful tenderer or its responsible representative;*

*2. If it is concluded without a prior public contract award procedure when the contracting authority should have carried it out in accordance with the act regulating public procurement;*

*3. If the contracting authority carried out the negotiated procedure without a prior publication of*

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<sup>89</sup> Available at: (<http://www.dkom.si/>)

*a contract notice when the conditions for this procedure were not fulfilled;*

*4. If the contracting authority, in accordance with the act regulating public procurement, carried out the negotiated procedure with a prior publication due to previously unsuccessful public contract award procedure and during the procedure did not publish a contract notice and therefore the conditions to carry out this procedure are not fulfilled,*

*5. If the contracting authority failed to publish a contract notice on the Public Procurement Portal and/or in the Official Journal of the European Union, although it should have pursuant to the act regulating public procurement,*

*6. If, notwithstanding the act regulating public procurement or this Act, the contracting authority does not take account of the grace period defined by the act regulating public procurement (hereinafter: grace period) in the public contract award procedure, provided this infringement influences the tenderer's chances to be selected as the most feasible;*

*7. If, after the submitted review claim, the contracting authority, contrary to the first paragraph of Article 17 of this Act and notwithstanding the fourth paragraph of Article 20 of this Act, concludes a contract with the successful tenderer despite the fact that during the public contract award procedure, the contracting authority committed an infringement which influences the tenderer's chances to be awarded the public contract;*

*8. If the contract, contrary to the act regulating public procurement, essentially derogates from the draft contract in the tender documentation and the contracting authority or the successful tenderer or his responsible representative or a person related to any of them, profited therefrom. A related person is deemed any person related to the contracting authority, the successful tenderer or the tenderer's responsible person by a professional or family relation in a direct family kin line or family kin steps up to the fourth level inclusively, through marriage, even in case of divorce, in cohabitation or registered same-sex civil partnership or in case of an in-law family relationship up to the third level inclusively.*

*(2) An individual contract shall be null and void:*

*- If the contracting authority, when awarding an individual contract based on a framework contract concluded with several tenderers and in which it opens competition among the contracting parties of the framework contract, acted contrary to the provisions of the act regulating public procurement, provided that the value of the individual contract equals or exceeds the threshold above which it is necessary to publish the public contract in the Official Journal of the European Union and the contracting authority failed to take account of the grace period;*

*- If the contracting authority, when awarding an individual contract in the dynamic purchasing system, acted contrary to provisions of the act regulating public procurement regarding subsequent inclusion in the dynamic purchasing system and regarding awarding an individual contract, provided that the value of the individual contract equals or exceeds the threshold above which it is necessary to publish the public contract in the Official Journal of the European Union and the contracting authority failed to take account of the grace period.*

*(3) The contract or an individual contract shall be null and void also due to reasons specified in the act regulating integrity and prevention of corruption, or other regulations.*

#### Article 45 (Maintaining Validity of the Contract):

*(1) In the case referred to in points 2 to 7 of the first and second paragraphs of the previous Article, the Court may decide that the contract remains valid despite the infringements, providing it establishes the existence of compelling reasons relating to the public, defence or security interests which require the contract to remain valid. The Court shall take into account all circumstances, such as the nature and scope of the public contract, the scope of completed contract obligations, the gravity and significance of the infringements established, and other circumstances.*

*(2) Economic interest may also be deemed compelling reasons related to the public interest requiring the contract to remain valid, but only as an exception when the consequences of contract nullity could lead to disproportionate consequences for the functioning of the state contracting authority.*

(3) *An interest not to seriously endanger, due to the contract's nullity, implementation of a wider defence or security programme essential to the security interests of the Republic of Slovenia, is deemed a compelling reason related to the public interest requiring the contract to remain valid.*

(4) *In case of the infringement referred to in point 5 of the first paragraph of the previous Article, the Court may decide that the contract remains valid if the contracting authority:*

*1. Performed:*

*- A negotiated procedure with a prior publication due to previous unsuccessful public contract award procedure and in compliance with the act regulating public procurement, did not publish a contract notice, or*

*- A negotiated procedure without a prior publication under the conditions specified in the act regulating public procurement,*

*2. Voluntarily published a notice in view of prior transparency on the Public Procurement Portal, and*

*3. Took account of the grace period.*

(5) *The Court shall also forward decisions which, due to compelling reasons of public, defence or security interest, kept the contract valid despite infringements, to the ministry of finance, laying out the compelling reasons of public, defence or security interest. The ministry of finance shall inform the European Commission (hereinafter: Commission) of these decisions on an annual basis.*

#### Article 46 (Consequences of Contract Nullity under this Act):

(1) *When the Court establishes that a contract or an individual contract is null and void or it should be null and void pursuant to Article 44 of this Act, it shall forward its proposal to initiate an administrative offence procedure referred to in point 8 of the first paragraph of Article 78 of this Act to the National Review Commission.*

(2) *If a contract or individual contract is null and void and the contracting party is unable to return to the other all that was received under such contract or individual contract due to this being impossible or the nature of contract fulfilment opposes returning, the contracting authority shall fulfil its obligations according to the act regulating contractual obligations, and moreover, immediately initiate a public contract or individual contract award procedure, unless the object of the public procurement is no longer needed or the necessary resources have been disposed with.*

#### Article 47 (Priority of Deciding):

*Cases in the judicial protection procedure referred to in this Act are urgent and Court decisions thereof are accorded priority treatment.*

#### Article 48 (Standpoint of the National Review Commission Regarding the Object of Judicial Proceedings):

*The National Review Commission shall deliver its standpoint regarding the dispute to the Court at its request and in the timeframe defined thereby.*

#### Article 49 (Remedying Damages):

(1) *Liability for damages arising from nullity of the contract or infringement of public procurement rules shall be judged according to the rules of law of obligations regarding responsibility without guilt.*

(2) *Anybody who deems they have incurred damages due to the unlawful acts of the contracting authority in the public contract award procedure may bring action against the contracting authority demanding remedy of such damages. When the contracting authority failed to carry out the public contract award procedure although it should have pursuant to the act regulating public procurement, remedying of damages may be exercised through the complaint for establishing nullity referred to in Article 42 of this Act.*

It was pointed out that the NRC can only intervene in an ongoing public procurement procedure and has no power to decide over the contracts, which have already been concluded. Thus, the NRC can interfere only before the contract has been awarded. If a decision to award a contract is challenged after the contract has been concluded

between a contracting authority and a company, the only potential remedy is a lawsuit for annulment of the contract and/or a claim for damages. As already mentioned, these types of disputes are not within the authority of the NRC but fall under the jurisdiction of ordinary civil courts.

### *Advantages and disadvantages of the system*

#### *Rapid resolution of disputes*

Due to relatively short time limits for reaching a decision in a public procurement dispute, the current legal framework allows for the rapid solution of procurement-related disputes. A contracting authority is obliged by law to render its decision on requests for review at the latest within 20 working days following the receipt of the request (art. 28(4), ALPPPP). If the contracting authority does not act within the prescribed time limit, it will be held responsible for an offense and punished by a fine of up to €100,000 (art. 78(1), ALPPPP).

The NRC also must render its decision over a dispute within the prescribed statutory time limits (15 working days from the receipt of a claim, with a possibility of an extension for another 15 working days). Although these time limits have only an instructive but not obligatory nature, these time limits are widely observed in practice (Art.37(1), ALPPPP).

Statutory regulation of time limits for the reviews demonstrates positive pressure on reviewing authorities and compels them to organize their work in a way to render their decisions in an effective and timely manner.

Timely decision-making undoubtedly contributes to the effectiveness of legal protection and serves as one of the main advantages of the NCR review mechanism compared to the regular court procedure (a dispute before a regular civil and/or administrative court can last for several years).

#### *A possibility to intervene in an ongoing procedure while preventing possible abuse*

To file a claim for review, bidders do not have to wait until an award procedure is concluded. They can request a review as early as the alleged infringement is perceived. Thus, the bidder can achieve an annulment of the award procedure before the final decision on the selection of the best tender is made.

On the other hand, if the bidder was allowed to file a claim for review at any time during the ongoing procedure, this could lead to abusive delay and jeopardize the timeliness of procurement itself. Therefore, the law requires that a review claim against a publication of tender and/or tender documents be brought before a specific deadline - not later than the deadline for submission of tenders.

Once this deadline is passed, a bidder may only claim alleged violations that had occurred in the later stages of the procurement process (e.g., opening of tenders, their comparison and evaluation, an award of the contract) (Art.25, ALPPPP). In case violations alleged by a bidder relate to the preliminary stages of the procurement process, the objections are considered late and not discussed (procedural preclusion).

#### *The system provides a final decision, which cannot be appealed before a court*

The decision of the NRC is final and cannot be appealed at any instance (art. 50, ALPPPP). Both the contracting authority and the claimant must accept the decision and act according to it.

Thus, when a decision of the NRC is rendered (and served), a dispute between parties is resolved with a final effect. Both parties must fully respect the decision. In the case of non-compliance with the decision, the contracting authority can be punished with a fine of up to €100,000. The only remedy that a bidder, not satisfied with the outcome of the review procedure before the NRC, can pursue is filing a lawsuit for annulment of the contract and/or damages before the civil court (art. 2, ALPPPP).

The above-described legal framework (finality of the NRC's decision under art. 50, ALPPPP) has been a subject of constant discussion, both in professional and laic public. Based on the NRC's experience, it was pointed out that the prevailing view is such legal regulation is appropriate and reflects the technical nature of the public procurement process. This is also the position of the Slovenian Constitutional Court.

In 2002, the Constitutional Court rendered a ruling according to which the regulation that does not permit any further legal remedies against decisions of the NRC is consistent with the Constitution, and the regulation is appropriate and proportionate. Such a regulation still guarantees judicial protection of the rights of concerned bidders in a public procurement procedure. Although this judicial protection is substantially limited (because a



concerned bidder can only file a claim for damages, which the contracting authority allegedly caused by the violation of its rights in the public procurement procedure), in the Constitutional Court's assessment, this ensures an appropriate level of judicial protection.

#### *The NRC as a minor offence authority*

In addition to its primary competence (i.e., adjudicating disputes arising from the public procurement process), the NRC also has the power to prosecute minor offences committed in public procurement procedures (Chapter X, ALPPPP). Minor offences in public procurement are prescribed by law and consist of different acts such as:

- failure to comply with deadlines for publication and submission of tenders;
- definition of a public contract in such a way that its essential elements differ from the conditions prescribed in the tender documentation;
- withdrawal from the procurement process in violation of the law;
- unlawful fragmentation of public procurement;
- awarding of a contract without implementing the public procurement procedure;
- failure to publish the public procurement notices;
- awarding a contract to an economic operator subject to exclusion;
- failure to comply with the standstill requirements;
- unauthorized amendment of the public contracts;
- failure of a selected economic operator to deliver the required information to prevent conflicts of interest to the contracting authority;
- failure of the economic operator (contractor) to provide necessary statements about payments to subcontractors when prompted by the contracting authority;
- execution of a public contract by a subcontractor lawfully rejected by the contracting authority;
- failure to conclude a public contract with the contracting authority without providing objective reasons thereof;
- provision of a false or forged statement or otherwise altered document as authentic within a submitted offer;
- failure to communicate statistical data or communication of wrong statistical data on awarded contracts; and
- failure to deliver documents or evidence to the NRC during a minor offence procedure etc.

A special division within the NRC is responsible for running the minor offence procedure and making appropriate decisions if any minor offence is established. As the NRC has no inspection powers, a minor offence procedure can commence only on an initiative (proposal) of those entitled to file such an application (proposal). In practice, a minor offence procedure before the NRC begins on two grounds. First, it follows the detection of offenses that the NRC identifies in the adjudication of a dispute. In such a case, a member of the NRC, who is reviewing the case, lodges an application. Second, a minor offence procedure can commence based on an application received by the NRC from persons who have the status of eligible applicants (MoPA, the CoA, Slovenian Competition Protection Agency, CPC, etc.) and report a minor offense detected within their line of work.

Minor offences within the competence of the NRC are mainly considered in an accelerated (“fast-track”) procedure conducted by an authorized person of the NRC. The authorized person collects evidence and issues a written decision. If all legal requirements are met, the authorized person issues a sanction prescribed by the law. The main sanction is a monetary fine (there is a spectrum of fines prescribed, and any appropriate fine on the spectrum can be pronounced). The authorized person may also issue a written warning instead of a fine (provided that the detected offence is of little significance and if the authorized person believes that a warning is sufficient given the minor nature of the offence). The authorized person’s decision (and payment order) can be challenged in court. Judicial protection claims must be lodged in due time. In such a case, the court issues a judgment by which it either rejects the claim as unjustified or upholds the claim and approves the decision of the NRC by its judgment.

In specific cases, minor offences fall within the exclusive competence of courts (“ordinary judicial procedure”). All offences for which a sanction of the exclusion of an economic operator from participating in future public procurement procedures is prescribed by law (given a significant magnitude of an offence) fall under the jurisdiction of courts. As this type of sanction can only be imposed by a court, the NRC must lodge an accusatory complaint with the competent court. In the procedure before a court, the NRC can participate in the oral hearing

and has a right to ordinary and further appeal against court decisions.

**Slovenia provided the following examples of the implementation of the provision under review:**

*Number of review procedures before the NRC*

The following table shows the number of cases treated by the NRC since the year 2000:

<b>Year</b>	<b>No. of cases treated</b>
2000	242
2001	306
2002	323
2003	363
2004	378
2005	497
2006	640
2007	362
2008	258
2009	392
2010	419
2011	537
2012	516
2013	513
2014	353
2015	330
2016	290

Numbers show a constant upward trend in received cases in the first years after the NRC's establishment. This trend reached its peak in 2006 when a course towards a decline became evident. The reason was an Amendment to the then-in-force Act on the Review of Public Procurement Procedures, which brought a drastic increase in fees that a claimant had to pay to initiate a review procedure. In addition, the Amendment introduced a procedural rule according to which a claimant, who lost its case before the NRC, had to pay an additional sum equal to the amount of the review procedures initiation fee as a reimbursement of costs of the review procedure. These amendments resulted in a drastic reduction of received review cases in 2007 and 2008.

In 2009, the downward trend changed to an upwards. This shift was mainly caused by the Slovenian Constitutional Court ruling, which removed the aforementioned obligation to pay an additional fee for the review procedure if the claimant's application was rejected. The Constitutional Court ruled that the legislator exceeded the extremes field of its discretion by such a measure and stressed that the fee could discourage bidders from seeking legal protection in the public procurement procedure, thus making the review process ineffective.

Since 2014, a significant drop in the number of cases before the NRC has been noticeable again. The reasons are most likely to be found in the changes of the Act on the Legal Protection in Public Procurement Procedures in July 2013, which introduced new procedural limitations for lodging a request for review.

The number of resolved applications for review by type of decision:

Type of decision	2016	2015
Review claim dismissed	17	31
Review claim rejected	123	145
Review claim party sustained	11	12
Review claim sustained	113	107
Procurement procedure annulled	11	11
Procurement procedure terminated	15	23
Returned to contracting authority for reconsideration	-	1
	290	330

*Common types of violations of the public procurement rules*

In the phase preceding the decision of the contracting authority to award a contract: unlawfully restrictive selection criteria (discriminatory and/or disproportionate criteria for qualifications of bidders), poorly defined subject matter of the contract (subject matter is not sufficiently defined, or technical requirements are unclear, discriminatory or disproportionate)

In the phase after the decision of the contracting authority to award a contract (appellant challenges a decision of a contracting authority to award a contract to their competitor or a decision to exclude the appellant’s offer from the procurement procedure): inadequate reference (past performance information), failure to comply with the requirements regarding the staff that will be involved in the execution of the contract, inadequacies concerning the submitted financial insurances (bank guarantees, etc.), unsettled liabilities to subcontractors, blocked accounts, bankruptcies, errors in the tender price and calculation errors, etc.

*Efficiency*

The NRC has been repeatedly recognized as one of the most effective public procurement review bodies in the EU. The NRC takes its decisions in public procurement disputes within the time limits significantly shorter than its counterparts in the EU. As can be seen from the graphs below, the time for resolving a dispute in Slovenia is the shortest among all EU Member States. Effective and rapid solution of the dispute is particularly important in the pre-contractual phase when it is still possible to prevent the consequences of violations, which could occur later in the execution of a particular public procurement procedure.

Time needed to resolve cases in which public procurement rules applied\* (in days)  
 source: pilot study<sup>24</sup>

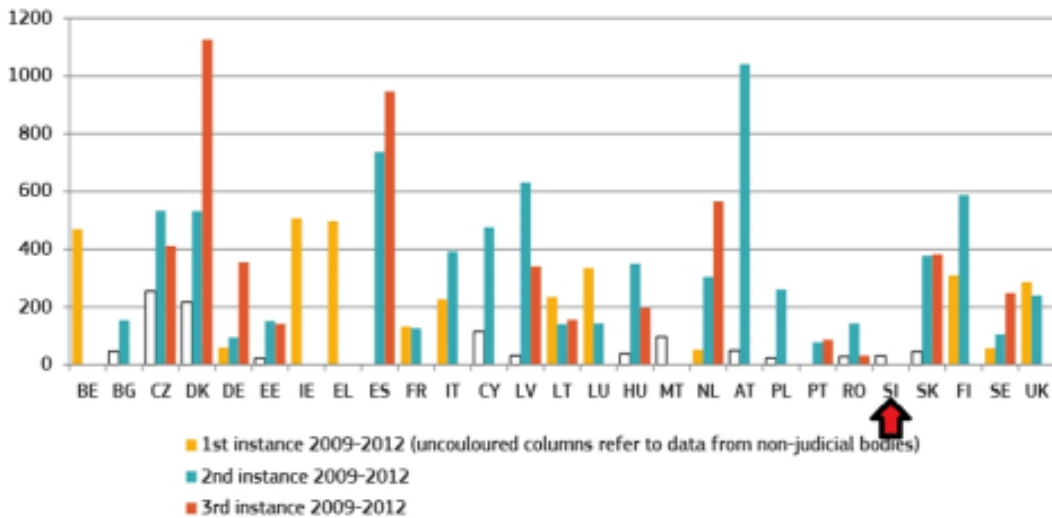
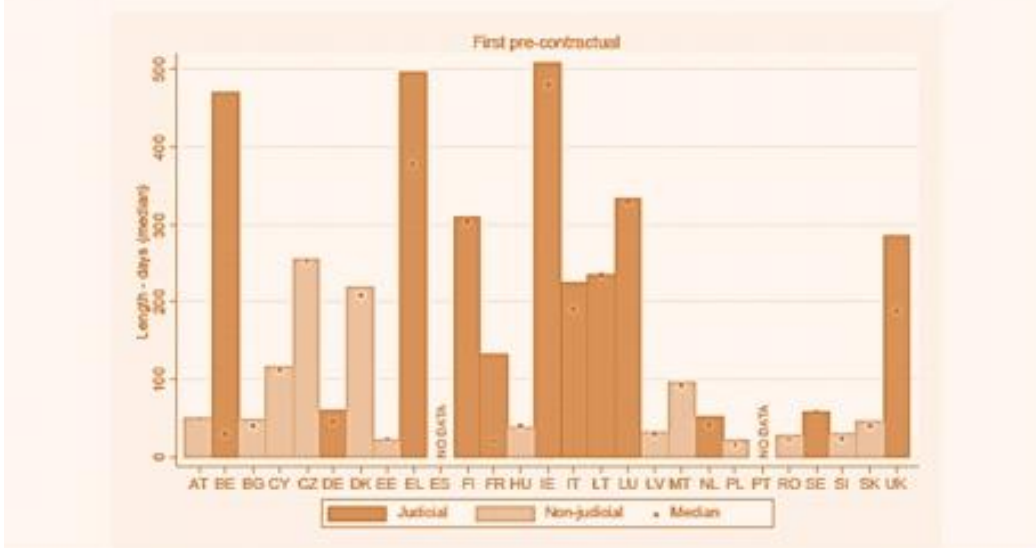


Figure 6.7: Estimated length of the review (pre-contractual remedies 2009-2012)



**(b) Observations on the implementation of the article**

Public procurement in Slovenia is decentralized and regulated by the Public Procurement Act, which transposed relevant European Union directives. The PPA is applied to procurement above a certain threshold (art. 21), which provides for diverse procurement methods, including competitive procedure (art. 39). Each method has clear rules on participation conditions and notification timeframes (arts. 40-47, PPA). It is mandatory to publish invitations for tenders regarding public contracts on the public procurement portal, except in negotiated procedures without prior publication (art.39, PPA). Contracts are awarded to the most economically advantageous tender. In lower-value procurement, the contracting authority is required to keep a record and publish the awards (art. 21, PPA).

The National Review Commission (NRC) is a specialized, independent, autonomous body assigned to review public procurement award procedures. According to the Act on the Legal Protection in Public Procurement Procedures, an aggrieved party must request a review by the contracting authority before resorting to the NRC (art. 24). The latter's decision, having a suspensive effect on the procurement process, is final and cannot be challenged except for civil damages (art. 49) or the contract's voidability (arts. 42-48).

## **Paragraph 2 of article 9**

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, *inter alia*:

- (a) Procedures for the adoption of the national budget;
- (b) Timely reporting on revenue and expenditure;
- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### *Procedures for the adoption of the national budget*

The basic provisions for the budgetary process are determined in the Constitution (arts. 148 and 149).

#### Article 148

*All revenues and expenditures of the state and local communities for the financing of public spending must be included in their budgets. If a budget has not been adopted by the first day it is due to come into force, the beneficiaries financed by the budget are temporarily financed in accordance with the previous budget.*

#### Article 149

*“State borrowings and guarantees by the state for loans are only permitted on the basis of law.”*

The Public Finance Act (PFA) sets detailed rules on the budgetary process. The PFA determines the composition, preparation, and execution of the state budget, asset management, borrowing, guarantees, debt management, accounting and budgetary control. The act stipulates that the Government is accountable to the National Assembly for executing the budget.

The PFA provides that the Government submits to the National Assembly a budget proposal for two consecutive years (arts.13 and 13a). At the same time, the Government can suggest changes to the budget for the second year until 1 October of the first year if such changes are required due to changes in economic development or fiscal policy.<sup>90</sup>

### **Public Finance Act**

#### Article 13 (Proposed Central and Local Government Budgets):

(1) *The Government shall submit to the National Assembly the following:*

1. *Budget memorandum;*
2. *Proposed central government budget with explanation;*

<sup>90</sup> Rules of Procedure of the National Assembly (The National Assembly of Slovenia Rules of Procedure, Chapter 3. Procedure for adopting the state budget, the supplementary state budget, the changes to the state budget, and the annual financial statement of the state budget)

([https://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/PristojnostilnFunkcije/RulesoftheProcedureText/!ut/p/z1/04\\_Sj9CPykyssy0xPLMnMz0vMAfIjo8zinfyCTD293Q0N3MOczAw8QwJcXE0tLlwsqk31wwkpiAJKG-AAjgb6BbmhigBFIUkx/dz/d5/L2dBISEvZ0FBIS9nQSEh/](https://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/PristojnostilnFunkcije/RulesoftheProcedureText/!ut/p/z1/04_Sj9CPykyssy0xPLMnMz0vMAfIjo8zinfyCTD293Q0N3MOczAw8QwJcXE0tLlwsqk31wwkpiAJKG-AAjgb6BbmhigBFIUkx/dz/d5/L2dBISEvZ0FBIS9nQSEh/));

3. *Proposed planned sales of the central government's financial and physical assets for budgetary purposes for the subsequent year with explanation;*
4. *Proposed financial plans for the subsequent year with regard to the Health Insurance Institute of Slovenia and Retirement and Disability Pension Insurance Institute of Slovenia, both in the area of compulsory insurance, public funds and agencies founded by the central government, together with explanations; and*
5. *Proposed laws required to implement the proposed central government budget.*

*(2) Mayors shall submit to local councils the following:*

1. *Proposed local government budgets with explanations;*
2. *Planned sales of the local government's financial and physical assets for budgetary purposes for the subsequent year with explanations;*
3. *Proposed financial plans for the subsequent year with regard to public funds and agencies founded by local government, together with explanations; and*
4. *Proposed rules of local government required to implement the proposed local government budgets.*
5. *The job allocation schedules and the plans of capital purchases, together with their substantiation, shall be a constituent part of the explanation attached to proposed budgets.*

#### Article 13a

*(1) The Government shall also submit to the National Assembly, together with the proposed budget for the subsequent budgetary year, a proposed budget for the year that follows this, in which shall be submitted:*

1. *Documents from items 1, 2, 3 and 5 of the preceding Article that apply to this budget, and*
2. *Proposals of financial plans for the Health Insurance Institute of Slovenia and the Retirement and Disability Pension Insurance Institute of Slovenia, public funds and agencies established by the state for the year following the subsequent year, if these are prepared.*

*A mayor may also submit to the local council, together with the proposed budget for the subsequent budgetary year, the proposed budget for the year that follows this, but only within the mandated period of time for which the local council has been elected.*

*(2) If the budget under the preceding paragraph is accepted, the Government shall no later than 1 October of the coming year submit to the National Assembly a proposal for budgetary changes that are necessitated by significant alterations in the assumptions of economic development or the guidelines of the economic and public finances policies, for which shall be submitted:*

1. *Documents from items 1, 2, 3 and 5 of the preceding article that apply to the budgetary changes if this is necessary with regard to the type and extent of budgetary amendments or changes and*
2. *Proposals of financial plans and/or their changes for the Health Insurance Institute of Slovenia and the Retirement and Disability Pension Insurance Institute of Slovenia, public funds and agencies established by the state for the subsequent year. If the local government budget under the preceding paragraph is accepted, a mayor may, within the period of time during the subsequent year prescribed under the second paragraph of Article 28 of this Act, submit changes to this budget to the local council.*

Articles 155 - 168 of the PFA set out a timetable for the budgetary process. The National Assembly must adopt a final budget within the time limits prescribed by the law to become effective from 1 January of the following year.

The budget approved by the National Assembly is publicly announced. As explained, it is possible to adopt changes in the budget for the coming year. The Government shall propose such changes if the assumptions of macroeconomic development, economic policy, and fiscal policy have changed or if the assessment of the execution of the existing budget significantly deviates from the approved budget. The changes have to be adopted by the National Assembly. It is also possible to adopt amendments to the current year's budget (i.e., budget revision). The Government should propose such amendments if new obligations have arisen, revised economic trends show an increase in spending or reduced revenues, or there is a need to implement measures to balance the budget. Throughout the budget cycle, all budgetary decisions are approved by the Government. Parliamentary

discussions on the budgetary documents (draft budget, annual accounts, mid-year report, etc.) are publicly available. Various relevant stakeholders are involved in the parliamentary debate in different committees.

*Main phases of the budget cycle and timeframe:*

Date	Year	Document	Institution
<i>Budget preparation</i>			
April	...	Draft budget Memorandum and Fiscal Framework	Government
		Decree on the Fiscal Framework	Government submits to the Parliament
June-August	...	Budget ceilings and preparation of Draft Budget	Government [preparation of financial plans of the central government direct budget users]
September	...	Draft Budget Memorandum and Draft Budget	Governmental harmonization and submission to the Parliament before 1 <sup>st</sup> October
October-November	...	Budget Memorandum and Implementation of the Republic of Slovenia's Budget Act	Parliament (parliamentary discussion) Parliament (adoption of the budget)
<i>Budget execution</i>			
July	...	Mid-year report on budget execution	Government reports to Parliament
<i>Reporting</i>			
March	...	Annual reports/accounts	Government reports to the Court of Auditor and Parliament

#### *Timely reporting on revenue and expenditure*

In July of each year, the Minister of Finance reports to the Government on the implementation of the budget in the first half of a year. Under article 63 of the PFA, the Government submits to the National Assembly a report on the implementation of the budget in the first half of a year. The report contains information on the realization of revenues and expenditures in the period of January - June and the estimated realization by the end of the year.<sup>91</sup>

The Government also reports to the National Assembly at the end of the budgetary year. Budget Users must prepare a report of their spending and submit it to the MoF.<sup>92</sup>

### **Public Finance Act**

#### Article 63 (Budget implementation reporting)

*(1) In July, the minister responsible for finance or the mayor shall report to the government or the municipal council on the implementation of the budget in the first half of the current year. The report shall include:*

- 1. a report on the realization of receipts, expenditures, surpluses or deficits, borrowing and estimates of the realization by the end of the year;*
- 2. information on the inclusion of new commitments in the budget, the transfer of earmarked funds*

<sup>91</sup> (Relevant website: [http://www.mf.gov.si/si/delovna\\_podrocja/proracun/izvrsevanje\\_proracuna/](http://www.mf.gov.si/si/delovna_podrocja/proracun/izvrsevanje_proracuna/)).

<sup>92</sup> (Relevant website: [http://www.mf.gov.si/si/delovna\\_podrocja/proracun/zakljucni\\_racun/](http://www.mf.gov.si/si/delovna_podrocja/proracun/zakljucni_racun/)).



*from the previous year's budget, the payment of outstanding commitments from previous years, the reallocation of appropriations, the change of direct users during the year, the use of appropriations of the budget reserve, guarantees issued and redeemed and recourse claims recovered from surety;*

- 3. an explanation of the major deviations from the adopted budget; and*
- 4. proposal of necessary measures.*

*(2) The Government shall submit the report referred to in the preceding paragraph to the National Assembly.*

Direct spending units (bodies and organizations of the central government and/or a local government and the local government administration) shall draw up financial statements of their financial plans and annual reports for the previous financial year and submit them to the MoF no later than 28 February of the current financial year. The MoF shall draw up the proposed financial statement of the central government budget (according to the PFA, there are also budgets of local self-governments) and submit it to the CoA no later than 31 March of the current financial year. The MoF shall submit the proposed financial statement of the central government budget together with the final report of the CoA to the Government within 30 days of the receipt of the final report from the CoA. The Government shall determine the proposed financial statement of the central government and submit it together with the final report of the CoA to the National Assembly for adoption no later than 1 October of the financial year.

The MoF publishes a monthly publication - Bulletin of Government Finance, which presents monthly, quarterly and annual data on the state budget (central government budget), local government budgets, social security funds (Pension and Health fund) and the consolidated general government budgetary accounts. Since 1999, detailed government finance data on revenues and expenditures have been compiled and published on the cash basis. Data on the state budget and the Pension and Health fund are published by the end of the current month for the previous month. Similarly, data on all local self-government budgets and consolidated general government budgetary accounts are published by the end of the current month for the previous month.<sup>93</sup>

As for the preparation and execution of the state budget, all data are available on a daily basis (available to the public according to conditions set in the APIA).

#### ***A system of accounting and auditing standards and related oversight***

*The applicable laws, regulations and procedures for the preparation and adoption of national budgets, including those that specify the type of information required as part of the submission to the legislature*

The laws, regulations and rules governing external auditing standards for the national budget and the administration of public finances:

##### *I. External control/auditing:*

The Slovenian Constitution provides that the Court of Audit (CoA) is the highest body for supervising state accounts, the state budget and all public spending in Slovenia. The Constitution further stipulates that the CoA is independent in the performance of its duties and bound by the Constitution and the law. Thus, the organization and powers of the CoA are provided by law. The Court of Audit Act (CoAA) provides that the acts with which it exercises its audit powers cannot be challenged before the courts or other state bodies. The Rules of Procedure of the Court of Audit defines in detail the manner and procedure used by the CoA to execute its audit functions. It also provides for the counselling of Budget Users by the CoA and the public nature of the work of the CoA.

Furthermore, regarding the issuance of auditing standards and manuals, article 23 of the Court of Audit Act stipulates:

*“The Court of Audit shall issue by itself or in co-operation with the Slovenian Institute of Auditors, auditing standards for reviewing the business operation of users of public funds in the Republic of Slovenia; the auditing standards shall apply to the exercise of auditing powers of the Court of Audit, including audit manuals and other professional literature important for the development of the audit*

<sup>93</sup> The publication can be found at:

[http://www.mf.gov.si/en/areas\\_of\\_work/general\\_government\\_finance/public\\_finances/bulletin\\_of\\_government\\_finance/](http://www.mf.gov.si/en/areas_of_work/general_government_finance/public_finances/bulletin_of_government_finance/).

*profession.”*

According to the special regulation issued by the President of the CoA, the CoA uses the following auditing standards:

- International Standards of Supreme Audit Institutions
- ISSAI, European Implementing Guidelines for the INTOSAI Auditing Standards and International Standards on Auditing issued by IFAC
- International Federation of Accountants.

*Examples of measures/steps taken to address problems detected:*

The Court of Audit Act provides the post-audit procedure to address problems detected in the audits (art. 29, CoAA). The post-audit procedure is introduced if any material irregularities or inefficiencies by the user of public funds have been found, and it is not stated in the audit report that appropriate measures have been taken during the audit procedure to eliminate the irregularities or inefficiencies discovered (art. 29, CoAA).

In that case, the auditee must submit to the CoA a response report. The response report must present the actions undertaken to remedy the irregularities and inefficiencies detected earlier (art. 29, CoAA). The CoA reviews the credibility of the response report. If the Court assesses that remedial actions are not satisfactory and that the public fund user has violated the obligation of operational efficiency, it issues a request for action and delivers it to an authorized body, which can take measures against the auditee. The authorized body must decide on the measures necessary and report its decision to the CoA within 30 days. If the user of public funds has committed a severe violation of the obligation of operational efficiency, the Court notifies the National Assembly (art. 29(9), CoAA). The relevant committee of the National Assembly reviews severe violations in the presence of the auditee and adopts a decree on the matter (art. 29(10), CoAA).

In cases of severe violations of the obligation of operational efficiency, or if the auditee prevents or hinders the execution of the audit, the CoA can issue a proposal for the dismissal of the responsible person and inform the media thereof (art. 29(11)(12), CoAA). If there is a suspicion of a criminal offence or a violation committed, the CoA proposes the commencement of proceedings against violations or motions for prosecution.

*Training and accreditation requirements for auditors:*

The Court of Audit Act stipulates that the CoA issues certificates for the titles of ‘State Auditor’ and ‘Certified State Auditor’ (art. 22(1)).

The ‘State Auditor’ certificate may be issued to a person who fulfils the following requirements (art. 22(2)):

1. has a university degree or four-year tertiary professional qualification with specialization or a master’s degree (second cycle of Bologna Process);
2. has at least two years of experience in the field of auditing;
3. has attained at least 30 points as in accordance with the Rules on scoring auditing achievements; and
4. has successfully passed the exam for obtaining the title ‘state auditor’, which consists of several tests in various subjects as prescribed by the education and training programme.

The title “State Auditor” can also be awarded to the candidate meeting the requirements laid down in the points from 1. to 3. of the above paragraph as well as the following requirements:

- the candidate is included in the register of certified auditors at the Slovenian Institute of Auditors and has passed the exam in the subjects ‘State Audit’ and ‘Operations of the State and Public Entities’ as prescribed by the education and training programme and has successfully defended their final paper; or
- the candidate has obtained the title ‘State Internal Auditor’ in accordance with the PFA and has passed the exam in the subject ‘State audit’ as prescribed by the education and training programme and has successfully defended their final paper. The certificate for the title of State Auditor shall be issued upon the candidate meeting all the prescribed requirements.

The 'Certified State Auditor' certificate may be issued to a person who meets the requirements referred to in Items 1 to 3 above and who has passed the examination for the title 'Certified State Auditor' (art. 22(3)).

Both certificates are public documents (art. 22(4)).

Requirements for the acquisition of the titles and conditions for the certificates are specified in detail in the general act of the CoA issued by the President of the CoA (art. 22(5)).

The auditor is required to obtain the title 'State Auditor' to be able to carry out audits independently. Requirements for obtaining the title 'State Auditor' are defined in the Rules on issuing certificates for the title 'State Auditor' and 'Certified State Auditor' issued by the President of the CoA.

The CoA organizes examinations and issues the certificates in accordance with the education and training programmes adopted by the President of the CoA. The CoA can authorize another professionally qualified organization to organize such activities to implement the training and examination.

The Court of Audit Act (arts. 16 and 17) also regulates the incompatibility of functions performed by the individuals at the CoA with any other function as well as with the implementation of certain works or activities. In addition, the Act also governs relationships not permitted among the holders of certain functions at the CoA and between those holders and the auditees.<sup>94</sup>

## **Court of Audit Act**

### Article 16 (Incompatibility of Office at the Court of Audit with Other Offices and with the Engagement in Other Work and/or Activities)

*(1) The office of Member of the Court of Audit, the office of Supreme State Auditor and the office of Secretary of the of Court of Audit (hereafter referred to as "office at the Court of Audit") shall not be compatible with:*

- 1- office in a state body, in local community bodies or in bodies of political parties or of trade unions;*
- 2- participation in the work of a state body, of a local community body or with a bearer of public authorities;*
- 3- membership in a management or supervisory body of a commercial company, public utility, trust, institution or in a cooperative;*
- 4- pursuance of any occupation or gainful activity which by law is not compatible with any public office.*

*(2) Any other office of the holder of office at the Court of Audit referred to in paragraph (1), Item 1, above shall end on the day of his/her taking office at the Court of Audit.*

*(3) Holders of office at the Court of Audit must cease pursuing their work or activity referred to in paragraph (1), Items 2, 3 and 4 above, within three months at the latest after having been appointed. Anybody who fails to do so ceases to hold office at the Court of Audit.*

*(4) Holders of office at the Court of Audit are obliged, within three months at the latest after having been appointed, to submit to the National Assembly a written statement on their income status in accordance with the Incompatibility of Holding Public Office with Profitable Activity Act (Official Gazette RS, Nos 49/92 and 50/92 – as amended).*

### Article 17 (Impermissible Relations of Holders of Office at the Court of Audit Between Themselves and with Auditees)

*(1) Holders of office at the Court of Audit shall not be related by blood in the direct line to all times removed and in the collateral line to four times removed.*

*(2) No holder of office at the Court of Audit shall be married to or living in an extramarital union with another holder of office at the Court of Audit, or be related by marriage to twice removed.*

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<sup>94</sup> Available at: <<https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/>>

*(3) No holder of office at the Court of Audit may participate in or decide on any Process of audit in cases where he/she is in business contacts with or in the direct or collateral line to inclusive four times removed related to, or married to, regardless of whether the marriage has been dissolved, or living in an extramarital union with or related by marriage to inclusive three times removed to the auditee, persons authorized by the auditee, its legal representatives, members of its governing or management bodies or persons responsible. No holder of office at the Court of Audit may participate in and decide on any Process of audit in cases where he/she had been employed with the auditee if a period of at least two years has not elapsed since the end of such employment.*

*Oversight, supervision and evaluation of the performance of auditors:*

The Court of Audit Act regulates the transparency and accountability of the audit process, the work of auditors, the performance of the CoA, and the audit process. It introduces internal control in the audit process and stipulates that the auditee has a right to objection against any audit disclosure in the proposed audit report.

In article 28 of the Court of Audit Act, the audit process is prescribed as follows:

The audit procedure begins with the formulation of a detailed audit plan, which is included in the annual work programme of the CoA. After its approval, a resolution is issued for carrying out the audit. This is followed by the performance of the audit at the auditee, followed by the issuance of a draft audit report.

Before the audit report is issued officially, the auditee shall be invited to a clearance meeting. The auditee shall receive a draft audit report as the basis for discussion. There may be several clearance meetings. The first meeting shall take place no sooner than eight days after the draft audit report is delivered to the auditee, while the last meeting shall take place no later than thirty days after the delivery of the report. Clearance meetings shall be conducted by the auditor authorized by the CoA and shall normally take place at the registered office of the auditee. At the clearance meeting, the auditee's representative may:

- (1) challenge individual disclosures in the draft audit report;
- (2) present explanations for audit disclosures.

Should the CoA acknowledge that the challenge to an audit disclosure (referred to under Item 1 above) is substantiated, such disclosure shall be excluded from the audit report. The CoA may carry out some additional audit tests before excluding any disclosure.

After clearance meetings, the auditor shall submit the draft audit report, including the auditee's comments, if any, to a competent Member or the Supreme State Auditor of the CoA. The competent Member or the Supreme State Auditor of the CoA shall review the audit report and auditee's comments and establish whether the comments are justified, whether the findings are based on documentary evidence, and whether the audit procedures have been carried out in accordance with auditing standards. Having evaluated the comments to and the findings of the audit, the competent Member or the Supreme State Auditor shall issue a proposed audit report and deliver it within 15 days after the final clearance meeting to the auditee and to the auditee's officers who were responsible in the period covered by the audit performed. In cases where no clearance meeting is necessary, the competent Member of the CoA shall issue the proposed audit report within 10 days after receiving the auditee's notification that it does not challenge any of the disclosures in the draft audit report.

The auditee and the auditee's officers can file an objection with the CoA against any audit disclosure in the proposed audit report. The time limit for filing an objection against an audit disclosure in the proposed audit report shall be eight days, and it commences on the day after the proposed audit report is delivered to the auditee or the auditee's officers.

The President of the CoA may order that the opinion of an expert of the CoA be obtained on the proposed audit report as a whole or any individual part thereof.

If an audit disclosure in the proposed audit report is challenged, or some doubt has been expressed in the opinion of the expert described in the preceding paragraph about the correctness and credibility

of the disclosure, such disclosure shall be considered disputable.

The Senate of the CoA shall decide on any disputable disclosure in the proposed audit report within 15 days following the receipt of the objection (art. 28(15)). It may decide that:

1. the disputed disclosure be excluded from the audit report;
2. the disputed disclosure be maintained in the audit report in unchanged form; or
3. the disputed disclosure be maintained in the audit report in a form defined by the Senate.

The audit report shall be delivered to (art. 28(16)):

1. the auditee;
2. the auditee's officers responsible in the period covered by the audit;
3. the National Assembly; and
4. other authorities, which in the opinion of the President of the CoA, shall be informed of the audit disclosures.

If the auditee or the auditee's officers have filed an objection against an audit disclosure in the proposed audit report, they shall, upon the delivery of the audit report, also receive a response to their objection. The Senate of the CoA determines and issues the response (art. 28(17)).

The process of the audit shall be completed by issuing an audit report. In the audit report, the CoA shall provide its opinion on the business operation of the auditee.

Both the draft audit report and the proposed audit report are confidential documents.

## *II. Internal auditing*

*The laws, regulations and rules governing internal auditing standards for the national budget and the administration of public finances:*

According to the legal framework of internal public financial control, an internal audit is a constituent part of a Budget User's public internal financial control. Its organization and operations are laid down by the PFA and secondary legislation (Rules Laying down the Policies for a Coordinated Function of Internal Financial Control System). All internal auditors are legally required to conduct their engagements for Budget Users in Slovenia in full compliance with the Guidelines for State Internal Auditing issued by the Minister of Finance based on internationally recognized internal auditing standards.

*For more information, please see the information provided under the next points.*

*Examples of measures/steps taken to address problems detected:*

Under the Guidelines for State Internal Auditing, internal audit reports directly to the head of the Budget User and at least once per year to the board. The term 'board' refers to:

- a) The entity of the individual spending unit, charged with the responsibility to oversee public spending, regularity and performance of its business operations (i.e., supervisory boards of municipalities, councils of public institutions and agencies, supervisory boards of public funds, etc.).
- b) Audit board if it is established in the case of joint internal audit service.
- c) In other cases, the term "board" refers to the head of the spending unit.

According to the legal framework on the internal control of public finance, the head of a Budget User is responsible for ensuring that the internal control system functions adequately and efficiently (art. 100(1), PFA). If the head of the Budget User does not react to internal audit recommendations, the internal audit is required to compile a "special report" and address it to the Budget Supervision Office. Under the regulations and the Guidelines for State Internal Auditing, an internal auditor must report without delay to the head of the Budget User and the Budget Supervision Office upon any suspicion of fraud or another criminal offence.

*Training and accreditation requirements for auditors:*

According to the PFA, an internal auditor of a Budget User must acquire the title "State Internal Auditor" (art. 100a(1)) or "Certified State Internal Auditor" (art. 100a(2)). The training programme, its implementation and the

issuance of certificates for both titles are the responsibilities of the MoF.

Conditions and training programmes for obtaining both titles are laid down in secondary legislation (Rules on Conditions for Obtaining the Title of State Internal Auditor and Certified State Internal Auditor). The title of “State Internal Auditor” can be issued to a person with a university degree and appropriate work experience who has successfully completed the education program to obtain the first degree of a certificate. The title “State Internal Auditor” can also be issued to a candidate who has obtained the title “State Auditor” in accordance with the Court of Audit Act and has passed the exam in the syllabus “Internal Audit Fundamentals” as a part of the prescribed training programme, and has successfully defended a thesis.

The title of “Certified State Internal Auditor” can be issued to a person with appropriate work experience in the audit field after fulfilling conditions for the first degree of certificate and having successfully completed the education programme for obtaining a second degree or certificate. The title “Certified State Internal Auditor” can also be issued to a candidate who has received the title “Certified State Auditor” in accordance with the Court of Audit Act and has passed the exam in the syllabus “Internal Audit Advanced” as a part of the prescribed training programme.

Certificates for both titles are public documents.

*Oversight, supervision and evaluation of the performance of internal auditors:*

According to the PFA (art. 101), the MoF, through its constituent body, i.e., the Budget Supervision Office (BSO), is responsible and competent for the harmonization and coordination of financial management, internal controls and internal auditing (*Please see more under the next point (2d)*).

It is responsible for designing the whole public internal control system (art. 101). The BSO, therefore, draws up proposals for guidelines for the establishment and development of internal controls and internal auditing and monitors the implementation of the regulations and guidelines referred to above by:

- (1) conducting compliance assessment of internal audit services of Budget Users based on the Guidelines for State Internal Auditing and
- (2) analyzing the declarations made by heads of Budget Users on the assessment of internal public financial control and the annual reports of internal audit services.

On the basis of this information, it issues an annual report on internal control of public finance for the Minister of Finance, the Government and the CoA.

*Effective and efficient systems of risk management and internal control:*

Article 100 of the PFA defines internal control as a system of procedures and matters to achieve the set goals and ensure that the assets are protected against loss, damage and fraud. Internal controls include a system of procedures and methods aimed at ensuring compliance with the principles of legality, transparency, efficiency, effectiveness, and economy, as well as with the purpose of controlling risk in financial management.

Every head of the Budget User must ensure internal auditing. Internal auditors carry out an audit of the operation of internal controls and the risk management system to achieve the business objectives of the respective Budget User.

The MoF, through the BSO, is responsible for developing, coordinating and verifying the functioning of the internal control of public finances and takes the following measures:

- (1) prescribes guidelines for the coordinated operation of the internal control system of public finances, and
- (2) prescribes the guidelines and methodology of internal controls and internal audits for direct and indirect Budget Users,
- (3) reviews the implementation of the guidelines, methodologies and standards and reports to the Government,
- (4) monitors and studies the findings and recommendations of internal audit services to improve financial management (internal audit) and internal controls, and reports findings to the Government and the CoA,
- (5) performs internal auditing with direct and indirect users of the state or municipal budget who are not obliged to set up their own internal audit services and have not hired an external contractor; and
- (6) certifies annual reports and coordinates or performs internal audits with direct and indirect users of the

state or municipal budget for projects co-financed by the European Union in accordance with international agreements.

*Where appropriate, corrective actions in the case of failure to comply with the requirements established in this paragraph.*

In article 104, the PFA provides that if a violation of a law, regulation or individual act, the implementation of which is being inspected, is found during the performance of inspection, the budget inspector shall have the right and the duty to:

- (1) issue a decision to establish a legal situation,
- (2) propose to the competent authority the adoption of relevant corrective measures,
- (3) propose the initiation of offense proceedings in accordance with the law, and
- (4) give a statement to the competent authorities for criminal offenses prosecuted ex officio.

In the case of irregularities, which could be eliminated with appropriate corrective measures, the inspection report shall recommend their elimination.

### **Slovenia provided the following examples and statistics on the implementation of the provision:**

*In relation to subparagraph 2 (a):*

As stated by the CoA, it issued an audit report - Efficiency of the Budget Preparation for the years 2011 and 2012, on 28 August 2012.

The MoF's website also publishes the following information:

- Budgeting: <[http://www.mf.gov.si/si/delovna\\_podrocja/proracun/priprava\\_proracuna/](http://www.mf.gov.si/si/delovna_podrocja/proracun/priprava_proracuna/)>
- Adopted Budgets: <[http://www.mf.gov.si/si/delovna\\_podrocja/proracun/sprejeti\\_proracun/](http://www.mf.gov.si/si/delovna_podrocja/proracun/sprejeti_proracun/)>

The National Assembly provides budgetary material that is publicly disclosed: <[https://www.dz-rs.si/wps/portal/Home/deloDZ/Porocevalec/GradivaDZ?search\\_query=prora%C4%8Duna\\*&search=prora%C4%8Duna](https://www.dz-rs.si/wps/portal/Home/deloDZ/Porocevalec/GradivaDZ?search_query=prora%C4%8Duna*&search=prora%C4%8Duna)>

*In relation to subparagraph 2 (b):*

It was reported that no violation was registered concerning the timeframe for the submission of the Proposal of the Annual Financial Statement of the State Budget of Slovenia, and appropriate procedures have been strictly followed.

Annual Financial Statements of the State Budget of Slovenia were adopted by the National Assembly in line with article 97 of the PFA after the CoA had issued an audit report thereon and were published in the Official Gazette of the Republic of Slovenia on the following website:

<<https://www.uradni-list.si/glasilo-uradni-list-rs>>.

Annual Financial Statements of the State Budget of Slovenia are published in the Official Gazette of the Republic of Slovenia.<sup>95</sup>

Examples on the MoF web page for:

- Execution of the budget:  
<[http://www.mf.gov.si/si/delovna\\_podrocja/proracun/izvrsevanje\\_proracuna/](http://www.mf.gov.si/si/delovna_podrocja/proracun/izvrsevanje_proracuna/)>
- Annual Financial Statements of the State Budget of Slovenia:

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<sup>95</sup> Zaključni račun proračuna Republike Slovenije za leto 2015  
Uradni list RS, št. 76/16 <<http://www.uradni-list.si/1/objava.jsp?sop=2016-01-3220>>;  
Zaključni račun proračuna Republike Slovenije za leto 2014  
Uradni list RS, št. 94/15 <<http://www.uradni-list.si/1/objava.jsp?sop=2015-01-3743>>;  
Zaključni račun proračuna Republike Slovenije za leto 2013  
Uradni list RS, št. 86/14 <<http://www.uradni-list.si/1/objava.jsp?sop=2014-01-3487>>;  
Zaključni račun proračuna Republike Slovenije za leto 2012  
Uradni list RS, št. 102/13 <<http://www.uradni-list.si/1/objava.jsp?sop=2013-01-3717>>.



[http://www.evroterm.gov.si/evrokorpus/svez\\_slovar4.php?beseda=%22annual%20financial%20statement%20of%20the%20state%20budget%22&jezik=slov&drugi=E](http://www.evroterm.gov.si/evrokorpus/svez_slovar4.php?beseda=%22annual%20financial%20statement%20of%20the%20state%20budget%22&jezik=slov&drugi=E)

[http://www.mf.gov.si/si/delovna\\_podrocja/proracun/zakljucni\\_racun/](http://www.mf.gov.si/si/delovna_podrocja/proracun/zakljucni_racun/)

*In relation to subparagraph 2 (c):*

In accordance with the Court of Audit Act, the CoA annually audits the regularity of the implementation of the state budget (the regularity of the operations of the state), the regularity of the operations of the public health insurance institute and the regularity of the operations of the public pension insurance institute. The CoA annually reviews the regularity of the operations of a considerable number of cities and other municipalities, commercial public service providers and non-commercial public service providers. The number is defined by the annual work programme of the CoA.

Pertaining to the aforementioned, the CoA must annually issue:

- an audit report on the proposal of the annual financial statement of the Budget of Slovenia and
- the audit report on the aggregate balance sheet of the State Budget.

The audit report on the proposal of the Annual Financial Statement of the State Budget of Slovenia for 2016 was published on the CoA's website.<sup>96</sup>

The audit report on the aggregate balance sheet of the State Budget for 2015 is published on the CoA's website.<sup>97</sup>

*Training and accreditation requirements for accountants:*

Most authorized accountants for state direct Budget Users have obtained their certificates of certified accountants for the public sector by participating in education and passing exams at the Centre of Excellence in Finance.

*In relation to subparagraph 2 (d):*

*External reports regarding the effectiveness and efficiency of the risk management system and internal controls:*

The CoA does not carry out independent audits of the effectiveness and efficiency of risk management and internal control systems. However, an integral part of each regularity and financial audit is the assessment of the internal control system with the purpose of defining suitable audit procedures on the basis of the circumstances given and not to express an opinion on the effectiveness of internal controls.

Statistics concerning the number of reports related to suspected financial mismanagement or misconduct, including the number of follow-up investigations and their outcomes, are published in annual reports of the CoA as published on the CoA's website.<sup>98</sup>

When deciding which audits to commence, the CoA prioritizes the proposals regarding the irregularities in the operations of the users of public funds. The CoA, however, primarily aims at auditing those fields with the highest risks, respectively, the fields with the profound consequences in the case the risks occurred. By implementing audits, the CoA thus endeavours to significantly enhance the operations of the public fund users.

*In relation to subparagraph 2 (e):*

The CoA is required to impose corrective measures for irregularities and inefficiencies disclosed in every published audit report. Article 29 of the Court of Audit Act regulates the post-audit procedure.

The auditee is required to submit a response report on the implementation of the corrective measures imposed within 90 days from the completion of the initial audit in accordance with the Court of Audit Act (art. 29). Thus, the corrective measures imposed must be of such nature and content, allowing for their realization within the prescribed period. The CoA assesses the scope of implemented corrective measures in the post-audit procedure. Annual statistics on the implementation of the corrective measures imposed are shown in the annual report of the

<sup>96</sup> <http://www.rs-rs.si/rsrs/rsrs.nsf/l/K9D4701A910812202C125816E003FB3C6?openDocument&appSource=91F2455D38551D7CC1257155004755A7>.

<sup>97</sup> Available at: [http://www.rs-rs.si/rsrs/rsrs.nsf/l/K151A2E62BD3E3472C125803E00400AA3/\\$file/ZBS15.pdf](http://www.rs-rs.si/rsrs/rsrs.nsf/l/K151A2E62BD3E3472C125803E00400AA3/$file/ZBS15.pdf).

<sup>98</sup> Available at: <http://www.rs-rs.si/rsrs/rsrs.nsf/l/K86546B35F636AAC1C1257155004B3D11>.

CoA in the chapter on its work and activities. All annual reports of the CoA, together with corresponding English translations of some of them, are published and publicly available on its website.

English translation of the annual report of the CoA for the year 2015 is also published and publicly available on its website.<sup>99</sup>

In the annual report for 2015, it is reported that the CoA issued 64 audit reports, of which 27 reports included a request for the submission of a response report, covering more than two-fifths (42 percent) of audited users of public funds. Compared to the years 2014 (39 percent) and 2013 (39 percent), the share increased, while in comparison to the years 2012 (44.7 percent) and 2011 (48.6 percent), the share decreased. The CoA issued 21 post-audit reports in 2015, where it assessed 112 corrective measures, of which 30 referred to the audits completed in 2014. Eighty-four measures were assessed as adequate (75 percent), six as partially adequate (20 percent), while 22 as inadequate (5 percent). Due to inadequately implemented corrective measures, the CoA issued a decision on violation of the requirement for operational efficiency in 10 post-audits reports.

In the annual report for 2015, most essential requests for corrective measures, recommendations and their implementation are presented, including the requests for corrective measures in the audit report regarding the Proposal of the Annual Financial Statement of the State Budget of Slovenia for 2014 and the regularity of the implementation of the State Budget in 2014. According to the annual report for 2015, important requests for corrective measures in that audit report were:

“In the revenue and expenditure account, there are no records of the revenue and expenditure arising from insurance operations performed for the Republic of Slovenia by the Slovene Export and Development Bank (SID Bank) based on the Slovene Export and Development Bank Act. It was established in the post-audit procedure that the amendment to the Act Governing Insurance and Financing of International Commercial Transactions provided a legal basis for future prevention of insufficient recording of transactions the SID Bank implements on behalf and for the account of the Republic of Slovenia, which would preclude further non-compliance with the regulations. Regardless thereof, the CoA assessed in its audit report that the provision of legal bases for inadequate accounting guidelines (in terms of completeness of presentation/disclosure) as foreseen in the amendment to the Act Governing Insurance and Financing of International Commercial Transactions decreases the information value of budgetary accounts. Contrary to the Slovenian Sovereign Holding Act, the funds from the purchase price for the company Aerodrom Ljubljana, d. d. (10 percent of a purchase price) that were to be transferred to a special account of the MoF and used for the financing of a demographic reserve fund exclusively, became part of an integral budget since the Ministry failed to open a special account. The MoF failed to open a special account for the transfer of funds from purchase prices within the deadline set in the audit report as stipulated by the provision of article 79 of the new Slovenian Sovereign Holding Act (ZSDH-1). The opening of an account is foreseen for the first quarter of the year 2016. In the proposal of the Implementation of the Republic of Slovenia Budget for 2016 and 2017 Act, the MoF foresaw the provision of a legal basis for the transfer of those funds that should have been paid into the special account already in 2015 as in accordance with the provision of article 73 of the new Slovenian Sovereign Holding Act (ZSDH-1). The adoption of the proposal of the Implementation of the Republic of Slovenia Budget for 2016 and 2017 Act and the receipt of the first purchase price from the sales of capital investments in the ownership by the Republic of Slovenia will result in the situation as if the account would have been opened in 2015. The CoA assessed the presented corrective measure as partially adequate.

Financial assets and liabilities account failed to disclose transactions the Slovene Enterprise Fund implements on behalf and for the account of the Republic of Slovenia, while the disclosure of expenditure for loans granted to the concerned Fund was too high. The responsive report of the MoF did not present the foreseen arrangement of the field of financial engineering. Additionally, the proposal of the Implementation of the Republic of Slovenia Budget for the 2016 and 2017 Act has not been submitted to the Government of the Republic of Slovenia to be included in the adoption procedure. The MoF did not supplement the risk register by the examination of risks regarding the incomplete recording of revenues and expenditures in case other legal entities performed transactions on behalf and for the account of the Republic of Slovenia. This means that the MoF failed to

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<sup>99</sup> Available at: <[http://www.rs-rs.si/rsrs/rsrseng.nsf/V/K145E333A26EC8194C12580AD004F97B0/\\$file/Letno\\_2015\\_ang.pdf](http://www.rs-rs.si/rsrs/rsrseng.nsf/V/K145E333A26EC8194C12580AD004F97B0/$file/Letno_2015_ang.pdf)>.

implement the imposed corrective measure.”

The CoA annually issues approximately 65 audit reports (on different issues of management of public finances and different users of public funds) and 20 post-audit reports, which are all published and publicly available on the website of the CoA. The content of the imposed corrective measures is diverse, depending on the type of irregularity or inefficiency. For imposed corrective measures, please see the English translation of the annual reports of the CoA.

*Statistics regarding any sanctions imposed against individuals and agencies for failing to adopt corrective action within the prescribed time*

For criminal offences and allegation proposals on misdemeanour matters filed by the CoA, please see annual reports of the CoA as published on the CoA's website.<sup>100</sup>

According to the annual report for 2015, the CoA cooperated with the police and the Prosecution Service to investigate criminal offences by delivering at their request audit documentation, draft or proposed audit reports, as well as final audit reports. In 2015, the CoA filed one criminal complaint, one announcement of a suspicion of a criminal offence and two allegation proposals on misdemeanour matters. In ten cases, the CoA provided the police, the State Prosecution Service and the National Bureau of Investigation with the required information and documentation. In the case of the Eco Fund, the CoA cooperated with the police already during the audit procedure and exchanged the available information and documentation that might be useful to the Prosecution Service in detecting and prosecuting possible criminal offences.

The CoA monitors the implementation of minor offence proceedings and criminal proceedings in those cases where it filed a criminal complaint as well as allegation proposals on misdemeanour.

#### ***(b) Observations on the implementation of the article***

The procedures for deliberation and adoption of the national budget are set out in the Public Finance Act (art. 13, PFA). The national budget is prepared by the Ministry of Finance and approved by the National Assembly. The Government is required to submit reports on revenues and expenditures to the National Assembly (art. 63, PFA). The data regarding budget, revenue, and expenditure are publicly accessible.

The CoA is in charge of auditing the national accounts, State budget, and public spending, including the issuance of auditing standards. The budget supervision office is responsible for designing the public internal control system. If an error is found, the budget inspector can propose correction measures.

#### ***Paragraph 3 of article 9***

*3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

In accordance with the Act on the Provision of Payment Services to Budget Users (ZOPSPU), payments and other services for Budget Users are performed exclusively by the Public Payments Administration of the Republic of Slovenia. The Public Payments Administration also distributes public revenues to the accounts of recipients of public revenues and provides data and information on public finance payments in state and municipal budgets. It also allocates funds to the accounts of the Institute for Health insurance of Slovenia and the Pension and Disability Insurance Institute of Slovenia.

There is special Guidance for storing the data relating to payment services for Budget Users, which also includes specific procedures and retention periods. The adequacy of the implementation of the instructions is regularly

<sup>100</sup> Available at: <<http://www.rs-rs.si/rsrs/rsrs.nsf/I/K86546B35F636AAC1C1257155004B3D11>>.

checked.

The documents shall be kept in accordance with the Uniform Classification Plan and the provisions of the Archives and Archival Institutions Act of the Republic of Slovenia.

Subjects who issue invoices to Budget Users can offer their invoices only on a single-entry point (the Public Payments Administration) in an electronic form. The Public Payments Administration keeps all information on invoices for two years, while e-invoice envelopes are kept for five years.

Transparency of the use of public funds is ensured by publication of all transactions made by all Budget Users who are subject to the legal framework on free access to information. In accordance with article 10(a) of the Act on Amendments and Supplements to the Access to Public Information Act, all relevant information is published on webpages by the Public Payments Administration. The Public Payments Administration also provides data for the ERAR (former 'Supervizor') application, which is freely available on the CPC's website page and allows free insight into the use of public money.

According to a stipulation of PFA, as explained by MoF, the internal control of public finances ensures that financial management and the control system operate in accordance with the principles of legality, transparency, efficiency, effectiveness and economy. Internal auditing ensures independent verification of financial management systems and controls and provides management advice to improve their efficiency.

Internal auditing is carried out by internal auditors. The internal auditor performs audits in accordance with the code of professional ethics of internal auditors and the internal audit standards issued by the minister in charge of finance on the basis of the transitional opinion of the CoA. The internal auditor is autonomous and independent in work, particularly in the preparation of proposals for audit plans, the choice of audit methods, reporting, recommendations and monitoring of their implementation. In carrying out audits, the internal auditor has free access to the premises, documents and persons involved in the audit. Supervision over the operations/transactions involving the state budget funds as well as the inspection procedures are carried out by the Budget Supervision Office (BSO) of the MoF. The budget inspectors independently carry out the inspection and supervision tasks to which they are assigned, issue minutes, decisions and decisions in the administrative procedure and order other measures for which they are authorized. *For more information on internal auditing, please refer to paragraph 2 of article 9 of the Convention.*

The Slovenian public accounting system is regulated by the Accounting Act and secondary regulations. Matters that are not determined by the Accounting Act and secondary regulations are determined by national accounting standards.

According to the Accounting Act, all events are recorded daily in general ledgers of all Budget Users transparently. At the national level, all procedures and internal controls are implemented into a unified IT system. All corrections of data and reports are visible through the same IT system. All events are recorded in line with the unified chart of accounts. The storage and preservation of electronic records are regulated by the Accounting Act (Chapter VI). The Accounting Act also provides penalties for falsifying the government's accounting books, records, financial statements or other documents.

The Slovenian Institute of Auditors (SIA) pointed out that bookkeeping documents and accounting books must be kept in accordance with the Accounting Act (art. 30), with the minimum storage time:

Permanently:

- annual financial statements,
- final payroll calculations,
- payment lists for periods for which there are no final payroll accounts;

10 years:

- the general ledger and journal;

5 years:

- the accounting documents on the basis of which it is to be registered, - statutory documents,
- auxiliary books;

3 years:

- accounting documents of payment transactions;

2 years:

- sales and control blocks,
- auxiliary accounts and similar bookkeeping documents.

Accounting books shall be kept in accordance with the Accounting Act and Slovenian Accounting Standards. A legal person can be fined if it:

- does not keep books of account under the double-entry bookkeeping system;
- does not provide separate monitoring and presentation of the outcome of operations with the funds of public finances and other means for performing a public service from monitoring the operations with funds obtained from the sale of goods and services on the market;
- does not provide in the books of account additional information prescribed by the minister in charge of finance;
- the financial statements do not show the true and fair view of assets and liabilities, income, expenses and surplus or deficit;
- does not keep bookkeeping documents and books of account in accordance with the law; or
- does not value items in the financial statements in accordance with accounting standards;

## **Accounting Act**

### Article 30

*Book-keeping documents and books of account shall be retained pursuant to the regulations, where periods shall be as follows:*

*Permanent:*

*for annual financial statements;  
for final payroll records;  
for payroll vouchers with regard to those periods for which no final payroll records exist.*

*Ten years:*

*for general ledgers and journals.*

*Five years:*

*for book-keeping documents on the basis of which entries are made;  
for documents prescribed by law;  
for subsidiary ledgers.*

*Three years:*

*for book-keeping documents covering payment transactions.*

*Two years:*

*for sales and control slips;  
for auxiliary statements and similar book-keeping documents.*

### Article 55

*Legal persons shall be fined from SIT 100,000 to SIT 6 million for the offences of:*

*failing to lay down rules with regard to the drawing-up of book-keeping documents, the types of book-keeping documents, and responsibilities concerning the compilation, movement, inspection and retention of book-keeping documents (Article 4);*

*failing to keep their books of account according to the double-entry system pursuant to Article 6;*

*keeping their books of account in contravention of paragraph one of Article 8 of this Act;*

*failing to ensure the monitoring of operations and the evaluation of performance with regard to public funds and other funds intended for the performance of public services separately from the monitoring of transactions in funds acquired from the purchase of goods and services on the market (Article 9);*

*failing to disclose additional data prescribed by the minister responsible for finance (Article 10);  
failing to give in their financial statements a true and fair view of assets and liabilities, revenues, expenditures and surpluses and/or deficits (Article 20);*

*failing to retain book-keeping documents and books of account pursuant to Article 30 of this Act;*

*failing to value financial statement items in accordance with the accounting standards (Article 31);*

*failing to value tangible fixed assets pursuant to the provisions of this Act (Article 32);*

*failing to include tangible fixed assets within small inventories in accordance with the accounting standards;*

*failing to value foreign currencies at the Bank of Slovenia's middle exchange rate pursuant to the provisions of Article 34 of this Act;*

*failing to value precious metals and products made from them on the basis of the prices fixed by the Bank of Slovenia (Article 35);*

*failing to balance the book value of assets and liabilities with the actual value established during financial inventory-taking (Article 36);*

*failing, at the end of the fiscal year, to balance the payable and receivable accounts pursuant to the provisions of Article 37 of this Act;*

*failing to issue instructions for a financial inventory-taking (paragraph three of Article 40);*

*failing to submit annual report by the set deadline to the organisation authorised to process and publish data, to the ministry whose responsibilities cover the activities performed by the legal person in question and, if required, to the ministry responsible for finance (Article 51);*

*failing to regulate accounting tasks and organisation, as well as the rights and obligations of authorised persons, by means of accounting rules (Article 52);*

*failing to arrange internal audits (paragraph two of Article 53).*

*The responsible person of a legal person shall also be fined from SIT 10,000 to SIT 500,000 for the offences referred to in the preceding paragraph.*

### **Slovenia provided the following examples of the implementation of the provision under review:**

The Public Payments Administration provided the following information:

- 5,198,505 transactions were published in the period from 1 January 2017 to 31 March 2017;
- The Code of Conduct for Public Employees was adopted (applies to the MoF and its constituent bodies);
- Integrity plans are put in place, their implementation is monitored, and risk reports are submitted (applies to the entire MoF);
- A secure information environment and reporting only to authorized persons are provided for the execution of transactions by Budget Users.

The CoA annually reviews financial statements of the state budget - annual financial statement of the budget of Slovenia, which includes:

- revenue and expenditure accounts,
- financial assets and liabilities accounts,
- financing account and
- aggregate balance sheets of all direct Budget Users.

Within the framework of the concerned audits, the CoA examines internal controls relating to accounting records to correct the presentation of revenues and expenditures. It also examines the regularity of operations in order to

define suitable audit procedures on the basis of the given circumstances, and it does not stipulate an opinion on the effectiveness of internal controls.

Regarding all state budget annual financial statements, except for the aggregate balance sheets, the CoA has since 2010 expressed a qualified opinion. In relation to that, the CoA disclosed irregularities in the system of accounting treatment, namely of transactions in which other legal entities perform transactions on behalf and for the account of Slovenia (agency services). However, those transactions were not disclosed or recorded in the annual financial statements of the state budget, as were accounting records.

On the aggregate balance sheets of all direct Budget Users, the CoA for the third consecutive year did not express an opinion due to inappropriate accounting records. Reasons for not expressing an opinion are:

- inadequate records in the field of fixed assets (documentation on old fixed assets, mainly roads, does not exist; inadequate entries in the land register; responsible persons not taking their positions as regards the findings of inventory committees);
- incorrect evaluation of long-term investments (the value of the financial investment has to be balanced with the companies' capital with a one-year delay);
- analytical records of receivables relating to assets managed by others are kept only by the recipients of those funds, while the competent ministries do not dispose of such funds and do not exercise sufficient control thereover.

The CoA annually requires the Government and ministries to:

- make a correction, on the basis of which corrections of the financial statement of the state budget in accordance with article 97 of the PFA shall be carried out;
- implement corrective measures according to paragraph 1 of article 29 of the Court of Audit Act to prevent future errors in financial statements of the state budget.

The Government and its ministries actively cooperate with the CoA to find solutions and improvements to eliminate irregularities that were not properly recorded or disclosed. Corrections are achieved either by changing or implementing regulations or by upgrading the information system.

Activities regarding improving data and information to the aggregate balance sheet:

- Fixed assets

Older fixed assets were included in the business books of Slovenia according to documentation on the valuation of motorway sections and roads and according to the audited annual report of Slovenske železnice (a company managing and maintaining railways). Competent ministry executes (according to post auditing report for the year 2015) activities to edit and arrange proper entries in the land register. Furthermore, the MoF has all documents at its disposal from 2010 and on for all motorway and railway infrastructure.

- Long term investments

The CoA audited the aggregate balance sheet of all state direct Budget Users prepared as of 31 December 2016. Since data are based on balance sheets stated on that day, it is impossible to record and include adjustments to the capital of companies (in proportion to the total value of the capital of the company in which the state has a financial investment) in the books of account for 2016 (in accordance with paragraph 6 of article 13 of the Rules on the parsing and measurement of revenues and expenses of legal entities governed by public law (Official Gazette of the Republic of Slovenia, No. 134/03, 34/04, 13/05, 114/06 - ZUE, 138/06, 120/07, 112/09, 58 / 10, 97/12 and 100/15)). This reconciliation is carried out on 2 January in the next business year (as correction of the opening balance sheet of the current year) and on the basis of the relevant documentation (IOP Form - Situation of Equity Investments, Balance Sheet, Approved or Accepted by the Managing Authority of the Company) obtained from the Company on the state of the financial investment.

According to article 54 of the Companies Act (ZGD-1), all companies, including those in which the Republic of Slovenia owns shares, shall prepare an annual report within three months after the end of the financial year, i.e., by 31 March. According to paragraph 1 of article 57 of the Companies Act (ZGD-1), the annual reports of large and medium-sized capital companies and dual companies must be audited by an auditor in the manner and under the conditions stipulated by the law regulating the auditing. The same applies to consolidated annual reports. In



paragraph 5 of that article, however, it is stipulated that the audit of the annual report referred to in paragraph 1 the same article must be carried out not later than six months after the end of the financial year. The management must submit the audited annual report or the audited consolidated annual report to the body of the company responsible for the adoption of this report, together with the auditor's report, no later than eight days after receipt of the auditor's report. An audit is also mandatory for small equity firms that, after recognition, measure property, plant and equipment at the revalued amount or value financial instruments for which there is no published price on the regulated market, including derivatives and investment property at fair value. The publication of audit reports is carried out in accordance with article 58 of the Companies Act, that is, until 31 August.

Since the final budget account of Slovenia, of which the aggregate balance sheet is an integral part, is prepared by 31 March, Slovenia cannot ask the companies, in which it has a business share, to send it a business report without a decision of the competent body of the company regarding on the audited business report. In addition, Slovenia cannot request reports from other stakeholders, as it would violate the rule of equal treatment of all stakeholders.

- Analytical records of receivables relating to assets managed by others

In 2016, the MoF carried out some activities that helped improve the bookkeeping records and data collection (analytical records of the fixed assets) on the basis of a remedial measure presented by the Slovenian Government in its response report to the Audit Report on the Balance Sheet for 2014. Indirect Budget Users send those data to the ministries to execute control of their assets.

The MoF has prepared a new, updated form for the reconciliation of receivables and liabilities for assets under management. In the instructions for completing the form named Reconciliation of Mutual Receivables and Liabilities for Assets under Management as of 31 December 2016), the Indirect Budget Users were appointed to enter data on the total book value of intangible and tangible fixed assets in the form. In addition, they must also indicate the resources for these assets.

As some Indirect Budget Users have identified donations received as a source of financing fixed assets, the form for reconciliation and the Instructions for completing the form were expected to be updated at the moment of the country visit.<sup>101</sup>

#### ***(b) Observations on the implementation of the article***

Accounting books shall be kept in accordance with the Accounting Act and Slovenian Accounting Standards. The different lengths of storing various financial documents and penalties for falsifications of such documents are set out in the Accounting Act (arts. 30 and 55).

### ***Article 10. Public reporting***

#### ***Subparagraph (a) of article 10***

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

*(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with*

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<sup>101</sup> **Development after the country visit:** Slovenian authorities reported that due to improved monitoring of the ministries over the analytical records of fixed assets of the Indirect Budget Users, the MoF upgraded the information systems and established uniform records for all assets under management. Indirect Budget Users updated exported data on fixed assets. The ministries were given access to this information and, most importantly, gained control over such information. The mentioned allowed the ministries to confirm receivables as assets on their balance sheets.

*due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;*

**(a) Summary of information relevant to reviewing the implementation of the article**

*The pursuit of transparency and integrity in the public sector*

The MoPA is the competent ministry in the field of transparency, access to public information, and public procurement. It carries out systemic activities to achieve greater openness in the functioning of wider public sector authorities to prevent corruption risks.

The main objective is to establish a system in which the authorities act openly and transparently:

- regulations are adopted in a transparent manner,
- contracts are concluded in a transparent manner and
- the public is familiar with the use of public funds in public procurement.

All the above points are essential to ensure that the public trusts the Government in handling public affairs. This is highlighted as an important commitment in the Public Administration Development Strategy adopted by the Government in April 2015. Work transparency is one of the founding values stated in the so-called Policy of Progress and Quality of Modern Public Administration.

The Access to Public Information Act (APIA) is the key act that ensures the open and transparent functioning of public authorities. The authorities must endeavour to provide the public with as much information about their work as possible. From a systemic point of view, the so-called proactive transparency is one of the essential elements for public control of the legality of the activities of public sector authorities and their use of public funds. The 2005 amendments to the APIA are highly important from the point of view of ensuring higher transparency in the utilization of public funds. It is determined that the information on the use of public funds should always be publicly available. The 2014 amendments to the APIA broadened the scope of liable bodies to include the companies owned by the State, municipalities, and other bodies governed by public law. The 2015 amendments to the APIA implement the changes of the EU Directive of 2013 on the re-use of public sector data and oblige the authorities to be proactive in delivering the public sector information.

*General information on the regime of access to public information in Slovenia is provided under paragraph 4 of article 7 of the Convention.*

*The transparency of the work of the Government*

The Government websites that publish Government materials are intended for public groups and persons with a special interest, particularly non-governmental and other civil society organizations, which the Government seeks to involve in the process of preparing and adopting its decisions. All stakeholders involved in creating materials can, in this way, verify how the competent ministries and departments have heeded their comments, initiatives and proposals in drawing up the Government decisions. At the same time, in addition to publishing specific materials in the Government information system, the Government General Secretariat publishes the materials on its website.

In addition to their rights under the APIA, the media and journalists have the right, pursuant to the Media Act<sup>102</sup>, to request a response from public bodies for the press. The time limit for responding to a media question is seven working days (art. 45(6), Media Act). Written notification must be provided to the media by the end of the next working day after receiving the request if the response is denied (art. 45(7)). A response to a question may be denied or partly denied only if the requested information is excepted from free access under the APIA (art. 45(5)). After receiving a response, the media may also request further clarification. A commercial subject under the predominant influence is bound to communicate within three days of receiving a request for further clarification. The media and journalists have the option, pursuant to the APIA, to appeal against a complete denial or partial denial of response with the Information Commissioner (IC) if the response to their questions stems from specific regulations at public bodies.

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<sup>102</sup> (Official Gazette of the Republic of Slovenia, No. 110/06 <http://www.uradni-list.si/1/objava.jsp?sop=2006-01-4666>)

English translation is available at:

<http://www.pisrs.si/Pis.web/npbDocPdf?idPredpisa=ODLU1841&idPredpisaChng=ZAKO1608&type=doc&lang=EN>

The public and the media can also access information on the basis of the Prevention of Restriction of Competition Act,<sup>103</sup> the Constitutional Court decision on the Media act,<sup>104</sup> and the Audiovisual Media Services Act.<sup>105</sup>

*See also the answer on the IT tools for transparency and integrity, paragraph 2 of article 5 of the Convention.*

#### *Standards to protect the privacy and personal data in the disclosure of such information*

According to the Access to Public Information Act (APIA), everyone is entitled to free access to and re-use of public information as defined in the APIA. Exceptions to the free access principle are provided in articles 5.a and 6 of the APIA. According to these provisions, the body may also reject access to requested information if the request refers to personal data (art. 6, APIA), the disclosure of which would constitute an infringement of the protection of personal data in accordance with the Personal Data Protection Act (PDPA).

However, there are exceptions to this rule. Namely, access to the requested information will still be sustained if:

- a) public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information;
- b) the requested information is related to the use of public funds or information related to the execution of public functions or employment relationship of the public employee, except in cases from point 1. and points 5. to 8. of the first paragraph and in cases when the Act governing public finance and the Act governing public procurement stipulate otherwise;
- c) the requested information is related to environmental emissions, waste, dangerous substances in factories or information contained in safety reports, and other information stipulated in the Environment Protection Act.

Therefore, public employees' personal data must be disclosed upon request when such data is related to their employment (e.g., gross payment, work position, etc.). Additionally, the Public Sector Salary System Act (PSSA) provides for salaries in the public sector to be public, whereby the information on the position, title or function, basic salaries, bonuses and performance-related pay, except the length-of-service increment, shall be publicly accessible. Nevertheless, this provision does not apply to the information on the salaries of public employees in the intelligence and security agencies. The PSSA also provides that public access shall be provided in accordance with the procedure regulated by the APIA to individual data on the gross salary of any public employee and official without any deduction due to the execution, loans or other personal liabilities.

However, there are no specific provisions for public bodies to publish these data online and in a way that such data contain the names and surnames of public officials.

As evident from statistical data on appellate procedures of the IC, the personal data exception is the most commonly used exception by public bodies to reject requests. Therefore, according to which information must be provided, the above-mentioned provisions are crucial for many applicants, even if the requested data represents personal data.

## **Constitution**

### Article 39 (Freedom of Expression)

*Freedom of expression of thought, freedom of speech and public appearance, freedom of the press, and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive, and disseminate information and opinions.*

*Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law.*

<sup>103</sup> Official consolidated text, 36/08 <http://www.uradni-list.si/1/objava.jsp?sop=2008-01-1459>

<sup>104</sup> ZSFCJA, 90/10 <http://www.uradni-list.si/1/objava.jsp?sop=2010-01-4784>

<sup>105</sup> 87/11 <http://www.uradni-list.si/1/objava.jsp?sop=2011-01-3715>, ZAvMS, 47/12 <http://www.uradni-list.si/1/objava.jsp?sop=2012-01-1962>, 47/15 <http://www.uradni-list.si/1/objava.jsp?sop=2015-01-1930>, - ZZSDT, 22/16 <http://www.uradni-list.si/1/objava.jsp?sop=2016-01-0831> and 39/16 <http://www.uradni-list.si/1/objava.jsp?sop=2016-01-1705>)

## **Access to Public Information Act**

### Article 5 (Free access principle)

*(1) Legal entities or natural persons (hereinafter referred to as "the applicants") have free access to public information.*

*(2) Each applicant shall have, at his request, the right to acquire information from the body by acquiring such information for consulting it on the spot, or by acquiring a transcript, a copy or an electronic record of such information.*

*(3) Every applicant has the right, under the same conditions as all other persons, to acquire the right to re-use information for commercial or noncommercial purposes.*

*(4) The body shall make its documents available through electronic means where possible and appropriate whereas this shall not imply an obligation, for the purposes of re-use of information, to provide conversion of the documents from one form to the other or to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation, nor shall it imply the obligation to continue with the creation of certain information only for the purposes of re-use of information by other bodies or other persons.*

*(5) The body may exceptionally deny the applicant access to requested information in the event the applicant with one or more functionally connected requests manifestly misuses its right to access public information under this Act or it is clear the request or requests are of vexatious character.*

### Article 5.a (Exceptions to Limiting the Rights of Parties, Participants or Victims in Proceedings and Protection of Confidential Source)

*(1) The body denies the applicant access to requested information if the request refers to information, access to which is forbidden or restricted under law even to parties, participants or victims in legal or administrative proceedings, or inspection procedure as governed by the law.*

*(2) The body denies access the applicant to requested information if the request refers to information on which the law stipulates protection of confidential source.*

### Article 6 (Exceptions)

*(1) The body shall deny the applicant access to requested information if the request relates to:*

- 1. Information which, pursuant to the Act governing classified data, is defined as classified;*
- 2. Information which is defined as a business secret in accordance with the Act governing companies;*
- 3. Personal data the disclosure of which would constitute an infringement of the protection of personal data in accordance with the Act governing the protection of personal data;*
- 4. Information the disclosure of which would constitute an infringement of the confidentiality of individual information on reporting units, in accordance with the Act governing Government statistics activities;*
- 5. Information the disclosure of which would constitute an infringement of the tax procedure confidentiality or of tax secret in accordance with the Act governing tax procedure;*
- 6. Information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution, or misdemeanors procedure, and the disclosure of which would prejudice the implementation of such procedure;*
- 7. Information acquired or drawn up for the purposes of administrative procedure, and the disclosure of which would prejudice the implementation of such procedure;*
- 8. Information acquired or drawn up for the purposes of civil, non-litigious civil procedure or other court proceedings, and the disclosure of which would prejudice the implementation of such procedures;*
- 9. Information from the document that is in the process of being drawn up and is still subject of consultation by the body, and the disclosure of which would lead to misunderstanding of its contents;*
- 10. Information on natural or cultural value which, in accordance with the Act governing the conservation*

*of nature or cultural heritage, is not accessible to public for the purpose of protection of (that) natural or cultural value;*

*11. Information from the document drawn up in connection with internal operations or activities of bodies, and the disclosure of which would cause disturbances in operations or activities of the body.*

*(2) Without prejudice to the provisions in the preceding paragraph, the access to the requested information is sustained, if public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information, except in the next cases:*

*- for information which, pursuant to the Act governing classified data, is denoted with one of the two highest levels of secrecy;*

*- for information which contain or are prepared based on classified information of other country or international organization, with which the Republic of Slovenia concluded an international agreement on the exchange or transmitting of classified information.*

*- For information which contain or are prepared based on tax procedures, transmitted to the bodies of the Republic of Slovenia by a body of a foreign country;*

*- For information from point 4 of paragraph 1 of this Article;*

*- For information from point 5 of paragraph 1 of this Article, unless the tax procedure is final or the person liable for tax discovered the liability in the tax return and did not pay the tax in the prescribed time.*

*(3) Without prejudice to the provisions in the first paragraph, the access to the requested information is sustained:*

*- if the considered is information related to the use of public funds or information related to the execution of public functions or employment relationship of the civil servant, except in cases from point 1. and points 5. to 8. of the first paragraph and in cases when the Act governing public finance and the Act governing public procurement stipulate otherwise;*

*- if the considered is information related to environmental emissions, waste, dangerous substances in factory or information contained in safety report and also other information if the Environment Protection Act so stipulates.*

*(4) If the applicant holds, that information is denoted classified in violation of the Act governing classified data, he can request the withdrawal of the classification according to the procedure from the Article 21 of this Act.*

*(5) The body can choose not to provide the applicant with the requested information, if the latter is available in freely accessible public registers or is in another way publicly accessible (publication in an official gazette, publications of the body, media, professional publications, internet and similar), and can only issue instructions as to the location of the information.*

*(6) The body shall deny the applicant's request to re-use information if the request relates to:*

*1. Information from the paragraph 1 of this Article, or*

*2. Information protected by the intellectual property rights of third parties, or*

*3. information held by bodies performing public services of public radio-television or bodies performing public service in fields of education, research and cultural activities, or*

*4. Information, for which another Act stipulates accessibility only to authorized persons.*

#### Article 27 (The right of appeal)

*(1) The applicant has the right of appeal against the decision by which the body has refused the request, as well as against the order by which the body has dismissed the request.*

*(2) The applicant also has the right of appeal in the case referred to in the fourth paragraph of Article 25 or when the information received is not in the form, requested in accordance with the second and fourth paragraph of Article 17 of this Act.*

*(3) The Commissioner for Access to Public Information shall decide on the appeal.*

*(4) Appellate proceeding shall be implemented in accordance with the provisions laid down in the Act*

*governing general administrative procedure.*

*(5) In appeal proceedings based on the appeal referred to in paragraph 4 of Article 26.a of this Act the Commissioner for Access to Public Information shall demand from the business entity subject to dominant influence of entities of public law all the documents concerning the matter or that reasons be provided for the lack of decision within the period prescribed by law.*

*(6) If the Commissioner for Access to Public Information in the appeal procedure from the previous paragraph establishes the appeal to be substantiated, it shall also decide on the business entity's request to access the public information.*

#### Article 31 (Administrative dispute)

*An administrative dispute may begin against the decision by the Commissioner in accordance with the statute.*

### **Slovenia provided the following examples of the implementation of the provision under review:**

As a whole, all the regulations representing the legislative framework of integrity - laws and implementing regulations and strategic documents and codes of ethics- are published on the official website of the Government, the MoPA and the CPC.

The following are also published:

- Code of Conduct for Public Employees;
- Code of Ethics of Public Employees in State Bodies and Local Community Administrations;
- Code of Ethical Conduct and Behaviour of Officials in the Slovenian Government and Ministries; and
- Unofficial interpretations of the above-mentioned regulations and documents, the texts of strategies, resolutions and other strategic documents adopted by the Government or by specific government departments.

Equally, the Programme of Government Measures to Prevent Corruption 2015-2016 and all the Government's interim and final reports on its implementation have been published on the website.

The laws, regulations, proposed regulations, and the consolidated texts of regulations in the working field of the official body are published on the website of the Government Service for Legislation on the Laws Portal (PIS RS), run by the Government Office for Legislation.

An example of the APIA:

- <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3336> is the tool that includes the automatic translation, so for the APIA in English: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3336>
- the respective website where all the documents involved in the preparation of the APIA amendments could be found: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7087>

*The Government General Secretariat regularly publishes the following materials on the website:*

Agendas are published in advance on the Government website:

- for Government sessions: [http://www.vlada.si/delo\\_vlade/dnevni\\_redi/](http://www.vlada.si/delo_vlade/dnevni_redi/)
- for working body sessions: [http://www.vlada.si/delo\\_vlade/seje\\_delovnih\\_teles/](http://www.vlada.si/delo_vlade/seje_delovnih_teles/)

The Government's annual work plan:

[http://www.vlada.si/delo\\_vlade/program\\_dela\\_vlade/](http://www.vlada.si/delo_vlade/program_dela_vlade/)

Proposed Government materials:

[http://www.vlada.si/delo\\_vlade/gradiva\\_v\\_obravnavi/](http://www.vlada.si/delo_vlade/gradiva_v_obravnavi/)

Press releases are issued following Government committee meetings and Government sessions:

[http://www.vlada.si/delo\\_vlade/sporocila\\_za\\_javnost/](http://www.vlada.si/delo_vlade/sporocila_za_javnost/)

Decisions of the Information Commissioner regarding the appeals under the APIA:



[<https://www.ip-rs.si/ijz/>](https://www.ip-rs.si/ijz/)

Decisions of the Administrative Court:

[<http://www.sodisce.si/usrs/odlocitve/>](http://www.sodisce.si/usrs/odlocitve/)

The rating of the international NGOs of the APIA:

[<http://www.rti-rating.org/country-data/>](http://www.rti-rating.org/country-data/)

The extensive information provided for potential applicants:

[<https://www.ip-rs.si/informacije-javnega-znacaja/>](https://www.ip-rs.si/informacije-javnega-znacaja/) Also in English!: [<https://www.ip-rs.si/en/freedom-of-information/>](https://www.ip-rs.si/en/freedom-of-information/)

The extensive information provided at the website of the MoPA:

- for potential applicants for information:

[<http://www.mju.gov.si/si/delovna\\_podrocja/transparentnost\\_in\\_dostop\\_do\\_informacij\\_javnega\\_znacaja/za\\_uporabnike/>](http://www.mju.gov.si/si/delovna_podrocja/transparentnost_in_dostop_do_informacij_javnega_znacaja/za_uporabnike/)

- and, liable public sector bodies:

[<http://www.mju.gov.si/si/delovna\\_podrocja/transparentnost\\_in\\_dostop\\_do\\_informacij\\_javnega\\_znacaja/za\\_zavezance/>](http://www.mju.gov.si/si/delovna_podrocja/transparentnost_in_dostop_do_informacij_javnega_znacaja/za_zavezance/)

- the 2016 Annual Report of the Information Commissioner:

[<https://www.ip-rs.si/en/freedom-of-information/>](https://www.ip-rs.si/en/freedom-of-information/)

The latest achievements of the MoPA in the field of Transparency and Open Data:

[<http://www.mju.gov.si/en/media\\_room/news/browse/1/article/12447/8165/>](http://www.mju.gov.si/en/media_room/news/browse/1/article/12447/8165/)

Additional information on transparency and the IT tools for transparency and integrity:

[http://www.mju.gov.si/en/areas\\_of\\_work/transparency\\_and\\_open\\_data/](http://www.mju.gov.si/en/areas_of_work/transparency_and_open_data/)

The Catalogue of Public Information of the MPA (an example of a catalogue):

[<http://www.mju.gov.si/si/o\\_ministrstvu/informacije\\_javnega\\_znacaja/katalog\\_ministrstva\\_za\\_javno\\_upravo/>](http://www.mju.gov.si/si/o_ministrstvu/informacije_javnega_znacaja/katalog_ministrstva_za_javno_upravo/)

The Catalogue of Public Information of the Public Sector Inspectorate (an example of a catalogue):

[<http://www.mju.gov.si/si/o\\_ministrstvu/informacije\\_javnega\\_znacaja/katalog\\_inspektorata\\_za\\_javni\\_sektor/>](http://www.mju.gov.si/si/o_ministrstvu/informacije_javnega_znacaja/katalog_inspektorata_za_javni_sektor/)

An example of the awareness-raising activities of the MPA and IC:

[<http://www.mju.gov.si/en/media\\_room/news/browse/3/article/12447/7719/>](http://www.mju.gov.si/en/media_room/news/browse/3/article/12447/7719/)

*Examples demonstrating how the protection of public privacy and personal data has been maintained in the context of the disclosure of such information*

In many cases, the IC has decided for the personal data of public employees and holders of public office (functionaries) to be disclosed upon public information requests. The Administrative Court and the Supreme Court have confirmed these decisions many times.

**In decision no. 021-142/2008/6 of 23 January 2009**, the IC ruled that the Municipality of Radovljica must provide the applicant with the requested copy of the record made by the inspector for public employees. The record included personal data of public employees, which was one of the reasons the Municipality rejected the request. However, as the personal data of public employees in the requested document related directly to their work, the IC decided the document must be disclosed. The IC's decision was confirmed by the Administrative Court (judgment no. I U 213/2009) and the Supreme Court.<sup>106</sup>

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<sup>106</sup> (judgment no. Ips 252/2009 [<https://www.ip-rs.si/fileadmin/user\\_upload/Pdf/sodbe/vrhovno\\_sodisce/SODBA-Ips\\_252-2009.tif>](https://www.ip-rs.si/fileadmin/user_upload/Pdf/sodbe/vrhovno_sodisce/SODBA-Ips_252-2009.tif))



**By Decision no. 090-106/2010, dated 9 September 2010**, the IC granted the appeal of an applicant who requested that an authority provide a list of employees containing the following data: first name, family name, education, work position, salary bracket, and gross salary for the period January - March 2010, the list of contractors (first name, family name or title, the type of contract - author's contract or subcontractor's contract, the subject of the contract, the overall amount paid to them in 2009, and the amounts paid to them in the period January - March 2010, if any), and the list of external contractors (first name, the subject of the contract, the total amount paid to them in 2009, and the amounts paid to them in the period January - March 2010, if any). The IC found that the authority held such documents and that they suited the definition of freely accessible public information. In the case at issue, no exemption to personal data protection was applied since it concerned data in relation to the employment of public employees and data regarding the use of public funds. The Administrative Court confirmed the decision regarding disclosure of personal data of public officials with judgment no. I U 1410/2010-13 of 25 May 2011.

**By way of its Decision No. 021-124/2008/12 of 19 December 2008**, the IC partially granted the appeal of an applicant against the Medvode Municipality, annulled the contested decision made by Medvode Municipality and ordered that the authority should provide the applicant, within 15 days upon receipt of the Decision, photocopies of the requested documents in relation to travel, paid for by the municipality, and at the same time also to redact certain personal data pertaining to persons who were not public employees, and which, as such, represented protected personal data. The requested information was per se related to the activities of the public authority since it pertained to appropriation by that authority. The IC emphasized that the potential negative estimation which the applicant or the general public might gain - either justifiably or unjustifiably - following the disclosure of certain information, pursuant to the Access to Public Information Act, was not a valid argument for preventing access to the information. The information which may reflect badly on the liable public authority - e.g., inappropriate action, poor management, tardiness, non-responsiveness, and even corrupt or unethical practices which may well prove to be a criminal offence - are frequently in the public interest, and hence access to such information is assessed as being 'in the prevailing interest of the general public.' The supervisory function enables citizens to oversee the work and financial appropriation of public administration and authorities, for the very reason it prevents bad management, the abuse of power and corruption.

**In case no. 090-272/2016/2 of 14 June 2016**, the IC rejected the appeal against the decision of the Biotechnological Faculty of the University of Ljubljana. The applicant requested e-mails exchanged between a public employee and the Faculty. In its decision, the IC stressed that there were two types of personal data of public employees: a) the ones related directly to the performance of public tasks and spending of public funds, and b) all other personal data that a public body had as the employer. Just because someone started an employment relationship in the public sector, they did not automatically give up their privacy at work entirely (see also ECHR decision Halford vs. UK and Copland vs. UK). A public employee could not expect privacy regarding their name, working title, position, gross salary, work address and those parts of his job application that proved he had fulfilled the requirements provided in his job description. When checking the requested e-mails, IP found that their content was personal, subjective opinions of an individual public employee and not the official position of the body. The e-mails were informal communication among two individuals and were not part of the official procedures at the body. Therefore, the requested e-mails should not be disclosed.

#### *Data on appeals against the denial of a request for access to information*

According to the Information Commissioner's annual report for 2016, the IC has received 514 appeals, of which 316 were against decisions to reject access, and 198 were due to administrative silence (no response from the body). The IC has published 312 decisions, while review procedures against 43 of its decision were started at the Administrative Court.

The numbers were similar in 2015 (632 appeals received, 318 against decisions, 314 due to administrative silence; the IC issued 309 decisions, while 37 of its decisions were tried at the Administrative Court).

Comparatively, in 2009 182 appeals were received against decisions and 309 due to administrative silence, while the IC issued 161 decisions, and 26 were tried at the Administrative Court.

### ***(b) Observations on the implementation of the article***

Legal entities and natural persons have the right to access public information freely (art. 39 of the Constitution, governed by the Access to Public Information Act (APIA) and the Media Act), which may only be refused on certain grounds, such as the protection of classified information and personal data (arts. 5 and 6, APIA).

However, the prescribed refusal bases are subject to exceptions if the information relates to the public interest, use of public funds, or environmental protection (art. 6, APIA). If requests for information are unattended or denied, appeals can be made to the Information Commissioner and then to administrative courts (arts. 27 and 31, APIA).

### ***Subparagraph (b) of article 10***

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

...

*(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

The public is informed of planned amendments to regulations through the Regulatory Programme of Government Work. This is an extensive document, which contains a list of proposed laws and other acts that the Government will submit to the National Assembly. The Programme sets out procedures and deadlines for deliberation of legal acts and decisions by the Government as well as debate and adoption by the National Assembly.

The simplest and most direct way of accessing information can be ensured by publishing information on the internet. Information of a public nature that official bodies must post on the internet is defined in article 10 of the Access to Public Information Act (APIA). This involves valid regulations, proposed regulations and the consolidated texts of regulations in the working field of the official body (these are published on the IC's website, run by the Government Service for Legislation). The obligation to publish information also applies to programmes, strategies, positions, opinions, and instructions that are of general significance and are important for the operation of the body or for the body to decide on the rights and duties of natural and legal persons, and to information about the activities and services offered by the official body. Notices and tender documents related to the awarding of public contracts must also be published on websites; these documents are published on the Public Procurement Portal. Information is accessible on the websites of individual bodies or via single state online portals.

## **Access to Public Information Act**

### **Article 10 (Transmission of information to the World Wide Web)**

*(1) Each body is obliged to transmit to the World Wide Web the following public information:*

*1. Consolidated texts of regulations relating to the field of work of the body, linked to the state register of regulations on the Web;*

*2. Programmes, strategies, views, opinions and instructions of general nature important for the interaction of the body with natural and legal persons and for deciding on their rights or obligations respectively, studies, and other similar documents relating to the field of work of the body;*

*3. Proposals for regulations, programmes, strategies, and other similar documents relating to the field of work of the body;*

*4. All publications and tendering documentation in accordance with regulations governing public procurements;*

*5. Information on their activities and administrative, judicial and other services;*

*6. All public information requested by the applicants at least three times;*

## *7. Other public information.*

*(2) Each body should facilitate, free of charge, access to information referred to in the preceding paragraph.*

*(3) The Ministry also enables access to information from the first paragraph via the joint government portal e-uprava.*

*(4) The provisions of this Article do not apply to business entities subject to dominant influence of entities of public law.*

### Article 10.a (Obtaining and Publishing Public Information On-line)

*(1) For the purpose of increasing transparency and responsible management of financial resources of entities liable under this Act and because of the overriding public interest in the disclosure of information on the expenditure of these resources, the competent authority for public payments, established pursuant to the law governing the provision of payment services to spending authorities (hereinafter: the competent authority for public payments), shall collect information on the balance on the account and payment transactions executed that debit the accounts of the following registered entities liable under this Act:*

- *public service agencies;*
- *public corporations in accordance with the law governing public utility services;*
- *those business entities referred to in item 1 or paragraph 2 of Article 1.a of this Act, where the participating interest of entities of public law, individually or jointly, amounts to 100%.*

*(2) The competent authority for public payments shall establish special records on all payment transactions executed that debit the accounts of the registered persons liable containing the following information:*

- *balance debits,*
- *name or business name of the payer,*
- *registered office of the legal person - the payer,*
- *debit reference,*
- *date of the transaction,*
- *amount of the transaction,*
- *transaction currency code,*
- *balance credits,*
- *name or business name of the credit recipient,*
- *registered office and address of the recipient,*
- *credit reference,*
- *the purpose of the payment,*
- *the code of purpose and*
- *other identification markings stated in the payment order or by the execution of a payment transaction according to regulations and standards of public payments.*

*(3) Payment service providers, except Banka Slovenije, shall communicate free of charge to the competent authority for public payment information about the balance on the account and all payment transactions executed that debit the accounts of the registered entities liable referred to in the paragraph 1 of this Article in a way determined by the Minister for Finance.*

*(4) The competent authority for public payments publishes on-line the following public information on transactions made by the registered entities liable referred to in paragraph 1 of this Article and other registered entities liable under Article 1 of this Act, except those liable as public service operators and holders of public mandates, provided they are not at the same time registered entities liable referred to in paragraph 1 of this Article:*

- *date of the transaction,*
- *currency and the amount of the transaction,*
- *account, name or business name of the credit recipient, except natural persons,*
- *the purpose of the payment.*

*(5) The registered entities liable referred to in Article 1 and Paragraph 2 of Article 1.a of this Act that are public procurement contractors, grantors of concessions or public partners shall within 48 days from the*

award of the contract, granting of concession or selection of a contractor in a public-private partnership based on the procedure regulated by acts on public procurement, concessions and public-private partnership publish generally accessible public information from the contract on public procurement, concession or public-private partnership. This information shall be published on the websites intended for e-public procurement in a machine-readable format. The manner, possible formats and the place of publication shall be determined by the Minister for administration in agreement with the Minister for finance.

(6) The exception to publishing the name or business name and registered office of the payment recipient defined in item 3 of paragraph 4 of this Article shall not apply to natural persons registered as business entities in the Slovenian Business Register.

(7) The competent authority for public payments is allowed to disclose information from paragraph 2 of this Article not published on-line to:

- the statutory representative, business entity and the members of the management and supervisory authority of the legal entity for the purpose of performing their duties established by the law and the constitutional document;
- the national authorities, the authorities of self-governing local communities and holders of public mandates for performing their legally specified competencies,
- other entitled entities in cases specified by law.

8) Unlimited free-of-charge re-use of public information from the paragraph 4 of this Article is permitted.

(9) Based on the request to access public information the information on payment transactions from this Article that classify as generally accessible public information are accessible under this Act from the entities liable.

(10) BAMC shall publish the public information defined in indent 4 of paragraph 5 of Article 6.a of this Act on-line without delay, and the information defined in indents 1, 2, and 3 of paragraph 5 of Article 6.a of this Act within three months from the actual acquisition of information. A more detailed manner of publishing the information defined in indents 1, 2, and 3 of paragraph 5 of in Article 6.a of this Act shall be determined by Banka Slovenije on the proposal of BAMC.

(11) The business entity subject to dominant influence of entities of public law shall publish on-line, on its website, the public information referred to in paragraph 1 of Article 6.a of this Act, concerning donor, sponsor, consulting, contractual or other intellectual services, within five days from the concluded transaction.

(12) The business entity subject to dominant influence of entities of public law shall publish on-line, by publishing on its website, the public information concerning the representatives of this business entity, the members of administrative or management body, or members of the supervisory authority from indent 2 of paragraph 1 of Article 4.a of this Act, referring to the type of representative or membership in the administrative, management or supervisory body, and information on amount of remuneration or credit of this person, specifically: the name of the person, the arranged amount of monthly remuneration, the arranged amount of severance and total amount of remuneration paid in the previous year.

*For more information, please see paragraph 4 of article 7 of the Convention.*

*For IT tools for transparency and integrity, please see paragraph 2 of article 5 of the Convention.*

#### *Open Data and re-use of public sector information*

The new Slovenian National Open Data Portal<sup>107</sup> (OPSI) was launched in December 2016. The portal is a source software and operates on the national computer cloud. It is based on the source code of the UK open data portal. Along with the open data itself, the OPSI also contains the metadata of all registers and databases kept by state authorities, municipalities, and other public sector organs. The state cloud represents the core infrastructure for analytical processing, including big data. Slovenia plans to develop further the concept of a data repository and

<sup>107</sup> Available at: <<https://podatki.gov.si/>>

dictionary, which constitutes a further step for the long-term quality of opening and publication of public sector information.

In addition to the development of the portal, the MoPA has also created a Manual for the opening up of public sector data;<sup>108</sup> the manual will facilitate public sector authorities' process of opening up data and be used for public officials' trainings in 2017.

In July 2017, the Secretary-General of the Government published all publicly available government documents in a machine-readable format, such as RDF and XML. This constituted an important development to enhance transparency further.

Apart from the legislative changes and the central platform, Slovenia continues to put a strong emphasis on collaboration with the end-users, academia, students, and NGOs.

In 2015, Slovenia organized the first Open Data Festival, together with the Laboratory for Multimedia and Computer Graphics of the Faculty of Computer and Information Science. A challenge involving the re-use of data from various ministries resulted in 17 applications. Students used the registers of motor vehicles, cultural and natural heritages, public transport timetables, national and local budgets, and selected statistical data. The results were publicly presented in Spring 2016 at an event attended by the Minister of Public Administration and the Dean of the Faculty of Computer and Information Science. In 2016, Slovenia started with the second Open Data Festival and invited even more institutions to participate, in addition to the faculties, the Statistical Office, and the General Police Directorate etc. The public presentation of this collaboration was in April 2017.

In the field of open data, the MoPA also cooperates with NGOs. In a project of cooperation with a non-government organization - TI Slovenia (in June 2016), two applications were developed - an application for the display and comparison of municipal budgets and another for the comparison of financial spending with respect to the state projects.

#### *The state portal for citizens - e-Uprava*

The state portal for citizens - e-Uprava - (the e-Government portal) is the central state portal for electronic services provided by the state. The portal has recently been upgraded to become more citizen friendly. Consequently, citizens will not need to personally visit various institutions, saving time and costs for the institutions and the citizens. Therefore, it is quite important for the portal to include as many back-end systems as possible to facilitate the use and filling out of electronic forms by users. Currently, the e-Government portal uses 26 back-end systems that enable the acquisition of various data and provide safe and reliable use and ten back-end systems that receive electronic forms sent by the users from the e-Government portal for further processing.

The portal's main functions are:

- *Provision of general information on services*: some services contain only a description; some have an application form attached (mostly PDF, some in Word); some services are completely electronic (electronic applications). Some services contain only a basic description; the user is then redirected to a specific service website, where he/she can make all arrangements needed (e.g., e-Taxes portal or web page of the Health Insurance Institute of Slovenia).
- *Electronic applications*: created in the background (by the editors) so that they can be linked to the national registers, and the user does not have to enter personal data, which can be accessed only using digital certificates.
- *Moja eUprava (My eGovernment) module*: an entirely new service which pursues the EU objectives that every citizen has to be offered one window through which they can directly access their personal data kept by the State. Now, citizens can gain access to personal data in the central population register, the documents listed in the register of documents, and data on vehicle ownership and other properties. An important function of this module is enabling insight into submitted applications and monitoring their resolution. It is necessary to mention their own notifications as well. Each user can activate their own notifications (e.g., for applications, documents, eDemocracy, etc.) and has the possibility to subscribe to the newsletter, where events of interest to a wider circle of users are published (e.g., Museum Open-door-day, tire replacement, Info Days held in secondary schools and faculties, supplement to the income tax submission, etc.).

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<sup>108</sup> Available at: <[https://podatki.gov.si/sites/default/files/attachments/OPSI\\_Prirocnik\\_1\\_izdaja\\_junij\\_2016.pdf](https://podatki.gov.si/sites/default/files/attachments/OPSI_Prirocnik_1_izdaja_junij_2016.pdf)>

- A special section is devoted to information on public sector institutions: users will find general information on institutions, their addresses, opening hours, applications that each institution publishes and some other data;
- In cooperation with the Ministry of Infrastructure, the portal contains dates of test centres for the theoretical and practical part of driving tests.
- An important part of the portal is a bulletin board where, according to the General Administrative Procedure Act, document deliveries (of judgments, orders, etc.) and offers for the sale of agricultural land are being published.
- Users can also find interesting information in the section for events and gatherings, where all the events and meetings, which are legally obliged to be declared to the competent administrative unit or to the police, are published.
- Sub portal 'e-Democracy': This is especially important to ensure the transparency of the government. Users can find proposals for regulations that are put on public hearings. Users can submit a comment, suggestion, as well as new proposals, etc. Users can also save submitted documents in their Moja eUprava (My e-Government) module.

The portal is adapted for people with special needs by fully considering the standard WCAG 2.0. This means that the portal is adapted for blind and partially sighted users, and users with dyslexia and hearing issues. The project team cooperated with the Association of the Blind and Visually Impaired and the Association of the Deaf and Hard-of-Hearing Slovenia to meet these requirements.

Since Slovenia has two recognized national minorities, the portal is also adapted to their needs. Depending on the arrangements and topicality of the minority, some general information and certain services are translated into Italian and Hungarian. The state portal eUprava (e-Government) is of the utmost importance for conducting business between the state and its citizens. On the one hand, it lowers the operating costs of public authorities, which provide their services in one place. On the other hand, this is a significant contribution to the citizens who do not need to look for services on various websites of public authorities. They can read all information on the portal or electronically submit an application and monitor its resolution.

### **Slovenia provided the following examples of the implementation of the provision under review:**

In a comparative analysis of Member States (2016), the European Commission has estimated that Slovenia has made significant progress in the field of public sector open data:

[http://www.mju.gov.si/en/media\\_room/news/browse/3/article/12447/8093/](http://www.mju.gov.si/en/media_room/news/browse/3/article/12447/8093/)

Regulatory Programme of Government Work

[http://www.vlada.si/delo\\_vlade/program\\_dela\\_vlade/](http://www.vlada.si/delo_vlade/program_dela_vlade/)

In order to help the applicants and to simplify the proceedings in the field of access to public information, the IC has published on its website the detailed information and the forms to be used for requesting information:

<https://www.ip-rs.si/informacije-javnega-znacaja/ijz-pri-organih/kako-napisati-zahtevo/>

[https://www.ip-rs.si/fileadmin/user\\_upload/doc/obrazci/ZDIJZ/Zahteva\\_za\\_dostop\\_do\\_informacij\\_javnega\\_znacaja\\_\\_O\\_brazec\\_Z-ZDIJZ\\_.doc](https://www.ip-rs.si/fileadmin/user_upload/doc/obrazci/ZDIJZ/Zahteva_za_dostop_do_informacij_javnega_znacaja__O_brazec_Z-ZDIJZ_.doc)

The MoPA has published the model decisions for public sector bodies (e.g., a decision to allow partial request due to personal data protection exception):

[http://www.mju.gov.si/si/delovna\\_podrocja/transparentnost\\_in\\_dostop\\_do\\_informacij\\_javnega\\_znacaja/za\\_zavezance/](http://www.mju.gov.si/si/delovna_podrocja/transparentnost_in_dostop_do_informacij_javnega_znacaja/za_zavezance/)

See the links under the title "VZORCI PISANJ" on the website PIS RS, run by the Government Service for Legislation (the central website where the Slovenian legislation, consolidated version, is published)

<http://www.pisrs.si/Pis.web/>

The Public Procurement Portal:

<https://www.enarocanje.si/?podrocje=portal>

*E-demokracija* (subportal of E-uprava) - the central point for publishing the draft laws:

<https://e-uprava.gov.si/drzava-in-druzba/e-demokracija.html>

Predlagam vladi <http://www.predlagam.vladi.si/>

Publication of all public sector financial transactions by the Public Payments Administration of the Republic of Slovenia:

<https://www.ujp.gov.si/> link under “TZIJZ”

The Commission for the Prevention of Corruption’s public sector financial transactions records- ERAR

<https://erar.si/>

Detailed information on the project:

[https://www.w3.org/2013/share-psi/wiki/images/6/6b/Supervisor\\_Slovenia\\_description\\_pdf.pdf](https://www.w3.org/2013/share-psi/wiki/images/6/6b/Supervisor_Slovenia_description_pdf.pdf)

The Public Procurement Portal - a subpage where public procurement signed contracts, concessions and public-private partnerships can be accessed:

<https://www.enarocanje.si/objavaPogodb/>

An important project on increasing transparency in public procurement is the IT solution STATIST:

<https://ejn.gov.si/statist>

The new Slovenian national Open Data Portal

<https://podatki.gov.si/>

In July 2017, the Secretary-General of the Government published all publicly available government documents in a machine-readable format:

<https://www.europeandataportal.eu/en/news/open-data-developments-slovenia>

The 2nd Open Data Festival, April 2017 (videos):

[http://videlectures.net/fop2017\\_ljubljana/](http://videlectures.net/fop2017_ljubljana/)

A project of cooperation with a non-government organization - TI Slovenia (in June 2016) an application for the display and comparison of municipal budgets:

<http://www.transparency.si/projekti/proracuni-obcin/>

### ***(b) Observations on the implementation of the article***

Information is made public through press conferences, official government websites, and the Gazette (art.10, APIA). In 2016, an Open Data Portal containing metadata of all public registers and databases, was launched to facilitate public access to information in addition to the e-Government portal.

### ***Subparagraph (c) of article 10***

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

...

*(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.*



### ***(a) Summary of information relevant to reviewing the implementation of the article***

*Most of the information relevant to the implementation of this provision was already provided in previous subparagraphs of this article.*

The IC adopts an Annual Report on the state of access to public information appeal procedures and data protection.<sup>109</sup>

The Government prepares a report on the implementation of the APIA (covers all state bodies and local government bodies and is based directly on the individual annual reports of these institutions to the MoPA).<sup>110</sup> The report is prepared by the MPA and is presented to be adopted by the Government.

Both reports are presented at the National Assembly.

The CPC manages the National Electronic Corruption Risk Register, and it is competent for the system of corruption risks assessments (integrity plans).

*Please refer to point e) in the description of the practices that Slovenia considers to be good practices in the implementation of the chapters of the Convention.*

Furthermore, the Government included these measures in its Programme for Strengthening Integrity and Transparency 2017-2019, setting a deadline for the implementation.

*For more information, please see paragraph 1 of article 5 of the Convention.*

#### **Slovenia provided the following examples of the implementation of the provision under review:**

- The CPC - Analysis of the corruption risks in the schooling sector:  
<<https://www.kpk-rs.si/sl/komisija/medijsko-sredisce/arhiv-novic/02/2017/ocena-korupcijskih-tveganj-in-tveganj-za-krsitev-integritete-v-slovenskih-osnovnih-in-srednjih-solah-s-priporocili-glede-upravljanja-identificiranih-tveganj>>
- The CPC Analysis of the corruption risks in the local administration:  
<[https://www.kpk-rs.si/download/t\\_datoteke/13794](https://www.kpk-rs.si/download/t_datoteke/13794)>
- The CPC's Annual reports:  
<<https://www.kpk-rs.si/sl/komisija/letna-porocila>>

### ***(b) Observations on the implementation of the article***

The CPC manages the National Electronic Corruption Risk Register, and it is competent for the system of corruption risk assessments. The CPC publishes reports concerning corruption risks in different sectors from time to time.

## **Article 11. Measures relating to the judiciary and prosecution services**

### ***Paragraph 1 of article 11***

*1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial*

<sup>109</sup> Available at: <[https://www.ip-rs.si/fileadmin/user\\_upload/Pdf/porocila/Letno\\_porocilo\\_2016\\_web.pdf](https://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno_porocilo_2016_web.pdf)>

press release: <<https://www.ip-rs.si/novice/informacijski-pooblascenec-je-v-drzavni-zbor-rs-posreoval-letno-porocilo-za-letno-2016-1048/>>

<sup>110</sup> Available at: <[http://www.mju.gov.si/si/delovna\\_podrocja/transparentnost\\_in\\_dostop\\_do\\_informacij\\_javnega\\_znacaja/porocilo\\_o\\_stanju/](http://www.mju.gov.si/si/delovna_podrocja/transparentnost_in_dostop_do_informacij_javnega_znacaja/porocilo_o_stanju/)>

*independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.*

***(a) Summary of information relevant to reviewing the implementation of the article***

The Constitution governs various aspects of the judiciary, including the independence of the judiciary (art. 125), organization and jurisdiction of courts (art. 126), and permanence of judicial office (art. 129). It also provides that judges are elected by the National Assembly on the proposal of the Judicial Council (art. 130) and shall cease to hold judicial office or be dismissed where circumstances arise as provided by law (art. 132). According to the Constitution, the judicial office is not compatible with offices in other state authorities, local self-government authorities, and bodies of political parties (art. 133). Judges enjoy immunity provided by the Constitution (art. 134).

**Constitution**

Article 125 (Independence of Judges)

*Judges shall be independent in the performance of the judicial function. They shall be bound by the Constitution and laws.*

Article 126 (Organisation and Jurisdiction of Courts)

*The organisation and jurisdiction of courts are determined by law. Extraordinary courts may not be established, nor may military courts be established in peacetime.*

Article 127 (The Supreme Court)

*The Supreme Court is the highest court in the state. It decides on ordinary and extraordinary legal remedies and performs other functions provided by law.*

Article 129 (Permanence of Judicial Office)

*The office of a judge is permanent. The age requirement and other conditions for election are determined by law.*

*The retirement age of judges is determined by law.*

Article 130 (Election of Judges)

*Judges are elected by the National Assembly on the proposal of the Judicial Council.*

Article 132 (Termination of and Dismissal from Judicial Office)

*A judge ceases to hold judicial office where circumstances arise as provided by law. If in the performance of the judicial office a judge violates the Constitution or seriously violates the law, the National Assembly may dismiss such judge on the proposal of the Judicial Council.*

*If a judge is found by a final judgement to have deliberately committed a criminal offence through the abuse of the judicial office, the National Assembly dismisses such judge.*

Article 133 (Incompatibility of Judicial Office)

*Judicial office is not compatible with office in other state authorities, in local self-government authorities, and in bodies of political parties, and with other offices and activities as provided by law.*

Article 134 (Immunity of Judges)

*No one who participates in making judicial decisions may be held accountable for an opinion expressed during decision-making in court. If a judge is suspected of a criminal offence in the performance of judicial office, he may not be detained nor may criminal proceedings be initiated against him without the consent of the National Assembly.*

The Judicial Service Act (JSA) also regulates the impartiality and independence of judges (art. 37). It provides for rules on the prohibition of gifts (art. 39) and exclusion of activities and secondary employment (arts. 41 and 42) for judges. Judges bear the responsibility to inform the President of the court of their acceptance of work in addition to judicial service (art. 43). The Judicial Council will decide on the compatibility of the work with the judge's function if the President holds that judges may not perform the work (art. 43). According to article 40 of the JSA, a judge shall suspend judicial service if selected to perform certain national or international functions.

## **Judicial Service Act**

### Article 37

*Judges must at all times act to safeguard the impartiality and independence of judging, the reputation of the judiciary and the independence of judicial power. Judges may not obstruct the functioning of the court in order to exercise their own rights.*

### Article 39

*Judges may not accept gifts or other benefits in connection with their service. Neither may judges' spouses, other members of judges' families and relatives or others who live with judges in a joint household accept gifts or other benefits.*

### Article 40

*A judge who is elected President of the Republic, a parliamentary deputy, a judge of the Constitutional Court, a judge of an international court or to another international justice office, the Prime Minister, the Human Rights Ombudsman or Ombudsman's deputy, or is appointed minister or president, deputy president or a member of the Commission for the Prevention of Corruption shall have his judicial office, and all rights and duties deriving from judicial service suspended. The provision of the first paragraph of this article shall be applied also for a judge who is elected to be a parliamentary deputy of the European Parliament, the European Human Rights Ombudsman, is appointed as a member of the European Commission or as a member of the international civilian mission.*

### Article 41

*A judge may not perform lawyer's or notary's transactions, or any commercial or other profit-making activities. A judge may not perform managerial transactions, and may not be a member of a board of directors or a supervisory board of any company or other legal person involved in profit-making activities.*

### Article 42

*Judges may not accept any employment or work that would obstruct them in performing judicial service, or that would be in conflict with the reputation of judicial service or encourage the impression that they are not impartial in performing their judicial service. Judges may perform teaching, scientific, publishing and research work and other similar work in the legal profession, provided the performance of judicial service is not thereby obstructed. Judges may not conclude an employment relationship in order to perform the work specified in the previous paragraph or other work that judges may perform in addition to judicial service.*

### Article 43

*A judge must inform the president of the court and a president of the court must inform the president of the immediately superior court in advance in writing of his/her acceptance of work that judges may perform in addition to judicial service. If the president of the court feels that pursuant to the provisions of this Act judges may not perform this work, he/she shall propose that the Judicial Council decides on the incompatibility of the work with judicial office and notify the judge of such. If the Judicial Council decides that the work is incompatible with judicial office, it shall prohibit the judge from accepting it.*

The Judicial Council is the central body comprising 11 members responsible for regulating the judicial profession. Article 131 of the Constitution stipulates the composition of the Council members. The National Assembly elects

five members on the proposal of the President of the Republic from among university professors of law, attorneys, and other lawyers, while judges holding permanent judicial office elect six members from among their members.

In April 2016, the Ethics and Integrity Commission of the Judicial Council adopted the Code of Judicial Ethics Commentary<sup>111</sup>, in accordance with article 26 of the Courts Act,<sup>112</sup> which was amended and updated in January 2017. The Code took into account many key international guidelines in terms of judicial ethics, including but not limited to Bangalore Principles of Judicial Conduct, adopted by the Economic and Social Council of the United Nations in 2006; Judicial Ethics - Principles, Values and Qualities, adopted by the European Network of Councils for the Judiciary (ENCJ); and Magna Carta of Judges, adopted by the Consultative Council of European Judges (CCJE). The Code addresses a variety of integrity issues of judges, including independence, impartiality, competence, commitment, compatibility, incompatibility, discretion, attitude and reputation.

In the performance of their work, judges are required to act in compliance with the Code of Judicial Ethics and relevant opinions or recommendations issued by the Ethics and Integrity Committee of the Judicial Council. Judges are also subject to the asset declaration system, with procedures of asset declarations being prescribed by the IPCA<sup>113</sup> (*for asset declaration regime, please also see the information provided under para. 5 of art. 8 of the Convention*). In addition, judges cannot undertake any employment or work that would interfere with the performance of their service or affect the reputation of the judicial service or have an adverse impact on their impartiality.

According to the Code of Judicial Ethics, a judge or public employee (the reporting person) who has reasonable grounds for believing that they have been requested to perform an illegal or unethical act or if any form of psychological or physical violence is exerted upon them for this purpose may report this to their superior or a duly appointed person (the responsible person). If the responsible person is unavailable or incompetent, or unsuitable to fulfil the work, the President of the court shall take charge of the matter reported. The responsible person must take all necessary actions to prevent any illegal or unethical requests and adverse consequences that may ensue. Under certain circumstances where elements of a criminal offence are involved, the reporting person may also inform the law enforcement authorities. The identity of a good-faith reporting person may be concealed in the interests of the investigation.

In order to ensure the implementation of relevant policies, various reports or documents are published every year, such as annual reports on the work of the courts<sup>114</sup>; yearly reports on the efficiency and effectiveness of courts, including data on disciplinary proceedings and evaluation procedures regarding the service of judges; data on the work activities performed by individual judges in addition to their judicial service; and minutes of the Ethics and Integrity Committee of the Judicial Council (intranet). Furthermore, the Supreme Court prepares the "Opening of the Judicial Year" with a view to presenting priorities of the judiciary for the following year to strengthen transparency and integrity.

In general, all judicial decisions that end a proceeding at a particular instance shall be published. There are a few exceptions, such as trivial procedural decisions, bulk case judgments, lower instance judgments, etc. With due consideration to the protection of private data, the judgments are publicly available on <http://www.sodnapraksa.si/>, and this database is maintained in real-time.

Judges are also provided with educational and training opportunities in ethics and integrity, including topics of integrity and risk factors in courts; personal, ethical and legal presumptions of the independence of judges and State prosecutors; and ethical standards and judicial decision-making. As for the statistics, 12 educational sessions were allocated in 2015, 14 educational sessions in 2016, and one-day individual seminars on judicial ethics and integrity were occasionally organized for judges.

The Courts Act specifies procedures concerning case assignment and distribution with a view to safeguarding certainty and promoting transparency. Meanwhile, the Court Rules provides for annual rotation of court duties, where the rotation would be determined by the Personnel Council on the proposal of the President of the court. The Court Rules also stipulate detailed requirements for case assignment and transfer in its articles 156 to 166.

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<sup>111</sup> Available at: [http://www.sodnisko-drustvo.si/SODNISKO\\_DRUSTVO,,english,code\\_of\\_judicial\\_ethics.htm](http://www.sodnisko-drustvo.si/SODNISKO_DRUSTVO,,english,code_of_judicial_ethics.htm)

<sup>112</sup> Available at: (<[http://www.sodni-svet.si/images/stories/komentar\\_EK\\_ang\\_2017.pdf](http://www.sodni-svet.si/images/stories/komentar_EK_ang_2017.pdf)>)

<sup>113</sup> Available at: <https://www.kpk-rs.si/upload/datoteke/IPCA-ENG.pdf>

<sup>114</sup> Available at: ([www.sodisce.si](http://www.sodisce.si) <[http://www.sodisce.si/sodna\\_uprava/statistika\\_in\\_letna\\_porocila/poslovanje\\_sodstva/](http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/poslovanje_sodstva/)>)

## **Courts Act**

### Article 13.a

*A judge shall hear priority cases defined as such by law.*

*When determining the set order of hearing other cases, a judge may also take into consideration the category, nature and importance of the case, in addition to the date of filing the case at the court.*

### Article 14

*A judge shall exercise judicial authority in one or more legal fields to which he/she has been assigned under the annual work schedule before the beginning of the calendar year.*

### Article 15

*Where two or more judges have been assigned to the same legal field, cases shall be assigned to individual judges according to the daily succession of filed initial procedural acts, taking into account the alphabetical order of the initial letters of the surnames of judges. If several initial procedural acts falling within the same legal field are filed on the same day, or when, within the same legal field, the order of cases is determined in advance, the cases shall first be classified by the alphabetical order of the initial letters of the surnames or names of parties or participants against whom the procedural act has been filed.*

*Cases in which higher courts and the Supreme Court of the Republic of Slovenia decide on an ordinary or extraordinary legal remedy shall be assigned to judges according to the daily succession of arrived files, taking into account the alphabetical order of the initial letters of the surnames of judges. Cases referred to in the preceding paragraphs shall be assigned to judges immediately, according to the succession of filed initial procedural acts and/or arrival of files; cases may also be assigned later, in compliance with the method of Court Rules previously determined.*

### Article 16

*The method of assignment defined in the previous article shall also apply for cases in which a judge has been excluded after taking over the case, or when, for reasons of extended absence, he/she cannot deal with them in due time.*

### Article 17

*Court Rules shall lay down detailed rules for the assignment of cases.*

*Court Rules shall specify in detail rules regarding the assignment of cases in the event of several initial procedural acts being filed against the same party; in the event of several initial procedural acts with basically the same factual and legal status being filed on the same day or within a short period of time; in the event of the assignment of new cases to a judge being temporarily stopped due to workload; and other similar cases; and shall also specify rules on the manner and sequence of summoning lay judges for participating in adjudication.*

### Article 17.a

*In order to ensure the public nature of trial and to fulfil the obligations set out in other acts and to inform the general public and media, the following shall be announced on the notice board of the court (hereinafter: "court board"):*

- assignment of judges under the provision of Article 14 of this Act;*
- rules of assignment of cases under the provisions of this Chapter and under Court Rules;*
- the time schedule of trials and sessions about which parties are informed and from which the general public is not excluded by law or by decision of the court;*
- other court documents and schedules of hearings provided for by law;*
- other data provided for by law or Court Rules.*

*The time schedule of hearings and sessions about which parties are informed and from which the general*

*public is not excluded by law or by decision of the court, shall include:*

- the reference number and category of case;*
- date and hour of the beginning of trial or the session about which the parties are informed;*
- data on the location and premises in which the trial or the session about which the parties are informed, will be held;*
- the personal name of the judge or the president of the panel hearing the case;*
- the personal name of parties to the proceeding.*

*Detailed rules concerning the announcement of data on the court board shall be laid down in Court Rules. The court board shall be of appropriate size, fixed on a court wall and accessible to the general public. Data from the court board may also be published in electronic form in a manner that makes them accessible to the general public. Should the data announced on the court board and those provided in electronic form differ, the data announced on the court board shall be deemed correct. When another law or implementing regulation uses the terms "notice board" or "board", they shall mean the court board if referring to the court board.*

#### Article 17.b

*Courts shall ensure that dealing with court cases shall be public in accordance with provisions of this Act and other regulations regulating proceedings before the courts.*

### **Court Rules**

#### Article 153

*The annual rotation of duties shall be used to assign judges to court departments or legal areas in which they exercise judicial powers, to appoint the heads of departments, of public registers and of services, to appoint the examining judge who shall make decisions on the undercover measures according to Criminal Procedure Act, to assign judges to court panels, to assign judges and panels to duty services, to assign duty services during the holidays. If the number of incoming cases in a certain legal field is not high enough for one judge to be assigned to the field full time, then the judge shall be assigned by the same annual rotation of duties to work on cases in other legal areas as well.*

#### Article 154

*The annual rotation of court duties for the next calendar year shall be determined by the personnel council on the proposal of the president of the court. The annual rotation of duties for the next year shall be presented to the judges by the president of the court at the conference of judges. The annual rotation of duties for the next calendar year must be displayed on the noticeboard by 15 December of the current year at the latest. If the number of judges working for a court falls or increases, in the event of a judge's prolonged absence from work or if so dictated by considerable changes in the number of new cases, then the annual rotation of duties shall be amended in the same manner as applies to the defining of the annual rotation of duties. The amended rotation of duties shall begin to apply five days after it was first displayed on the court's noticeboard. After each change of the annual rotation, a clean copy shall be provided.*

#### Article 155

*When assigning judges to work in an individual legal area the individual preferences of judges to work in a specific legal area, their work experience and training for specific areas shall be taken into account. Care shall be taken to ensure an even distribution of the workload between judges. When assigning a judge to the position of head of a department, not only qualifications but also the abilities to organise work in the department shall be taken into account.*

According to Articles 95 to 98 of the Judicial Service Act, if criminal proceedings are introduced against a judge based on well-founded suspicion of a criminal offence committed through abuse of judicial office, the President of the Supreme Court must pronounce temporary removal of the judge from judicial service (suspension). The

Judicial Council decides on the suspension of the President of the Supreme Court. In terms of remedies, the judge may appeal to the Judicial Council against the decision on suspension within 15 days upon the receipt of the decision; the President of the Supreme Court may appeal to the National Assembly. The suspension may last until a final decision is made on the judge's dismissal (art. 97, JSA). Only one case was reported where a judge was convicted of abuse of office or official duties and acceptance of a bribe in the past five years and sentenced to imprisonment of 5.5 years and a fine as an accessory punishment.

The CPA also regulates potential conflicts of interest of judges during criminal proceedings. According to article 39 of the CPA, a judge or juror judge may not perform judicial duties:

- 1) if he himself has suffered harm through the criminal offence;*
- 2) if he is married to or lives in a domestic partnership with the accused, the defence counsel, the prosecutor, the injured party and their legal representatives or attorneys, or if he is related to the aforesaid persons by blood in direct line at any remove or collaterally up to four removes, or related through marriage up to two removes;*
- 3) if his relationship with the accused, the defence counsel, the prosecutor or the injured party is that of a custodian or a ward, adopter or adoptee, foster parent or foster child;*
- 4) if he had conducted acts of investigation in connection with the same criminal offence, or took part in determining objections to the charge sheet or a request of the presiding judge referred to in Articles 271 and 284 of this Act, or conducted the preparatory procedure as a judge for juvenile offenders and a motion for punishment has been submitted, or took part in the proceedings as prosecutor, defence counsel, legal representative or attorney of the injured party or plaintiff, or was examined in the matter as a witness or an expert;*
- 5) if in the course of determining any question within the proceeding, he became acquainted with evidence which under this Act must be excluded from the files (Article 83), he may not in the same matter decide on the charge or appeal or extraordinary legal remedy against the decision that determined the charge, unless the content of evidence is of such nature that it obviously could not influence his decision;*
- 6) if he took part in the passing in a lower court of a decision in the same matter or took part in the passing in the same court of a decision challenged by an appeal or a request for the protection of legality;*
- 7) if circumstances exist that give rise to doubts over his impartiality.*

Articles 40 to 43 of the CPA further provide specific regulations on various circumstances of exclusion of judges, relevant requirements, and possible remedies. It was reported that the Civil Procedure Act also has similar provisions.

#### Article 40

*(1) As soon as a judge or juror judge finds any reason warranting his exclusion under points 1 to 4 or point 5 of the preceding Article, or if he believes that there exists a reason for his exclusion referred to in point 4a or 6 of the preceding Article, he must cease all work on the case in question and notify the president of the court, who shall decide on the exclusion and, if he excludes the judge, order that the case be assigned to another judge in accordance with the court rules. If the exclusion relates to the president of the court, the vice-president of the court shall rule on this matter as the president of the court; if however the vice-president must also be excluded, the president shall appoint a substitute from among the judges of this court, or, if that proves impossible, the president shall ask the president of the immediately higher court to assign a substitute.*

*(2) There shall be no appeal against the decision from the preceding paragraph upholding the request for exclusion. A judge or juror judge may appeal against a decision rejecting a request for exclusion. The panel (sixth paragraph of Article 25) shall decide on any appeal against a decision of the president of a local or district court; an appeal against a decision of the president of a higher court or the Supreme Court shall be decided by a panel of three high court or Supreme Court judges.*

*(3) If it is necessary to perform an act in a case and postponement of that act would present a risk, the president of the court shall order that the act be performed by another judge pending the decision on the request for exclusion of the judge, in accordance with the court rules on the assigning of cases.*



#### Article 41

- (1) Exclusion of a judge may also be requested by the parties in the case.*
- (2) A party shall be bound to request exclusion of a judge or a juror judge as soon as he learns of the existence of grounds for exclusion and no later than before the conclusion of the main hearing. He may only request that a judge or juror judge be excluded during the main hearing for the reasons referred to in points 4a or 6 of Article 39 of this Act if the reason warranting exclusion arose after the main hearing had commenced and, if it arose earlier, only if the party did not know or could not have known about it.*
- (3) A party shall only have time until the beginning of the session of the panel to request that a higher court judge be excluded. If the hearing is being held before a court of second instance (Article 380), the provisions of the preceding paragraph shall apply mutatis mutandis to the party's request that a judge be excluded.*
- (4) In challenging a judge or a juror judge participating in the case considered, or in challenging a higher court judge, a party shall be bound to specify the name of the judge challenged.*
- (5) A party shall be bound to set forth in its request for exclusion the circumstances which in his opinion provide the legal basis for exclusion. A party need not repeat in the request for exclusion the reasons cited in a previous request which was rejected, or cite the reasons already cited by the judge, juror judge or other party in the case on the basis of which the request was rejected.*

#### Article 42

- (1) The request for exclusion referred to in the preceding article shall be decided by the president of the court.*
- (2) If the exclusion request relates to the president of the court or to the president of the court and a judge or a juror judge, the ruling thereon shall be rendered by the president of the immediately higher court; if the president of the supreme court is challenged, the ruling thereon shall be rendered by a plenary session of the supreme court.*
- (3) Before a ruling on exclusion is rendered, the judge, the juror judge or the president of the court shall be heard and, if necessary, other inquiries shall be made.*
- (4) No appeal shall be permitted against a ruling whereby exclusion is granted. A ruling rejecting a request for exclusion may be challenged by means of a special appeal; if the ruling was rendered after the charges were filed, that ruling may only be challenged in an appeal against the judgement.*
- (5) If the party acted in a manner contrary to the provisions of the second to fifth paragraphs of the preceding article, or if it is clear from its contents that the request is obviously without foundation and has been submitted in order to delay proceedings or undermine the authority of the court, the request shall be rejected wholly or in part. The decision rejecting the request shall be issued by the investigating judge, the judge or the panel hearing the case. The judge or president of the court whose exclusion is being requested may take part in the decision-making. No appeal shall be permitted against a ruling rejecting the request.*

#### Article 43

- (1) As soon as a judge or juror judge learns that his exclusion has been requested, he must immediately discontinue any further action in connection with the case, unless it involves an unlawful or clearly groundless request for exclusion which is rejected (fifth paragraph of Article 42). If it is necessary to perform an act in a case and postponement of that act would present a risk, the provisions of the third paragraph of Article 40 of this Act shall be applied.*
- (2) If the request for the exclusion of a judge or juror judge is upheld, the acts performed by that judge or juror judge after he learned that reasons for his exclusion had been adduced shall not be procedurally valid.*

Disciplinary measures can be imposed on judges. Below is the data regarding disciplinary proceedings on judges from 2010 to 2016:

	2010	2011	2012	2013	2014	2015	2016
All proceedings	0	7	1	1	3	7	3
Acquittals	0	2	1	0	0	3	1
Proceedings stopped because of the termination of judicial service	0	0	0	0	2	0	0
Transfer to another court	0	0	0	0	1	0	0
Written warning	0	3	0	1	0	0	1
Wage reduction	0	0	0	0	0	2	0
Suspension of promotion.	0	2	0	0	0	2	1

Judicial office and judicial service can also be terminated pursuant to article 74 of the Judicial Service Act, where judges shall have their judicial office terminated:

- if they fail to make an oath no later than sixty days from the day of the election to judicial office unless the failure of not making an oath is a result of factors beyond their control;
- if they lose the citizenship of Slovenia;
- if they lose the capacity to contract or cease to be in sufficient health to perform judicial service;
- if they resign from judicial service via a written application sent to the Judicial Council by the president of the court;
- if the court where the judge is serving is abolished and it cannot be guaranteed they continue performing judicial service at another court;
- if they accept an office, begin to perform activities, enter into an employment relationship, or perform work that is incompatible with the judicial office (art. 41, para. 3 of art. 42 and para. 3 of art. 43);
- if it proceeds from the assessment of their service that they are unsuited to judicial service (art. 33); or
- if a disciplinary sanction of termination of judicial office is pronounced upon them.

For relevant statistics, please refer to the table illustrating the reasons for termination of judicial office and judicial service in the period from 2012 to 2016:

	2012	2013	2014	2015	2016
failing to make an oath no later than sixty days from the day of being elected to judicial office	1	1	0	0	0
losing the capacity to contract or cease to be in sufficient health to perform judicial service	1	2	1	2	1
resigning from judicial service via a written application	5	3	6	9	4
accepting an office, beginning to perform activities, concluding an employment relationship or despite a prohibition performing work that is incompatible with judicial office	2	4	0	2	3
unsuited to judicial service	0	3	2	1	0
disciplinary sanction of termination of judicial office is pronounced	0	0	0	0	1
retirement	37	11	21	15	11
total	46	24	30	29	20
conviction of criminal offence.	0	0	1	0	0

For more information on the code of conduct and ethics for judges, please see the summary provided under paragraph 6 of article 8 of the Convention.

### ***(b) Observations on the implementation of the article***

The independence of the judiciary is established in the Constitution (art. 125). The organization of courts and the recruitment and dismissal of judges are governed by the Constitution and the Judicial Service Act (JSA). Judges are elected by the National Assembly on the proposal of the Judicial Council. Slovenia has a specific Code of Judicial Ethics for judges. The courts make use of professional as well as lay judges. The JSA provides for rules on the prohibition of gifts (art. 39), excluded activities and secondary employment (arts. 41-43). The Courts Act governs procedures regarding case assignment and distribution.

### ***Paragraph 2 of article 11***

*2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

The State Prosecutor's Office is a system of independent state bodies, within which state prosecutors perform their function of filing and presenting criminal charges as a special function of state power pursuant to the provision of article 135 of the Constitution and carry out other tasks according to the laws. Based on the constitutional character of the state prosecutorial function, the prosecution of perpetrators of criminal offences is performed by enforcing criminal legislation on behalf of the State in the public interest as repressive activities of the State. The State Prosecutor's Office is part of the executive branch.

According to paragraph 1 of article 135 of the Constitution, the principle of functional independence of State prosecutors is established regarding the performance of the state prosecutorial function. This implies the independence of the individual state prosecution offices as state bodies. As stipulated by the Constitutional Court, state prosecutors have been guaranteed independence in carrying out their function in concrete cases as the State Prosecutor's Office is not such a part of the executive power that may in concrete cases be guided by the Government or any ministry in terms of political or expert instructions.

As a part of the executive branch, the State Prosecutor's Office is subject to limits and supervision over the executive branch. These significantly co-define the balance between the executive and legislative branches and, in particular, respect for the judicial branch. As stated by the Constitutional Court, State Prosecution Offices shall, therefore, be organized as independent state bodies.

#### **Constitution**

##### Article 135 (State Prosecutor)

*State Prosecutors file and present criminal charges and have other powers provided by law. The organisation and powers of state prosecutor offices are provided by law.*

##### Article 136 (Incompatibility of the Office of State Prosecutor)

*The office of State Prosecutor is not compatible with office in other state authorities, in local self-government authorities, and in bodies of political parties, and with other offices and activities as provided by law.*

The independence of state prosecutors is guaranteed by the law regulating the state prosecutorial service and the prosecutorial function<sup>115</sup>. The positioning of the State Prosecutor's Office in the Constitution indicates that the State Prosecutor's Office is an independent state body in terms of its functioning and a part of the system of justice in the broad sense. According to the State Prosecutor's Office Act (SPOA), state prosecutors are functionaries in an employment relationship with Slovenia. A state prosecutor is independent and bound by the Constitution and

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<sup>115</sup> Constitutional Court Decision No. U-I-42/12-15, dated February 7, 2013

law in performing state prosecutorial service. Pursuant to the Constitution, a state prosecutor shall also be bound by the general principles of international law and ratified and published international treaties. State prosecutors may not be given instructions or orders for their work in a specific criminal case. At the same time, general instructions on the conduct of state prosecutors relating to the uniform application of the law are permitted to provide general guidance, ensure the uniformity of prosecution policy, and inform the public and others as necessary. The independence of State prosecutors is safeguarded by the institute of the takeover of a case and release from further work.<sup>116</sup>

The SPOA stipulates that the State Prosecutorial Council (inter alia):

- adopts the Code of Ethics of State Prosecutors,
- appoints members of the Ethics and Integrity Commission,
- gives its consent to the Policy of Detection and Control of Corruption Risks and Exposure of State Prosecution Offices, and
- monitors the implementation of and proposes amendments to the Policy of Detection and Control of Corruption Risks and Exposure of State Prosecution Offices,
- decides on the incompatibility of a state prosecutorial function, and
- participates in the safeguarding of independence in the performance of state prosecutorial service.

A state prosecutor who believes that his or her independence has been violated may propose to the State Prosecutorial Council to process this violation. If the State Prosecutorial Council finds the proposal well-founded, it may, given the nature of the violation, terminate the violation or request or propose that it be terminated and, if needed, publish its findings.

On 22 September 2015, the State Prosecutorial Council adopted the Code of Ethics of State Prosecutors. On 16 September 2015, it appointed the Ethics and Integrity Commission members. On 20 January 2017, it also appointed a substitute member of the Ethics and Integrity Commission. On 16 March 2016, the State Prosecutorial Council gave its consent to the Policy of Detection and Control of Corruption Risks and Exposure, which the State Prosecutor General adopted on 29 March 2016.

The Ethics and Integrity Commission, appointed by the State Prosecutorial Council, adopts principled opinions on conduct that may violate the Code of Ethics of State Prosecutors. In accordance with the Code of Ethics of State Prosecutors, the Ethics and Integrity Commission issues recommendations regarding compliance with the rules of ethics and integrity of state prosecutors, adopts guidelines in the field of ethics and integrity of state prosecutors, and is responsible for education and training of state prosecutors in the field of ethics and integrity in cooperation with the Centre for Judicial Training. Only state prosecutors may be appointed to the Ethics and Integrity Commission. On 25 May 2016, in accordance with the recommendations of GRECO, the Ethics and Integrity Commission adopted Recommendations regarding conflicts of interest for state prosecutors about expected conduct outside the State Prosecutor's Office and when state prosecutors leave for the private sector.

On 22 February 2017, Interpretations of the Code of Ethics of State Prosecutors were adopted by the Ethics and Integrity Commission. The Recommendations regarding conflicts of interest for state prosecutors stipulate the types of behaviour recommended for state prosecutors at work and outside the office to maintain a high level of integrity, ethics and moral standards. State prosecutors are advised to avoid situations that may raise doubts about their impartiality and objectivity both at work and outside the office. They are also advised to be vigilant that – in procedures that might cast doubt on their objectivity and impartiality (and on the objectivity and impartiality of the state prosecutors' organization) – they always act according to the Code of Ethics of State Prosecutors and relevant recommendations. The Recommendations also cover the behaviour of former state prosecutors in the private sector. Although violations of these standards cannot be sanctioned in the case of a former state prosecutor, it merely creates an expectation throughout state prosecutors with regard to the expected behaviour once they leave the prosecution service (moral obligation). This presents a hold-back on the side of a person who would like to take advantage of acquaintances as well as on the side of an active state prosecutor who is aware that such conduct is inappropriate and, therefore, must be avoided. The Recommendations also present guidelines for state prosecutors if they are assigned to a case for which legal reasons requiring recusal are not in place, but the state prosecutor is acquainted with the parties to the case. The purpose is to increase the reputation of the state

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<sup>116</sup> the takeover of a case from a particular prosecutor is rigorously regulated (only under extreme circumstances)

prosecutorial function and resolve certain dilemmas related to internal organization.

With regard to disciplinary procedures, the State Prosecutorial Council appoints disciplinary bodies, initiates or demands the initiation of a disciplinary procedure, while - in a procedure of temporary removal from state prosecutorial service (suspension) - it gives a preliminary opinion and renders decisions on the appeal against the suspension.

The State Prosecutorial Council is an independent state body that (among others) directs personnel policy in filling the state prosecutorial positions. In the procedure of state prosecutors' appointment, it formulates the final opinion on appointment proposals. Regarding selection procedures, it adopted (on 27 October 2016) Measures, Methods, and Rules for Testing Professional Qualification and Other Skills of Candidates for State Prosecutors, which requires publication of vacant positions in the service, ensuring equal conditions for all candidates. Its objective is to ensure the selection of the candidate who best fulfils the statutory criteria. The State Prosecutorial Council is also responsible for preparing the state prosecutorial service's performance assessment and for the promotion of state prosecutors. In this regard, the State Prosecutorial Council adopted Measures for Quality of Work of State Prosecutors for Assessment of the State Prosecutorial Service on 28 November 2012, 10 November 2015, and 27 October 2016.

In cooperation with the Ethics and Integrity Commission, trainings of state prosecutors on ethics and integrity have been taking place since 2015. As part of the Prosecutors' Educational Days, Deputy President of the Ethics and Integrity Commission and District State Prosecutor Counsellor Primož Suknaic delivered a lecture entitled "Ethics and Integrity of a State Prosecutor" on 1 December 2015, while introductory general lectures and specialized workshops were carried out in 2017.<sup>117</sup>

The State Prosecutor's offices have, similarly to the courts, the obligation to compose, execute and periodically revise their integrity plans. The Integrity Plan is a document that lists identified risks of corruption and other unlawful and unethical acts within the organization and outlines measures to prevent these risks.

Regarding the procedure of case assignment and distribution in the state prosecution, the SPOA states as follows:

#### Article 7 (Competences and Duties of a State Prosecutor)

*(1) The competences of a state prosecutor shall be determined by the Constitution and the statute. (2) In performing State Prosecutorial Service, a state prosecutor shall act with impartiality and protect constitutionality and legality, the principles of the rule of law and human rights and fundamental freedoms. (3) A state prosecutor shall perform State Prosecutorial Service in accordance with the the principle of legality, in an expertly correct manner, in a timely fashion, and shall safeguard its reputation. (4) A state prosecutor shall resolve any matters assigned to him without any unnecessary delay.*

#### Article 17 (State Prosecutorial Rules)

*(1) The functioning of state prosecutor's offices shall be regulated by the Statute and the State Prosecutorial Rules.*

*(2) The State Prosecutorial Rules shall determine the internal organisation of the state prosecutor's offices, the assignment, removal and takeover of cases to and from the state prosecutors, office administration rules, the contents of registers, directories and records and their upkeep, forms for work, form and contents of seals, stamps and logo of the state prosecutor's office, form and content of official identification cards, detailed rules on the informing the public, contacts with members of national communities, functioning in the matters of the state prosecutor administration, rules on the performance of expert supervision, ensurance of the security of persons, documentation and property, informing the Ministry, basic house rules and standards for state prosecutor's office premises and equipment, rules on viewing and copying of files, rules on performance and supervision of conducting of material and financial affairs, rules on the regular performance of matters and reporting, the distribution of working hours and client visits, rules on keeping statistics and other rules referring to the functioning of state prosecutor's offices.*

*(3) The State Prosecutorial Rules shall be issued by the minister responsible for interior affairs (hereinafter:*

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<sup>117</sup> **Development after the country visit:** Center for judicial education is organising 2-3 one-day "Ethics and Integrity of a State Prosecutor" workshops per year. The registration is free. All the state prosecutors can apply and attend.

Minister), following a preliminary opinion of the State Prosecutor General of the Republic of Slovenia in female gender or State Prosecutor General of the Republic of Slovenia in male gender (hereinafter: State Prosecutor General of the Republic of Slovenia [in male gender]) and the State Prosecutorial Council.

(4) Should the Minister fail to consider in full or in part the preliminary opinion as referred to in the previous paragraph when issuing the State Prosecutorial Rules, he shall substantiate his point of view and convey the explanation to the State Prosecutor General and the State Prosecutorial Council.

(5) The State Prosecutorial Rules shall be published in the Official Gazette of the Republic of Slovenia.

#### Article 144 (Assignment of Cases)

(1) The assignment of cases to state prosecutors shall be regulated by the State Prosecutorial Rules. (2) As a rule, the cases shall be assigned to state prosecutors following the order of receipt, taking into consideration the organisation of work, specialisation and an even workload. The rules for the assignment of cases and implementation of procedural rules may be determined in more detail by the annual work schedule in accordance with the State Prosecutorial Rules.

(3) In the case of releasing a state prosecutor from a case and reassigning the case, the head of a state prosecutor's office shall issue an order on the reassignment of the case and either reassign it to another state prosecutor whose turn it is to take on the case according to the annual work schedule, or he may assign it to himself for resolution.

(4) In addition to the cases referred to in the previous paragraph, the case may be reassigned to another state prosecutor in the case of a longer absence, being burdened with other extensive and legally demanding matters, exclusion, merging or exclusion of a state prosecutor or change in a legal field, and temporarily also for the purpose of performing a particular procedural act.

(5) The order referred to in the previous paragraph shall state the reason and the legal basis for the reassignment.

(6) Depending on the nature and complexity of the matter, the head of a state prosecutor's office shall determine the state prosecutors and personnel members who will cooperate with the state prosecutor to whom the case is assigned under the principle of team work, and the scope and manner of cooperation.

#### *Prosecutorial Rules*

Article 68 of the Prosecutorial Rules establishes the rules for case assignment. The case assignment decision is made by the head of the State Prosecutor's Office based on the annual work schedule. The head of the State Prosecutor's Office may pass the rights for case assignment to his or her deputy or to the head of the department within the State Prosecutor's Office. When assigning cases, the actual workload of state prosecutors shall be taken into consideration.

A case in which instructions or investigation acts have been performed during on-duty service shall be assigned to the state prosecutor who has given instructions or participated in investigation acts. For the purpose of ensuring a balanced workload, a proportionate number of cases are also assigned to state prosecutors who do not perform on-duty service.

The exclusion of a state prosecutor is regulated and prescribed in articles 39 to 44 of the CPA (*for the texts of the articles, please see the previous paragraph*).

The regulation on the exclusion of state prosecutors where conflicts of interest may occur also serves as the legal framework for the prevention of conflicts of interest regarding state prosecutors' assets.

#### **Slovenia provided the following examples and statistics:**

Table of disciplinary proceedings conducted in the last five years.

YEAR	2012	2013	2014	2015	2016
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No. of conducted disc. procedures	2	3		1	2
Acquittal		1			
Discontinuation due to termination of the function			1		
Transfer to another location					
Written reprimand		1			
Temporary reduction of salary			1		
Suspension of promotion					
Dismissal of the function of the state prosecutor					
Discontinuation for other reasons					1

Statistical data on findings and work of the Ethics and Integrity Commission (number of reports of corruption in the prosecution service) is provided under paragraph 2 of article 7 of the Convention. There are no research/case studies, etc., demonstrating the impact of educational and training programs for members of the prosecution service.

Regarding the information about the system of financial disclosure of prosecutors, the regulation is the same as for judges. *See also the previous answer and information provided under paragraph 5 of article 8 of the Convention.*

Regarding cases in which members of the prosecution service have been subject to criminal proceedings as a result of alleged acts of corruption, there has been one case of a state prosecutor who was convicted of a criminal offence of ‘acceptance of bribes’ (art. 261, CC). He was sentenced to one year and six months of imprisonment and a fine (€3,000) as an accessory punishment. The judgment was pronounced in March 2012. It became final in November 2012.

***(b) Observations on the implementation of the article***

The public prosecutor enjoys functional independence according to the Constitution (art. 135). The organization and functioning of the Office of the Public Prosecutor is regulated in the State Prosecutor’s Office Act, which provides that the State Prosecutorial Council (SPC) is an independent State body responsible for selecting prosecutors, appointing members for the Ethics and Integrity Commission (EIC), and applying disciplinary procedures. The SPC adopted a special Code of Ethics for State Prosecutors in 2015.

**Article 12. Private sector**

***Paragraphs 1 and 2 of article 12***

*1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*

*2. Measures to achieve these ends may include, inter alia:*

*(a) Promoting cooperation between law enforcement agencies and relevant private entities;*

*(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;*

*(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;*

*(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*



*(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*

*(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*

**(a) Summary of information relevant to reviewing the implementation of the article**

**Paragraph 1 of article 12**

The CPC adopts either a principled opinion or findings on a specific case in implementing its duties. The principled opinion and findings of the CPC do not constitute a final decision on the criminal, minor offence, compensation, disciplinary or any other accountability of a legal or natural person and do not take a form of an administrative decision. In its principled opinions or findings, the CPC is entitled to process the personal data of individuals, including their name, function, position and place of employment.

The principled opinions of the CPC shall, in particular, include its presentation of and position on systemic shortcomings, inconsistencies and problems, and its proposals to improve the situation. The findings of the CPC on a specific case shall include a statement of facts and an assessment of relevant conducts in terms of the law, measures to strengthen the integrity of the public sector and mitigate corruption risks, as well as an explanation of the actions required where irregularities and risks have been established.

Through the two types of documents, the CPC identifies corrupt practices and assesses the actions of individuals if they constitute corruption as defined in article 4 of IPCA and does not evaluate the criminal or other liabilities of an individual.

Both documents serve primarily as preventive tools – a proactive approach. With the issuance of the documents and press reports, the CPC raises awareness of the general public and demonstrates examples of corrupt behaviour and ways to avoid it.

The CPC works on cases not only from the public sector but also from the private sector (58% of all cases are related to public institutions, 28% to local municipalities and 14% to the private sector). This illustrates that the CPC also raises awareness amongst the general public, including the private sector.

On the basis of its analysis of concluded corruption cases reported to it, the CPC finds that corruption usually appears in different forms, the violation of established procedures and appropriate regulations to generate both financial and non-financial benefits being the most common form, and provides examples of cases.

The IPCA includes, among others, the following anti-corruption obligations for the private sector:

**a) Anti-corruption clause, defined in Article 13 of IPCA:**

*(1) Any contract in which a person promises, offers or gives any undue advantage to the representative or agent of a public sector body or organisation on behalf or for the account of another contracting party for the purpose of*

- obtaining business;*
- concluding business under more favourable terms and conditions;*
- omitting due supervision over the implementation of contractual obligations; or*
- any other act or omission which causes a public sector body or organisation damage or by*

*which the representative or the agent of the public sector body or organisation, the other contracting party or its representative, agent or intermediary are put, in a position to obtain an undue advantage, shall be deemed null and void.*

*(2) Public sector bodies and organisations entering into contracts that exceed EUR 10 000 (excluding VAT) with bidders, the suppliers of goods and services, or contractors shall, by taking each case into consideration, include in these contracts the content referred to in the preceding paragraph as a compulsory element of any contract; they may also include additional provisions for the purpose of preventing corruption or other transactions which are contrary to morality or public*

*order. This provision shall also apply to entering into contracts with bidders, the suppliers of goods and services, or contractors outside the territory of the Republic of Slovenia.*

*(3) A public sector body or organisation which has concluded a contract shall on the basis of its own findings on the alleged existence of the facts referred to in paragraph 1 of this Article or on the basis of a notification from the Commission or any other authority in respect of the alleged occurrence of these facts commence with the identification of the criteria for nullifying the contract referred to in the previous paragraph or by way of any other measure in compliance with the regulations of the Republic of Slovenia.*

*(4) In the event that there is a suspicion of irregularities in the implementation of paragraph 2 of this Article, the Commission shall request the public sector bodies or organisations to submit to it all contracts concluded in a specific period of time or with a specific person. In the event that the Commission establishes a violation of the provisions of paragraph 2 of this Article or the alleged existence of the facts referred to in paragraph 1 of this Article, it shall notify the body or organisation that concluded the contract and other competent authorities accordingly thereof.*

*(5) In the event that a public sector body or organisation takes the view that due to the nature of a contract the inclusion of the anti-corruption clause is not possible or appropriate, or in cases where the other contracting party is established outside the territory of the Republic of Slovenia and opposes the inclusion of such, the relevant body or organisation may, by way of a reasoned proposal, request that the Commission grant an exemption from the obligation laid down in paragraph 2 of this Article in respect of the contract in question. When taking a decision thereon, the Commission shall particularly take into account the public interest in the conclusion of the contract, any objective circumstances which prevent business from being concluded owing to the inclusion of the anti-corruption clause, and the level of the general corruption risk in equivalent business transactions. The Commission's permission regarding the conclusion of a contract without the anti-corruption clause shall be published on its website or, in accordance with an agreement with the relevant body or organisation, when it can no longer have any impact on the conclusion of the contract. (6) In order to ensure the transparency of the business and to mitigate corruption risks, any public sector body or organisation which is subject to the obligation to carry out public procurement procedures in compliance with the relevant public procurement regulations shall, prior to the conclusion of a contract exceeding the value of EUR 10 000 (excluding VAT) obtain a statement or information on the participation of natural and legal persons in the bidder's assets, including the participation of silent partners, as well as on economic operators, which are considered to be companies affiliated to the bidder under the provisions of the Companies Act. The public sector body or organisation in question shall submit this statement or information to the Commission at the latter's request. In respect of natural persons, this statement shall include their personal name, residential address and their interest in the assets. In the event that the bidder submits a false statement or provides false information on the facts stated, the contract shall be rendered null and void.*

b) *Integrity assessments.* According to **article 49 of the IPCA**, on the proposal and at the expense of other legal entities, the CPC may assess the integrity of the entity or make suggestions for integrity improvements.

c) *Duty to provide data.* **Article 16 of the IPCA** defines that, amongst others, any legal person governed by public or private law shall, within the time limit set out by the CPC and notwithstanding the provisions of other acts and irrespective of the form of the data, communicate to the CPC at its reasoned request any data, including personal data, and documents which are required by the CPC to perform its statutory tasks. They shall do so free of charge.

d) *Obligation to avoid a conflict of interest.* According to **article 37 of the IPCA**, an 'official person' shall pay attention to any actual or possible conflicts of interest and shall make every effort to avoid it. An official person may not use his or her office or post to advance his or her personal interests or the personal interests of another person. Official persons are, following article 4 (point 10), also managers and members of the management and supervisory boards of public sector entities (according to point 4, article 4, IPCA, public sector entities include public undertakings and private companies in which a controlling interest or a dominant influence is held either by the State or a local community)

## Corporate Governance

The Slovenian corporate governance framework consists of laws, (implementing) regulations, standards, and autonomous sources of law, such as codes and guidelines. The corporate governance framework, which is, to a great extent, inspired by the German/Austrian corporate law model, is consistent with the EU legal framework and international best practices such as G20/OECD Principles of Corporate Governance.

**The Slovenian Companies Act** is the main law laying down the basic corporate status rules for the establishment and operation of commercial companies and sole proprietors, related parties, the subsidiaries of foreign companies, and the transformation of their legal form. Parts of the Companies Act are also the provisions on the elimination of conflicts of interest, the notification of the company data to the register, the accounting rules and standards, annual reports of companies, and their disclosures.

**The Takeovers Act** lays down the terms, conditions and procedures relating to the takeover bids. The provisions of the Takeovers Act on publication of data, notification and publication of the intention to takeover, the takeover bid and prospectus significantly increase the transparency of the takeover and add to the protection of different groups of stakeholders, especially minority shareholders, the creditors and employees in the target company. The supervision and penalty provisions enable the competent authority to monitor the crucial phases of the takeover and impose minor offence liabilities in the cases of non-compliance with the provisions of the Takeovers Act.

**The Financial Instruments Market Act**, on the other hand, regulates the conditions for the offering of securities to the public and the admission of securities to trading on a regulated market; the obligations concerning the disclosure of information related to the securities admitted to trading on a regulated market; the terms and conditions for the founding, operation, supervision and winding-up of investment firms, market operators and settlement systems with the registered office in Slovenia; the terms and conditions under which the persons with the registered office outside Slovenia may provide investment services in Slovenia; the rules of trading on a regulated market, prohibited acts of market abuse and the rules for settling transactions concluded on a regulated market and the rules of operation of the Securities Market Agency (SMA) in the performance of its competences and responsibilities.

**The Auditing Act** governs auditing. The act also regulates the professional areas associated with auditing, the supervision of auditing and valuations and the operations of the Slovenian Institute of Auditors and the Agency for the Public Oversight of Auditing.

Sector-specific regulations lay down status, operation and other rules in the area of banking, insurance operations, energy, and management of state-owned enterprises, etc.

Corporate governance codes provide the companies, their management, shareholders and other stakeholders with additional guidance on corporate governance and management of the company. There are three corporate governance codes in Slovenia:

- *Corporate governance code for listed companies*, a reference code for listed companies,
- *Corporate governance code for non-listed companies*, a reference code for companies other than publicly listed companies, and
- *Corporate governance code of state-owned enterprises*, a reference code for state-owned enterprises and their subsidiaries in which the position of the controlling company is held by a company with state's capital assets.

Accounting and auditing standards are codes of conduct of the profession, which further elaborate on the statutory rules and accounting and auditing requirements, and explain and set out the methods of their application.

The presented legal framework also imposes measures/penalties (administrative, civil) for not complying with the legal requirements and empowers the competent authorities to supervise and sanction the private entities as well as responsible persons.

Measures aim to be effective, proportionate and dissuasive. The Companies Act, for example, differentiates between serious and minor breaches of the law and accordingly imposes fines (administrative penalty) on micro, small, medium and large companies, foreign companies with subsidiaries in Slovenia, entrepreneurs, responsible persons, or supervisory and management boards, etc.

Provisions of the Companies Act on diligence, responsibility and liability for damages provide for the example of

a measure that is at the disposal of the company and its creditors and which can be imposed on the members of the supervisory and management body for damages arising from the violation of their duties. Members of the supervisory and management body are jointly and severally liable to the company for damages arising from the violation of their duties unless they can demonstrate that they fulfilled their duties fairly and conscientiously.

Another measure in the Companies Act that can apply to the company members is the concept of disregard for legal personality. Company members can assume responsibility for the liabilities of the company in four cases:

- if they have abused the company as a legal person in order to attain an objective that is forbidden to them as individuals;
- if they have abused the company as a legal person, thereby causing damages to their creditors;
- if, in violation of the law, they have used the assets of the company as a legal person as their own personal assets; or
- if for their own benefit, or for the benefit of some other person, they have reduced the assets of the company, where they knew or should have known that the company would not be capable of meeting its liabilities to third persons.

**The Chamber of Commerce and Industry (CCIS)** promotes codes of conduct, codes of best practices, and codes of ethics as guidance to companies relating to best practices in a branch or profession, through web information, events and educational activities such as workshops for the use of the Corporate governance code for non-listed companies mentioned above.

- Slovenian Corporate Integrity Guidelines<sup>118</sup>
- Code of Good Business Practice for Real Estate Agents and Professionals<sup>119</sup>

The Chamber also cooperates with national administration units, such as the MoPA and the Financial Administration Office, to provide companies, together with professional and branch associations, with guidelines for professionals, such as guidelines for public procurement and guidelines for tax incentives on R&D. This gives companies a better information platform and more legal and business certainty.

It also creates standards that promote best practices through certificates of excellence, such as a website seal “Excellent SME Slovenia.”<sup>120</sup> This is a business-performance certificate issued in cooperation with the renowned credit rating agency COFACE Slovenia to the most successful small and medium-sized companies in Slovenia. The main purpose of the certificate, coinciding with EU directives, is to promote successful small and medium-sized companies, secure and safe business, and good business practices, and to increase market transparency. Additionally, it will help customers and business partners to reduce financial and other risks when concluding business agreements. The certificate enables local and international business partners to verify the company’s existence, proper web address, and, most importantly, creditworthiness.

#### ***Subparagraph 2(a) of article 12:***

##### *Reporting mechanisms:*

Persons in Slovenia can report possible corrupt practices to the police, the Public Prosecutor’s Office and the CPC. The police run a hotline for receiving reports of offences. In accordance with the laws, any person may report instances of corruption.

Besides, the CPA stipulates (arts. 145 and 146) that all state agencies and organizations having public authority are bound to report criminal offences, of which they have been informed or which were brought to their notice. In submitting crime reports, the agencies and organizations must indicate evidence known to them and shall undertake steps to preserve traces of the crime, objects on which or by means of which the crime was committed and other items of evidence.

According to article 23(1) of the IPCA, any person may report instances of corruption committed by a holder of

<sup>118</sup> Available at: <[http://www.korporativna-integriteta.si/Smernice/Smernice\(SSKI\).aspx](http://www.korporativna-integriteta.si/Smernice/Smernice(SSKI).aspx)>

<sup>119</sup> Available at: <<https://zdnf.gzs.si/vsebina/Dokumenti-ZDNF/55319>>

<sup>120</sup> Available at: <<https://excellent-sme.gzs.si/vsebina/About-Excellent-SME-Slovenia>>

public authority in a state body, or local community, including legal persons governed by private law, or practice by a natural person for whom he or she believes that it contains elements of corruptions, to the CPC or any other competent body.

The Rules of Procedure of the CPC provide that anonymous reports with substantial information are reviewed. Reports on corruption can be lodged on the website of the CPC, by telephone, or via e-mail to the CPC. In Slovenia, financial incentives are not provided for reporting offences. The CPC provides all the necessary information about whistle-blower protection and makes it easily accessible on its website to encourage people to report corruption offenses. Public employees receive information about whistle-blowing protection during the trainings launched by the CPC.

If the CPC finds that the report contains elements of a criminal offence, it informs the law enforcement authorities and requests that they keep the CPC informed of any further courses of action. The identity of the reporting person who has made a report in good faith and has reasonably believed that the information provided is true shall not be established or disclosed (art. 23(4), IPCA). If in connection with the report of corruption, the conditions for the protection of the reporting person or his or her family members are fulfilled under the Witness Protection Act, the CPC may submit a proposal to the Commission on the Protection of Witnesses Risk to include them in the protection programme or may propose that the State Prosecutor General take urgent safeguarding measures (art. 23(6)). In article 25, the IPCA also provides measures to protect the reporting person (the right to claim compensation from their employer for the unlawfully caused damage).

If the CPC establishes a causal link between the reporting and the retaliatory measures taken against the reporting person, it shall demand that the employer ensure that such conduct is discontinued immediately - a fine between €400 and €4,000 shall be imposed on the legal person governed by private law which acts in a manner that has adverse consequences for the reporting person, or takes retaliatory measures against the reporting person and which in contravention of the demand of the CPC fails to immediately cease imposing retaliatory measures.

In addition, the Slovenian Institute of Auditors promotes cooperation between law enforcement agencies and audit firms and certified auditors. The cooperation must be within the scope of the legal duty to protect confidential data. Criminal offences are discussed with auditors during education programs for the title of certified auditors and in continuing education seminars where speakers are invited from the Public Attorney Office and the Office for Money-Laundering Prevention, etc.

#### *Whistle-blower protection:*

The IPCA includes provisions regarding the protection of whistle-blowers (reporting persons) in line with the UNCAC. The IPCA regulates the protection of persons against diverse threats and all forms of physical violence and psychological maltreatment when such persons actively and in good faith wish to make an effort to prevent and detect illegal activities and their perpetrators. The provisions regulate the protection of whistle-blowers of corruption cases and other illegal activities (Chapter III, arts. 23, 24 and 25 – *please see paragraph 4 of article 8 of the Convention*).

The law contains other internationally recognized principles for whistle-blower protection, including confidentiality; internal and external disclosure channels; a broad range of remedies to compensate for retaliation; referral of valid claims to law enforcement; assistance from an independent agency (the Commission for the Prevention of Corruption); fines (ranging from €400- 1,200) for those who retaliate against or disclose the name of whistle-blowers; and the burden on employers to prove that adverse personnel actions are justified. Additionally, the law defines whistle-blowing in very broad terms, encompassing all forms of illegal or unethical behaviour.

Additional protections for government employees are established in the Public Employees Act and a Code of Ethics, both of which prohibit retaliation against public employees who report wrongdoings. The Public Employees Act, among others, prohibits humiliation, intimidation, and insulting one's dignity.

The Witness Protection Act (2005) defines the protection of witnesses and other persons endangered because of their cooperation in court proceedings. Protection is assured in the pre-trial procedure as well as after the trial in court.

If the CPC finds that a report filed contains elements of a criminal offence for which the offender is prosecuted ex officio, it informs the law enforcement authorities of this in accordance with the law governing the criminal procedure. If in connection with the report of corruption, the conditions for the protection of the reporting person

or his/her family members are fulfilled under the Witness Protection Act, the CPC may submit a proposal to the Commission on the Protection of Witnesses Risk to include them in the protection programme or may propose that the State Prosecutor General take urgent safeguarding measures. As mentioned earlier, according to the laws, the identity of the reporting person, who has made a report in good faith, must not be established or disclosed.

An 'official person' who has reasonable grounds to believe that he or she has been requested to engage in an illegal or unethical conduct, or has been subject to psychological or physical violence to that end, may report such practice to the superior or the person authorized by the superior. If the reporting persons have been subject to retaliatory measures as a consequence of filing the report, and this has had an adverse impact on them, they have the right to claim compensation from their employer for the unlawfully caused damage. The CPC can offer a reporting person assistance in establishing a causal link between the adverse consequences and retaliatory measures (art. 25, IPCA). If the reporting persons are public employees, and if they continue to be the focus of retaliation despite the CPC's demand to discontinue the retaliation, making it impossible for them to continue work in their current work post, they may request that their employer transfer them to another equivalent post and inform the CPC of the transfer (art. 25(4), IPCA).

### ***Subparagraph 2(b) of article 12***

The Companies Act contains several provisions that incentivize the companies, namely their management and supervisory bodies, shareholders or members, employees, creditors and other stakeholders, to perform in the best interest of the company.

#### *Provisions on conflicts of interest*

The Companies Act provides for the definition of conflicts of interest in article 38a. A conflict occurs when the impartial and objective performance of tasks or decision-making of certain persons (see the next paragraph) in the company limited by shares and the limited liability company is jeopardized due to the inclusion of personal economic interest, or the interest of family members or due to personal affection or any other interest associated with other natural or legal persons (art. 38a(3)).

As a general rule, members of the management and supervisory body, the procurator and the executive director in companies limited by shares, and managers, supervisory board members and the procurator in the limited liability company must avoid any conflicts of interest or conflicts between their duties and the interests or duties of the company managed or supervised by them. In the event of a conflict of interest, the person referred to in the preceding sentence must notify the body of which such person is a member and the supervisory authority of the company. If a company does not have a supervisory board, it must notify its members thereof at the company's next general meeting (art. 38a(1)(2)).

The management, procurator and executive director of a company limited by shares or a limited liability company may enter into a legal transaction with another company in which they or their family members or they together hold an interest of at least one-tenth of the share capital or in which they or their family members participate in the profits of another company on any legal basis only subject to the approval of the company's supervisory or management board. The persons referred to in the preceding sentence may enter into a legal transaction with another legal person in which they or their family members or they together hold at least one-tenth of the voting rights or in which they participate in the profits of such a legal person on any legal basis only subject to the approval of the company's supervisory or management board. If a company does not have a supervisory board or a management board or if its supervisory or management board does not have a quorum because a member of the body is not allowed to take part in the decision-making process, approval must be granted by the general meeting (art. 38a(4) of the Companies Act). If no consent is granted, the legal transaction is deemed null and void (art. 38a(9) of the Companies Act). The memorandum of association can lay down stricter restrictions on the conclusion of legal transactions (art. 38a(10) of the Companies Act).

The management, procurator and executive director of a company limited by shares or a limited liability company must notify the supervisory or the management board of a legal transaction entered into with another company in which they or their family members or they together hold an interest which is lower than that referred to in the preceding paragraph within three business days of the date of such transactions. The persons referred to in the preceding paragraph must notify the supervisory or the management board of a legal transaction entered into with a legal person in which they or their family members or they together hold less than one-tenth of the voting rights

within three business days of the date of such transactions. If a company does not have a supervisory board or a management board, it must notify its company members thereof at the company's next general meeting (art. 38a(5) of the Companies Act).

The preceding provisions do not apply to a company limited by shares or a limited liability company if the management, the procurator or executive director himself or herself or his or her family member is a holder of three-quarters of the share capital or voting rights of such a company limited by shares or such a limited liability company (opt-out) (art. 38a(11) of the Companies Act). The same shall apply if they have such a stake in the share capital (art. 38a(11) of the Companies Act).

The provisions also do not apply if the amount of a legal transaction does not exceed €2,000 excluding VAT and if the total amount of all legal transactions with other companies or other legal persons does not exceed €24,000 excluding VAT in the current financial year. The exception in the preceding sentence does not apply if the management, the procurator or executive director himself or herself or his or her family members participate in the profits of the legal person with which they enter into a legal transaction on any legal basis (art. 38a(11) of the Companies Act).

## **Companies Act**

### Article 38a (Elimination of conflicts of interest)

*(1) The management, Procurator Holder and the Executive Directors of a public limited company or a limited liability company may enter into a legal transaction with another company in which they or their immediate family members or they together hold an interest that exceeds one tenth of the share capital, or if they or their immediate family members are silent partners in another company or share its profits on any other legal basis, only with the consent of the supervisory board or the board of directors of the company. If the company does not have a supervisory board or a board of directors, the consent shall be granted at the general meeting.*

*(2) The management, Procurator Holder and Executive Directors of a public limited company or a limited liability company shall notify the supervisory board or the board of directors of any legal transactions entered into with another company in which they or their family members or they together hold an interest, which does not exceed the interest referred to in the preceding paragraph, within three business days of entering into such legal transaction. If a company does not have a supervisory board or board of directors, it shall notify the Company Members thereof at the next general meeting to be held.*

*(3) A member of the body which decides on the granting of the consent referred to in paragraph (1) of this Article shall not participate in the decision-making process if the member himself or an immediate family member is a member or a silent partner of the company with which the transaction is concluded or participates in the profit of this company on any other legal basis.*

*(4) The immediate family members referred to in the preceding paragraphs shall be deemed persons defined by paragraph (3) of Article 308a of this Act.*

*(5) Notwithstanding Article 263 of this Act, the Manager's liability for damages is not excluded despite the transaction being entered into after the approval of the general meeting.*

*(6) If no consent referred to in paragraph (1) of this Article is granted, the legal transaction shall be deemed null and void.*

*(7) The memorandum of association can lay down stricter restrictions on the conclusion of the legal transactions referred to in paragraph (1) of this Article.*

The Corporate Governance Code for Listed Companies recommends that the companies call upon the supervisory board members to sign a statement of independence in which they declare themselves on their meeting of the criteria of conflicts of interest and indicate whether they consider themselves independent. Should they recognize any potential conflicts of interest and consider themselves independent, they state in their statements why the conflict of interest is not permanent and relevant pursuant to the Code. In the statements, they also explicitly state that they have the relevant professional training and know-how to work on a supervisory board. Such signed statements should be posted on the company's website.

Moreover, the Corporate Governance Code of State-Owned Enterprises similarly requires the supervisory board



members in companies with state's capital assets to complete and sign a statement of independence upon the appointment, annually and at any change. The requirement also applies to the representatives of the employees on the supervisory board. A complete and signed statement should be published on the company's website. A member of the supervisory board may indicate in the statement of independence that despite the existence of the circumstances of the potential conflict of interest that create a presumption of dependence on a member of the supervisory board, it is still independent because the potential conflict of interest is not relevant and of permanent nature. An independent member should immediately inform the supervisory board of any change in the fulfilment of the independency elements.

#### *Provisions on disclosure of related party transactions in the notes to the financial statement*

A related party is a party defined as such by the International Financial Reporting Standards. Transactions between the parent company and the subsidiary may be exempted if the parent is a 100 percent owner of the subsidiary unless the securities of one of the companies are traded on the regulated market (art. 69(3) of the Companies Act).

The Companies Act requires the medium and large-sized companies to disclose in notes to the financial statement transactions initiated by the company with related parties, including the amounts of such transactions, the nature of the relationship with related parties and other transaction data which are necessary for understanding the company's financial position, if these transactions are significant and are not carried out under normal market conditions. The company may disclose the information on individual transactions in cumulative figures depending on their type, except when separate data are required for the purpose of understanding the effect of related party transactions (art. 69(3)).

#### *Provisions on disclosure of the compliance of the company with the reference corporate governance codes in the corporate governance statement*

The requirement to include the corporate governance statement in the business report is imposed on companies required to have their annual reports audited. The corporate governance statement must include a reference to the corporate governance code applicable to the company, the corporate governance code which the company has voluntarily decided to apply and all relevant information about the corporate governance practices that go beyond the requirements of the Companies Act; a description of main features of the company's internal control and risk management systems in relation to the financial reporting process; significant direct and indirect shareholdings; the holders of securities with special controlling rights; any restrictions on voting rights relating to a certain holding or a certain number of votes; the rules governing the appointment and replacement of members of the management or supervisory bodies and the amendment of the articles of association; the powers of the management, particularly the power to issue or purchase the shares of the company itself; a description of the operation of the general meeting and its key powers and a description of shareholders' rights and how they can be exercised; the composition and operation of the management and supervisory bodies and their committees and the description of the diversity policy applied to the management and supervisory bodies with regard to gender and other aspects, such as age or education or professional background, the objectives of that diversity policy, how it has been implemented and the results in the reporting period - if no such policy is applied, the statement must contain an explanation of the reasons (art. 70 of the Companies Act).

The statement must also include an explanation as to which parts of the company's code depart from or why the company has decided not to refer to any provisions of the corporate governance code (art. 70 of the Companies Act).

#### *Report on relations with the affiliated companies*

The Companies Act requires the management of the controlled company to draw up a report on relations with the affiliated companies. The report must indicate all legal transactions entered into with the controlling company or its affiliates during the previous financial year or carried out at the initiative or in the interest of these companies, and all other acts that the company carried out or failed to carry out at the initiative or in the interest of these companies in the previous financial year (art. 545 of the Companies Act).

The report of the company is audited by an external auditor, which examines the accuracy of the information in the report and evaluates the proportionality of the value of legal transactions induced by the controlling company that was detrimental to the controlled company and the value of compensation provided to the controlled company. The report is also examined by the supervisory board and can be subject to special auditing. A special auditor is

appointed by the court on the proposal of an individual shareholder (art. 546 of the Companies Act).

#### *Provisions on the responsibility and liability for drawing up and publishing the annual reports*

An annual report must be drawn up in a clear and transparent manner. It must give a true and fair presentation of the assets, liabilities, financial position, and profit and loss of the company (art. 61 of the Companies Act).

The management and supervisory bodies must collectively ensure that annual reports and their parts are drawn up and published according to the Companies Act and the Slovenian Accounting Standards or International Financial Reporting Standards. In this respect, they are required to act within their powers, with due care and accountability, as provided for the legal form of the company by the Companies Act. They also have to sign the report and its components (art. 60a).

Failure to comply with the requirement of the Companies Act on signing the annual report by the management and supervisory bodies, drawing up the annual report within the time limits, or including the mandatory components in the annual report etc. is a minor offence, and a considerable fine can be imposed on the company and the responsible person by the minor offence authority (art. 686 of the Companies Act).

The Ministry of the Economic Development and Technology and the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) are the competent minor offence authorities (pursuant to art. 684 of the Companies Act). The AJPES supervisory powers are limited to the control of the fulfilment of the obligation to submit annual reports (pt. 7 (1) of art. 686 and art. 686a, Companies Act). The AJPES reviews the compliance of the submission of the annual reports and/or the consolidated annual reports with the manner and the deadline set by the Companies Act and initiates offence proceedings where cases of non-compliance are found.

Regarding the violation of the provisions of the Companies Act on books of accounts and annual reports, the Ministry of Economic Development and Technology considered two complaints of infringements from 1 January 2012 onwards. In the first case, the act was not considered a minor offence, and in the second case, the act was not recognized as an offence under the jurisdiction of the Ministry of Economic Development and Technology.

The requirement for the company and its management and supervisory bodies also covers books of accounts. The competent authority for the supervision of the provision is the Financial Administration of the Republic of Slovenia. Failure to comply with the provision constitutes a minor offence.

#### ***Subparagraph 2(c) of article 12***

##### *A general framework for company disclosures*

The general framework for disclosures of company information (financial and other relevant information) has been laid down by the Companies Act, the Financial Instruments Market Act, the Court Register of Legal Entities Act, the Business Register of Slovenia Act, Guidelines of the Ljubljana Stock Exchange on Disclosure for Listed Companies, and other sector-specific acts, executive acts (such as the Decision on the Obligation to Disclose Regulated Information) and autonomous legal sources.

The Slovene framework for disclosures follows EU regulation (*Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State; Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of paragraph 2 of article 48 of the Treaty, with a view to making such safeguards equivalent; Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC; Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC; Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing*

*technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council etc.) and international best practices.*

Company information (such as unique identification number, registered name or business name, head office and business address, organizational form, date and the final version of the articles of association, founders, partners and members of the company, members of the supervisory and management board, legal representatives, the amount of the subscribed capital and other information) entered in the commercial/business register is generally publicly available on the website of the Agency of the Republic of Slovenia for Public Records and Services (arts. 4, 5 and 7, Court Register of Legal Entities Act).

## **Court Register of Legal Entities Act**

### Article 4

*(1) In the case of the entities of entry referred to in the first paragraph of Article 3 of this Act, the following information shall be entered in the court register:*

- 1. Unique identification number,*
- 2. The business name or name,*
- 3. Location (location) and business address at the place of establishment;*
- 4. Legal organizational form*
- 5. Date of founding act (contracts, statutes or other act) on the basis of which the establishment of the entity in the court register is entered;*
- 6. With respect to the founding members, members or members of the registration entity:*
  - identification data,*
  - the nature and extent of liability for the obligations of the entity to be entered,*
  - Date of entry,*
  - Date of exit;*
- 7. With regard to persons authorised to act on behalf of an entity:*
  - identification data,*
  - the type of representative (representative, member of the administration, liquidator, etc.),*
  - the method of representation (total or independent),*
  - Limits on the powers of representation, where, pursuant to the law, the limitation of representation powers is effective against third parties,*
  - Date of granting of the mandate,*
  - The date of termination of the authorisation,*
- 8. The duration of the entity's duration, if constituted for a limited period of time,*
- 9. In relation to compulsory settlement, liquidation or bankruptcy proceedings:*
  - a decision to initiate compulsory settlement, liquidation or bankruptcy proceedings;*
  - the decision to close the procedure of compulsory settlement, liquidation or bankruptcy, with a brief indication of the type of discharge procedure,*
  - the decision on validation of the settled CS,*
- 10. With regard to other channels of termination of the registration entity: the legal basis of winding-up and information on possible successor,*
- 11. Conclusion, modification and termination of the corporate contract and identification data of the co-contractor;*
- 12. Other information;*
  - Whose law provides that they shall be entered in the court register, or*
  - which are important for legal traffic and whose registration requires the subject of an entry.*

*(2) With regard to the entities of registration referred to in points 1 and 3 of the second paragraph of Article*

*3 of this Act, the following information shall be entered in the court register:*

- 1. The information specified in points 1 to 5 and point 7 of the preceding paragraph,*
- 2. Information on the parent number, the firm and registered office of the company or other legal person of which that entity forms part,*
- 3. The closure of the branch.*

*(3) Notwithstanding the first paragraph of this Article, the information referred to in point 6 of the first paragraph of this Article shall not be entered in the entities of the entities listed in points 4, 6 and 9 of the first paragraph of this Article, and the information referred to in point 5 of the first paragraph of Article 3 of this Act shall only be entered as regards complementary information referred to in point 6 of the first paragraph of this Article.*

*(4) If the entity is not the owner of the installation at the business address specified in the application, he must enclose a certified statement from the owner of the facility to allow the registration entity to do business at this address.*

#### Article 5

*(1) Where the entity of subscription is a limited company, a European public limited company, a limited partnership or a limited liability company, the following particulars shall also be entered in the court register in addition to the information referred to in Article 4 of this Act:*

*1. As regards the members of the supervisory board or the board of directors, if the company has a supervisory board or board of directors:*

- identification data,*
- the date of the designation,*
- the date of recall,*

*2. The amount of the share capital, the increase and reduction of the share capital and the decisions of the competent authorities of the company with regard to the increase and reduction of the share capital,*

*3. Status conversion (merger, division, transfer of assets or modification of the legal form) and the contract, which was the legal basis of the status conversion,*

- 4. Final decisions on the declaration of invalidity or revocation of joint decisions,*
- 5. A final decision on the determination of nullity of a capital company.*

*(2) Where the entity of the subscription is a limited liability company, the following information shall also be entered on the core contribution and the business share of the individual member:*

*1. The identification mark of the business share, consisting of the registration number of the entity and the serial numbers of the subscription thereto,*

*2. The nominal amount of the underlying input,*

*3. The shareholding that must be expressed in the same way for all members, either by a percentage or using a fraction,*

*4. Third party rights having as their object of share;*

*5. A note on an enforcement decision and other legal facts having as their object a commercial interest and for which law provides that they shall be entered in the court register,*

*6. If an aggregation or split of the business shares is carried out, the merger or division of the shares in which the former shareholdings resulted in a shareholding.*

*(3) Where the entity of the subscription is a limited company, the number of shares to which the share capital of the company is divided shall also be entered.*

*(4) Where the entity is registered, in addition to the information referred to in Article 4 of this Act, the register shall also record the information referred to in point 3 of the first paragraph of this Article.*

*(5) In addition to the information referred to in Article 4 of this Act, where the entity of subscription of the limited partnership is a partnership, the amount of the contribution from individual partners shall also be*

*entered in the register.*

*(6) In the case of a public limited-liability company, a European limited-liability company, a limited partnership with a public limited liability company or a limited liability company, a unique identifier is to be used for the exchange of, and access to, data and documents of the judicial register in the system of interconnection of business registers.*

#### Article 7

*(1) The Registry is a public register.*

*(2) The public of the data entered in the Registry's main register shall be ensured:*

*1. It must be possible for any person entered in the court register to consult each person on the Agency's website free of charge,*

*2. It must be possible for any person, through the Agency's website, to access free of charge information as to whether a particular person is a founder or member of the subscription entity and in which the entity is the founder or member,*

*3. It must be possible for any person, through the Agency's website, to access free of charge information as to whether the person concerned is a representative or a member of the inspection body of the entry and in which the entity of the entry is the representative or a member of the inspection body; and*

*4. By issuing an extract from the court register in accordance with Article 48 of this Act.*

*(3) The content of the documents on which the entries in the court register are based, or which have been submitted to a judicial record by the public notice, shall be provided as follows:*

*1. In such a way that everyone, through the Agency's website, must have access free of charge to:*

*— the statutes of a joint stock company, limited joint-stock partnership, a European limited liability company or a social contract of a limited liability company, including a consolidated copy of the amended statutes or a social contract with a notary's certificate,*

*— the instrument of constitution on the basis of which the entity of the subscription other than the one referred to in the preceding indent was established, including the amendments or a copy thereof,*

*— Final court decisions on the declaration of nullity of a capital company,*

*— The minutes of the general meeting of the public limited liability company submitted to the judicial register in the last year for publication, and*

*— documents that have been accompanied, in the last year prior to the date of publication of the entry for the entry in the court register, by the application for registration of the merger or division, provided that the court has authorised, pursuant to this proposal, the entry of mergers or divisions into a court register,*

*2. By issuing the printout of the document under Article 48a of this Act.*

*(4) Upon request, the court shall also issue a certificate stating that a specific registration exists that there is no later registration in the specific case, that a particular entry has been deleted or that a certain entry is not.*

*(5) The consultation of the data referred to in points 2 and 3 of the second paragraph of this Article shall be made available for natural persons by means of a combination of a personal name, an EMŠO or a combination of a personal name, a tax number or a combination of a personal name and the address of the person residing in the court register and, in the case of legal persons, the use of business name, name, parent or tax number.*

*(6) The website of the Agency shall be designed in such a way that the consultation of the entity entering the register contains a link to the consultation of persons referred to in points 2 and 3 of the second paragraph of this Article (hereinafter: consultation on the participation in related persons). The display of the participation in related persons shall be made at the request of the user. The data link shall be carried out automatically on the basis of a unique identification number of the natural or legal person without entering the number. Consultation on the participation in related persons shall not contain the EMŠO and*

*the natural person's tax number.*

Annual reports, consolidated annual reports and auditor's reports are published on the website of the Agency of the Republic of Slovenia for Public Records and Services. The reports are accessible to anyone free of charge (art. 58, Companies Act).

On the other hand, a publicly listed company is required to comply with additional disclosure requirements. Disclosure requirements refer to the so-called "regulated information," e.g., every piece of information that the public company must disclose. The regulated information also include information under article 17 of the Regulation (EU) No 596/2014 and information pursuant to the regulations of other member States (art. 106, Financial Instruments Market Act).

Regulated information especially covers:

- annual report and auditor's report;
- adoption of the annual report;
- half-year report;
- consolidated report on payments to governments;
- any change in the share of voting rights, of which the company was informed by a member of the company's management or supervisory body;
- any change in a major holding, of which the company was informed by a shareholder, share option holder or a reporting entity;
- information on the amount of own shares;
- changes to the total number of shares with voting rights;
- changes in the content of rights from securities and
- inside information (art. 8 of the Decision on the Obligation to Disclose Regulated Information).

The regulated information must be made available as soon as possible and at the latest within the deadlines prescribed by the Financial Instruments Market Act, the Regulation (EU) No 596/2014 and the Commission Implementing Regulation (EU) 1055/2016 in a manner that ensures public access to the information on a non-discriminatory basis (art. 4 of the Decision on the obligation to Disclose Regulated Information). For this purpose, the public company must use a medium that guarantees sufficient reliability of the dissemination of information to the public on the entire EU territory. The regulated information must also be submitted to the system for the central storage of regulated information. A public company is also not allowed to charge any fees to the investors for the publication of regulated information (art. 136, Financial Instruments Market Act).

*Public nature of information on founders, members and shareholders of the company and members of the management and supervisory bodies of the company*

The information on founders and members of the company, as well as on members of the management and supervisory bodies of a company in Slovenia, is entered in the commercial/business register and publicly available. In contrast, the information on shareholders other than founders is entered in the central register of the central securities depository, and only information on holders of registered shares is publicly available.

The Court Register of Legal Entities Act stipulates that the Slovenian commercial register contains the information on founders and members of the company, persons authorized for the representation of the company and members of the management and supervisory board (arts. 4 and 5).

Information of the founders and members of the company includes the identification data, type and extent of liability for the obligations of the company, date of entry and date of deletion; information of the persons authorized for the representation of the company includes the identification data, type of representation (procurator, member of the management board, liquidator etc.), manner of representation (joint or independent), limits of a power of attorney, the date of granting the power of attorney and the cessation date of a power of attorney (art. 4); and information of the members of the management and supervisory board include the identification data, and the date of appointment and recall (art. 5).

The public nature of the entered information is assured as access to particular company data with extracts in the commercial register is provided free of charge on the website of the Agency of the Republic of Slovenia for Public Records and Services. The public can also visit the website of the Agency of the Republic of Slovenia for Public

Records and Services and check the commercial register to ascertain whether a particular person is a founder or a member of a company and of which companies a particular person is a founder or a member (art. 7, Court Register of Legal Entities Act).

Information on holders of book-entry securities (shares and other book-entry securities) is entered in the central register, a computerized register of book-entry securities, the rights and liabilities arising from them, and their holders and encumbrances. The central register is maintained by the central securities depository (art. 9, Book-Entry Securities Act).

The central securities depository is also responsible for keeping a share register and a register of other registered book-entry securities in the name of, and for the account of, the issuers of book-entry securities entered in the central register (article 25, Book-Entry Securities Act). The information in the share register and the register of other registered book-entry securities is available to anyone upon request and against the fee (art. 39, Book-Entry Securities Act).

#### *Additional requirements of disclosure of shareholdings in medium and large companies*

Certain information on shareholdings must be disclosed by companies in the annual reports.

The Companies Act (art. 69) requires medium and large companies to disclose in the notes to the financial statements:

- (1) corporate name and registered office;
- (2) the amount of equity and profit and loss for the financial year of each company in which the company has at least 20 % participation in equity, either directly or through a person acting on behalf of the company;
- (3) the amount of company's equity participation. This information does not need to be disclosed if it is not important for a true and fair presentation. For companies that do not publish their annual reports and in which the company has less than 50 % direct or indirect equity participation, the amount of their equity and profit and loss does not need to be disclosed. The information also does not need to be disclosed if the information would be seriously prejudicial to the companies to which it relates. Any such omission must be disclosed in the notes to the financial statements;
- (4) the corporate name, the registered office and the legal form of the company of which the company is a member and personally liable without limitation for the debts of this company. This information does not need to be disclosed if it is not important for a true and fair presentation; and
- (5) the corporate name and registered offices of the controlling company, which compiles a consolidated annual report for the broadest circle of group companies and in relation to which the company is a subsidiary (art. 69, Companies Act).

Companies required to have their annual reports audited have to disclose in the corporate governance statement the following information:

- significant direct and indirect ownership of the company's securities in terms of achieving a qualified holding, as determined by the act governing mergers and acquisitions, particularly the following:
  - o the full name or corporate name of the holder;
  - o the number of securities and the proportion they account for in the company's share capital;
  - o the nature of ownership.

A person is considered an indirect holder of securities if these are held for such person's account by another person or if the person can provide assurance that the rights arising from such shares are exercised in accordance with the person's own free will;

- each holder of securities with special controlling rights:
  - o the full name or corporate name of the holder;
  - and
  - o the nature of rights;
- all restrictions on voting rights, particularly the following:
  - o restrictions on voting rights relating to a certain holding or a certain number of votes; o deadlines for exercising the voting rights; and



- agreements in which, with the company's cooperation, the financial rights arising from securities are separated from the rights arising from security ownership;
- all major agreements to which the company is a party and which take effect are changed or cancelled following a change in control over the company resulting from a bid, as determined by the act governing mergers and acquisitions and the effects of such agreements.

This is not necessary if the disclosure of such an agreement could cause significant damage to the company unless the company is obliged to disclose such agreements pursuant to other regulations (art. 70, Companies Act).

Companies that are obliged to apply the act governing mergers and acquisitions have to disclose other relevant information in addition to the information defined in the preceding paragraph (art. 70, Companies Act).

#### *Additional disclosure requirements for publicly listed companies*

Under the legal framework on publicly listed companies, there are rules that require informing the publicly listed company of major holdings and making such information publicly available.

Specific requirements in this regard are imposed on shareholders of a publicly listed company. The Financial Instruments Market Act requires shareholders to inform a public company that an individual threshold of a major holding (5 %, 10 %, 15 %, 20 %, 25 %, 1/3, 50 % and 75 % of total voting rights in the public company) has been reached or exceeded or that such a holding has been reduced below the individual threshold of a major holding due to the reasons prescribed by the Financial Instruments Market Act (art. 118). Under certain conditions, the obligation to inform the public company is also imposed on a person entitled to acquire or dispose of or exercise the voting rights arising from shares (art. 120, Financial Instruments Market Act).

A shareholder or a reporting entity must send the public company a notice on the change in major holdings as soon as possible but no later than within the deadline prescribed by the Financial Instruments Market Act. A shareholder or a reporting entity is exempted from the obligation to report if the notice has been sent by its parent undertaking or the latter's parent undertaking (art. 123).

A public company must publish the information on the change in major holdings as soon as possible but no later than the third trading day following the receipt of notification. The information must also be published in the system for the central storage of regulated information no later than the third trading day of the receipt of notice (art. 124, Financial Instruments Market Act).

#### *Disclosure of company beneficial owners*

Regarding the disclosure of beneficial owners, Slovenia draws attention to the fact that the Act on the Prevention of Money Laundering and Terrorist Financing stipulates the establishment of the Register of Beneficial Owners. The purpose of the register is to provide transparency of ownership structures of business entities and thus prevent abuses of business entities for money-laundering and terrorist financing. The Register of Beneficial Ownership was expected to be established in December 2017.

Disclosure of Non-financial Information Amendments to the Companies Act, which took effect on 15 April 2017, introduced additional requirements with regard to the disclosure of non-financial and diversity information. Public-interest entities in Slovenia exceeding on their balance sheet dates the average number of 500 employees during the financial year have to include in the business report a non-financial statement containing the information to the extent necessary for an understanding of the company's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and personnel matters, respect for human rights and anti-corruption and bribery matters, including: a brief description of the company's business model, policies relating to non-financial matters, including due diligence processes implemented, the outcome of those processes, material risks related to the company's operations and key non-financial performance indicators relevant to the particular business.

A company can disclose the information on the basis of the Companies Act, other national frameworks, European Union frameworks or international frameworks. In this case, it must indicate the frameworks used.

A company does not need to provide the information in exceptional cases, on the basis of a duly justified opinion of the members of the company's management or supervisory body, in the case of disclosure of information on foreseeable events or matters that are the subject of ongoing negotiations, and their disclosure would be seriously

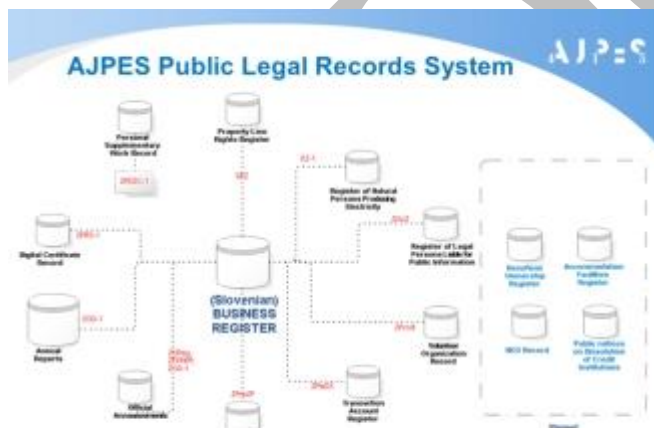
prejudicial to the commercial position of the company, provided that such an omission does not affect a fair and balanced understanding of the development, performance and position of the company and the impact of its operation.

*The role of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) in enhancing transparency:*

The basic component of ensuring transparency among private entities is the Public Legal Records System managed by the AJPES. The AJPES is a legal entity of public law founded by Slovenia in 2002. It is organized as a public agency and performs development, regulatory and professional functions in the public interest. AJPES performs the following tasks:

- a) Registry keeping
- b) Collection, processing and publication of annual reports
- c) Statistical research, data collection and publication
- d) Credit rating operations and other commercial activities

All tasks are interconnected and follow the AJPES's strategic goal of safeguarding the security of legal transactions. The AJPES provides a substantial contribution to a transparent business environment. All registered information (without disclosing personal data) is available free of charge via the AJPES internet portal.

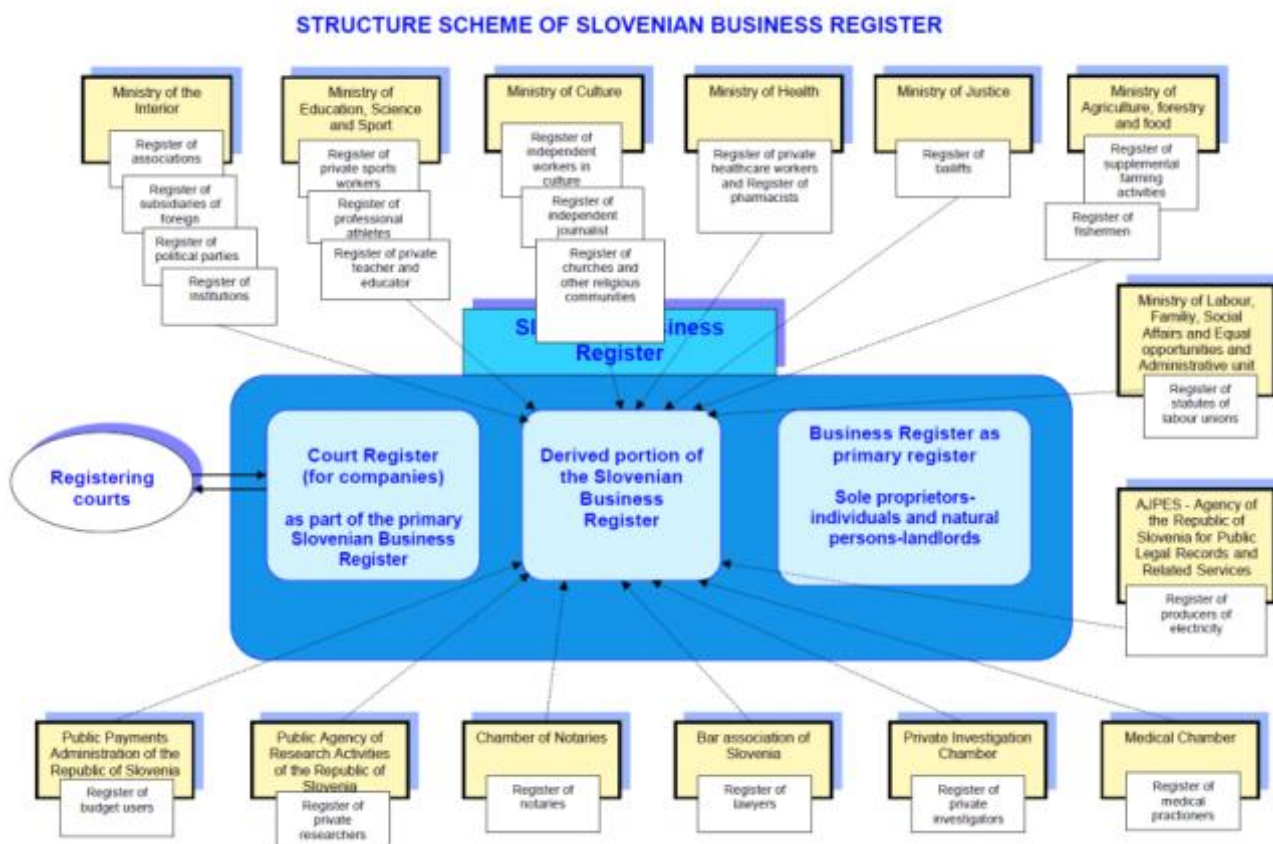


In accordance with the Commercial Register of Slovenia Act, the AJPES manages the Slovenian Business Register (SBR) as the central database on all business entities based on the territory of Slovenia and involved in a profit or non-profit business activity. The Court Companies Register is now a part of the SBR (as of 1 February 2008). According to the law, the registration of data of companies and other entities for which the registration is required under the law is decided by registering courts alone. According to the Companies Act and the Court Register Act, entry into the registry has significant effects in terms of publicity and corporate matters.

As part of the SBR, the court register has two parts: the main book and the documentary archive. The main book is used by registering courts to enter data about the individual registry entities. Registering courts also maintain an electronic archive of documents, which constitute the basis for an entry in the court registry, and a collection of documents submitted to the court registry for publication purposes. The AJPES web portal allows users to review procedures for registration with the court registry (e-Publications in the course of registration with the court register). The court registry entry and, consequently, the entry in the SBR is published on the AJPES website at the moment of registration, which is extremely important as publicity effects come into effect at the time of publication of the entry in the court register.<sup>121</sup>

<sup>121</sup> (Publication of entries in the court registry at the AJPES website has replaced the previous system of public announcement in the Official Gazette of the RS.)

The SBR also contains other business entities whose operation requires registration in the registry of professions or activities kept by another public authority or institution. For example, societies primarily register with the Societies Registry kept by the Ministry of the Interior, notaries register with the Notaries' Chamber of Slovenia, attorneys register with the Slovenian Bar Association, independent journalists register in the records of independent journalists held by the Ministry of Education, Science and Sport, and independent researchers register in the independent researchers' registry held by the Public Agency for Research Activities of the Republic of Slovenia, etc. The AJPES feeds data into the SBR on business entities from 22 primary registries and records maintained by 14 government authorities or other institutions.



Under article 2 of the Commercial Register of Slovenia Act, all SBR data are public except personal data. The SBR includes data on natural persons involved in business entities as founders, shareholders, representatives and members of the supervisory body. The residential address of a natural person entered into the Court Companies Register is disclosed according to article 2.b of the Court Companies Register Act by viewing data on a specific business entity. Data on other companies that a person is involved in is made available upon request pursuant to the amendments to the Court Companies Register Act.

The AJPES provides public access to information from the SBR in different ways: by accessing the data through the AJPES web portal and issuing regular and historical extracts from the court registry via the web portal (iPRS), and by preparing selections of data according to specific user-defined criteria. The AJPES also provides “the person search” in SBR. This allows (by knowing some personal data of a particular person) determining whether a person is a founder, a shareholder, a representative or a member of the supervisory body and, if yes, in which entity, taking into account all subjects of entry in the court register, sole proprietors and other natural persons performing a profitable activity.

Pursuant to article 122 of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act, the AJPES (as of 1 October 2008) also provides data and other information about insolvency proceedings (bankruptcy, compulsory composition, liquidation) of natural persons and legal entities taking place before bankruptcy courts (e-Publications in insolvency proceedings).

Additionally, pursuant to AML Directive – the Registry of Beneficial Ownership was established in December

2017. Business entities (except for sole proprietors and single-person limited liability companies) were required to enter data regarding their actual owners and the related amendments into this register by January 2018.

In accordance with laws, the AJPES also publishes annual reports of companies, cooperatives, sole proprietors and associations on its website to allow the corporate public and all other interested users easy and efficient access to the performance data of business entities. Transparency is further improved by the publication of annual reports of political parties and public-law entities.

Public posting of annual reports is enabled as a web service ([JOLP](#)) that allows users to access published annual reports for the last five business years free of charge.

The AJPES is authorized for the collection, processing and dissemination of data from annual reports filed by business entities in conformity with the laws and for providing public access to annual reports and other corporate data of companies, sole proprietors and other business entities, in accordance with the Companies Act and other legislation. According to regulations, business entities are required to file their annual report data to the AJPES for national statistics purposes and their annual reports for publication purposes. Most business entities submit their annual reports to the AJPES for national statistics, public availability, and tax purposes. There are over 170,000 business entities required to submit such data to the AJPES. Data from annual reports for publication and national statistics purposes are not submitted by sole proprietors taxed on the basis of calculated profits by applying averaged expenses and business entities that are not founded as legal entities and do not have the status of a sole proprietor (notaries, lawyers, independent healthcare workers, independent cultural workers, athletes, journalists, some other business entities and civil associations).

#### ***Subparagraph 2(e) of article 12:***

According to the CPC, the Slovenian legal system does not define the principle of “revolving doors”. However, there are temporary prohibitions on certain activities of former public officials after the termination of public functions.

According to **article 35 of the IPCA** (Restrictions on business activities and the consequences of violations), a public sector body or organization which is committed to conducting a public procurement procedure in accordance with the regulations on public procurement or which carries out the procedure for granting concessions or other forms of public-private partnership, may not order goods, services or construction works, enter into public-private partnerships or grant special and exclusive rights to entities in which the ‘official’ who holds office in the body or organization concerned or the official’s family member has the following role:

- participating as a manager, management member or legal representative; or
- has more than a 5% level of participation in the founders’ rights, the management or capital, either by direct participation or through the participation of other legal persons.

According to **article 36 of the IPCA** (Temporary prohibition of operation after the termination of office)

*(1) An official may not act as a representative of a business entity that has established or is about to establish business contacts with the body in which the official held office until two years have elapsed from the termination of his office.*

*(2) The body in which the official held office may not do business with the entity in which the former official has a 5% participation in the founders’ rights, management or capital, either by direct participation or through the participation of other legal persons until one year has elapsed from the termination of the office.*

*(3) The body in which the official held office shall immediately, or within 30 days at the latest, inform the Commission of the situation referred to in paragraph 1 of this Article.*

A draft law amending the IPCA envisages stipulating a temporary prohibition (one year) of business relations involving public funds with the former official as a natural person.

#### ***Subparagraph 2(f) of article 12:***

*System of internal controls*

The Corporate Governance Code for Listed Companies recommends that companies set up an efficient system of

internal controls, which would foster quality risk management. In cooperation with the audit committee, the companies should ensure substantive, periodical and impartial professional surveillance over the work of the system of internal controls tailored to the company's business and scope of operations.

The management board should ensure that adequate organizational and competent human resources are in place for timely risk detection and assessment and adequate risk management regarding the risks that the company is exposed to due to its business operations.

*Provisions on the responsibility and liability for drawing up and publishing the annual reports*

Please see subparagraph 2(c) of article 12 of the Convention.

*Provisions on the responsibility of the supervisory board in the company limited by shares and the limited liability company (if the articles of association provide for the supervisory board) with regard to the annual report*

The supervisory board is required to examine the annual report submitted by the management board. Each member of the supervisory board or the audit committee has the right to examine and verify all the data used for preparing the annual report. The data have to be submitted upon request unless the supervisory board decides otherwise (art. 282(1), Companies Act).

The supervisory board has to draw up a written report for the general meeting on the findings of the exercise referred to in the preceding paragraph. The report must indicate how and to what extent the supervision of the company's management has been carried out during the financial year. If an audit report is also attached to the annual report, the supervisory board's report must also include an opinion on the audit report. At the end of its report, the supervisory board indicates whether it has any comments in relation to the completion of the annual report verification process and whether it gives its approval to the annual report. If the supervisory board approves the annual report, it is considered adopted (art. 282(2), Companies Act). *For more information, please see subparagraph 2(b) of article 12 of the Convention*

*Provisions on the responsibility of the audit committee*

The appointment of the audit committee is the option of the supervisory board. However, the audit committee is obligatory for publicly listed companies (art. 279 of the Companies Act).

The audit committee is responsible among else for monitoring the financial reporting procedures and preparing recommendations and proposals in order to ensure their integrity; monitoring the efficiency of the company's internal control, internal audit, if any, and risk management systems; monitoring the statutory auditing of the annual and consolidated financial statements; reviewing and monitoring the independence of the auditor appointed for the review of the company's annual report, particularly with regard to ensuring additional non-audit services; the auditor selection procedure and making proposal for the appointment of the auditor of the company's annual report to the supervisory board; supervision of the integrity of financial information provided by the company; evaluation of the compilation of annual report, including formulation of the proposal to the supervisory board; participation in determining major audit areas; participation in drafting the agreement between the auditor and the company; reporting to the supervisory board on the result of the statutory audit, including the explanation of how the statutory audit contributed to the integrity of financial reporting and what role the audit committee played in this process; cooperating with the auditor in carrying out the audit of the company's annual report, in particular by mutual communication of the main audit issues; cooperating with the internal auditor, in particular by mutual communication of the main issues relating to internal audit (art. 280, Companies Act).

*Provisions of the Companies Act on internal audit*

The company limited by shares may also constitute an internal audit. The Companies Act provides an internal audit with a certain degree of independence, which is important for expeditious detection of possible irregularities in the company as well as for improving the efficiency of supervisory boards.

The supervisory board must consent to the appointment, dismissal and remuneration of the head of the internal audit, the act regulating the purpose, the importance and functions of the internal audit and the annual and multi-annual internal audit work plan. The Companies Act also stipulates that the annual report on the work of the internal audit is submitted to the management board, the supervisory board and the auditor of the financial statements no later than three months after the end of the financial year and that the supervisory board may request

additional information from the internal auditor in addition to the information in the annual report (art. 281a, Companies Act).

#### *Auditing the annual (consolidated) reports*

Medium, large capital and publicly listed companies and double partnerships are required to audit their annual reports according to the method and under the terms and conditions laid down in the Auditing Act (art. 57, Companies Act). An auditor must also audit the financial report and examine the business report to the extent sufficient to ascertain whether its content conforms with the other elements of the annual report.

The auditor must verify that a corporate governance statement and non-financial statement have been included and examine whether they contain the statutory elements.

As far as the substance of the corporate governance statement is concerned, the auditor reviews a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process; significant direct and indirect shareholdings; the holders of securities with special controlling rights; any restrictions on voting rights relating to a certain holding or a certain number of votes; the rules governing the appointment and replacement of members of the management or supervisory bodies and the amendment of the articles of association; the powers of the management, particularly the power to issue or purchase own shares of the company.

The Companies Act stipulates (art. 57) the content of the auditor's report as follows:

1. a name of the company whose annual or consolidated accounts are subject to statutory audit, the identification of the annual or consolidated financial statements, the date and the period they cover, the description of the financial reporting framework applied in their preparation;
2. a description of the scope of the audit, in which, as a minimum, identifies the audit standards under which the audit was conducted;
3. an audit opinion which is either unqualified, qualified or an adverse opinion and which states clearly the opinion of the auditor as to:
  - a. whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework and;
  - b. where appropriate, whether the annual financial statements comply with statutory requirements; - if the auditor is unable to express an audit opinion, disclaimer (refusal) of an opinion;
4. a reference to any other matters to which the auditor specifically draws attention to, without the audit opinion being changed;
5. an opinion:
  - a. whether the business report is in accordance with the financial statements of the same financial year and
  - b. whether the business report was prepared in accordance with the applicable statutory requirements;
6. an indication whether, in the light of the knowledge and understanding of the company and its environment obtained in the course of the audit, the auditor has identified material misstatements in the business report, indicating the nature of any such misstatements;
7. a statement of any significant uncertainty associated with events or circumstances that could give rise to serious doubts as to the ability of the company to continue its business;
8. an indication of the seat of the auditor or audit firm;
9. date and auditor's signature.

As stipulated in the Auditing Act, auditing services may only be provided by an audit company. Auditing services on behalf of an audit company may only be provided by persons holding a licence to perform the tasks of a certified auditor and employed by the audit company or who have concluded a business cooperation contract or agreement with an audit company. In carrying out individual auditing procedures, the persons may also confer with other persons employed by an audit company or who have concluded a business cooperation contract or agreement with an audit company under the condition that their operations are carefully planned and supervised (art. 5, Auditing



Act). Supervision of the quality of auditing is performed by the Slovenian Institute of Auditors and the Agency for the Public Oversight of Auditing in accordance with their competencies pursuant to the Auditing Act.

Supervision of the quality of work of audit companies shall be ensured:

- through verification of whether individual entities meet the conditions for the issue of a licence to provide auditing services;
- through continuous verification of whether certified auditors and audit companies meet the conditions for entry in the appropriate register;
- through the monitoring, collection and verification of reports and notifications of audit companies and other persons that are obliged to report to or notify the Slovenian Institute of Auditors with regard to individual facts and circumstances in accordance with the provisions of the Auditing Act and other acts;
- through examinations of the operations of audit companies;
- by imposing measures of supervision in accordance with the Auditing Act (art. 74, Auditing Act).

According to the professional rules, audit procedures shall include activities to assess the risk of fraud and other violations of important legislation. Audit procedures are also focused on the establishment of necessary internal control systems, which shall prevent financial statements from material errors of fraud. Financial statements shall be prepared in accordance with SAS or IFRS. Audit of financial statements shall be performed according to International Standards on Auditing issued by the International Federation of Accountants (IFAC).

**Slovenia provided the following examples of the implementation of the provision under review:**

***Subparagraph 2 (b) of article 12***

**ETHOS NETWORK**

Since 2009, the CPC has taken part in a network Ethos to promote anti-corruption activities in the private sector. The network was established upon the initiative of Siemens and under the auspices of the UN Global Compact Slovenia. In terms of membership, Ethos was a mixture of private companies, non-governmental organizations and state bodies (in addition to the CPC, the CoA was also a member). During its existence, Ethos created the Declaration on Fair Business, which was signed by several Slovenian companies as a declaration of their commitment to corruption-free operation. The declaration included an anti-corruption clause, similar to the one that is proscribed by the IPCA for all public bodies. Further, the Ethos initiative created a concept and draft programme of an anti-corruption/compliance training and certification project aimed at private sector companies. Unfortunately, in the last phase of the project's inception, the network became inactive and was disengaged due to the change of the representatives of Ethos' members.

However, there was at least some sort of continuation of Ethos' ideas in the establishment of the European Institute of Compliance and Ethics (EISEP), one of the civil society bodies that provide expert training on compliance (including anti-corruption risk management, internal reporting on acts of corruption and breaches of integrity and similar). The CPC has co-operated with the EISEP on two occasions. Both times, the EISEP was in the role of a trainer rather than a trainee.

In 2016, the Slovenian Institute of Auditors strengthened cooperation with the CPC, and the Institute invited the CPC's staff as lecturers on training for auditors on corruption in banks and public procurement procedures.

***Seminar for the Chamber of Crafts and Small Business in Slovenia***

In March 2016, the CPC carried out training for small and medium businesses enterprises in cooperation with the Chamber of Crafts and Small Business of Slovenia. The training was incorporated in a priory scheduled Chamber's event focused on the issues of cross-border business transactions. At the event, ten representatives of small and medium-sized export-oriented business enterprises were present. The Chamber and the CPC shared the opinion that in order to reach a larger number of business representatives, such trainings should become a somewhat common feature of the Chamber's events. Therefore, similar trainings will also be performed in the future within



Chamber's events focused on export-related topics.<sup>122</sup>

**Subparagraph 2 (c) of article 12**

The Slovenian Business Register (SBR) is a central database containing information about all business entities involved in a profit or non-profit activity, having their principal place of business located on the territory of Slovenia. Pursuant to legislation, all the entities should disclose the identity of legal and natural persons involved in the establishment and management to the competent registration authority.

Data on representatives are also publicly available in the SBR for all the entities.

Data on founders and/or shareholders are publicly available in the SBR for all entities except public limited companies, non-profit organizations, associations and cooperatives.

Number of business entities in SBR (on 30 June 2017)

All entities	Companies	Sole proprietors	Natural persons performing registered activities	Associations	Cooperatives	Public sector entities	Non-profit organizations
<b>209.817</b>	72.709	88.973	11.916	24.115	462	2.807	8.835
	34,7%	42,4%	5,7%	11,5%	0,2%	1,3%	4,2%

Source: [https://www.ajpes.si/Registers/Slovenian\\_Business\\_Register#b439](https://www.ajpes.si/Registers/Slovenian_Business_Register#b439)

*For statistics regards cases and whistle-blower protection, please see the information provided under paragraph 4 of article 8 of the Convention.*

Corruption offences committed in the private sector are prescribed in the Criminal Code<sup>123</sup> in two articles (unlawful acceptance of gifts (art. 241.) and unlawful giving of gifts (art. 242.)). The below tables show statistics for above-mentioned criminal offences from 2013 to 2016, separately for natural and legal persons.

<sup>122</sup> More about other trainings please see: <https://www.kpk-rs.si/upload/datoteke/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf> (p. 72).

<sup>123</sup> (Official Gazette of the Republic of Slovenia, No. 55/2010)

Number of Criminal offences under Article 241 and 242 of Penal Code - natural persons

YEAR	CRIMINAL CHARGE	DISMISAL	INVESTIGATION	INDICTMENT	JUDGEMENT	CONVICTION
2013	25	5	8	4	9	8
2014	60	19	23	17	8	7
2015	41	19	4	10	16	16
2016	62	44	54	3	4	4
SUM	188	87	89	34	37	35

Number of Criminal offences under Article 241 and 242 of Penal Code - legal persons

YEAR	CRIMINAL CHARGE	DISMISAL	INVESTIGATION	INDICTMENT	JUDGEMENT	CONVICTION
2013	7	1	5	3	0	0
2014	1	0	1	0	0	0
2015	0	2	4	0	0	0
2016	4	1	0	0	3	3
SUM	12	4	10	3	3	3

***(b) Observations on the implementation of the article***

The Companies Act (CA) lays out basic requirements for establishing and operating commercial legal entities, including provisions on elimination of conflicts of interest in the private sector (art. 38a). Corporate Integrity Guidelines as well as codes of good business practice for certain industries have been designed to safeguard the integrity of private entities.

The private sector may report allegations of corruption to the Police, the Public Prosecutor's Office and the CPC, subject to the same level of protection as that on reporting persons (Art. art. 24, IPCA).

The Court Register of Legal Entities Act (arts. 4, 5 and 7), in addition to the CA, requires the registration of certain entities in the commercial or business register whose information is open to the public.

There are various corporate governance codes for companies. Auditing and accounting standards are regulated by the CA and the Auditing Act. However, measures on preventing the misuse of procedures regulating private entities were not reported.

The IPCA has imposed a temporary restraint on senior public officials from serving as representatives of a business that may have business contacts with the official's former office after leaving office (art. 36). However, there is no general provision regarding a "cooling-off" period for public officials moving to the private sector.

**It is recommended that Slovenia:**

- **consider taking measures to prevent the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities.**
- **continue to take measures to strengthen post-employment restrictions, including, where appropriate, providing a general "cooling-off" period for all public officials moving to the private sector that may have potential conflicts of interest.**

**Paragraph 3 of article 12**

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents;
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

**(a) Summary of information relevant to reviewing the implementation of the article**

Slovenian law requires that all companies and entrepreneurs keep records and books in accordance with the Companies Act, Slovenian Accounting Standards, or International Financial Reporting Standards (art. 54, Companies Act). In addition, books of account have to be kept in accordance with the double-entry bookkeeping system. Private entities subject to proper accounting rules are requested, pursuant to article 54 of the Companies Act, to maintain the books of account, balance sheets, profit and loss accounts, the annual reports as well as business reports permanently, whereas the accounting documents may be stored for a specified period as follows:

**Companies Act**

Article 54 (General accounting rules)

(1) Companies and company owners shall administer books of account and prepare year-end accounts in accordance with this Act and the Slovenian Accounting Standards or International Financial Reporting Standards, unless otherwise provided by the law. The financial year may not coincide with the calendar year. After the closure of accounts for each financial year, an annual report shall be drawn up within three months of the end of each financial year.

...

(3) Books of account shall be kept in accordance with the double-entry bookkeeping system unless otherwise provided by the law. In keeping their books, all companies shall use the chart of accounts for the general ledger adopted by the Slovenian Institute of Auditors in agreement with the ministers responsible for the economy and finance. Upon receipt of the approval, the Slovenian Institute of Auditors shall publish the chart of accounts in Uradni list Republike Slovenije. The chart of accounts shall define the account categories from 0 to 9 and from 00 to 99.

...

(6) The books of account, the balance sheet, the profit and loss account, the annual report and the business reports referred to in Articles 56 and 60 and paragraph (1) of Article 70 of this Act shall be stored permanently. Accounting documents may be stored for a specified period only.

...

(8) The Slovenian Accounting Standards shall not be contrary to this Act and other acts governing the rules on accounting for individual legal entities and the regulations issued on their basis.

(9) The Slovenian Accounting Standards shall transpose the content of Directive 78/660/EEC and Directive 83/349/EEC and their concept shall not be contrary to International Financial Reporting Standards.

The Financial Administration of the Republic of Slovenia is responsible for monitoring the maintenance of books of accounts according to the requirements of the Companies Act (art. 684(1)). Failure to comply with relevant requirements, such as keeping the books of account in accordance with the double-entry bookkeeping system, is considered a minor offence subject to fines on the company (art. 685, Companies Act).

## **Companies Act**

### **MONITORING OF THE IMPLEMENTATION OF THE ACT**

#### Article 684

*(1) The implementation of the provisions of this Act shall be monitored by AJPES, the Tax Administration of the Republic of Slovenia, the Labour Inspectorate of the Republic of Slovenia, the Market Inspectorate of the Republic of Slovenia, and the Ministry of Economy*

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*(3) The Tax Administration of the Republic of Slovenia shall be responsible for monitoring the implementation of the provisions of paragraph (3) of Article 54 of this Act.*

### PART IX PENAL PROVISIONS

#### Article 685 (Offences committed by a company)

*(1) A fine from EUR 16 000 to EUR 62 000 shall be imposed on a company that:*

...

*4. fails to keep books of account in compliance with paragraph (3) of Article 54 of this Act;*

Slovenia also provides criminal offences for forgery or destruction of business documents under article 235 of the Criminal Code.

## **Criminal Code**

### Forgery or Destruction of Business Documents

#### Article 235

*(1) Whoever enters false information or fails to enter any relevant information into business books, documents or files which he is obliged to keep under the statute or regulations derived therefrom and which are essential to the operation of business with other legal or natural persons, or intended for making decisions concerning economic or financial activities, or whoever certifies such a book, document or file containing false information with his signature or renders possible the creation of such a book, document or file, shall be sentenced to imprisonment for not more than two years.*

*(2) Whoever uses a false business book, document or file as truthful, or whoever destroys or hides books, documents or files under the preceding paragraph or substantially damages or renders the same useless, shall be punished to the same extent.*

*(3) Any attempt to commit the offence under paragraphs 1 and 2 of this Article shall be punishable.*

The offences and punishments have also been extended to legal persons by the Liability of Legal Persons for Criminal Offences Act (arts. 1 and 25). The Act prescribes relevant punishments for legal persons for forgery or

destruction of business documents, including fines and winding-up of a legal person (arts. 26 and 15).

## **Criminal Offences from the Criminal Code**

### Article 1

*(1) Under the conditions, which in accordance with Article 333 of the Criminal Code of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 63/94, 70/94 – correction and 23/99) shall be defined by this Act, a legal person shall be liable for a criminal offence as well as the perpetrator.*

*(2) The statute shall define for what criminal offence a legal person may be liable and what punishment or other penal sanction may be imposed on it.*

### Article 25

*Legal persons shall be liable for the following criminal offences from the Special Part section of the Criminal Code of the Republic of Slovenia:*

*...7) From Chapter 24 for criminal offences under Articles 231-24422 and 247-25523;*

*...*

### Article 26

*(1) The following types of punishments may be imposed on legal persons committing the criminal offences under the preceding paragraph:*

*1) For criminal offences for which a punishment of up to three years' imprisonment is prescribed for the perpetrator, a fine of up to 75,000,000 (seventy-five million) tolar, or up to 100 (one hundred) times the amount of damage caused or property benefit obtained through the criminal offence;*

*...*

*(3) For criminal offences under the first paragraph of this Article, a punishment of winding-up of the legal person may be applied instead of a fine if the conditions under Article 15 of this Act are met.*

### Article 15

*(1) The winding-up of a legal person may be ordered if the activity of the legal person was entirely or predominantly used for the carrying out of criminal offences.*

*(2) In addition to the winding-up of a legal person the court may also impose a punishment of confiscation of property.*

*(3) When sentencing a legal person to winding-up the court shall propose the initiation of liquidation proceedings.*

*(4) Creditors may be paid off from the property of the legal person imposed the punishment of winding-up of legal person.*

### *External auditing*

The Companies Act sets the rules addressing the issues above. Appropriate book-keeping is indirectly monitored by the external auditors/audit companies. In order for them to be able to issue audit reports in accordance with the International Standards of Auditing (ISA), they must cover the topics above (arts. 53 and 54, Companies Act). ISAs have been enacted by the national legislation (Audit Act) since 2001 and are being enforced by the Agency for Public Oversight of Auditing and the Slovenian Institute of Auditors. At the same time, financial reporting must be conducted in accordance with either the International Financial Reporting Standards or Slovenian Accounting Standards (none of those allows such accounting treatment as stated above), and the Auditors' report must state the financial statements' compliance with one or another accounting framework. Thus the (indirectly) external audit ensures that no such instances occur (in all material aspects).

Besides, the Tax Procedure Act also provides that a fine shall be imposed on private business persons and any

other natural persons performing a registered activity, as well as legal persons where they fail to keep business accounts and records or fail to administer them correctly and in due order, or administer them in a manner so as to make information unavailable for the assessment of tax liabilities; submit them within the term and at the place determined by the tax authorities; or keep business accounts and records until the expiry of the time specified by the present law (paragraphs 1, 2 and 3, article 31, Tax Procedure Act). Article 397 of the Tax Procedure Act, which establishes the minor offence for the breach of article 31, is based on the responsibility of legal persons and their managers for the fact that there has been improper book-keeping.

**Slovenia provided the following examples and statistics:**

Regarding the violation of the provisions of the Tax Procedure Act, which requires proper maintenance of business accounts and records, the Financial Administration of the Republic of Slovenia has considered 1,267 offences and imposed 952 fines and 315 warning notices in accordance with the Minor Offences Act from 2014 to 2016. The total value of imposed fines amounts to €877,100. More detailed data are shown in the table below:

2014	2015	2016
261 offences	459 offences	547 offences
220 fines and 41 warning notices	343 fines and 116 warning notices	389 fines and 158 warning notices
EUR 228,100.00 fines imposed	EUR 307,000.00 fines imposed	EUR 342,000.00 fines imposed

Regarding the violation of the provisions of the Companies Act on the book of accounts and annual reports, the Ministry of Economic Development and Technology considered in the period from 1 January 2012 onwards two complaints of infringements. In the first case, the act was not considered a minor offence, and in the second case, the act was not recognized as an offence under the jurisdiction of the Ministry of Economic Development and Technology.

From 2014 to 2016, no penalties were imposed for paragraph 3 of article 54 of the Companies Act. The reason is the specific content of this provision - the fine is imposed when failing to keep books of account in accordance with the double-entry book-keeping. To date, there are almost no such cases. More probable are cases when books are not kept at all. For such cases, where books are not kept or saved (not at all or not properly or not in a way that enables the determination of tax liability), provisions of the Tax Procedure Act (article 397, paragraph 1, point 9) are applied. This provision is wider and more useable - in the period from 2014 to 2016, there were altogether 1.166 infringements with a total amount of fine €816,900.

In severe cases, when due to the lack of documents, it is not possible to determine tax liability, the Financial Administration files a criminal report to the police or public prosecutor on the basis of a special form of tax evasion in accordance with paragraph 3 of article 249 of the Criminal Code, which states:

*“Whoever, with the intention of preventing establishment of an actual tax liability does not, on the request of the competent tax authority, provide information, submit business books and records which he is obliged to keep, or if the books and records are incorrect in their substance, or does not provide explanations in relation to the subject of tax inspection, or obstructs tax inspection, shall be sentenced to imprisonment for not less than one and not more than two years.”*

From 2014 – 2016, the Slovenian Financial Administration filed 26 criminal reports according to paragraph 3 of article 249 of the Criminal Code.

The Supreme Court does not keep statistics specifically on corruption cases in the private sector.

**(b) Observations on the implementation of the article**

Private entities must keep permanently books and accounts (art. 54, Companies Act), subject to sanctions (art. 685, Companies Act). In addition, criminal provisions on forgery or destruction of business documents (art. 235, Criminal Code) can apply.



#### **Paragraph 4 of article 12**

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Article 30 of the Corporate Income Tax Act explicitly prohibits the deduction of bribes as business expenses in tax returns. The law applies to all legal persons, as well as natural persons conducting economic activities pursuant to article 48(2) of the Personal Income Tax Act (48/2: For the purposes of determining revenue and expenditure, the provisions on corporate income tax shall apply, unless otherwise provided by this Act).

Article 30 of the Corporate Income Tax Act provides a list of non-deductible expenses that cannot serve as a basis for a tax deduction, including “bribes, and other forms of material benefit given to natural or legal persons in order to bring about or prevent a certain event which would otherwise not arise, such as in order for a certain action to be performed more quickly or favourably omitted” (indent 10 of art. 30).

With respect to article 30, “material benefit” includes intangible property such as certificates of stocks, bonds, promissory notes, copyrights and franchises. There is no small facilitation payments exception under Slovenian law. Such payments cannot be tax-deductible and would always be treated as bribes.

#### **Corporate Income Tax Act**

##### Article 30 (unrecognized expenses)

(1) Tax deductible expenses are:

1. income similar to dividends, including the concealed payment of profits;
2. expenses to cover losses from previous years;
3. costs relating to private life, such as entertainment, leisure, sports and recreation, including the associated value-added tax;
4. costs of forcible collection of taxes or other charges;
5. penalties imposed by the competent authority;
6. taxes paid by a partner as a natural person;
7. value added tax which the taxpayer did not claim as a deduction of input tax in accordance with the law governing value added tax, although he was entitled to it under the law governing value added tax;
8. interest:
  - a) from taxes or other dues paid in due time;
  - b) from loans received from persons having their registered office, place of effective management or residence in countries other than EU Member States in which the general or average nominal rate of taxation of profits is less than 12,5% and is listed in in accordance with Article 8 of this Act;
9. donations;
10. bribes and other forms of proceeds given to natural or legal persons in order to cause or not to cause a certain event that would not otherwise, for example, to perform a faster or more favorable or abandon an act.

(2) The costs referred to in point 3 of the first paragraph of this Article shall be:

1. costs relating to the private life of the owners or related persons referred to in Articles 16 and 17 of this Act, including the costs of assets owned or leased by the taxpayer relating to the private life of such persons;
2. costs relating to the private life of other persons, including the costs of assets owned or leased by the taxpayer, relating to the private lives of such persons, except for the costs of securing credit and other payments in connection with employment, if they are taxed by law, which regulates personal income



tax.

(3) Notwithstanding the first and second paragraphs of this Article, the costs referred to in point 3 of the first paragraph of this Article shall be recognized if they are for free use but up to the amount of payment or reimbursement. The costs of assets owned or leased by a taxpayer relating to the private life incurred during the use of those assets for private use shall not be recognized in proportion to such use.

#### **Slovenia provided the following examples and statistics:**

In corporate income tax returns, taxpayers are also obliged to disclose the data on expenses for bribes and other forms of proceeds that are not recognised for tax purposes. In 2014, 2015 and 2016, such expenditure amounting to €367,607.89 was shown by a total of 90 taxpayers in their tax return. Detailed data are shown below:

	2014	2015	2016
Number of taxpayers	31	27	32
Expenditure not recognised for tax purposes	121,249.71	101,251.62	145,607.89

#### **(b) Observations on the implementation of the article**

The tax-deductibility of expenses that constitute bribes is not allowed (art. 30, Corporate Income Tax Act).

#### **Article 13. Participation of society**

##### **Paragraph 1 of article 13**

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
  - (i) For respect of the rights or reputations of others;
  - (ii) For the protection of national security or ordre public or of public health or morals.

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Please refer to the information provided under paragraph 4 of article 7, paragraph 4 of article 8, and 10 of the Convention for more information on measures taken by Slovenia.

##### **Article 13, subparagraph 1 (a):**

*Enhancing the transparency of and promoting the contribution of the public to decision-making processes*

The Government focuses on restoring public trust in the state and its fundamental pillars of governance (political,

social, cultural, financial, economic, etc.). The state should become and be perceived as a provider of support for development in the wider public interest based on the following five key principles:

- respecting the rule of law: crucial focus will be on ensuring systemic support to implement legislation, decisive action against corruption, and permanent tenure of judges with a probationary period. Within the judiciary, there will be zero tolerance for corruption.
- creating a predictable and stable business environment by simplifying procedures for acquiring funding, permits and information, improving the control over the collection of contributions and taxes, implementing controlled privatization and the effective absorption of development funds.
- developing the professional potential of public employees and improving public services.
- promoting an open dialogue with civil society, particularly by including representatives of civil society as initiators of development and optimization of the operation of the public sector, by establishing a transparent and stable system of financing civil society and by including the results of the non-governmental sector in general performance indicators of society.
- Building a healthy, innovative, and competent society that provides social support.

The fourth principle - promoting an open dialogue with civil society, also reflects the Government's efforts to combat corruption and raise awareness for integrity in the public sector. The Programme of Government Measures to Prevent Corruption 2015-2016 and the latest Programme of Government Measures for Integrity and Transparency 2017-2019 were prepared in cooperation with the NGOs (TI Slovenia and CNVOS – a national NGO umbrella network, joining together more than 900 small and large NGOs from various policy fields), as well as the CPC. Furthermore, the NGOs are invited to cooperate in the process of raising awareness in the public sector by organizing trainings for public employees.

#### *Transparency of the legislative processes and public consultations in Slovenia*

On 19 November 2009, the National Assembly adopted the Resolution on Legislative Regulation, which represents a political commitment of each government body to respect the principles of better preparation of regulations and include the public in forming new policies or in the procedure for preparing new regulations. The Resolution represents a starting point and basic orientation of legislative work since it sets the grounds and principles for regulation drafting and guidelines for conducting the impact assessment and cooperation with expert circles and other interested groups.

In 2010, following the directives of the Resolution on Legislative Regulation, amendments to 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 were adopted. Special attention has been given to public participation, publication of the materials on websites, and prior inter-ministerial coordination. It was specified that the general public must be enabled to participate in drawing up a regulation in 30 to 60 days from the day of publication on the internet. The proposer of a regulation must also inform the expert circles and general public of the essential proposals and opinions that were not considered and explain the reasons for this within 15 days of the adoption of the regulation or the submission of the proposed regulation for further procedure.

Minimum standards of public involvement:

- as a rule, the public must be allowed to comment on a draft regulation within 30 to 60 days; exceptions are draft regulations that do not allow participation by their very nature (for example, urgent procedures, national budget);
- relevant material that contains a summary of the content with background papers, key questions and objectives should be drafted;
- after the completed participation process, a cooperation report should be drafted presenting the impact on the resolutions contained in the draft regulation;
- a call for participation should be implemented so as to ensure the response of target groups and the expert

- public<sup>124</sup> and ensure that the information on the drafts is introduced to all stakeholders – ‘broadest public’;
- lists of subjects whose participation in the drafting of regulations is regulated by law and of subjects involved in the field should be drafted for continuous cooperation and information.

The public is informed of planned amendments to regulations through the Regulatory Programme of Government Work, an extensive document containing a list of proposed laws and other acts that the Government will submit to the National Assembly. The Programme sets out the procedures and the deadlines for deliberation by the Government and for debates and adoption by the National Assembly.

The legal obligation to publish proposed regulations online is also provided by article 10 of the APIA.

Additionally, article 7 of the implementing regulation of the Decree on Communication and Re-use of Public Sector Information provides that official bodies must publish draft regulations, programmes, strategies and other documents on the internet for purposes of public announcement and consultation with the public and key stakeholders, and that regarding the method and deadlines, the provisions of the resolution governing regulatory activities and the Government Rules of Procedure should be applied *mutatis mutandis*.

Ministries publish draft regulations and other acts that are published in the Official Gazette of the Republic of Slovenia on the single national designated E-democracy portal.

If the proposed documents cannot be published on the internet, the authority must ensure minimum transparency<sup>125</sup> in the adoption of the act as follows:

- 1) Draft acts or other acts of the National Assembly which are proposed by the Government, and draft Government regulations or other Government acts which are published in the Official Gazette of the Republic of Slovenia no later than their adoption by working bodies of the Government;
- 2) Draft rules or other acts of a Ministry, which are published in the Official Gazette of the Republic of Slovenia no later than seven days before their issuance;
- 3) Draft programmes, strategies or other similar documents at least 15 days before their issuance;
- 4) Draft general acts of a State authority, local community, or holder of public authorizations at least seven days before their issuance.

Effective inclusion of the public in the drafting of regulations is also the aim of the Guidelines for Inclusion of the Public in Drafting Regulations, drawn up by the MoPA in 2015.

The inclusion of residents of Slovenia in formulating policy at the Government level is also facilitated by the tool *Predlagam vladi* (“I propose to the Government”, the responsibility of the Government Communication Office). Via this website, anyone can propose to the Government the adoption of a certain measure, regulation and so forth. A proposal that receives sufficient support is sent for scrutiny by the competent ministry, which must take a position on the proposal.

Consultations with outside stakeholders are compulsory for all primary and subordinate regulations and often take place early in the process with the use of green papers, consultation documents, etc. In early 2015, an extensive project was carried out by the MoPA to train regulatory drafters, external stakeholders, and decision-makers, aiming to increase transparency and involvement of civil society in the preparation of regulations throughout the whole policy cycle.

The freedom of assembly and association, as well as the freedom of expression, are enshrined in the Constitution (arts. 39 and 42)

## **Constitution**

### Article 39 (Freedom of Expression)

*Freedom of expression of thought, freedom of speech and public appearance, freedom of the press, and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive, and disseminate information and opinions.*

<sup>124</sup> experts in a certain field (usually outside of the public sector)

<sup>125</sup> the authority must at least follow the steps under 1-4

*Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law.*

#### Article 42 (Right of Assembly and Association)

*The right of peaceful assembly and public meeting shall be guaranteed. Everyone has the right to freedom of association with others. Legal restrictions of these rights shall be permissible where so required for national security or public safety and for protection against the spread of infectious diseases. Professional members of the defence forces and the police may not be members of political parties.*

#### **Article 13, subparagraph 1(b):**

*Please see answers provided under:*

- *paragraph 4 of article 7 of the Convention - general information on access to public information regime in Slovenia*
- *subparagraph (a) of article 10 - general information on access to public information regime in Slovenia*
- *subparagraph (b) of article 10 - Open Data in Slovenia*

#### *Detailed information on access to public information regime in Slovenia*

The right to access public sector information (PSI) is governed by the APIA, the Decree on the Provision and Re-use of Public Information, the General Administrative Procedure Act (GAPA) and the Information Commissioner Act (ICA).<sup>126</sup>

#### *Bodies obliged to provide the public sector information:*

According to the APIA, everyone is entitled to free access to and re-use of public information held by two groups of entities:

1. state bodies, local government bodies, public agencies, public funds and other entities of public law, public powers holders and public service contractors,
2. companies and other legal entities of private law and subject to the direct or indirect dominant influence, individually or jointly, self-governing local communities and other entities of public law (business entities subject to the dominant influence of entities of public law).

#### *Public sector information:*

The first group of bodies is obliged to provide all information originating from their field of work and occurring in the form of a document, a case, a dossier, a register, a record or other documentary material drawn up by the body, by the body in cooperation with other bodies, or acquired from other persons. The second group of bodies is obliged to provide:

a) information on a concluded legal transaction on obtaining, using or managing tangible assets of a business entity or expenditures of a business entity on a contract on supply, works, or agent, consulting or other services, as well as a sponsor, donor and contractual agreements and other legal transactions of equal effect.

b) information on the type of representative or membership in an administrative, management or supervisory body, information on the amount of arranged or paid remuneration or credit of a member of a management or administrative body, or another representative of a business entity, and information on employment or designation of the entities listed which indicates compliance with the conditions and criteria to be met for employment or designation.

#### *Exceptions:*

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<sup>126</sup> English translation of ICA available here: <https://www.ip-rs.si/en/legislation/zakon-o-informacijskem-pooblascencu/>.

Exceptions to the free access principle are provided in articles 5.a and 6 of the APIA. According to these provisions, the body may reject access to requested information, if the request refers to:

- information, access to which is forbidden or restricted under the law even to parties, participants or victims in legal or administrative proceedings, or inspection procedure as governed by the law;
- information on which the law stipulates protection of confidential source;
- information which, pursuant to the Act governing classified data, is defined as classified (If the applicant holds that information is denoted classified in violation of the Act governing classified data, he can request the withdrawal of the classification according to the procedure from article 21 of the APIA);
- information which is defined as a business secret in accordance with the Act governing companies;
- personal data the disclosure of which would constitute an infringement of the protection of personal data in accordance with the Act governing the protection of personal data;
- information the disclosure of which would constitute an infringement of the confidentiality of individual information on reporting units, in accordance with the Act governing Government statistics activities;
- information the disclosure of which would constitute an infringement of the tax procedure confidentiality or of tax secret in accordance with the Act governing tax procedure;
- information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution, or misdemeanours procedure, and the disclosure of which would prejudice the implementation of such procedure;
- information acquired or drawn up for the purposes of administrative procedure, and the disclosure of which would prejudice the implementation of such procedure;
- information acquired or drawn up for the purposes of civil, non-litigious civil procedure or other court proceedings, and the disclosure of which would prejudice the implementation of such procedures;
- information from the document that is in the process of being drawn up and is still subject to consultation by the body, and the disclosure of which would lead to misunderstanding of its contents;
- information on the natural or cultural objects which, in accordance with the Act governing the conservation of nature or cultural heritage, is not accessible to the public for the protection of (that) natural or cultural objects;
- information from the document drawn up in connection with internal operations or activities of bodies, and the disclosure of which would cause disturbances in operations or activities of the body.

Nevertheless, without prejudice to the above provisions on exceptions, access to the requested information is sustained if public interest for disclosure prevails over public interest or interest of other persons not to disclose the requested information, except in the following cases:

- for information which, pursuant to the Act governing classified data, is denoted with one of the two highest levels of secrecy;
- for information that contains or is prepared based on classified information of other countries or international organizations, with which Slovenia concluded an international agreement on the exchange or transmitting of classified information.
- for information that contains or is prepared based on tax procedures, transmitted to the bodies of Slovenia by a body of a foreign country;
- for information from point 4 of paragraph 1 of this article;
- for information from point 5 of paragraph 1 of this article, unless the tax procedure is final or the person liable for tax discovered the liability in the tax return and did not pay the tax in the prescribed time.

Additionally, access to the requested information is sustained, without prejudice to the above provisions on exceptions, if the considered information is related to:

- the use of public funds or information related to the execution of public functions or employment relationship of the public employee, except in cases from point 1. and points 5. to 8. of the first paragraph and in cases when the Act governing public finance and the Act governing public procurement stipulate

otherwise;

- environmental emissions, waste, dangerous substances in the factory or information contained in the safety report and also other information if the Environment Protection Act so stipulates.

The body can choose not to provide the applicant with the requested information if the latter is available in freely accessible public registers or is in another way publicly accessible (publication in an official gazette, publications of the body, media, professional publications, internet and similar), and can only issue instructions as to the location of the information.

#### *Procedure:*

The APIA stipulates that the request to access public sector information (PSI) may be informal (oral) or formal (in writing). However, only the applicant who files a written request enjoys legal protection from an unjustified refusal of his/her request. The applicant files a request for access with the body, which supposedly holds the requested information. According to article 17 of the APIA, in his or her request, the applicant has to specify:

1. The information he or she wishes to get acquainted with, and
2. The way he or she wishes to get acquainted with the contents of the requested information (consultation on the spot, a transcript, a copy, an electronic record).

If the public body, which has received the request, does not hold the information, it must immediately, within the time limit of 3 working days, assign the request to the body which is competent for resolving the request and notify the applicant. On the other hand, if the public body would otherwise be competent for the applicant's request but does not hold the requested information, it must issue a decision, denying access on the ground that the information does not exist (the public body does not hold the information).

When the public body does not respond to the applicant's request or does not provide the PSI in due time (within 20 working days from receiving the request), the applicant can appeal to the Information Commissioner (IC).

The IC is an autonomous and independent state body, competent for:

- Deciding on appeals against decisions by which a public sector body refused or dismissed the request for access or re-use of public sector information;
- Supervising, within appellate procedures, the implementation of the APIA and regulations adopted thereunder;
- Initiating misdemeanour procedures for violations of the APIA (only in the framework of an appellate procedure) for:
  - Destroying information with the intention of making such information inaccessible to the public;
  - Not transmitting, without justification, the requested public information within the prescribed time limit;
- Initiating misdemeanour procedures for violations of the ICA; namely for failing to:
  - Transfer requested information to the Commissioner upon its request;
  - Enforce the Commissioner's decision (when it becomes final and enforceable - in case the administrative dispute is not initiated).

Upon receiving the appeal, the IC must inquire with the body as to why there was no response. Should it recognize that the reasons for the delay are justified, it prolongs the deadline for the body to decide on the applicant's request (but for no longer than 30 days). However, if the delay is not justified (according to the assessment of the IC), the IC decides to take one of the following steps. One possibility is to take over the case and issue a decision instead of the public body. Another but more frequent option is to demand from the public body a decision within a certain time limit if this option is more economical and faster than taking over the case. Should the public body (even after receiving a written call to issue a decision from the IC) fail to do so, the IC issues the decision itself.

#### *Appeal:*

When a public body rejects the applicant's request but does not issue a formal decision and instead only responds by phone, email or an informal letter, this is also considered an administrative silence (after the 20 working days have passed). Namely, according to paragraph 2 of article 22 of the APIA, if the body refuses the request for access in whole or in part, it must issue a written decision. The same applies to the applicant's request for the re-use.

When the public body refuses the applicant's request in whole or in part, the applicant must file the appeal with the body. If the applicant first appeals directly to the IC, the IC must immediately send the appeal to the public body.

Upon receiving the appeal, the public body must first check all the procedural requirements - whether the appeal is allowed, whether the appellant has the right to appeal and whether the appeal has been filed within the prescribed time limit (15 days after the decision). If any of these procedural requirements are not fulfilled, the body dismisses the appeal by an order. The applicant may appeal against this order.

If the procedural requirements are fulfilled, the body sends the appeal to any of the entities whose interests might be affected by the appellate procedure (e.g., the requested information represents their business secret), invite them to participate in the procedure and provide any relevant information or their position on the matter.

The public body has the possibility to decide on the appeal itself by amending its first decision. The applicant can also appeal against this new, amended decision.

If the public body finds that the procedural requirements are fulfilled and insists on its first decision, it sends the appeal, together with all the relevant documentation (including the requested PSI), to the IC. The body has 15 days to check all the procedural requirements and send the appeal to the IP. If the body fails to send the appeal to the IC, the applicant (or the IC) can report the body to the Public Sector Inspectorate.

Upon receiving the appeal and the documentation, the IC also checks the procedural requirements. If those are not fulfilled, the IP dismisses the appeal by order. Otherwise, the IC decides on the subject matter. The IP can:

- refuse the appeal in whole or part as unfounded and confirm the public body's decision;
- grant the appeal in whole or partially, overthrow the body's decision and order the body to hand out the requested PSI or part of it for re-use;
- grant the appeal in whole or partially, overthrow the body's decision and refer the matter back to the body to issue another decision within 30 days;
- annul the body's decision.

The IC has to immediately issue a decision and, at the latest, within two months from receiving the complete appeal.

The IC's decision is binding (Failure of abiding by it constitutes a misdemeanour). However, any of the parties involved may begin an administrative dispute against the IC's decision before the Administrative Court.

#### *Costs:*

The appellate procedure is free of charge; however, the body may charge the applicant with costs for providing the requested PSI. However, the costs are limited and specified in the APIA and the Decree, and costs may only be charged when higher than €20 (e.g., in principle, a request for up to 299 pages A4 is free of charge). According to article 34 of the APIA, consultation on the spot of the requested information shall be free of charge when no partial access under article 7 of the APIA is required. The body may charge the applicant the material costs for the transmission of a transcript, copy or electronic record of the requested information. The Decree then provides detailed costs that may be charged to applicants in articles 16-18. Costs may only be charged when they are higher than €20 and only material cost for transmission of the following information:

1. submission of a copy, photocopy or electronic records carrier of the required information, where a copy shall be considered as the production of any duplicate by technical means,
2. conversion of information from electronic to hard copy if the public information exists exclusively in an electronic form and the applicant wishes to receive the information in a physical form;
3. conversion of information from a physical to an electronic form if the information exists exclusively in a physical form and the applicant wishes to receive the information in an electronic form;
4. making of a copy for the purposes of partial access for consultation on the spot of the requested information.
5. postage for mailing.



The body may not charge costs:

- for consultation on the spot (except for costs from point 4);
- for the provision of information by telephone;
- for the provision of information via e-mail (except for costs from point 3);
- for the provision of information by means of telefax not exceeding five pages altogether

The material cost prices for providing public information are (excluding VAT):

1. one page photocopy or print of A4 format, €0.06
2. one page photocopy or print of A3 format, €0.13
3. one page photocopy or print of larger format, €1.25
4. one page colour photocopy or print of A4 format, €0.63
5. one page colour photocopy or print of A3 format, €1.25
6. one page colour photocopy or print of larger format €2.50
7. electronic record on one compact disc CD, €2.09 EUR
8. electronic record on one compact disc DVD, €2.92 EUR
9. electronic record on USB, the price for which the body purchased the USB
10. conversion of one document page of A4 format from electronic to physical form, €0.08
11. conversion of one document page of A3 format from electronic to physical form, €0.20
12. postage for sending information per post in accordance with the applicable postal services price list.

Upon providing information, the body shall issue a decision to the applicant on the costs, from which the specification of costs in accordance with the Decree must be evident.

*Sanctions:*

#### **Access to Public Information Act**

##### Article 39 (Liability for misdemeanour)

*(1) A fine of EUR 1,000 shall be imposed upon a person for the misdemeanour of destruction, concealment, or of making in any other way inaccessible of a document, a case, a dossier, a register, a record or a documentary material containing public information, with the intention of making such information inaccessible to the public.*

*(2) A fine of EUR 1,200 shall be imposed upon the responsible person of the body or business entity subject to dominant influence of entities of public law committing the offence from the previous paragraph.*

*(3) A fine of EUR 800 shall be imposed upon the responsible person of the body committing the offence:*

- *if within the period referred to in Article 23 of this Act he/she shall unduly fail to provide the public information requested,*
- *shall fail to publish the catalogue of public information referred to in Article 8 of this Act, or shall fail to publish public information on-line in accordance with Article 10 of this Act, or*
- *shall fail to submit in due time the annual report referred to in Article 37 of this Act,*
- *shall fail to publish the public information from Article 10.a on-line in the period referred to in paragraph 10 of Article 26 of this Act.*

*(4) A fine of EUR 800 shall be imposed upon the responsible person of the business entity subject to dominant influence of entities of public law committing the misdemeanour from indent 1 of the previous paragraph or if they fail to publish on their website all the public information referred to in paragraphs 11 and 12 of Article 10.a of this Act.*

*(5) A fine of EUR 300 shall be imposed upon the responsible person of the ministry or authority of a self-governing local community that shall fail to transmit to the competent organisation information in accordance with paragraph 1 of Article 3.č of this Act and the responsible person of entities of public law that shall fail to transmit to the competent organisation information in accordance with paragraph 2 of*

*Article 3.č of this Act.*

*(6) A fine of EUR 700 to 1,400 shall be imposed upon the individual and a fine of EUR 2,000 to 30,000 shall be imposed upon a legal entity or an entrepreneur, who re-uses the public information for commercial purposes, for which the body charges a price or states other conditions and the body did not allow such re-use in accordance with paragraph 3 of Article 22 of this Act.*

*(7) By urgent offence proceedings from the previous paragraph the competent body may impose any fine within the range determined*

#### *Transparency International Slovenia inputs*

The TI Slovenia noted that although Slovenia has one of the best legal regulations in this area, access to information is impeded in practice.<sup>127</sup> There are systemic difficulties with public institutions' proactive publication of information and existing procedures to access the information. Access to information may be denied if the information is declared as (business) secret, personal information, disclosure of which could breach protection of private data legislation or any other reasons defined in the APIA.

The TI Slovenia further added that access to information should be rapid, according to several international documents, including CoE Convention on the Access to the Official Documents, while practices in Slovenia show that access is impeded and much too slow if a public institution decides to deny access to information. The consequent process of determining whether the public has the right to access the disputed information regularly surpasses a threshold of 90 days envisaged in the APIA. When the disputes come before the Administrative Court, they can last more than two years to be resolved. In the case SuNP 7/2016, the Administrative Court in the first instance needed 16 months to rule; in the second instance, 11 months. In that case, the Supreme Court decided there was no breach of the standard, which stipulates trial without undue delay. The Constitutional Court was considering the case in addition to a number of similar cases standing before the Administrative Court at the moment of the country visit.

The TI Slovenia further noted that there is a tendency to hide public contracts and other relevant documentation that should be public. One example is the purchase of barbed wire where the TI Slovenia, other NGOs and journalists cannot obtain information on the details of the deal. While there are a number of red flags highlighting possible wrongdoings, there is no damage to be done by publishing the contracts. The entire process of obtaining the contract lasts more than one and a half year; the Administrative Court still has not ruled on the case.<sup>128</sup>

The TI Slovenia also noted that in the last three years, the Government adopted new legislation enhancing the proactive transparency and reusability of public data within open data formats. The Government focused on this topic since Slovenia was way behind other EU countries. The Government implemented a couple of important projects with the participation of the TI Slovenia<sup>129</sup> to enhance open data. While the MoPA indeed enhanced the work in this area, it also took actions to restrict the access to information for the NGOs and journalists to obtain public information. The access to public information in Slovenia is free of charge, while the proposed drafts went in the direction of charging for it.<sup>130</sup> NGOs and journalists managed to have the proposal rejected in the National Assembly.<sup>131</sup>

Slovenia signed the Council of Europe's Convention on the Access to the Official Documents in 2009 but has failed to ratify the Convention.<sup>132</sup>

#### ***Subparagraph 1(c) of article 13:***

<sup>127</sup> (Habič, S. Ur. 2012. Nacionalni sistem integritete. Accessible: [http://nis.integriteta.si/images/pdf/knjiga\\_integriteta\\_2012.pdf](http://nis.integriteta.si/images/pdf/knjiga_integriteta_2012.pdf)).

<sup>128</sup> Available at: <http://transparency.si/8-novice/343-ograja-na-meji-letno-in-pol-onemogocanja-dostopa-do-informacij>, <http://transparency.si/8-novice/322-dolga-in-trnova-pot-do-informacij>).

<sup>129</sup> Available at: (<http://www.transparency.si/projekti/proracuni-obcin/>),

<sup>130</sup> Available at: (<http://transparency.si/dostop-do-informacij>)

<sup>131</sup> Available at: (<http://transparency.si/8-novice/169-odprto-pismo-poslancem-dz-o-spremembah-zdijz>)

<sup>132</sup> Available at: ([http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p\\_auth=7c2z8Ycp](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p_auth=7c2z8Ycp)).

The Ministry of Education, Science and Sport (MESS) described that pupils are educated about corruption within individual subjects in elementary education. Anti-corruption content is not systematically included in national vocational and professional education programs.

Nevertheless, activities for awareness of children and youth are carried out. Transparency International Slovenia, along with “Društvo mladinski ceh”, executed a competition titled Students Against Corruption. They encouraged students to think about corruption problems and the lack of transparency and integrity. The students were involved in the search for solutions in this field.

In the field of science, high ethical standards are applied in public research. Institutional arrangement of ethical issues in all important areas of science is applied on a systemic level, following the lead of other EU member States. The National Commission for Integrity in Science is foreseen to be established. Its operation will be determined in the Research and Development Amendment Act. It is also reported that a national code of ethics, morals and integrity will be adopted, and good practices in science will be shared.

In sports, the operation and financing of disability, humanitarian and sports organizations are regulated to eliminate the risks of corruption and the irrational use of financial resources. Thus, the Foundation for Financing Sports Organizations in the Republic of Slovenia and the Foundation for Financing Disability and Humanitarian Organizations in the Republic of Slovenia Act are under preparation.

Internal and external audits of the execution of tasks and projects are regularly carried out.

When preparing new regulations, provisions that regulate corruption risks are integrated into the legislation. The MESS is actively involved in preparing regulations, such as the Students Association Amendment Act, where the proposed amendments aim to facilitate a more transparent operation of student organizations. It is required that the proposal take into account the legislation in the field of prevention of corruption.

Educational courses or modules introduced in primary and secondary schools include aspects related to corruption or related issues such as ethics, civic rights or governance. The subject dealing with civic and homeland education and ethics is an integral part of social and humanistic education in elementary schools. Pupils acquire basic knowledge about the position and role of the individual in society, the rules that apply in the communities, the social principles and rules of public and political life, and the political order of the European Union, etc.

Educational courses and modules introduced in universities include aspects related to corruption or related issues such as public administration, public procurement, ethics, criminal law or corporate governance. The Operational Programme for the Implementation of the EU Cohesion Policy 2014-2020 has been adopted. The OP is the key implementation document outlining the priority axes of selected priority investments, where Slovenia will invest European Cohesion Policy funds in order to achieve national targets within the framework of the EU 2020 objectives. The development projects of various social and communication competences are included. Various activities and contents related to strengthening ethical principles and moral values related to the development of a democratic society are included.

In line with the recommendations of the Council of the EU, one of Slovenia’s key objectives is to fight corruption with zero tolerance. With planned activities and measures in the field of raising the level of integrity and limiting corruption risks, Slovenia pursues the vision of a professional and efficient public administration, within which there is thorough management of corruption risks.

#### *Erasmus+ project*

As part of the Erasmus + project “Innovative approaches towards teaching anti-corruption in formal education”, the TI Slovenia developed an educational handbook “Students for Integrity”, which includes educational materials for teachers who wish to address the topics of integrity, transparency, responsibility and anti-corruption at secondary schools (topics which currently are not part of the subject curricula). The use of the teachers’ handbook was piloted in two secondary schools in Slovenia (Gimnazija Šentvid and the School of Economy of Murska Sobota). Four professors were trained in using the newly developed educational material, which was tested in 8 different classes, involving almost 130 high school students.

The Ministry of Education, Science and Sport (MESS), the Education Institute of Slovenia and the TI Slovenia had also organized a conference entitled “Students for Integrity” where content on integrity, transparency, responsibility and anti-corruption had been presented to third-year high school students.

## Handbook

- <http://www.transparency.si/boj-proti-korupciji-v-srednjih-solah>
- [http://www.transparency.si/images/publikacije/prirocnik-korupcija-fin\\_2016.pdf](http://www.transparency.si/images/publikacije/prirocnik-korupcija-fin_2016.pdf)

## Conference

- [http://www.zrssi.si/zrssi/wp-content/uploads/ti\\_slo\\_konferenca.pdf](http://www.zrssi.si/zrssi/wp-content/uploads/ti_slo_konferenca.pdf)

### *Sports Act - a clearer definition of public interest in the field of sports*

Article 4 of the newly adopted Sports Act stipulates that the state pursues a public interest in sports by securing financial resources for the implementation of the national programme and promotes a favourable administrative and taxation environment. Consequently, the state should avoid measures and regulations regarding the programmes, which would constitute additional administrative burdens, and avoid tax barriers in its fiscal policies in the field of sports. The financial funds for implementing the national sports programmes are allocated from 4 resources, namely: the state budget, the municipality budget, the budget of the Sports Foundation and the budget of the Foundation for Financing Disabled and Humanitarian Organizations. Furthermore, the funds for pursuing public interest may be ensured through private funding in the form of donations, sponsorships and other resources.

### *Act amending the Students Association Act*

Paragraph 4 of article 10 of the proposed amendment to the Students Association Act, introduces a clause by which the students organization of Slovenia and all legal persons, where the students organization of Slovenia or its subsidiaries have a prevailing influence are subject to the provisions of the anti-corruption act, anti-corruption clauses, operational limitations and consequences for violations and other anti-corruption provisions.

The CPC executes oversight and other responsibilities relating to the measures of the act in accordance with integrity and anti-corruption legislation. The amendments of the act regulate the following:

- The CoA shall supervise the correctness and expediency of the use of budgetary funds by students organizations;
- Full commitment to the disclosure of information in the public interest;
- Students organizations are subject to the provisions of the Public Procurement legislation;
- High officials, officials, management and other official representatives of the students' organizations are subject to the anti-corruption provisions of the Integrity and Prevention of Corruption Act
- Regulation of students organization within short-cycle higher education;
- Clear procedures for election to representative bodies are put in place, and strict limitations on campaign financing are introduced

### *Citizenship education in the formal curricula*

Article 2 of the Basic School Act 2007 (Government of Slovenia, 2007) sets out the aims of basic education in Slovenia, among which are especially relevant for citizenship education are:

- (1) Raising awareness of citizenship and national identity and improving knowledge of Slovene history and culture;
- (2) Educating for the general cultural and civic values originating out of European traditions; and
- (3) Educating for mutual tolerance, respect for differences, cooperation with others, and respect for human rights and fundamental freedoms, thus developing the competencies required for living in a democratic society.

Similar educational goals for basic and upper-secondary education directly relevant to citizenship education are also defined in the Organization and Financing of Education Act 2008 (Government of Slovenia, 2008). From 2013 the subject is named Patriotic and Citizenship Culture and Ethics and includes topics of anti-corruption, transparency and responsibility as a horizontal element. The subject is compulsory for 7th and 8th-grade pupils at the primary school level.<sup>133</sup>

### *Proposal for the new Research and Development Act*

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<sup>133</sup> (Source: <http://www.bpb.de/veranstaltungen/netzwerke/nece/206029/citizenship-education-in-slovenia?p=all>)

Scientific excellence goes hand in hand with ethical conduct. Therefore, the ministry responsible for science and the Slovenian Academy of Sciences and Arts have established a council for the development of contextual background for the set-up of a national committee for science integrity. One of its fundamental tasks will be prevention and training in the field of ethics in science, with the aim of encouraging good practices of combating (scientific) dishonesty/misconduct. The committee will issue opinion statements on breaches of ethical rules and standards. A high degree of researchers' ethical standards in their work as well as in wider society is one of the objectives of the Resolution on the National Research and Development Programme 2011-2020 and is also one of the priorities of the responsible ministry.

*The projects of the CPC towards schools were already introduced under paragraph 2 of article 5 of the Convention.*

*Transparency International Slovenia inputs:*

TI Slovenia noted that there is no specific anti-corruption programme in primary or secondary schools. Primary schools enforce the so-called citizenship and ethics programme. For the last five years, TI Slovenia endeavours to educate high-school students on the topic of integrity, transparency, accountability, ethics and anti-corruption. TI Slovenia has implemented an innovative and holistic approach, first train the trainers on the basis of the adopted handbook<sup>134</sup> and enforcing the 5 – 30 hours long programme in the classrooms. TI Slovenia, together with partners, prepared e-learning for students and finalized the curriculum programme, which was sent to the MESS and the Association of Education in Slovenia. The programme was included in the so-called compulsory optional curriculum, but it depends on the schools to be included in the curriculum. At this point, no schools have decided to do so.

Universities include the topic of corruption in some of the classes. TI Slovenia has noted that some faculties, such as the Faculty of Economics, Faculty for Criminal Justice and Security, Faculty of law, etc., enforce the topic more and more.

***Subparagraph 1(d) of article 13:***

As regards public access to information regarding corruption cases, the rules of the APIA, which were described above under subparagraph (b) apply in the same manner. However, there are a few differences and exemptions. According to the provision of paragraph 2 of article 23 of the IPCA (which is "lex specialis" towards the APIA), the APIA does not apply to documents, files, records and other documentary materials relating to a procedure conducted by the CPC with regard to the reported suspicion of corruption until the procedure before the CPC is concluded. The information on the protected reporting person shall not be made public also after the procedure is concluded. This provision shall also apply in the event that the materials (documents, files, records and other documentary materials relating to a procedure) have been referred to another body for further consideration. The reporting person may send the report containing information defined by law as classified information only to law enforcement authorities or to the CPC.

Thus, when the procedure before the CPC is completed (concluded), the APIA applies with the restrictions as defined by article 6 of the APIA, which defines data that cannot be accessible to the public (personal data, tax secrecy, classified information, etc.). In that case, the applicant (public) shall be granted partial access to the documents (names, tax secrecy, classified information will be coloured with black - or erased). According to the above mentioned, anyone (natural or legal person) can ask for (under the APIA) access to cases, documentations, etc. There is no need to state reasons for such acquisition.

With regard to the access to assets declarations, the procedure is the same as mentioned above. However, according to article 46 of the IPCA, data on the income and assets of persons with obligations, with the exception of persons responsible for public procurement and 'civil servants of the National Review Commission', shall be publicly available in part relating to income and assets obtained during the period of holding a public office or performing an activity and within one year after the termination of the office or activity, irrespective of the restrictions stipulated in the law governing the protection of personal information and the law governing the protection of confidential tax information.

As explained by the CPC, the reason for not publishing the asset declarations is the absence of systematic and comprehensive control of all declarations submitted. The CPC is not willing to take responsibility for publishing

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<sup>134</sup> Available at: ([http://transparency.si/images/publikacije/prirocnik-korupcija-fin\\_2016.pdf](http://transparency.si/images/publikacije/prirocnik-korupcija-fin_2016.pdf))

inaccurate declarations on its website. It is estimated that 60% of the declarations contain inaccuracies, and one of the common mistakes is that public officials' close persons' assets, which are not subject to publicity requirements, are disclosed. The CPC also does not grant requests for access to asset declarations under the APIA and forwards those requests to the officials concerned, who may choose whether or not to disclose such information.

*Transparency International Slovenia inputs:*

The TI Slovenia noted that the involvement of citizens in the decision-making processes is satisfactory. The Government did not implement a comprehensive legislative footprint but did enforce a paragraph into its Rules of Procedure, where each ministry should provide details on who is responsible for drafting the law and who took participation in the process. Implementation of the paragraph varies, and there is no supervision and penalties for breaching the provision.

Institute Danes je nov dan<sup>135</sup> prepared a comprehensive tool for transparency of National Assembly - [www.parlameter.si](http://www.parlameter.si).

The involvement of civil society and interested parties varies between the ministries. The Government does not follow its own rules on the length of public consultation. CNVOS is following the statistics on the implementation of the Resolution of normative regulation,<sup>136</sup> which highlights that the Government traditionally breaches it, and the statistics show the breach is generally more than 50%. This makes it harder for citizens to participate in the consultation processes.

The Government no longer involves external consultants in drafting the legislation. However, when it does so, the process is not transparent. There is no practice of making the consultants public on their web-page, but the information is freely accessible per request. In addition to that, ministries and other public bodies do not follow the financial transparency provisions established by the APIA. The latter stipulates that the public authorities should use a special code when transactions are made for consultancy and honorarium contracts to the individuals. This enables transparency of the transaction in the IT tool - ERAR managed by the CPC. As a consequence, the transactions are not visible and thus hidden.

The IC works in the direction of enhancing the transparency of public information. In certain cases, there is a disagreement between NGOs and the IC when it comes to proactive transparency, a combination of different databases and utilization of IT tools. There is a clash between two rights - the right to know and the protection of personal data. For example, TI Slovenia cannot publish the names of the lobbyists online in the tool, which shines a light on lobbying contacts and interactions between public and private (<http://www.kdovpliva.si/>) as this would constitute a breach of public data regulation. Currently, there are no ongoing discussions as to when public interest must prevail over private information, especially when it is about positive business practices.

TI Slovenia also added that although the Government adopted a regulation in 2009/2010 regarding the transparency of lobbying activities, it did not solve all the issues. Reports on lobbying contacts are around 2000 per year, but it represents just a fraction of the lobbying going on. The CPC prepared IT tools for online reporting.

*For measures on the proactive transparency of the work of the Government and on the ways the public and the media can access information, please refer to paragraph 4 of article 7 and subparagraph (a) of article 10 of the Convention.*

**Slovenia provided the following examples and statistics:**

The Resolution on Legislative Regulation (automated translation into English)

<http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5516>

The public is informed of planned amendments to regulations through the Regulatory Programme of Government Work:

[http://www.vlada.si/delo\\_vlade/program\\_dela\\_vlade/](http://www.vlada.si/delo_vlade/program_dela_vlade/)

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<sup>135</sup> Institute Danes je nov dan

<sup>136</sup> Available at: (<http://stevec-krsitev.si/>)



Effective inclusion of the public in the drafting of regulations is also the aim of the Guidelines for Inclusion of the Public in Drafting Regulations, drawn up by the MoPA in 2015:

[http://www.stopbirokraciji.si/fileadmin/user\\_upload/mju/Boljsi\\_predpisi/Vkljucvanje\\_javnosti/MJU-SMERNICE-FINAL\\_842015.pdf](http://www.stopbirokraciji.si/fileadmin/user_upload/mju/Boljsi_predpisi/Vkljucvanje_javnosti/MJU-SMERNICE-FINAL_842015.pdf)

The inclusion of residents of Slovenia in formulating policy at the Government level is also facilitated by the tool Predlagam vladi - «I propose to the Government»

<http://predlagam.vladi.si/>

The ministry that prepares the law proposal must include the report on the consultations in the material sent to the Secretariat General of the Government. The content of the material is prescribed by the Instructions for the Implementation of the Rules of Procedure of the Government of the Republic of Slovenia. Annex 1 to each drafted government document, inter alia, contains the following points on public consultation and consultation with the municipalities:

<b>8. Presentation of cooperation with the associations of municipalities:</b>	
<i>The contents of the submitted material (regulation) have an impact on:</i> <ul style="list-style-type: none"> <li>- the competencies of municipalities,</li> <li>- the functioning of municipalities,</li> <li>- the funding of municipalities.</li> </ul>	YES/NO
<i>The material (regulation) was sent for the observations to:</i> <ul style="list-style-type: none"> <li>- the Association of Municipalities and Towns of Slovenia (SOS): YES/NO</li> <li>- the Associations of Municipalities of Slovenia (ZOS): YES/NO</li> <li>- the Association of Urban Municipalities of Slovenia (ZMOS): YES/NO</li> </ul>	
<i>The proposals and comments of the associations were taken into consideration:</i> <ul style="list-style-type: none"> <li>- in full,</li> <li>- mostly,</li> <li>- partially,</li> <li>- not at all.</li> </ul>	
Crucial proposals and comments that were not taken into consideration.	
<b>9. Presentation of public participation:</b>	
<i>The material has been previously published on the proposer's website:</i>	YES/NO
<i>(if NO, state reasons why it was not published)</i>	
<i>(if YES, indicate:</i> Date of publication: ..... Discussion involved: <ul style="list-style-type: none"> <li>- non-governmental organisations,</li> <li>- representatives of the interested public,</li> <li>- representatives of the expert public.</li> </ul>	
<i>Opinions, proposals and comments, including who they were submitted by (do not indicate the names of natural persons who are not business entities):</i>	
<i>These were taken into consideration:</i> <ul style="list-style-type: none"> <li>- in full,</li> <li>- mostly,</li> <li>- partially,</li> <li>- not at all.</li> </ul>	
Crucial opinions, proposals and comments that were not taken into consideration and reasons for this.	
The report was submitted on .....	
<i>The public was involved in drafting the material in accordance with the Act on ....., which is stated in the proposed regulation.)</i>	
<b>10. In the preparation of the material, the requirements from the Resolution on Legislative Regulation were taken into consideration:</b>	YES/NO
<b>11. The material was included in the Government work programme:</b>	YES/NO
PROPOSER'S SIGNATURE:	



The Act amending the Access to Public Information Act (the Act amending the APIA), adopted on 15 December 2015, stipulates that when a body publishes a proposed regulation or a general act for the exercise of public powers, it must also publish information on the external expert who was involved in the drafting of the regulation or act (the name and the payment).

The amended provisions of the Act amending the APIA were the basis for the amended Instructions for the Implementation of the Rules of Procedure of the Government of the Republic of Slovenia adopted on 12 May 2016, and of the adjusted text of Annex 1 to each drafted government document. Its contents reveal which data should be provided insofar as an external expert participated in the drafting of the document.

<b>3.b External experts who participated in drafting the material (in part or whole):</b> <i>(Indicate the name of the external expert or the business name and address of the legal person who participated in drafting the regulation or general act for the exercise of public authority.)</i> <i>(Indicate the associated financial implications for public funds, or indicate that the participation of the expert is not related to the general government expenditure.)</i>
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An example - the complete government proposal to the National Assembly - on the APIA amendments (the 2014 amendments to the Act broadened the circle of liable bodies on the companies owned by the State, municipalities and other bodies governed by public law as the anti-corruption measure):

- The Government proposal:

<<http://vrs-3.vlada.si/MANDAT13/VLADNAGRADIVA.NSF/18a6b9887c33a0bdc12570e50034eb54/450936FB2040E9B5C1257BE500456359?OpenDocument>>

- All the amendments, with the direct links to the text and the originator (provided for every law adopted by the Parliament by the Government Service for Legislation on the Laws Portal: PIS RS)

<<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6766>>

An example - an invitation to public consultation - links to the documentation for public consultation - draft amendments to the IPCA:

[http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/novice/2016/161118\\_IPCA-C.pdf](http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/novice/2016/161118_IPCA-C.pdf)

<[http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/novice/2016/161118\\_ZIntPK-C.pdf](http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/novice/2016/161118_ZIntPK-C.pdf)>

An example - the Public Administration Development Strategy 2015-2020 was prepared in the process of public consultation coordinated by the MoPA. The invitation and the responses of the MoPA to the ones who sent the proposals are published here:

<[http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SOJ/2015/ODZIVI\\_NA\\_JAVNO\\_RAZPRAVO.doc](http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SOJ/2015/ODZIVI_NA_JAVNO_RAZPRAVO.doc)>

An example - the Digital Slovenia Strategy 2020 was prepared in the process of public consultation. The initiation to the public and the proposals of the public are published here:

<[http://www.mju.gov.si/si/delovna\\_podrocja/informacijska\\_druzba/digitalna\\_slovenija\\_2020/](http://www.mju.gov.si/si/delovna_podrocja/informacijska_druzba/digitalna_slovenija_2020/)>

2015 and 2016 Statistics regarding the requests for public information - the information gathered by the MoPA from the state bodies and the local administrations (app. 400 liable public bodies):

	2015		2016	
Requests for access	6605	84%	6892	82%
Requests for re-use	1223	16%	1495	18%
total	7828		8387	

All 1st level decisions under ZDIJZ		Access	Re-use	total	%
All processed requests	2015	6605	1223	7828	100%
	2016	6892	1495	8387	
Fully satisfied	2015	4787	1200	5987	76%
	2016	4932	1474	6406	
Partially satisfied	2015	922	10	932	12%
	2016	960	16	976	
Fully rejected	2015	609	11	620	8%
	2016	687	3	690	
Other type of decisions	2015	287	2	289	4%
	2016	313	2	316	

Considering that the main reason for providing partial access to information is the exception of personal data protection, it means that the state bodies and the local administrations, in general, satisfy approx. 88% of the requests for information.

The statistics for 2015 and 2016 are published at the Slovenian national Open Data portal and freely available for further re-use and analysis:

<https://podatki.gov.si/dataset/zbirka-statisticnih-podatkov-iz-letnih-porocil-o-izvajanju-zdijz-drzavni-organi-in-organi-lokalnih-s>

Statistical data of the CPC regarding access to information on cases of corruption:

		2016	2015	2014	2013	2012
Number of all request for access to information		61	61	118	84	80
Number of approvals for access to information		19	19	86	50	60
Number of partial approvals/denials for access to information		28	13	23	16	19
Reasons for partial access / denial <small>(number of reasons is not the same as number of cases, since more reasons can be applied in one case)</small>	Personal data	20	11	22	12	19
	Misdemeanour procedure	1		2	7	
	Internal procedure	1		5	3	1
	Protection of reported person	6		8	2	
	Information does not exist		1	3	3	
	Business secrecy			5		5
	Court procedure			1		
Number of denials for access to information		6	29	7	11	1
Reasons for denial <small>(number of reasons is not the same as number of cases, since more reasons can be applied in one case)</small>	Information does not exist	3	7		1	
	Personal data	2	15	1	3	
	Protection of reported person	1		6	1	
	Misdemeanour procedure		2	1	1	1
	Internal procedure		1	1	2	
	Court procedure				5	
	Business secrecy			1		
Other final decisions (referred cases, discarded cases, etc.)		8	4	2	7	
Number of appeals to the Information commissioner		2	6	6	13	3
Decisions of Information commissioner	In favour of appeal	1	2	1		
	Partly in favour of appeal		2		6	2
	Not in favour of appeal	1	2	5	6	1
	Appeal was discharged.					

Relevant information regarding corruption is, for example, published on the web page of:

- the CPC: <<https://www.kpk-rs.si/sl/>><sup>137</sup>
- the MoPA: <[http://www.mju.gov.si/si/delovna\\_podrocja/integriteta\\_in\\_preprecevanje\\_korupcije/](http://www.mju.gov.si/si/delovna_podrocja/integriteta_in_preprecevanje_korupcije/)>

### **(b) Observations on the implementation of the article**

The freedom of assembly and association as well as the freedom of expression are enshrined in the Constitution (arts. 39 and 42).

The Government allows the public to comment on draft regulations. While draft legislation is published for consultation, the Government Communication Office also collects proposals submitted by the public through a designated website.

Civil society organizations play an important role not only in the process of formulating preventive policies and measures against corruption but also in awareness-raising campaigns. The curricula of primary, secondary and tertiary schools in Slovenia contain ethics and anti-corruption programmes.

### **(c) Successes and good practices**

Slovenia has facilitated public access to information by various means, such as providing e-Government service and open data portal for citizens.

### **Paragraph 2 of article 13**

*2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

All information regarding public information campaigns that promote knowledge of the anti-corruption body (the CPC) is given in previous paragraphs.

*Please refer to the general information, paragraphs 1 and 2 of article 5, paragraph 1 of article 6 and article 8 of the Convention.*

Besides, the CPC also prepared leaflets about CPC and its obligations prescribed in the IPCA. All distributed leaflets are available in PDF versions via the following link:

<<https://www.kpk-rs.si/sl/korupcija-integriteta-in-etika/publikacije-in-multimedija>> .

Via this link, the public can find leaflets about lobbying, the CPC, Integrity plans, asset declarations, etc. A special leaflet in English about the CPC is available here:

<[https://www.kpk-rs.si/download/t\\_datoteke/9262](https://www.kpk-rs.si/download/t_datoteke/9262)>.

*Means of access to the CPC to report acts of corruption by the public and procedures for doing so:*

According to article 23 of the IPCA, any person may report instances of corruption committed by legal and natural persons when he or she believes that there exist elements of a corruption offence to the CPC or any other competent

<sup>137</sup> (English version: <<https://www.kpk-rs.si/en/>>).

body.

The Rules of Procedure of the Commission for the Prevention of Corruption provide that anonymous reports are reviewed where the reports contain substantial information (rules or law does not prescribe mandatory content for reports - any information in the report is checked and analyzed).

Reports on corruption can be lodged on the CPC website <sup>138</sup>; on this website, the public also can see all information on how to report, where to report corruption and what is corruption, etc., telephone number or e-mail address of the CPC. Persons can also come in person to the CPC and file a complaint/report. In Slovenia, financial incentives are not paid for reporting corruption offences. The CPC provides all the necessary information about whistleblower protection and makes it easily accessible on its website to encourage people to report corruption offenses. Public employees receive information about whistle-blowing protection during the trainings launched by the CPC.

According to paragraph 5 of article 23 of the IPCA, filing a malicious report is an offence (a fine of between €1,000 and €2,000 shall be imposed on an individual who makes a malicious report) if no elements of a criminal offence have been established.

In case of a crime, the **Criminal Code** defines the following provision:

Article 288: False Reporting of Crime

*(1) Whoever accuses another person of having committed a criminal offence subject to prosecution ex officio, knowing the accusation to be false, shall be sentenced to imprisonment for not more than two years.*

*(2) The same sentence shall be imposed on whoever shifts the traces of a crime to another person or otherwise causes the initiation of criminal proceedings against such a person ex officio, in the knowledge that that person is not the perpetrator of the criminal offence concerned.*

*(3) Whoever falsely indicts himself of a criminal offence subject to prosecution by virtue of office shall be punished by a fine.*

*(4) The same punishment as that referred to in the preceding paragraph shall be imposed on whoever alleges a criminal offence, subject to prosecution by virtue of office, to have been perpetrated, knowing the allegation to be false, thus causing state authorities to start to act.*

*(5) If the offence under paragraphs 1 or 2 of this Article has been committed by an official by abusing official position, he shall be sentenced to imprisonment for not more than three years.*

*Information on protection of whistle-blowers/reporting persons are given under paragraph 4 of Article 8 of the Convention.*

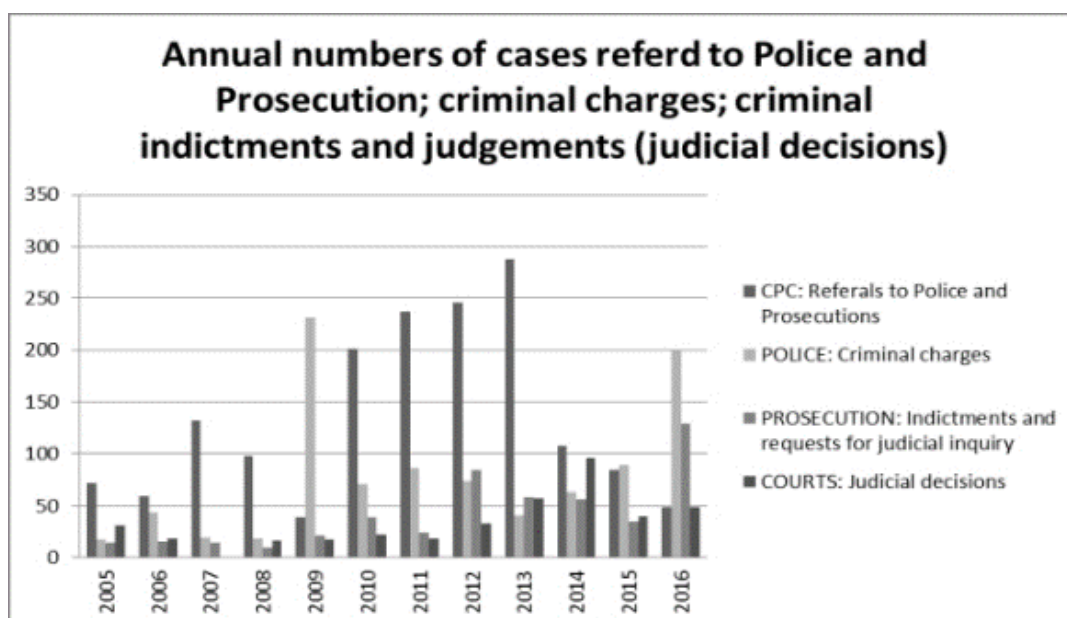
**Slovenia provided the following examples and statistics:**

*Please also refer to the general information, paragraphs 1 and 2 of article 5, paragraph 1 of article 6 and article 8 of the Convention.*

Please see also annual numbers of all cases referred to police and prosecution by CPC; all criminal charges made by the police; criminal indictments and court decisions:

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<sup>138</sup> Available at: ( <<https://www.kpk-rs.si/sl/nadzor-in-preiskave/prijava-suma-korupcije-in-drugih-nepravilnosti>>



Besides, all information on final convictions is available on the SI STAT website or SURS, Crime section.<sup>139</sup>

According to the Transparency International Report on Whistle-blowing (2013), Slovenia is one of the four EU countries with advanced regulations on whistle-blower protection (both in public and private sectors).<sup>140</sup>

State prosecution's statistic on criminal offences involving corruption from 2013 to 2016

#### Criminal offences involving corruption- natural persons

LETO	CRIMINAL CHARGE	DISMISAL	INVESTIGATION	INDICTMENT	JUDGEMENT	CONVICTION
2013	128	51	49	35	28	22
2014	158	84	53	56	91	84
2015	142	94	14	34	37	37
2016	196	105	106	109	48	42
SUM	624	334	222	234	204	185

#### Criminal offences involving corruption - legal persons

LETO	CRIMINAL CHARGE	DISMISAL	INVESTIGATION	INDICTMENT	JUDGEMENT	CONVICTION
2013	7	2	5	3	0	0
2014	1	0	1	0	0	0
2015	5	4	0	1	3	3
2016	1	3	4	0	0	0
SUM	14	9	10	4	3	3

<sup>139</sup> Available at: [http://pxweb.stat.si/pxweb/Database/Dem\\_soc/13\\_kriminaliteta/01\\_statistika\\_toz\\_sodisc/03\\_13603\\_obsojene\\_poln\\_osebe/03\\_13603\\_obsojene\\_poln\\_osebe.asp](http://pxweb.stat.si/pxweb/Database/Dem_soc/13_kriminaliteta/01_statistika_toz_sodisc/03_13603_obsojene_poln_osebe/03_13603_obsojene_poln_osebe.asp), or at: <http://www.stat.si/StatWeb/Field/Index/10/609>.

<sup>140</sup> Available at: [https://www.transparency.org/whatwedo/publication/whistleblowing\\_in\\_europe\\_legal\\_protections\\_for\\_whistleblowers\\_in\\_the\\_eu](https://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu)



### ***(b) Observations on the implementation of the article***

Anyone can report corruption directly to the CPC via the website, telephone, email or in person.

The CPC has a dedicated website with information on CPC tasks, structure, resources of financing, and accountability. From the CPC website, citizens can receive information on anti-corruption measures, manuals on avoiding corruption, information on lobbying, etc.

The CPC also regularly informs the public of its activities in terms of protection of reporting persons.

## ***Article 14. Measures to prevent money-laundering***

### ***Subparagraph 1 (a) of article 14***

*1. Each State Party shall: (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

Measures for preventing money-laundering and terrorist financing in Slovenia were fully assessed within the mutual evaluation process conducted by MONEYVAL from January 2016 to May 2017. The Mutual Evaluation Report of Slovenia (MER Slovenia) was adopted at the MONEYVAL's plenary meeting, from 29 May to 1 June 2017. MER Slovenia was published on the official website of MONEYVAL and contained detailed information on the regime of anti-money-laundering and combating the financing of terrorism (AML/CFT regime) in Slovenia.

Thus, the summary of the implementation of the provision under review contains a brief introduction of the current AML/CFT regime while more detailed information is available in the MER Slovenia (*information on preventive measures is provided in Chapter 5 and the Technical Compliance Annex, and information on the supervisory regime is provided in Chapter 6 and the Technical Compliance Annex*).

#### **Slovenia cited the following policy and legislative measures to implement the provision under review:**

Slovenia notes that the AML/CFT regime has been strengthened in the last few years. The fight against economic crimes, including money-laundering, has been recognized as a high-level priority of the Government in various national strategies and documents, such as the Resolution on the National Programme of the Prevention and Fight against Criminality for the Period 2012-2016.

In 2010, Slovenia ratified the Convention of the Council of Europe No. 198 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which came into force in Slovenia in August 2010.

The Forfeiture of Assets of Illegal Origin Act was adopted in 2011. The law came into force in 2012 and included provisions relevant to improving the AML/CFT regime.

AML/CFT policymaking and coordination activities have been implemented through the Permanent Coordination Group for Prevention, Detection and Prosecution of Money-Laundering and Terrorist Financing, established in 2012. The Group is chaired by the representative of the Slovenian FIU (Office for Money-Laundering Prevention - OMLP), discusses issues in the field of prevention and detection of money-laundering and terrorist financing (ML/TF) and takes necessary measures to implement the AML/CFT regime. The Permanent Coordination Group consists of the representatives of several ministries, the Bank of Slovenia (BoS), the State Prosecutor's Office and the Supreme Court. Representatives of other State bodies, governmental services, and external experts are occasionally invited to participate in the work of the group.

Measures to prevent money-laundering in Slovenia are taken in accordance with the international standards, including the FATF recommendations and the EU legal framework. The fundamental law in the Slovenian

AML/CFT regime is the Act on the Prevention of Money-Laundering and the Financing of Terrorism (AML Law), adopted on 4 November 2016 (entered into force on 19 November 2016), which replaced a previous law that was in force since 2008.

The AML Law's main objective is to bring the domestic legislation in line with the Fourth European Union Anti-Money-Laundering Directive 2015/849/EU and the revised FATF Recommendations 2012.

Money-laundering is criminalized under article 245 of the Criminal Code.

The AML Law stipulates measures, competent authorities, and procedures for detecting and preventing ML/TF and governs the inspection of the implementation. The most relevant solutions introduced by the new AML Law include the adoption of the Risk-Based Approach based on the National Risk Assessment (NRA) and the requirement to implement the Register of Beneficial Ownership Information, which was established in December 2017.

In addition, thirteen sector-specific guidelines for the implementation of the provisions of the AML Law have been issued for obliged persons by the supervisory authorities.

### *Specific measures*

#### *Obliged persons (art. 4, AML Law)*

The obligations for detecting and preventing ML/TF stipulated by the AML Law are carried out by: banks and savings banks, payment institutions, post offices if they provides services related to the transfer of money (payments and disbursements) through postal money order, brokerage companies, investment funds managers of mutual pension funds, founders and managers of pension companies, insurance companies, issuers of electronic money, currency exchange offices, auditing firms, and independent auditors, organizers and concessionaires organising games of chance, pawnshops; legal entities and natural persons conducting business relating to: granting credit or loans, including consumer credit, mortgage credit, factoring and financing of commercial transactions, including forfeiting, financial leasing, issuing and managing other means of payment, issuing and managing virtual currencies, issuing of guarantees and other commitments, portfolio management services for third parties and related advice, and investment management for the Republic of Slovenia in accordance with the law, governing the Slovenian Sovereign Holding, safe custody services, brokerage in concluding credit and loan business, insurance agency services for the purpose of concluding life insurance contracts, insurance intermediaries in concluding life insurance contracts, accounting services, tax advisory services, trust and company services providers, trade in precious metals and precious stones, trade in works of art, organization and execution of auctions, real estate agencies.

Measures for detecting and preventing ML/TF as established by the AML Law should also be implemented by lawyers, law firms, notaries, but only within the scope stipulated in Chapter 4 of the AML Law.

## **Act on the Prevention of Money Laundering and the Financing of Terrorism**

### Article 4 (Obliged persons)

*(1) The measures for detecting and preventing money laundering and terrorist financing stipulated by the present Act shall be carried out prior to or at the time of receiving, handing over, exchanging, safekeeping, disposing of or handling monies or other property and in concluding business relationships with:*

- 1. banks, branches of banks from third countries and Member State banks which establish branches in the Republic of Slovenia or which are authorised to directly perform banking services in the Republic of Slovenia;*
- 2. savings banks;*
- 3. payment institutions, waived payment institutions, and payment institutions and waived payment institutions of the Member States which as per the Act governing payment services and systems establish a branch in the Republic of Slovenia or provide payment services in the Republic of Slovenia through a representative or directly;*
- 4. post office if it provides services of money transfer (payments and disbursements) through a*



*postal money order;*

*5. brokerage companies;*

*6. investment funds that sell their own units in the Republic of Slovenia; if an investment fund does not provide its own management, the provision of this Act that applies to an obliged person shall apply to a manager of the respective fund;*

*7. management companies and managers of alternative investment funds that provide portfolio management services and ancillary services set forth in the Act governing investment funds and management companies or the Act governing managers of alternative investment funds;*

*8. branches of an investment company of a Member State and branches of an investment company of a third country in the Republic of Slovenia;*

*9. branches of a management company in the Republic of Slovenia that provide portfolio management services and ancillary services set forth in the Act governing investment funds and management companies;*

*10. branches of a manager of a Member State and branches of a manager of alternative investment fund of a third country in the Republic of Slovenia that provide portfolio management services and ancillary services set forth in the Act governing managers of alternative investment funds;*

*11. managers of mutual pension funds;*

*12. managers of a bridging facility set forth in the Act governing bridging insurance for professional and top athletes;*

*13. founders and managers of pension companies;*

*14. insurance companies authorised to pursue life insurance business and branches of insurance companies from third countries with a permit to provide life insurance business and insurance companies from Member States which establish branches in the Republic of Slovenia or which are authorised to pursue life insurance business directly in the Republic of Slovenia;*

*15. issuers of electronic money, issuers of waived electronic money, branches of issuers of electronic money and issuers of waived electronic money from third countries and issuers of electronic money and issuers of waived electronic money from a Member State that establish a branch in the Republic of Slovenia which are authorised to directly perform services of issuing electronic money in the Republic of Slovenia;*

*16. currency exchange offices;*

*17. auditing firms and independent auditors;*

*18. organisers and concessionaires organising games of chance;*

*19. pawnshops;*

*20. legal entities and natural persons conducting business relating to:*

*a) granting credit or loans, including consumer credit, mortgage credit, factoring and financing of commercial transactions, including forfeiting;*

*b) financial leasing;*

*c) issuing and managing other means of payment (e.g. bills of exchange and traveller's cheques), whereby it is not deemed a payment service as per the Act governing payment services and systems,*

*d) issuing and managing virtual currencies, including the service of exchanging virtual currencies to standard currencies and vice versa,*

*e) issuing of guarantees and other commitments;*

*f) portfolio management services for third parties and related advice, and investment management for the Republic of Slovenia in accordance with the law, governing the Slovenian Sovereign Holding;*

*g) safe custody services;*

*h) brokerage in concluding credit and loan business, except for those legal entities and natural persons whereby the brokerage activity is not their main activity and they do not do business*

*on behalf of, and for the account of, a financial or credit institution (credit intermediaries in an ancillary capacity);*

- i) insurance agency services for the purpose of concluding life insurance contracts;*
- j) insurance intermediaries in concluding life insurance contracts;*
- k) accounting services;*
- l) tax advisory services;*
- m) trust and company services;*
- n) trade in precious metals and precious stones or products made from these materials; o) trade in works of art;*
- p) organisation and execution of auctions; and*
- r) real estate agency including real estate activities with own property, renting and operating of own or leased real estate and real estate agencies;*
- s) implementation of measures to strengthen the stability of banks of the Republic of Slovenia in accordance with the law, governing the measures of the Republic of Slovenia to strengthen the stability of banks.*

*(2) Measures for detecting and preventing money laundering and terrorist financing as determined in this Act, as per the provisions of Chapter 3 of this Act, shall also be implemented in lawyers, law firms, notaries, but only within the scope stipulated in Chapter 4 hereof.*

*(3) For the purposes of this Act, the term obliged person shall refer collectively to obliged persons referred to in paragraphs 1 and 2 of this Article.*

#### *National Risk Assessment (arts. 7-11, AML Law)*

In the context of the AML/CFT system, a comprehensive National Risk Assessment (NRA) was conducted under the guidance of the World Bank and finalized in 2015. The NRA report was adopted by the Government in October 2015, with its summary made publicly available on the OMLP website. The NRA aimed to identify, assess and understand the threats of money-laundering and potential weaknesses in the AML/CFT regime, propose amendments to existing regulations and introduce relevant measures.

### **Act on the Prevention of Money Laundering and the Financing of Terrorism**

#### Article 7 (Cooperation of competent authorities)

*The Office, supervisory bodies referred to in Article 139 of this Act and other authorities competent to detect and prevent money laundering and terrorist financing work together and harmonise the implementation of policies and activities of combating money laundering and terrorist financing. To attain strategic and operational objectives, these authorities may sign agreements on mutual cooperation and establish inter-ministerial working groups.*

#### Article 8 (National risk assessment)

*(1) To establish, assess, understand and mitigate the risks related to money laundering and terrorist financing, the Republic of Slovenia shall conduct a national risk assessment of money laundering and terrorist financing and update it at least every four years.*

*(2) To conduct the national risk assessment of money laundering and terrorist financing in the Republic of Slovenia, the Government shall establish a permanent inter-ministerial working group. The tasks of the inter-ministerial working group shall be as follows:*

- 1. implementation of the national risk assessment of money laundering and terrorist financing in the Republic of Slovenia;*
- 2. preparation of the report on identified national risks of money laundering and terrorist financing;*
- 3. preparation of proposals for measures and an action plan to mitigate identified risks of money laundering and terrorist financing;*

4. implementation of other analyses in the field of money laundering and terrorist financing which require cooperation and harmonisation between different institutions, and the preparation of reports on the analyses conducted.

(3) The work and tasks of the permanent inter-ministerial working group referred to in the preceding paragraph shall be directed and harmonised by the Office.

(4) When implementing the national risk assessment referred to in paragraph 1 of this Article, the findings of the report of the European Commission on the assessed risks of money laundering and terrorist financing (transnational risk assessment) shall be observed.

#### Article 9 (Report and purpose of the national risk assessment)

(1) Through the report on the findings of the national risk assessment of money laundering and terrorist financing referred to in point 2 of paragraph 2 of the preceding Article, the Office shall notify the Government.

(2) The findings of the report on the national risk assessment are intended to:

1. improve the national regulation of detecting and preventing money laundering and terrorist financing, in particular by defining sectors or activities where the obliged persons must take stricter measures related to customer due diligence and other liabilities set forth in this Act;

2. identify sectors or activities of little, or increased risk of, money laundering and terrorist financing;

3. define the priority arrangement of all resources and assets intended to prevent money laundering and terrorist financing;

4. prepare relevant regulations for individual sectors or activities according to the identified risks of money laundering and terrorist financing; and

5. assist obliged persons to implement their risk assessments of money laundering and terrorist financing.

(3) The activities referred to in the previous paragraph shall be directed and harmonised by the Office.

(4) With the regulation, the Government shall determine the sectors or activities of little or increased risk of money laundering or terrorist financing referred to in paragraph 2 of this Article.

#### Article 10 (Notifying Member States and European institutions)

The Office shall notify the European Commission, European supervisory authorities and other Member States with the title of the permanent inter-ministerial working group referred to in paragraph 2 of Article 8 of this Act and of summary of the report on the national risk assessment of money laundering and terrorist financing.

#### Article 11 (Recommendations of the European Commission)

(1) Within the scope of the arrangement for preventing money laundering and terrorist financing in the Republic of Slovenia, the recommendations of the European Commission on measures suitable to mitigate risks established in the national risk assessment may be observed.

(2) If the Republic of Slovenia decides not to observe the recommendations referred to in the preceding paragraph, it shall notify the European Commission thereof and state the reasons for its decision.

#### *Obligations of obliged persons (art.12, AML Law)*

For the purpose of detecting and preventing ML/TF, obliged persons have to carry out the following tasks:

- prepare a risk assessment of ML/TF;
- establish policies, controls and procedures to mitigate and manage risks of ML/TF successfully;
- apply measures to acquire knowledge about the customer (customer due diligence) under the terms and conditions and in the manner provided by the AML Law;

- report prescribed and requisite data and submit evidence to the OMLP in accordance with the provisions of the AML Law;
- appoint an authorized person and assistants of the authorized person and ensure proper conditions for their work;
- provide regular professional training for employees and ensure regular internal control of the performance of tasks in accordance with the AML Law;
- prepare a list of indicators for identifying customers and transactions in respect of which reasonable grounds to suspect ML/TF exist;
- ensure protection and retention of data and management of records required by the AML Law;
- implement policies and procedures of a group and measures for detecting and preventing ML/TF in branches and majority-owned subsidiaries located in third countries;
- implement other tasks and obligations as per the provisions of the AML Law and regulations adopted on the basis of the act.

*Risk-based approach and risk management (arts. 13-15, AML Law)*

An obliged person has to prepare a risk assessment for individual groups or customers, business relationships, transactions, products, services or distribution channels and consider geographical risks with respect to the potential of being misused for money-laundering and/or terrorist financing purposes.

The risk assessment should be prepared by the obliged person according to the guidelines issued by the competent supervisory authorities based on the findings of the NRA and transnational risk assessments. The findings of risk assessment have to be documented and updated by the obliged persons at least every two years. Documented findings shall be made available to the competent supervisory authorities upon their request.

*For more details, please see the relevant section of the summary under paragraph 1 of article 52 of the Convention.*

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Article 13 (Risk assessment of money laundering and terrorist financing)

*(1) Risk of money laundering or terrorist financing shall mean the risk that the customer would misuse the financial system to launder money or for terrorist financing or that a business relationship, transaction, product, service or distribution channel, taking into account the geographical factor (state or geographical area), would be used, directly or indirectly, for money laundering or terrorist financing.*

*(2) An obliged person shall prepare a risk assessment for individual groups or customers, business relationships, transactions, products, services or distribution channels and take into account factors of geographical risk with respect to their potential misuse of money laundering or terrorist financing.*

*(3) The risk assessment and procedure to determine the risk assessment referred to in the previous paragraph shall reflect the specific features of the obliged person and its operations.*

*(4) The risk assessment referred to in paragraph 2 of this Article shall be prepared by the obliged person according to the guidelines issued by the competent supervisory body referred to in Article 139 of this Act according to its powers and by observing the reports on the findings of national risk assessment and transnational risk assessment.*

*(5) The findings of risk assessment referred to in paragraph 2 of this Article shall be documented and updated by the obliged person at least every two years. Documented findings shall be available to the competent supervisory bodies referred to in Article 139 of this Act at their request.*

*(6) Upon all important changes in its business processes – such as the introduction of a new product, new business practice, including new distribution channels, introduction of new technology for new and existing products, or organisational changes – the obliged person shall perform a relevant assessment of how the changes affect the exposure of the obliged person to the risk of money laundering or terrorist financing.*

(7) *The obliged person shall perform the risk assessment referred to in the preceding paragraph before the introduction of a change and, according to findings, adopt measures to reduce risks of money laundering or terrorist financing.*

#### Article 14 (Little or increased risk of money laundering and terrorist financing)

(1) *If the obliged person assesses that a customer, business relationship, transaction, product, service, distribution channel, state or geographical area presents little risk of money laundering or terrorist financing, it may implement measures of simplified customer due diligence according to the provisions of this Act on simplified customer due diligence.*

(2) *If the obliged person assesses that a customer, business relationship, transaction, product, service, distribution channel, state or geographical area presents an increased risk of money laundering or terrorist financing, it must implement measures of enhanced customer due diligence according to the provisions of this Act on enhanced customer due diligence.*

#### Article 15 (Risk management of money laundering and terrorist financing)

(1) *To carry out efficient mitigation and management of risk of money laundering and terrorist financing identified on the basis of Article 14 of this Act, the obliged person shall establish efficient policies, controls and procedures that are proportional in terms of his/her activity and size (such as size and structure of the obliged person, scope and structure of business operations, types of customers with which the obliged person conducts business, types of products offered by the obliged person).*

(2) *The policies, controls and procedures referred to in the previous paragraph shall include:*

1. *development of internal policies, controls and procedures that refer to:*

- *models of risk management,*
- *customer due diligence,*
- *reporting of data to the Office,*
- *protection and retention of data and management of records,*
- *internal control of the performance of tasks in the field of detecting and preventing money laundering and terrorist financing,*
- *provision of compliance with regulations, and*
- *secure employment and, if required, security clearance of employees as per the Act governing classified information, and*

2. *establishment of an independent internal audit department verifying internal policies, controls and procedures referred to in the preceding point if the obliged person is a medium-sized or large company as per the Act governing companies.*

(3) *An obliged person that is a medium-sized or large company as per the Act governing companies shall appoint one of the members of Management Board or body who is responsible for implementing the tasks referred to in the preceding paragraph and providing compliance of the implementation of acts and other regulations in the field of detecting and preventing money laundering and terrorist financing.*

(4) *Prior to introducing policies, controls and procedures, obliged persons shall acquire the approval of the management, and according to the guidelines of supervisory bodies referred to in Article 139 of this Act, monitor and, if required, strengthen the measures adopted.*

#### *Customer due diligence measures (art. 16, AML Law)*

Customers due diligence measures are aimed at:

- *establishing the customer's identity and verifying the customer's identity on the basis of authentic, independent and objective sources;*
- *determining the beneficial owner of the customer;*
- *obtaining data on purpose and intended nature of the business relationship or transaction, as well as other*

data pursuant to the AML Law;

- regular monitoring of business activities undertaken by the customer through the obliged person (*for the text of the article, please refer to paragraph 1, article 52 of the Convention*).

#### *Customer due diligence obligation (art. 17, AML Law)*

An obliged person has to conduct customer due diligence in the following cases:

- when establishing a business relationship with a customer;
- when carrying out a transaction amounting to €15,000 or more, notwithstanding whether the transaction is carried out in single or several operations which are evidently linked;
- organizers and concessionaires who offer games of chance upon payment of wins, bets or both when they are transactions in the value of €2,000 or more, notwithstanding that a transaction is executed individually or with several transactions which are evidently linked;
- when there are doubts about the veracity and adequacy of previously obtained data about a customer or beneficial owner;
- whenever there is a suspicion of ML/TF in respect of a transaction or customer, assets or property regardless of the transaction amount.

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#### Article 17 (Customer due diligence obligation)

*(1) An obliged person shall perform customer due diligence in accordance with the terms and conditions provided by the present Act in the following cases:*

- 1. when establishing a business relationship with a customer;*
- 2. when carrying out a transaction amounting to EUR 15,000 or more, notwithstanding whether the transaction is carried out in a single or several operations which are evidently linked;*
- 3. in organisers and concessionaires who offer games of chance upon payment of wins, bets or both when they are transactions in the value of EUR 2,000 or more, notwithstanding that a transaction is executed individually or with several transactions which are evidently linked;*
- 4. when there are doubts about the veracity and adequacy of previously obtained data about a customer or beneficial owner;*
- 5. whenever there is a suspicion of money laundering or terrorist financing in respect of a transaction or customer, assets or property regardless of the transaction amount.*

*(2) If the obliged person concludes an additional business relationship with the customer or on the basis of the existing business relationship performs transactions referred to in points 2 and 3 of the preceding paragraph, the obliged person shall obtain only the missing data referred to in paragraphs 1, 2, 3 and 4 of Article 48 of this Act, and that under the condition that it has already executed customer due diligence as per Article 16 of this Act and provided suitable verification and update of the preliminarily obtained documents and data on the customer within the scope of regular monitoring of business activities.*

*(3) In the transactions referred to in points 2 and 3 of paragraph 1 of this Article, an organiser or a concessionaire offering games of chance shall verify the identity of the customer carrying out the transaction and obtain the required information at the cashier's desk or other transaction points according to the type of game of chance and method of gaming.*

*(4) For the purposes of this Act, the customer's registration for participation in a system of organising games of chance with organisers and concessionaires who offer games of chance via the Internet or other telecommunications means shall be deemed an established business relationship.*

(5) Pursuant to this Act, the customer's accession to the fund rules of a mutual fund managed by a management company shall be deemed as an established business relationship between the customer and the management company. Accession to the fund rules of another mutual fund managed by the same management company shall not be deemed as an established new business relationship between the customer and the management company.

(6) Pursuant to this Act, a customer's accession to the fund rules of an investment fund management or other document, on the basis of which the investor accesses the investment fund, shall be deemed as an established business relationship between the customer and the obliged person referred to in point 6 of paragraph 1 of Article 4 of this Act. Accession to the fund rules of another investment fund managed by the same management company or a manager of an alternative investment fund shall not be deemed as an established new business relationship as per this Act.

(7) The establishment of a business relationship as per this Act shall not include:

- implementation of payment transactions not exceeding EUR 1,000 on the basis of the UPN form with the providers of payment services with which the payer has no open payment account;
- implementation of minor business operations that do not exceed the value of EUR 1,000.

#### *Beneficial owner of a corporate entity (art.35, AML Law)*

Pursuant to the AML Law, a beneficial owner of a corporate entity is any natural person who:

- is an indirect or direct owner of a sufficient business share, shares, voting or other rights based on which the person participates in the management of the corporate entity; or
- indirectly or directly participates in the capital of the corporate entity with a sufficient share; or
- has a controlling position in the management of the corporate entity's funds and
- any natural person who indirectly provides or is providing funds to a corporate entity and on such grounds has the possibility of exercising control, guiding or otherwise substantially influencing the decisions of the management of the corporate entity concerning financing and business operations. (*For the text of the article, please refer to paragraph 1 of article 52 of the Convention*)

#### *Beneficial owner of a foreign trust, foreign institution or similar foreign legal arrangements (art. 37, AML Law)*

The beneficial owner of a foreign trust, foreign institution or similar foreign legal entity which accepts, administers or distributes funds for particular purposes means

a) any natural person who is:

- a founder of a foreign trust, foreign institution or similar foreign legal entities;
- a trustee of a foreign trust, foreign institution or similar foreign legal entities;
- a beneficiary of the proceeds of property under management, whereby the future beneficiaries have already been determined or can be determined;
- a potential representative appointed to represent and protect the interests of recipients of proceeds.

b) a category of persons with interest in establishing a foreign trust, foreign institution or similar foreign law entity when the individuals that benefit from the foreign trust, foreign institution or similar foreign law entity have yet to be determined;

c) any other natural person who, in any other way indirectly or directly, controls the property of a foreign trust, foreign institution or similar foreign law entity.

#### *Register of beneficial owners (arts. 44-48, AML Law)*

Accurate and updated data on beneficial owners is kept in the register of beneficial owners set up to provide transparency of ownership structures of business entities and thus prevent abuses of business entities for ML/TF.



*The reporting obligation concerning cash transactions and remittances to high-risk countries (art. 68, AML Law)*

The obliged person must forward to the OMLP data on any cash transaction exceeding €15,000 immediately after the transaction is completed and no later than within three working days following its completion. In addition, financial institutions have to send to the OMLP data on any transaction exceeding €15,000, and which at the request of a customer is deposited in the bank accounts of the high-risk countries.

*Reporting of suspicious transactions (art. 69, AML Law)*

The obliged persons have to forward to the OMLP data and related documentation if reasons to suspect ML/TF exist in connection with the transaction, person, property or assets, before effecting the transaction and state the time limit the transaction is to be carried out. The aforementioned report on STRs must be submitted to the OMLP via a protected electronic channel. Exceptionally, it may be submitted by telephone. In that case, it must also be submitted to the OMLP via a protected electronic channel no later than the next working day.

With regard to detection, the OMLP conducts its analysis on the basis of the STRs received from the obliged persons. It can also start analysis on the basis of a written request from the police, the Public Prosecution Office, the court and other State bodies or supervisory authorities determined by the AML Law (BoS, SMA, etc.). After concluding its analysis, the OMLP forwards written notifications to competent authorities (the police, State Prosecutor's Office, Tax Administration, SOVA) if there exist reasons for suspicion of ML/TF or other criminal offences.

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### Article 69 (Reporting obligation concerning suspicious transactions and deadlines)

*(1) The obliged person shall furnish the Office with the data referred to in paragraph 1 of Article 137 of this Act and related documentation if reasons to suspect money laundering or terrorist financing exist in connection with the transaction, person, property or assets, prior to effecting the transaction, and shall state the time limit in which the transaction is to be carried out. The aforementioned report on suspicious transaction must be submitted to the Office via a protected electronic channel. Exceptionally, it may be submitted by telephone. In this case, it must be also submitted to the Office via a protected electronic channel by no later than the next working day.*

*(2) If the reporting of transactions referred to in the preceding paragraph via a protected electronic channel is significantly hindered or prevented due to technical reasons, this report may be exceptionally submitted to the Office in written form only.*

*(3) The reporting obligation concerning the transactions referred to in paragraph 1 of this Article shall also apply to an intended transaction, irrespective of whether it is effected at a later date or not.*

*(4) A suspicious transaction as referred to in paragraphs 1, 2 and 3 of this Article is any intended or effected transaction in respect of which the obliged person knows or has reasons to suspect that the property or assets originated from criminal offences that could constitute a prior act of money laundering or relate to terrorist financing or in terms of their characteristics correspond with indicators for detecting suspicious transactions as referred to in Article 85 of this Act that indicate grounds to suspect money laundering or terrorist financing.*

*(5) Auditing firms, independent auditors, legal entities and natural persons performing accounting or tax advisory services shall report all cases when a customer seeks advice on money laundering or terrorist financing purposes to the Office immediately or not later than within three business days from when such advice was sought.*

*(6) If, in the cases referred to in paragraphs 1, 2 and 3 of this Article, and due to the nature of the transaction or because the transaction has not been completed, or for other justified reasons, the obliged person cannot conduct the described procedure, it shall furnish the data to the Office as soon as is practicable or immediately after the suspicion of money laundering or terrorist financing is raised. The obliged person shall explain in the report the reasons for not acting in accordance with the described procedure.*

### *Record-keeping (art. 129, AML Law)*

Financial institutions (banks, payment institutions, insurance companies, brokerage companies, etc.) and non-financial institutions (casinos, real estate agencies, notaries, lawyers, auditors, etc.) have to keep the financial and corresponding documentation for ten years after the termination of the business relationship, the completion of a transaction, a customer's admission to a casino or gaming hall, or a customer's access to a safe unless another act determines a longer period for retention.

The Slovenian FIU (OMLP) has to keep the data and information from the records maintained by it under the AML Law (art.132) for a period of 12 years from the moment of acquiring unless another act determines a longer period. *(For the text of the articles referred, please refer to paragraph 3 of article 52)*

### *Supervision (arts. 139-162, AML Law)*

In the field of anti-money-laundering measures, several authorities implement the supervision over the implementation of the AML Law by developing an effective system for ensuring compliance with obligations and standards. According to the AML Law, there is no single and centralized competent authority to supervise the implementation of the new AML Law, and its article 139 introduces the following supervisory authorities competent for the supervision in their respective sectors of responsibility:

- Office for Money-Laundering Prevention (FIU/OMLP),
- Bank of Slovenia (BoS),
- Securities Market Agency (SMA),
- Insurance Supervision Agency (ISA),
- Financial Administration of the Republic of Slovenia (FURS),
- Market Inspectorate of the Republic of Slovenia,
- Agency for Public Oversight of Auditing and Slovenian Audit Institute (APOA),
- Bar Association of Slovenia, and
- Chamber of Notaries of Slovenia.

Banks and foreign exchanges offices are supervised by the BoS, participants in the securities market and fund management companies are supervised by the SMA, insurance companies are supervised by the Insurance Supervision Agency (ISA), and casinos are supervised by the Financial Administration of the Republic of Slovenia (FURS), lawyers are supervised by the Bar Association of Slovenia, and notaries are supervised by the Chamber of Notaries of Slovenia. The compliance of other designated non-financial reporting entities, such as accountants and tax advisors, are under the supervision of the OMLP. In order to improve the effectiveness of the regime, the OMLP has acquired additional powers to conduct on-site inspections of the activities of obliged persons.

Supervisors are competent to take the following actions in the case of violations of provisions of the AML Law:

- order measures to remedy the irregularities and deficiencies within the specified time limit;
- carry out proceedings in accordance with the law regulating offences;
- propose the adoption of appropriate measures to the competent authority;
- order other measures and take actions to which it is authorized by law or any other regulation.

Under the Minor Offences Act, the supervisory authorities can initiate and conclude the administrative offence procedure. All supervisory authorities are obliged to inform the OMLP of the measures they have taken so that the OMLP has an overview of the type of offences in relation to the particular group of obliged persons, including imposed fines and other sanctions.

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### Article 139 (Supervisory bodies and their activity)

*(1) Supervision of the implementation of the provisions of this Act and the ensuing regulations shall be exercised within their competencies by:*

- a) the Office,*
- b) Bank of Slovenia,*

- c) *Securities Market Agency*
- d) *Insurance Supervision Agency,*
- e) *Financial Administration of the Republic of Slovenia*
- f) *Market Inspectorate of the Republic of Slovenia,*
- g) *Agency for Public Oversight of Auditing, and the Slovenian Institute of Auditors, h) Bar Association of Slovenia, and*
- i) *Chamber of Notaries of Slovenia*

(2) *If, in exercising supervision, the supervisory body referred to in paragraph 1 of this Article establishes offences referred to in Articles 91, 163, 164, 165, 166, 167, 168, 169 and 170 hereof, it shall have the right and duty to:*

1. *order measures to remedy the irregularities and deficiencies within a time limit that it specifies;*
2. *carry out proceedings in accordance with the law regulating offences;*
3. *propose the adoption of appropriate measures to the competent authority;*
4. *order other measures and perform acts for which it is authorised by law or any other regulation.*

(3) *Offence proceedings shall be led and decided on by an official person authorised by the supervisory body referred to in paragraph one of this Article that meets the conditions stipulated by the stated Act and the regulations adopted on the basis therein.*

#### Article 140 (Supervision and risk assessment)

(1) *With regard to the supervision of the obliged persons referred to in Article 4 of this Act, an approach based on money laundering and terrorist financing risks shall be used.*

(2) *When planning the frequency, scope, intensity, and implementation of supervision, the supervisory bodies referred to in the preceding Article shall take into account:*

- *data concerning discovered risks of money laundering or terrorist financing from the national risk assessment,*
- *data concerning specific national or international risks related to clients, products, and services,*
- *data concerning the risk of individual obliged persons, and other available data and*
- *important events or modifications related to the management of the obliged person, and any change of activities.*

(3) *When planning and carrying out inspections, the Bank of Slovenia, the Securities Market Agency, and the Insurance Supervision Agency shall also take into account the guidelines provided by European supervisory bodies.*

(4) *The Office shall suggest to the other supervisory bodies referred to in the preceding paragraph that they implement supervision of a particular obliged person or type of obliged persons, depending on the information and data available to the Office and depending on the performed strategic and operational analyses.*

#### Article 141 (General competencies of the Office)

(1) *The Office shall perform supervision of the implementation of the provisions of this Act by the obliged persons referred to in Article 4 of this Act.*

(2) *The Office shall supervise the implementation of the provisions of this Act by collecting and verifying data, information and documentation obtained on the basis of the provisions of this Act.*

(3) *The obliged persons shall submit to the Office in writing the data, information and documentation on the performance of their duties as provided by this Act, as well as other information which the Office requires to conduct supervision, without delay and at the latest within eight days of receiving the request.*

(4) *The Office may also demand from state authorities and from holders of public authority all data, information and documentation required for exercising supervision under this Act and for conducting offence proceedings.*

## 9.2 Inspection performed by the Office

### Article 142 (Competencies of the Office concerning inspection)

*(1) In addition to the supervision carried out by supervisory bodies pursuant to Articles 140 and 141 of this Act, inspection of the implementation of this Act and other regulations in the field of the discovery and prevention of money laundering and terrorist financing shall be performed by the Office on- and off-site.*

*(2) Within the scope of the report referred to in Article 119 of this Act, the Office shall also report to the Government on its work in the field of inspection control.*

### Article 143 (Inspector for the prevention of money laundering)

*The tasks of inspection control provided by the Office are carried out by officials. Officials under this Act shall be inspectors for the prevention of money laundering.*

### Article 144 (The application of the Act)

*The inspector for the prevention of money laundering shall independently perform supervisory tasks under this Act, manage procedures, and issue decisions in administrative and minor offence proceedings.*

### Article 145 (Service ID card)

*(1) The inspector shall prove their authorisation to perform inspection-related tasks by showing the service ID card issued by the minister competent for finances.*

*(2) The form of the card and the procedure for issuing it shall be decided by the minister competent for finances, unless set forth otherwise by a special Act.*

### Article 146 (Authorisations of the inspector)

*(1) In addition to the authorisations set forth by the Act governing inspection control, the inspector for the prevention of money laundering shall also be authorised to the following when performing inspection control tasks related to a natural person or legal entity:*

*- to enter and inspect premises, land, and means of transport (hereinafter: premises) at the registered offices of the obliged persons and elsewhere;*

*- to inspect the internal acts, books of account, business correspondence, records, and other data and documentation referring to the operation of the obliged person and the implementation of measures to discover and prevent money laundering and terrorist financing, regardless of the storage media in which the data is recorded or stored (hereinafter: books of account and other documentation);*

*- to confiscate or obtain copies, forensic copies or extracts from books of account and other documentation in any format by using the photocopying devices and computer equipment of the obliged person or the Office; if copies cannot be made by using the photocopying devices and computer equipment of the obliged person or the Office due to technical reasons, the inspector may take the books of account and other documentation and keep them as long as is necessary to make copies; an official note concerning this shall be made;*

*- to seal all business premises and books of account and other documentation for the period and to extent required to perform supervision;*

*- to confiscate items and books of account and other documentation for a maximum of 20 working days;*

*- to require from any representative of the obliged person (hereinafter: representative) or person employed at the obliged person to provide an oral or written clarification concerning facts or documents referring to the object or purpose of supervision, and to draft minutes on this; if the inspector requires a written clarification, a deadline for submitting such clarification shall be fixed;*

*- to inspect documents by means of which the identity of persons may be verified;*

*- to perform other actions in accordance with the purpose of supervision.*

(2) *The obliged person shall enable the inspector access to its premises and its books of account and other documentation, and it shall not interrupt the performance of inspection control in any way, unless attorney-client privileges are being enforced. At the request of the inspector, the obliged person shall enable working conditions at its premises.*

(3) *In exercising the authorisations of the inspector for preventing money laundering referred to in paragraph one of this Article, the principle of proportionality shall be observed. When exercising the authorisations and imposing measures relating to the obliged person, the inspector shall not exceed that which is necessary to fulfil the objectives of this Act. When selecting from multiple authorisations and measures, the inspector shall select those that are the most favourable for the obliged person if this fulfils the purpose of the Act. When doubt arises, the matter shall be decided to the benefit of the obliged person.*

(4) *The inspector for preventing money laundering shall inform the Bar Association of Slovenia beforehand concerning the tentative time and location of the planned inspection control in order to secure the presence of their representative during inspection control.*

(5) *The attorney in whose office the inspection control is being carried out and the law firm where the inspection control is being carried out shall be entitled to require that the inspection control be carried out in the presence of a representative of the Bar Association of Slovenia. All actions related to inspection control shall be suspended pending the arrival of the representative, but not for longer than two hours from the times when the attorney or the law firm request their presence. After this period expires, the supervision shall continue without their presence.*

(6) *When carrying out inspection control tasks at an attorney's office or at a law firm, the inspector for preventing money laundering shall be entitled to exercise the authorisations referred to in paragraph one of this Article, unless the exercise of these authorisations would violate attorney-client privileges.*

(7) *In the inspection control procedure, the attorney, the law firm, or the representative of the Bar Association of Slovenia, if present, shall be entitled to object to the inspection of data and documents or their confiscation in order to protect attorney-client privileges. In the event of an objection, the procedure shall continue by applying, mutatis mutandis, the provisions of the Act governing criminal proceedings.*

#### Article 147 (Interfering with supervision)

*If an obliged person fails to allow entry to their premises or interferes with such entry, or fails to allow access to books of account and other documentation or interferes with such access, or if it interferes with the performance of inspection control in any other way, or if there are grounds to expect this, the inspector may enter the premises or access books of account or other documentation against the will of the obliged person with the assistance of the police, unless the obliged person is an attorney or a law firm. The costs of entry or access and any damages shall be borne by the obliged person.*

#### Article 148 (Minutes)

(1) *Minutes shall be drafted on the performed inspection control, which must include the following information in particular:*

- *on the beginning and end or the duration of the inspection control, - information on the obliged person,*
- *the actual state of affairs discovered,*
- *the statements given by persons present at the inspection control, - the confiscation of documentation,*
- *the authorised official carrying out the inspection and any other persons present during the inspection.*

(2) *For the needs of the management of the minor offence procedure, the minutes referred to in the preceding paragraph shall also include data pursuant to the Act governing minor offences, in particular:*

- *data on the perpetrator of the minor offence: name and surname, unique personal ID number (EMŠO), date and place of birth, nationality, residence, or the name, registered offices, and registration number of the legal entity, employment of the responsible person,*

- place and time of the minor offence,
- legal classification of the minor offence.

#### Article 149 (Decision)

- (1) Following an inspection, the inspector shall be competent to issue a decision to the obliged person to ensure that an action is taken or omitted, or an act is issued securing the enforcement of laws and other regulations in the inspector's jurisdiction within a deadline determined by the inspector.
- (2) An appeal against the decision referred to in the preceding paragraph shall be permitted within fifteen days from the date of receipt. An appeal shall not stay the implementation of the decision.
- (3) The obliged person shall report to the inspector concerning the execution of the decision within eight days after the expiry of a particular deadline for its execution.

#### Article 150 (Appeal body)

Appeals against a decision referred to in paragraph one of the preceding Article shall be decided on by the ministry competent for finances.

### 9.3 The competencies of other supervisory bodies

#### Article 151 (Other supervisory bodies)

- (1) The Bank of Slovenia, in accordance with its competencies stipulated herein and in other acts, shall exercise supervision of the implementation of the provisions of this Act by the obliged persons referred to in points 1, 2, 3, 15, 16 and 20 d) of paragraph 1 of Article 4 hereof and by other entities.
- (2) The Securities Market Agency, in accordance with its competences stipulated herein and in other acts, shall exercise supervision of the implementation of the provisions of this Act by the obliged persons referred to in points 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of paragraph one of Article 4 hereof and by other entities. It shall only perform supervision of the obliged persons referred to in points 1, 2, and 3 of paragraph one of Article 4 hereof with regard to the services and activities of the obliged person's investment banking activities and regarding matters to which the provisions of the Act governing the financial instruments market apply. It may perform supervision independently or in cooperation with the Bank of Slovenia.
- (3) The Insurance Supervision Agency, in accordance with its competencies stipulated herein and in other acts, shall exercise supervision of the implementation of the provisions of this Act by the obliged persons referred to in points 11, 12, 13, 14, 20 i), and 20(j) of paragraph one of Article 4 hereof and by other entities.
- (4) The Financial Administration of the Republic of Slovenia, in accordance with its competencies stipulated herein and in other acts, shall exercise supervision of the implementation of the provisions of this Act by the obliged persons referred to in point 18 of paragraph one of Article 4 hereof and by other entities.
- (5) The Financial Administration of the Republic of Slovenia, in accordance with its competencies, shall exercise supervision of the implementation of prohibitions against the acceptance of payments for goods and performed services in cash in an amount exceeding EUR 5,000 by legal entities and natural persons referred to in Article 67 of this Act.
- (6) The Market Inspectorate of the Republic of Slovenia, in accordance with its competencies stipulated herein and in other acts, shall exercise supervision of the implementation of the provisions of this Act by the obliged persons referred to in points 19, 20(a), 20(b), 20(h), 20(n), and 20(r) of paragraph one of Article 4 hereof and by other persons.
- (7) The Agency for Public Oversight of Auditing and the Slovenian Institute of Auditors, in accordance with its competencies stipulated herein and in other acts, shall exercise supervision of the implementation of the provisions of this Act by the obliged persons referred to in point 17 of paragraph one of Article 4 hereof and by other persons or entities.
- (8) The Bar Association of Slovenia, in accordance with its competencies stipulated herein and in other

acts, exercise shall supervision of the implementation of the provisions of this Act by lawyers, law firms and other persons.

(9) *The Chamber of Notaries of Slovenia, in accordance with its competencies stipulated herein and in other acts, shall exercise supervision of the implementation of the provisions of this Act by notaries and other persons.*

(10) *The supervisory bodies referred to in this Article shall forward to any other supervisory body, upon its request, all necessary information required by that supervisory body to conduct its supervisory tasks.*

#### 9.4 Reporting data on supervision

##### Article 152 (Notification of violations and measures)

(1) *The supervisory bodies referred to in Article 139 herein shall immediately notify the Office in writing concerning supervisions performed, violations discovered, decisions issued and other supervisory measures, and other significant findings.*

(2) *The notification referred to in the preceding paragraph shall contain all the data referred to in paragraph thirteen of Article 137 of this Act.*

(3) *A supervisory body which detects a violation shall also inform other supervisory bodies of its findings and/or any irregularities if relevant to their work.*

(4) *To enable the centralisation and analysis of all data related to money laundering and terrorist financing, supervisory bodies shall also forward to the Office a copy of any decision issued concerning a violation, as well as any decisions or orders by means of which other measures have been imposed.*

##### Article 153 (Notifying facts)

(1) *The supervisory bodies referred to in Article 139 hereof shall immediately notify the Office in writing if, during supervision under this Act or during the performance of their activities or business operations in accordance with the competencies stipulated in other acts, they establish or discover facts that indicate or may indicate money laundering or terrorist financing.*

(2) *On the basis of the notified facts referred to in paragraph one of this Article, the Office, if it deems appropriate, may start collecting and analysing data, information and documentation in compliance with its authorisations stipulated by this Act.*

#### 9.5 Issuing recommendations and guidelines

##### Article 154 (Issuing recommendations and guidelines)

*With a view to ensuring uniform implementation of the provisions of this Act and the ensuing regulations by obliged persons, the supervisory bodies referred to in Article 139 hereof shall independently, or in cooperation with other supervisory bodies, issue recommendations and guidelines on the implementation of individual provisions of this Act by the obliged persons referred to in Article 4 hereof.*

##### Article 155 (National cooperation)

(1) *The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate in the performance of their tasks and authorisations when carrying out supervision, and they shall make efforts to ensure the effectiveness of measures and supervision in combating money laundering and terrorist financing.*

(2) *The Office and other supervisory bodies referred to in Article 139 of this Act shall, to the greatest extent possible, endeavour to unify supervisory practices and, in this context, also to ensure the comparability of the methodological approach when carrying out measures and supervision.*



## 9.6 Cooperation with competent supervisory bodies of Member States, third states, and European supervisory bodies

### Article 156 (Cooperation with the competent supervisory authorities of Member States)

(1) *The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with bodies of Member States which are competent for supervision in the field of preventing money laundering and terrorist financing, specifically with regard to the supervision of obliged persons that mainly operate through subsidiaries and affiliates in the Republic of Slovenia and other Member States in which they do not have registered offices.*

(2) *The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with competent supervisory bodies from other Member States, particularly by exchanging all information that could help facilitate the supervision of obliged persons.*

### Article 157 (Cooperation with the competent supervisory authorities of third countries)

(1) *The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with bodies of third states which are competent for supervision in the field of preventing money laundering and terrorist financing, specifically with regard to the supervision of obliged persons that mainly operate through subsidiaries and affiliates in the Republic of Slovenia and in third states, in which they do not have registered offices.*

(2) *The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with competent supervisory bodies from third states, particularly by exchanging all information that could help facilitate the supervision of obliged persons.*

(3) *Cooperation with competent supervisory bodies from third states shall be possible if, in these third states, there are established standards for preventing money laundering and terrorist financing, which are equivalent to the provisions of this Act, of international standards, or other regulations.*

### Article 158 (Cooperation with European supervisory bodies)

(1) *The Bank of Slovenia, the Securities Market Agency, and the Insurance Supervision Agency shall provide European supervisory bodies with all information that is required to enable the performance of their tasks related to preventing money laundering and terrorist financing.*

## 9.7 Violation notification system

### Article 159 (Internal violation notification system)

(1) *An obliged person shall establish a violation notification system, which enables employees and persons in comparable positions to internally report violations of the provisions of this Act through independent and anonymous reporting channels.*

(2) *The system referred to in the preceding paragraph shall include clearly defined procedures for receiving and processing reports which are proportionate to the nature and size of the obliged person.*

(3) *When the identity of a person filing the report is disclosed despite the provision referred to in paragraph one of this Article, the obliged person shall ensure that all data on the persons who filed a report concerning violations are processed as confidential, pursuant to the Act governing the protection of personal data. The obliged person shall not disclose this information without the prior consent of the person filing the report, unless the disclosure of the identity of the person filing the report is needed to carry out a pre-trial investigation of criminal proceedings.*

### Article 160 (A system for notifying supervisory bodies concerning violations)

(1) *The supervisory bodies referred to in Article 139 of this Act shall establish an effective and reliable notification system which enables employees and persons in comparable positions working for obliged persons to file reports concerning possible or actual violations of the provisions of this Act.*

(2) With regard to the notification system referred to in the preceding paragraph, the supervisory bodies referred to in Article 139 of this Act shall ensure the following: a simple and easily accessible method for filing reports on violations, internal procedures for accepting and processing reports, suitable protection of the personal data of persons who filed a report against an obliged person, and of persons who are allegedly responsible for a violation, pursuant to the provisions of the Act governing the protection of personal data.

(3) It shall not be permitted to disclose the data referred to in point 3 of the preceding paragraph without the prior consent of both the person filing the report and the person allegedly committing a violation, unless the disclosure of their identity is needed to carry out a pre-trial investigation and criminal proceedings in accordance with the Act. The supervisory bodies referred to in Article 139 of this Act shall not disclose the data on the person filing the report or the person allegedly committing the violation to the obliged person against which a report has been filed. The supervisory bodies referred to in Article 139 of this Act shall endeavour to prevent the disclosure of the identity of the person filing the report and the person allegedly committing the violation when discovering and processing violations which are the object of the report.

## 9.8 Disclosures related to supervision

### Article 161 (Disclosure of information on measures imposed)

(1) For the purpose of preventing and discouraging actions that are considered to be violations of this Act, the supervisory bodies referred to in Article 139 of this Act shall publicly publish information on supervisory measures and sanctions imposed due to violations of this Act.

(2) The information referred to in the preceding paragraph shall include the following data:

1. on the person committing the violation and the obliged person against which a measure is taken:

- the name and registered office of a legal entity or
- the personal name of a natural person;

2. on the violation or the nature of the measure imposed:

- a description of the circumstances and actions that are considered to be a violation of this Act or necessitate the imposition of the measure concerned,

- the nature of the violations discovered or the type of deficiencies due to which a measure was imposed;

3. the operative part of the decision by means of which the proceedings were finally concluded;

4. on the possible elimination of the violation or the performance of the measure that has been ordered.

(3) Once the decision by means of which a violation has been discovered, a measure imposed, or a minor offence declared becomes final and the obliged person against which the measure is to be imposed is informed of such decision, the information referred to in paragraph two of this Article shall be published on the websites of the supervisory bodies referred to in Article 139, and it shall be accessible on the websites for five years following the publication. The purpose of the publication of the information referred to in the preceding paragraph is to prevent the violation of statutory provisions and, as a result, to provide greater legal security when persons enter into business relationships and improve the integrity of the business environment, and to inform the interested public on the operation of businesses which operate in the business environment and with legal transactions in the field of regulations concerning the prevention of money laundering and terrorist financing.

(4) The Bank of Slovenia, the Securities Market Agency, and the Insurance Supervision Agency shall forward the information referred to in paragraph two of this Article to competent European supervisory bodies.

### Article 162 (Disclosure of the identity of the person committing a violation)

(1) Notwithstanding paragraphs one and two of the preceding Article, the supervisory bodies referred to in Article 139 of this Act shall not publish the information on the identity of the person committing the violation

and the obliged person against which measures will be imposed if:

1. the supervisory measure or sanction has been imposed due to minor violations as referred to in Article 165 of this Act, or

2. the publication of information on the identity of the person committing a violation or the obliged person against which a measure is to be imposed could inhibit the conduct of a pre-trial investigation or criminal proceedings.

(2) If the supervisory bodies referred to in Article 139 of this Act find upon issuing a decision that, relating to the publication of the identity of the person committing a violation, there are grounds as referred to in the preceding paragraph whereby, in addition to issuing a decision by means of which they impose supervisory measures, they shall also decide:

- not to publish the identity of the person committing a violation, or
- to suspend publication of the identity of the person committing a violation and to state a time limit on the suspension of publication if it is deemed that the grounds for suspending publication will cease to exist during this period.

#### *Sanctions for non-compliance (arts. 163 – 172, AML Law)*

The sanctioning regime is in compliance with the provisions of the European Union Fourth Anti-Money Laundering Directive 2015/849/EU. The amount of fines depends on the seriousness of the offence in accordance with the list included in articles 163-165 of the AML Law. The sanctions range from a simple warning to eliminating the violation or requesting the implementation of appropriate internal controls to the request for the initiation of administrative proceedings (which can lead to the imposition of a fine up to €5,000,000 for legal persons in case of serious offences).

In addition, article 161 of the AML Law obliges competent authorities to disclose AML/CFT violations by publishing them on their websites (*for the text of the article, please see above*).

### **Act on the Prevention of Money Laundering and the Financing of Terrorism**

#### Article 163 (The gravest violations)

(1) A fine of € 12,000 to € 120,000 shall be imposed for an infringement on a legal entity:

1. if they fail to draft a risk assessment or determine a risk assessment of a particular group or type of client, business relationship, transaction, product, service, or distribution path, and take into account geographic risk factors, or fail to carry out a suitable assessment of the impact on risk exposure of changes in business processes (paragraphs two and six of Article 13 of this Act);

2. if they fail to carry out measures related to in-depth client due diligence, even though it is deemed that the client, business relationship, transaction, product, service, distribution path, country, or geographic area may pose an increased risk (paragraph two of Article 14 of this Act);

3. if they fail to establish effective policies, controls, and procedures for effective risk mitigation and management (paragraph one of Article 15 of this Act);

4. if they fail to carry out customer due diligence (paragraph one of Article 17 and paragraph four of Article 22 hereof);

5. if they establish a business relationship with a customer without prior application of the prescribed measures (paragraph one of Article 19 hereof);

6. if they effect a transaction without prior application of the prescribed measures (Article 20 hereof);

7. if, prior to marketing a product (paragraph three of Article 22 hereof), they fail to inform the Office concerning a planned partial omission of customer due diligence, and if they fail to attach documentation on the fulfilment of conditions and risk assessment referred to in paragraph one of Article 22 to the notification;

8. if they fail to determine and verify the identity of a customer which is a natural person or his/her statutory representative, a sole trader or self-employed person of a statutory representative of a legal entity, authorised person of a natural person, sole trader or self-employed person, legal entity, an agent of other civil law entities or a beneficial owner, or fail to obtain the prescribed data, or failure to obtain them in the prescribed manner, or fail to obtain the certified written authorisation or a written authorisation for representation (Articles 23, 24, 25, 28, 29, 35, 36, 37 and 43 hereof);

9. if they determine and verify the identity of a customer by using electronic identification means in a prohibited manner (paragraph five of Article 26 hereof);

10. if they determine and verify the identity of a customer by using video-electronic identification in a prohibited manner (Article 27 hereof);

11. if they fail to determine or verify the identity of a customer upon the customer's entry to a casino or gaming hall of a concessionaire who organises games of chance, or each time the customer accesses a safe, or if they fail to acquire the prescribed data or if they fail to acquire them in a prescribed manner (Article 30 hereof);

12. if, contrary to the provisions of the Act, they determine and verify the identity of banks and similar credit institutions which have registered offices in a high-risk third state as referred to in paragraph five of Article 50 (paragraph three of Article 31);

13. if they fail to keep data and documentation acquired with regard to determining the beneficial owner, pursuant to the provisions of this Act (paragraph three of Article 34);

14. if they fail to obtain data on the purpose and intended nature of the business relationship or transaction, as well as other data pursuant to this Act, or fail to obtain all the required data (Article 48 hereof);

15. if the obliged person entered into a business relationship in contravention of the provisions of this Act (paragraph five of Article 54 hereof);

16. if they carry out simplified customer due diligence even though they fail to assess, pursuant to paragraph one of Article 14 of this Act, that the customer, the business relationship, transaction, product, service, distribution path, country, or geographic area pose a negligible threat (paragraph one of Article 57 hereof);

17. if they fail to obtain by simplified customer due diligence the prescribed data on a customer, business relationship or transaction, or if they fail to obtain the data in the prescribed manner (Article 58 hereof);

18. if they fail to apply the prescribed measures and, in addition, obtain data, information and documentation in accordance with paragraph one of Article 60 when entering a correspondent banking relationship with a bank or other similar credit institution located in a third state, or fail to obtain the data in the prescribed manner (paragraphs one and three of Article 60 hereof);

19. if they enter into or continue, contrary to law, a correspondent banking relationship with a respondent bank or other similar credit institution located in a third state (paragraph five of Article 60 hereof);

20. if it fails to obtain data on the source of funds and property that are, or will be, the subject of a business relationship or transaction when entering into a business relationship or effecting a transaction on behalf a customer who is a politically exposed person, or for failure to obtain the data in the prescribed manner (point 1, paragraph six of Article 61 hereof);

21. if it fails to establish and carry out measures with regard to politically exposed persons in life insurance transactions and life insurance linked to units of investment funds (Article 62 hereof);

22. if it fails to carry out measures by means of in-depth customer due diligence when the customer is from a high-risk third state (Article 63 hereof);

23. if they open, issue or keep for a customer anonymous accounts, passbooks or bearer passbooks, or other products enabling, directly or indirectly, concealment of the customer's identity (Article 64 hereof);

24. if they enter into a business relationship or carry out a transaction referred to in Articles 17 and 18 of this Act, even though the customer reports the ownership of a legal entity or a similar entity under foreign law based on bearer shares the traceability of which is not enabled through a central securities clearing corporation or a similar register (Article 65 hereof);

25. if they enter into or continue a correspondent banking relationship with a bank that operates or may operate as a shell bank, or other similar credit institution known to allow shell banks to use its accounts (Article 64 hereof);

26. if they accept cash payment from a customer or third person when selling goods or performing individual services exceeding the amount of € 5,000, or accepting payment effected by several linked cash transactions exceeding in total the amount of € 5,000 (paragraphs one and two of Article 67 hereof);

27. they fail to furnish the Office with the prescribed data within a statutory time limit, when grounds to suspect money laundering or terrorist financing exist in connection with a customer or transaction or an intended transaction (Article 69 hereof);

28. if they fail to submit to the Office, within the prescribed time limit, the required data, information and documentation, if in respect of a transaction, a person, or property or assets there are grounds to suspect money laundering or terrorist financing (Article 91 hereof);

29. if they fail to comply with the Office's order temporarily suspending a transaction or the Office's instructions issued in this regard (Article 96 and paragraphs one and three of Article 110 hereof);

30. if they fail to comply with the Office's written order for continuous monitoring of a particular customer's financial transactions (paragraphs one, two and three of Article 98 hereof);

31. if they disclose to a customer or a third person the facts referred to in paragraph one of Article 122 hereof;

32. if they fail to remedy irregularities and deficiencies within the time limit as specified by an official authorised person (point 1 of paragraph two of Article 139 hereof);

33. if they fail to submit to the Office, within the prescribed time limit and in the prescribed manner, data, information and documentation on the performance of duties as provided by this Act, as well as other information which the Office requires to conduct supervision (paragraph three of Article 141 hereof);

34. if they fail to enable access to premises and books of account and other documentation to the inspector for preventing money laundering, or hinders the inspector in any other way in the exercise of his authorisations (paragraph two of Article 146 hereof);

(2) A fine from €4,000 to €40,000 shall be imposed on a sole trader or self-employed person for the offence referred to in the preceding paragraph.

(3) A fine from €800 to €4,000 shall be imposed on the responsible person of a legal entity, the responsible person of a sole trader or a self-employed person for the offence referred to in paragraph one of this Article.

(4) If the nature of the offence referred to in points 1 to 22 of paragraph one is particularly grave due to the amount of the damage caused or the amount of unlawfully acquired proceeds, due to the perpetrator's intent or their intention to gain self-interest, due to the recurrent or systematic nature of the offence, the legal entity shall receive a fine in an amount up to:

1. €1,000,000, or

2. an amount that is double the proceeds acquired by means of the offence if such proceeds can be determined and if this amount exceeds the amount referred to in the preceding point.

(5) If the nature of the offence referred to in points 1 to 22 of paragraph one is particularly grave due to the amount of damage caused or the amount of unlawfully acquired proceeds, due to the perpetrator's intent or their intention to gain self-interest, due to the recurrent or systematic nature of the offence, a sole trader or a self-employed person shall receive a fine in an amount up to:

1. €500,000, or

2. an amount that is double the proceeds acquired by means of the offence if such proceeds can be determined and if this amount exceeds the amount referred to in the preceding point.

(6) A responsible person of the legal entity referred to in paragraph four of this Article and a responsible person of a sole trader or a self-employed person as referred to in paragraph five of this Article shall be fined an amount up to €250,000.

(7) A legal entity as referred to in paragraph four of this Article which is a credit or financial institution shall be fined in the amount of:

1. €5,000,000, or

2. 10% of the total annual turnover in the preceding business year, provided that this amount exceeds the amount referred to in the preceding point.

(8) If the legal entity referred to in the preceding paragraph is an entity, a credit or financial institution that controls one or more controlled companies, or that is an affiliate, the consolidated annual report shall be taken into account with regard to the data on the total annual turnover in the preceding business year, pursuant to the Act governing companies.

(9) A sole trader or self-employed person as referred to in paragraph five of this Article which is a credit or financial institution shall be fined in the amount of:

1. €2,500,000, or

2. 10% of the total annual turnover in the preceding business year, provided that this amount exceeds the amount referred to in the preceding point.

(10) A responsible person of a legal entity referred to in paragraph seven of this Article and a responsible person of a sole trader or self-employed person referred to in paragraph nine of this Article shall be fined an amount up to €500,000.

(11) In addition to the fine, a permanent or temporary suspension of the permission to perform activities shall also be ordered against the legal entity referred to in paragraphs four and seven of this Article and against the sole trader or self-employed person referred to in paragraphs five and nine of this Article if the legal entity, sole trader, or self-employed person requires such permission to perform their activities.

(12) The order to permanently or temporarily suspend the permission to perform activities referred in the preceding paragraph shall be issued by the body which issued such permission in proceedings instituted by the body itself or upon the proposal of the Office.

(13) In addition to a fine, a temporary ban on the performance of leadership tasks shall also be imposed against a responsible person as referred to in paragraphs six and ten of this Article.

(14) The order to temporarily ban the performance of leadership tasks referred to in the preceding paragraph shall be issued by the body which allowed the performance of leadership tasks in proceedings instituted by the body itself or upon the proposal of the Office.

#### Article 164 (Grave violations)

(1) A fine of €6,000 to €60,000 shall be imposed for an infringement on a legal entity:

1. if they fail to carry out customer due diligence to the prescribed extent (paragraph one of Article 16 hereof);

2. if they fail to define procedures for implementing the measures referred to in paragraph one of Article 16 in its internal regulations (paragraph five of Article 16 hereof);

3. if they fail to demand a written statement from a customer, legal representative, authorised person or agent of other civil law entities (paragraph three of Article 23, paragraph four of Article 24, paragraph four of Article 25, paragraph five of Article 28 and paragraph five of Article 29 hereof);

4. if they fail to carefully monitor business activities undertaken by a customer through the obliged person (paragraph one of Article 49 hereof);

5. if they fail to acquire the prescribed data when verifying and updating data (paragraphs two and three of Article 49 hereof);

6. if they entrust a third party with the performance of customer due diligence without having verified whether this third party meets all the conditions stipulated by this Act (paragraph two of Article 51 hereof);

7. if they accept customer due diligence as appropriate in which a third party determined and verified the identity of a customer in the customer's absence (paragraph three of Article 51 hereof);

8. if they entrust customer due diligence to a third party which is a shell bank or other similar credit institution which does not or may not pursue its activities in the country of registration (paragraph six of Article 52 hereof);

9. if they entrust customer due diligence to a third party, whereby the customer is a foreign legal entity which is not or may not be engaged in trade, manufacturing or other activity in the country of registration (Article 53 hereof);

10. if the obliged person fails to define the procedure for determining foreign politically exposed persons in its internal act (paragraph one of Article 61 hereof);

11. if they enter into a business relationship with a customer who is a foreign politically exposed person, but does not monitor with due diligence the transactions and other business activities carried out by that person (point 3, paragraph six of Article 61 hereof);

12. if they fail to furnish the Office, within the prescribed time limit, with the prescribed data on any cash transaction exceeding €15,000 (paragraph one of Article 68 hereof);

13. if they fail to furnish the Office, within the prescribed time limit, with the prescribed data on any cash transaction exceeding €15,000 and executed on the accounts referred to in paragraph two of Article 68 (paragraph two of Article 68 hereof);

14. if they fail to ensure the implementation of the policies and procedures of the group to which they belong regarding measures for discovering and preventing money laundering and terrorist financing (paragraph one of Article 71 hereof);

15. if they fail to ensure that its branches and majority-owned subsidiaries with head offices in third countries apply the measures for detecting and preventing money laundering and terrorist financing stipulated by this Act (paragraph one of Article 75 hereof);

16. if they fail to appoint an authorised person and one or more deputies for particular tasks of detecting and preventing money laundering and terrorist financing stipulated by this Act and the ensuing regulations (Article 76 hereof);

17. if they fail to provide an authorised person with appropriate authorisations, conditions and support to perform his/her duties and tasks (Article 79 hereof);

18. if they fail to draw up a list of indicators for identifying customers and transactions in respect of which there are reasonable grounds to suspect money laundering or terrorist financing, or if they fail to draw up the said list in the prescribed manner and time limit (Article 85 hereof);

19. if they fail to keep data and documentation for five years after the termination of a business relationship, completion of a transaction, or the customer's entry to a casino or gaming hall or access to a safe (paragraph one of Article 129 hereof).

(2) A fine from €2,000 to €20,000 shall be imposed on a sole trader or a self-employed person for the offence referred to in the preceding paragraph.

(3) A fine from €400 to €2,000 shall be imposed on a responsible person of a legal entity, sole proprietor or self-employed person for the offence referred to in paragraph one of this Article.

#### Article 165 (Minor violations)

(1) A fine of no less than €3,000 to €30,000 shall be imposed for an infringement on a legal person:



1. if they fail to examine in advance, when verifying the identity of a customer, the nature of the register from which data on the customer is to be obtained (paragraph six of Article 28 hereof);

2. if they fail to ensure that the scope and frequency of measures referred to in paragraph one of Article 49 are appropriate to the risk of money laundering or terrorist financing to which the obliged person is exposed when carrying out individual transactions or in business operations with individual customers (paragraph four of Article 49 hereof);

3. if they fail to inform the competent supervisory bodies referred to in Article 139 of this Act and take appropriate measures to eliminate the risk of money laundering or terrorist financing (paragraph four of Article 75 hereof);

4. if they fail to ensure that the work of an authorised person or his/her deputy is entrusted solely to a person meeting the prescribed requirements (paragraphs one and two of Article 77 hereof);

5. if they fail to forward to the Office, within the prescribed time limit, the personal name and title of the position held by the authorised person and his/her deputy and any changes thereof (paragraph five of Article 79 hereof);

6. if they fail to provide regular professional training to all employees carrying out tasks for the prevention and detection of money laundering and terrorist financing pursuant to this Act (paragraph two of Article 80 hereof);

7. if they fail to draw up, within the prescribed time limit, the annual professional training and education programme for the prevention and detection of money laundering and terrorist financing (paragraph four of Article 80 hereof);

8. if they fail to ensure regular internal control of the performance of tasks for detecting and preventing money laundering and terrorist financing pursuant to this Act (Article 81 hereof);

9. if they fail to use the list of indicators referred to in paragraph one of Article 85 when determining the grounds to suspect money laundering or terrorist financing or other circumstances relating thereto (paragraph three of Article 85 hereof);

10. if they fail to keep the data and corresponding documentation concerning the authorised person and their deputy, the professional training of employees, the performance of internal control and risk management referred to in Articles 13, 76, 77, and 80 of this Act for four years after appointing the authorised person and their deputy, the completed professional training, and performed internal control and the analysis of impacts due to changes in the obliged person's business processes related to the risk of money laundering or terrorist financing (paragraph three of Article 129 of this Act).

11. if they fail to keep separate records of access to data, information and documentation referred to in paragraph one of Article 122 hereof which was held by the supervisory bodies referred to in Article 139, or for keeping incomplete records (paragraphs one and two of Article 138 hereof);

12. if they fail to inform the Office within the prescribed time limit and in the prescribed manner of any access by the supervisory bodies referred to in Article 139 hereof to the data, information, and documentation referred to in paragraph one of Article 122 (paragraph three of Article 138 hereof).

(3) A fine in the amount of €1000 to €10,000 shall be imposed on a sole trader or a self-employed person who commits the offence referred to the preceding paragraph.

(2) A fine of no less than €200 to €1,000 shall be imposed on the responsible person of a legal entity, the responsible person of a sole trader or the responsible person of a self-employed person, for an offence referred to in paragraph one of this Article.

*Article 166 (Offences committed by issuers of electronic mean of identification)*

(1) A fine from €12,000 to €120,000 shall be imposed for the offence of an issuer of electronic means of identification if they fail to submit to the obliged person, upon its request, data on the manner of determining and verifying the identity of the customer that is the holder of the electronic means of identification (paragraph four of Article 26 hereof).

*(2) A fine from €800 to €4,000 shall be imposed on the responsible person of an issuer of electronic means of identification for the offence referred to in paragraph one of this Article.*

**Article 167 (Offences committed by business entities related to data on the beneficial owner)**

*(1) A fine of €6,000 to €60,000 shall be imposed for an infringement on a legal entity:*

*1. if they fail to discover data or if they discover false data on their beneficial owner or owners; if they fail to establish and manage precise records of data concerning their beneficial owners, or if they fail to update such records upon each modification of data, or if they fail to keep the data on their beneficial owners for five years following the date of the termination of beneficial owner status (paragraphs one, two, three, and four of Article 41 of this Act);*

*2. if they fail to furnish, without undue delay, any data concerning their beneficial owners, or if they furnish false data upon the request of obliged persons or bodies for detecting and prosecuting criminal offences, courts, and the supervisory bodies referred to in Article 130 of this Act (Article 42 hereof);*

*3. if they fail to enter into the register any data concerning their beneficial owner and their modifications, or if they enter false data within eight days following their entry in the Slovenian Business Register or following their entry in the tax register, if they have not been entered in the Slovenian Business Register, or within eight days following any modification of data (paragraph three of Article 44 of this Act).*

*(2) A fine between €400 and €2,000 shall be imposed for an offence on a responsible person of a legal entity who commits the offence referred to in the preceding paragraph.*

**Article 168 (Offences committed by employees working for an obliged person)**

*(1) A fine from €200 to €1,000 shall be imposed for an offence committed by an employee working for an obliged person establishing the correspondent relationship referred to in paragraph one of Article 60 and carrying out the enhanced customer due diligence procedure if he/she fails to obtain the written consent of his/her superior responsible person in the obliged person holding a senior leadership position prior to entering into such a relationship (paragraph two of Article 60 hereof).*

*(2) A fine from €200 to €1,000 shall be imposed for an offence by an employee working for an obliged person who carries out the procedure for entering into a business relationship with a customer who is a foreign politically exposed person if he/she fails to obtain the written consent of his/her superior responsible person holding a senior leadership position prior to entering into such a relationship (point 2 of paragraph six of Article 61 hereof).*

**Article 169 (Specific offences by auditing firms, independent auditors, legal entities and natural persons performing accounting or tax advisory services)**

*(3) A fine from €12,000 to €120,000 shall be imposed for an offence by an auditing firm for carrying out simplified due diligence procedure despite the fact that in respect of the customer or auditing circumstances, grounds to suspect money laundering or terrorist financing exist (paragraph six of Article 57 hereof).*

*(4) A fine from €4,000 to €40,000 shall be imposed for an offence by an independent auditor for carrying out simplified due diligence procedure despite the fact that in respect of the customer or auditing circumstances, grounds to suspect money laundering or terrorist financing exist (paragraph six of Article 57 hereof).*

*(5) A fine from €12,000 to €120,000 shall be imposed for an offence by an auditing firm or a legal entity performing accounting or tax advisory services if they fail to report to the Office, within the prescribed time limit, data concerning all cases in which a customer has sought advice on money laundering or terrorist financing (paragraph five of Article 69 hereof).*

*(6) A fine from €4,000 to €40,000 shall be imposed for an offence by an independent auditor or a self-employed person performing accounting or tax advisory services if they fail to report to the Office, within the prescribed time limit, data concerning all cases in which a customer has sought advice on money laundering or terrorist financing (paragraph five of Article 69 hereof).*

*(7) A fine from €400 to €2,000 shall be imposed on the responsible person of a legal entity, of a sole trader, or of self-employed person for the offence referred to in paragraphs one, two, three, or four of this Article.*

#### Article 170 (Offences by lawyers, law firms and notaries)

*(1) A fine from €12,000 to €120,000 shall be imposed for an offence by a law firm if it fails to report to the Office, within the prescribed time limit, that a client has sought advice on money laundering or terrorist financing (paragraph two of Article 83 hereof).*

*(2) A fine from €4,000 to €40,000 shall be imposed for an offence by a lawyer or notary for failing to inform the Office, within the prescribed time period, that a client sought advice on money laundering or terrorist financing (paragraph two of Article 83 hereof).*

*(3) A fine from €12,000 to €120,000 shall be imposed for an offence by a law firm for failing to submit to the Office, within the prescribed time limit, the required data, information and documentation, if in respect of a transaction, person, property, or assets there are grounds to suspect money laundering or terrorist financing (paragraphs one, two and three of Article 92 hereof).*

*(4) A fine from €4,000 to €40,000 shall be imposed for an offence by a lawyer or notary for failing to submit to the Office, within the prescribed time limit, the required data, information and documentation, where in respect of a transaction, person, property, or assets there are grounds to suspect money laundering or terrorist financing (paragraphs one, two and three of Article 92 hereof).*

*(5) A fine of €800 to €4,000 shall be imposed on a responsible person of a law firm, lawyer, or notary of they commit the offence referred to in paragraphs one, two, three, or four of this Article.*

#### Article 171 (Imposing fines in fast-track proceedings for minor offences)

*A fine in an amount which is higher than the lowest prescribed amount specified by this Act may be imposed in a fast-track procedure for offences referred to in this Act.*

#### Article 172 (Application of provisions concerning minor offences)

*Until amendments to the provisions concerning the amounts and ranges of fees stipulated by the Act governing minor offences are introduced, the amounts and ranges of fees determined in Article 163 hereof shall be applied regardless of the provisions of the Act governing minor offences.*

#### *Communication of policies to the OMLP by obliged entities*

The AML Law does not provide for reporting policies to the Office for Money Laundering Prevention on a regular basis. However, according to article 141 of the AML Law, the OMLP may require the obliged entities to submit to the Office, in writing, the data, information and documentation on the performance of their duties as provided by the AML Law, as well as any other information that the OMLP requires to conduct supervision, without delay and at the latest within eight days of receiving a request. Based on this provision, the OMLP may also require information on the policies established by the obliged entities.

Besides, the OMLP may, on the basis of the “Rules concerning the authorised person, the method of executing internal control, retention and protection of data, the administration of records and professional training of employees within the obliged persons pursuant to the APMLFT,” issued by the minister responsible for finance (Minister of Finance), require the obliged entities to submit to the Office annual reports on performing their internal controls. The report may also contain information on policies, internal controls and procedures established by the obliged entity in order to carry out efficient mitigation and management of the risk of money-laundering and terrorist financing.

#### **Slovenia provided the following examples and statistics:**

Relevant statistics have been provided for the MONEYVAL evaluation to demonstrate the effectiveness of the regime (for more information, please refer Chapters 5, 6 and the Technical Compliance Annex of the MER Slovenia).

In most cases, an order to eliminate violations is utilized to inform obliged persons of the nature and consequences of detected violations and impose an obligation on them to eliminate the violations within the defined deadline. However, when detected violations are not severe, a supervisory letter is issued.

The number of STRs reported to the OMLP has constantly been increasing since 2010. In 2014–2016, 1405 STRs were reported to the OMLP, based on 694 of which written notifications were issued and sent to the police for identified suspicions of ML.

In addition, 382 cases were reported to the police by the OMLP due to suspicion of other criminal offences other than ML. In the same period, 151 criminal proceedings were initiated by the police or State prosecutors, and 56 final convictions for money-laundering were passed. Several ML-related processes started on the basis of STRs disclosed to the OMLP by obliged persons as stipulated in the AML Law (56% of STRs led to investigations and/or prosecutions).

### ***(b) Observations on the implementation of the article***

The AML Law of Slovenia came into force on 19 November 2016 and established a list of financial and non-financial institutions subject to this regime (art. 4). The AML Law also lists categorized supervisory authorities of these professions (arts. 139-162). The AML law prescribes not only banks and non-bank institutions as obliged persons but also includes other bodies that are especially susceptible to money-laundering, such as accounting services, tax advisory services, persons involved in trade in precious metals and stones, trade in works of art, organization and execution of auctions and real estate agencies.

The AML Law establishes obligations to conduct risk management for obliged entities (arts. 13-15), apply proper customer due diligence standards (arts. 16 and 17), keep proper records (art. 129 for the obliged persons, and art. 132 for the FIU) as well as to report STRs to national authorities (art. 69).

In 2015, Slovenia finalized a national risk assessment with the assistance of the World Bank, which is designed to identify, assess and understand the money-laundering and/or terrorist financing risks within its jurisdiction. Consequently, Slovenia applies a risk-based approach in accordance with articles 7 to 11 of the AML Law.

### ***Subparagraph 1 (b) of article 14***

*1. Each State Party shall: ...*

*(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

Cooperation and coordination are conducted at the State, inter-ministerial, expert and operational levels. There exist various mechanisms at policymaking and operational levels that support inter-agency and multi-disciplinary cooperation and coordination.

#### *Competent authorities responsible for combating money-laundering*

- The Slovenian Police Authority (Slovenian Police) is an independent agency within the Ministry of the Interior. The Ministry is the primary law enforcement agency in charge of investigating predicate offences and offences of ML/TF. The coordination, analysis, oversight and supervision of the work of the police in the field of money-laundering is entrusted to the Financial Crime and Money-Laundering Section (FCMLS), which is structurally part of the Economic Crime Division, Criminal Police Directorate, General Police

Directorate.

- The State Prosecutor's Office is placed under the authority of the Ministry of Justice, and its organizational structure consists of:
  - the Office of the State Prosecutor General of the Republic of Slovenia, the highest-ranking prosecutor's office in the country, is in charge of the entire 26 territories of Slovenia. The Expert Information Centre (EIC) is an internal organizational unit within the Office of the State Prosecutor General and coordinates cooperation on confiscation. It keeps a central register of all proposals and orders related to confiscation and provides expert assistance to State prosecutors on this matter;
  - the Specialized State Prosecutor's Office (SSPO), was established in 2011 to prosecute serious criminal activities in the areas of organized traditional and economic crime, terrorism, corruption, and other criminal activities requiring detection and prosecution by specially organized and trained State prosecutors. The jurisdiction of the SSPO also extends to the entire territory of Slovenia; and
  - 11 District State Prosecutor's Offices have jurisdiction in the territory of a District Court of general jurisdiction;
- The Ministry of Justice of Slovenia (MoJ) is the central authority in the provision of mutual legal assistance (MLA). Although according to the CPC, MLA requests are to be sent via diplomatic channels, in practice, MLA requests are submitted directly through the MoJ, which ensures their timely processing and execution. Furthermore, the MoJ keeps statistics on the type and the number of requests made, received, processed, granted or refused (with countries outside the EU).
- The Financial Administration of the Republic of Slovenia (FURS) enforces the physical cross-border reporting of currency and bearer negotiable instruments (BNIs) of value above the maximum threshold of €10,000.
- The Commission for the Prevention of Corruption (CPC) is an independent administrative body with a mandate to prevent and investigate corruption. Although the CPC is not a law enforcement agency, it is empowered to accomplish a wide range of executive and supervisory tasks. The CPC can also request the OMLP to open a case.
- The Slovenian Intelligence and Security Agency (SOVA) is the central civilian intelligence and security service responsible for the protection of national security. The SOVA, as well as its military counterpart, the Intelligence Security Service, acquire and analyse the information as part of TF and counter-terrorism investigations. The SOVA also has the power to request the OMLP to collect information on a particular case.
- The Bank of Slovenia (BoS) has extensive powers to license, register and supervise banks, money or value transfer services and exchange offices. In order to perform its supervisory functions, the BoS performs different types of examinations and determines banks' AML/CFT profiles. Furthermore, BoS participates in the preparation of AML/CFT legislation, actively cooperates with the banking industry and takes part in international committees (MONEYVAL, EU AML committee, etc.).
- Supervisory Authorities: AML Law designates the following institutions which carry out AML/CFT supervision of financial institutions and designated non-financial businesses or professions: BoS, SMA, ISA, Office of the Republic of Slovenia for Gaming Supervision, Tax Administration of the Republic of Slovenia, Market Inspectorate of the Republic of Slovenia, Agency for Public Oversight of Auditing (APOA) and Slovenian Institute of Auditors (SIA), Bar Association of Slovenia, and Chamber of Notaries of Slovenia.

### *Financial Intelligence Unit*

The Slovenian FIU is the Office for Money-Laundering Prevention (OMLP), established in 1994 as a constituent body of the Ministry of Finance (MoF). The OMLP performs tasks aimed at the prevention and detection of money-laundering and other duties as stipulated by the AML Law (2016).

## **Organisation and Competence of Ministries Act**

### Article 2

*Ministry of Finance shall comprise:*

*Financial Administration of the Republic of Slovenia,  
Office of the Republic of Slovenia for the supervision of gambling,  
**Office for Money Laundering Prevention,**  
Exchange Inspectorate of the Republic of Slovenia;*

#### Article 19

*Within 30 days of the entry into force of this Act, the following administrative bodies set up under this Act shall commence:*

*Office of the Republic of Slovenia for the supervision of gambling and the **Office for Money Laundering Prevention**, under the Ministry of Finance;*

The OMLP is the central national body competent for analysing reports on suspicious transactions and other data, information, and documentation on potential money-laundering, predicate criminal offences or terrorist financing and submitting the results of its analyses to the competent authorities. In the implementation of its duties, the OMLP is autonomous and functionally independent.

To implement its duties, the OMLP has timely, direct and indirect access to data, information, and documentation at the disposal of obliged persons, State authorities and holders of public authorizations, including information relating to the detection and prosecution of criminal offences. In the field of detection, the OMLP starts its analysis on the basis of the STRs submitted by obliged reporting entities. It can also start analysis on the basis of the written initiative of the court, State prosecutor, the police, the SOVA, the Intelligence and Security Service of the Ministry of Defence, the CoA, the CPC, the Budget Supervision Office of the Republic of Slovenia, the Financial Administration of the Republic of Slovenia, the Public Payments Administration of the Republic of Slovenia and supervisors determined by article 139 of the AML Law. After concluding its analysis, the OMLP forwards written notifications to competent authorities (the police, State Prosecutor's Office, FURS, SOVA) if there exists a reason for suspicion of money-laundering, terrorist financing or other criminal offences.

If the OMLP believes that there are well-founded reasons to suspect ML/TF, it may issue a written order on temporarily postponing a transaction for three working days (art. 96, AML Law). The OMLP may also request from the obliged persons the ongoing monitoring of financial transactions (art. 98, AML Law, *please see subparagraph 2(b) of article 52 of the Convention*).

The OMLP performs duties related to the prevention of ML/TF in such a manner that it (art. 114, AML Law):

- proposes to the competent authorities changes and amendments to regulations concerning the prevention and detection of ML/TF;
- participates in drawing up the list of indicators for the identification of STRs;
- draws up and issues recommendations or guidelines for the obliged persons;
- participates in professional training;
- collects and publishes statistical data on ML/TF, in particular, the number of STRs submitted to the OMLP, the number of cases handled annually, etc.;
- informs the public on ML/TF trends and typologies.

### **Act on the Prevention of Money Laundering and the Financing of Terrorism**

#### Article 114 (Prevention of money laundering and terrorist financing)

*The Office shall perform duties related to the prevention of money laundering and terrorist financing in such a manner that it shall:*

1. *propose to the competent authorities changes and amendments to regulations concerning the prevention and detection of money laundering and terrorist financing;*

2. *participate in drawing up a list of indicators for the purpose of identifying customers and transactions in respect of which there are reasonable grounds to suspect money laundering or terrorist financing;*

3. *draw up and issue recommendations or guidelines for the uniform implementation of the provisions of this Act and regulations issued on the basis hereof, for persons under obligation referred to in Article 4 of this Act;*

4. *cooperate with regard to the professional training of employees working for the obliged person, state authorities, and holders of public authority;*

5. *collect and publish statistical data on money laundering and terrorist financing;*

6. *inform the public, in any other appropriate manner, of the various forms of money laundering and terrorist financing.*

#### *National level cooperation*

Although the legal basis for cooperation and coordination already exists in provisions of several laws, the AML Law introduces a mechanism that ensures effective and comprehensive cooperation and coordination among the OMLP, supervisory bodies, and other competent bodies responsible for the fight against ML/TF at the policy and operational levels. To attain strategic and operational objectives, the authorities may sign agreements on mutual cooperation and establish inter-ministerial working groups (arts. 7 and 155, AML Law).

### **Act on the Prevention of Money Laundering and the Financing of Terrorism**

#### Article 7 (Cooperation of competent authorities)

*The Office, supervisory bodies referred to in Article 139 of this Act and other authorities competent to detect and prevent money laundering and terrorist financing work together and harmonise the implementation of policies and activities of combating money laundering and terrorist financing. To attain strategic and operational objectives, these authorities may sign agreements on mutual cooperation and establish inter-ministerial working groups.*

#### Article 155 (National cooperation)

*(1) The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate in the performance of their tasks and authorisations when carrying out supervision, and they shall make efforts to ensure the effectiveness of measures and supervision in combating money laundering and terrorist financing.*

*(2) The Office and other supervisory bodies referred to in Article 139 of this Act shall, to the greatest extent possible, endeavour to unify supervisory practices and, in this context, also to ensure the comparability of the methodological approach when carrying out measures and supervision.*

For instance, the police and the OMLP have signed an Agreement on Mutual Cooperation in the Field of Prevention and Detection of Money-Laundering and Terrorist Financing (the Agreement). Pursuant to article 6 of the Agreement, they have also concluded a protocol on processing and access to personal data in personal data collections managed by the police.

Article 4 of the Agreement defines international cooperation, outlining different competencies of authorities abroad and some overlap of competencies regarding the exchange of data at an international level on money-laundering between different institutions in Slovenia. Coordination of the cooperation between the Criminal Police Directorate and OMLP is also prescribed in the Agreement.

It is stipulated that the OMLP shall send to the related authorities abroad all data that it may collect according to the law, including the data it has received under the Protocol, while other data, if it refers to suspicion of money-laundering, shall be sent to other countries by the police, within their competence. The Agreement dictates that when sending data to and collecting data from other countries, both authorities shall observe provisions of international conventions on money-laundering, bilateral agreements signed with foreign countries, international



standards and other legislation governing this area. The Criminal Police Directorate and OMLP coordinate their activities before international data exchange. The police and OMLP encourage other authorities, bodies, and institutions engaged in the fight against crime to engage in international cooperation more actively.

Under article 8 of the Forfeiture of Assets of Illegal Origin Act, State authorities, banks and financial institutions are required to assist and provide any relevant information to the authorities conducting financial investigations and enforcing decisions under the act.

## **Forfeiture of Assets of Illegal Origin Act**

### Article 8 Cooperation and provision of information

*(1) State authorities, holders of public authority, banks and other financial institutions shall provide the required free-of-charge assistance to the competent authorities referred to in Article 7 of this Article and to authorities having the competence to enforce decisions under this Act.*

*(2) Administrators of official records, registers, public registers and other protected data, information and documents required for the purpose of exercising the powers under this Act shall provide the competent authorities with information free of charge at their request. A request for data, information and documents made by a competent authority shall include the type of information requested, the full name, the date and the place of birth or the personal registration number and information on the place of residence of the owners for whom the information is required, the unique identification number assigned to the case, as well as the appropriate time limit within which the information is to be provided; moreover, it shall also include a notice that the person to whom the information relates shall not be made aware of the disclosure of such information.*

*(3) The obligation to protect confidential information, trade, bank and professional secrecy shall not apply to the court, state prosecutor's office, other state authorities, holders of public authority, notaries public, banks and other financial institutions and their employees in the provision of the data, information and documents referred to in the preceding paragraph.*

## *International cooperation*

### **Act on the Prevention of Money Laundering and the Financing of Terrorism**

#### **9.6 Cooperation with competent supervisory bodies of member States, third States, and European supervisory bodies**

##### Article 156 (Cooperation with the competent supervisory authorities of Member States)

*(1) The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with bodies of Member States which are competent for supervision in the field of preventing money laundering and terrorist financing, specifically with regard to the supervision of obliged persons that mainly operate through subsidiaries and affiliates in the Republic of Slovenia and other Member States in which they do not have registered offices.*

*(2) The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with competent supervisory bodies from other Member States, particularly by exchanging all information that could help facilitate the supervision of obliged persons.*

##### Article 157 (Cooperation with the competent supervisory authorities of third countries)

*(1) The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with bodies of third states which are competent for supervision in the field of preventing money laundering and terrorist financing, specifically with regard to the supervision of obliged persons that mainly operate through subsidiaries and affiliates in the Republic of Slovenia and in third states, in which they do not have registered offices.*

*(2) The Office and other supervisory bodies referred to in Article 139 of this Act shall cooperate with competent supervisory bodies from third states, particularly by exchanging all information that could help*

*facilitate the supervision of obliged persons.*

*(3) Cooperation with competent supervisory bodies from third states shall be possible if, in these third states, there are established standards for preventing money laundering and terrorist financing, which are equivalent to the provisions of this Act, of international standards, or other regulations.*

#### Article 158 (Cooperation with European supervisory bodies)

*(1) The Bank of Slovenia, the Securities Market Agency, and the Insurance Supervision Agency shall provide European supervisory bodies with all information that is required to enable the performance of their tasks related to preventing money laundering and terrorist financing.*

According to the CPA, international legal assistance within the police is conducted in the following way: the police requests the SSPO to propose to the Ljubljana District Court that it should, in accordance with articles 156, 502, 514 of the CPA (*for the texts of the articles, please see below*), in a given case against a person reasonably suspected of having committed the criminal offence of money-laundering under article 252/1 and 3 of the Criminal Code, send a request for international assistance to the competent judicial authority of a foreign country, proposing that the authority should order the transmission of confidential bank information for a particular period as well as temporary securing of the claim for the seizure of proceeds in a particular bank account.

According to article 514 of the CPA, mutual legal assistance in criminal matters shall be administered pursuant to the provisions of the CPA unless provided otherwise by international agreements.

#### **Criminal Procedure Act**

##### Article 514

*International aid in criminal matters shall be administered pursuant to the provisions of this Act unless provided otherwise by international agreements.*

According to article 515/1 of the CPA, petitions of domestic courts and State prosecutor's offices for legal aid in criminal matters shall be transmitted to foreign agencies through diplomatic channels. Foreign petitions for legal aid from domestic courts shall be transmitted in the same manner.

#### **Criminal Procedure Act**

##### Article 515

*(1) Petitions of domestic courts and state prosecutor's offices for legal aid in criminal matters shall be transmitted to foreign agencies through diplomatic channels. Foreign petitions for legal aid from domestic courts shall be transmitted in the same manner.*

...

Article 516/1 of the CPA lays down that the Ministry of Foreign Affairs shall send petitions (requests) for legal aid received from foreign agencies to the MoJ, which shall forward them for consideration to the circuit court in whose territory resides the person who should be served with a document, or interrogated, or confronted, or in whose territory an investigative act should be conducted. If the petition (request) refers to an act that is under the jurisdiction of the State Prosecutor's Office under domestic law, the MoJ shall send the petition (request) to the State Prosecutor's Office, in whose territory of jurisdiction the act needs to be conducted.

#### **Criminal Procedure Act**

##### Article 516

*(1) The Ministry of Foreign Affairs shall send petitions for legal aid received from foreign agencies to the Ministry of Justice which shall forward them for consideration to the circuit court in whose territory resides the person who should be served with a document, or interrogated, or confronted, or in whose territory an investigative act should be conducted.*

*If the request refers to the implementation of an act which, according to the national law, falls under the*

*jurisdiction of the state prosecutor's office, the Ministry of Justice shall send the request into the consideration of the state prosecutor's office in whose territory of jurisdiction the act needs to be implemented.*

...

According to article 515/2 of the CPA, requests in emergency instances may be sent through the Ministry of the Interior, and/or the body responsible for the prevention of money-laundering. Also, if reciprocity applies or if so determined by an international treaty, legal assistance can be exchanged directly between Slovenia and foreign bodies (para. 3 of art. 515)

### **Criminal Procedure Act**

#### Article 515

...

*(2) In emergency cases and on condition of reciprocity, requests for legal assistance may be sent through the Ministry of the Interior, or in instances of criminal offences of money laundering or criminal offences connected to the criminal offence of money laundering, also to the body responsible for the prevention of money laundering.*

*(3) If reciprocity applies or if so determined by an international treaty, international criminal- legal help may be exchanged directly between the Slovene and foreign bodies which participate in the pre-criminal and criminal proceedings, wherein modern technical assets, in particular computer networks and aids for the transmission of pictures, speech and electronic impulses may be used.*

Article 502/1 of the CPA lays down that where the seizure of proceeds is applicable and if there is a danger that the defendant could, on their own or through other persons, use these proceeds for further criminal activities or could conceal, alienate, destroy or otherwise make use of these proceeds and thus preclude or render the seizure of proceeds difficult, the court shall on its own authority order temporary securing of the claim upon motion of the State prosecutor.

Article 502/2 of the CPA stipulates that such securing may be ordered by the court also during the pre-trial procedure if there are well-grounded reasons for the suspicion that a criminal offence has been committed through which or because of which proceeds were gained or that such proceeds were obtained for another person or transferred to that person.

### **Criminal Procedure Act**

#### Article 502

*(1) Where the seizure of proceeds is applicable and if there is danger that the defendant could, on his own or through other persons, use these proceeds for further criminal activities or could conceal, alienate, destroy or otherwise make use of these proceeds and thus precluded or rendered the seizure of proceeds difficult, the court shall on its own authority order temporary securing of the claim upon motion of the state prosecutor.*

*(2) Such securing may be ordered by the court also during the pre-trial procedure if there are well-grounded reasons for the suspicion that a criminal offence has been committed through which or because of which proceeds were gained or that such proceeds were obtained for another person or transferred to that person.*

At the international level, the majority of information exchanges are made by OMLP. The State Prosecutor's Office steps in when the case is sent for further investigation to the police or prosecution.

In the case of the State Prosecutor's Office, the cooperation and exchange of information at the domestic level are prescribed in article 82 of the State Prosecutor's Order. The State prosecutor has an obligation to notify the reporting person (and in cases of money-laundering, to notify the police or OMLP) in case of a dismissal of a criminal report. In the reasoning of the decision, the State prosecutor should provide reasons that the criminal report is not suitable for further prosecution. With the explanation of the reasons for dismissal of criminal charges, both the police and OMLP are informed of the evidence and facts necessary to conduct the criminal investigation

or file a criminal charge. It is believed that this exchange is instrumental in organizing detection and investigation in other ongoing and future cases.

In cases when criminal proceedings are initiated on suspicion of ML/TF and when the centralisation of data has been provided under international agreements, the authority that conducts criminal proceedings shall immediately send to the ministry responsible for internal affairs data about the criminal offence and its perpetrator. In addition, the court of the first instance shall send the final judgment. Whenever a criminal offence of money-laundering or criminal offences connected to money-laundering is involved, data shall be sent without delay to the body responsible for the prevention of money-laundering.

In criminal proceedings, the State Prosecutor's Office considers all forms of cooperation, from mutual legal assistance and informal requests to bilateral agreements on cooperation. The nature of cooperation depends on the requesting country. As it concerns prosecution authorities, in particular, each State prosecutor may receive or make requests related to international cooperation through direct contacts with foreign counterparts within the European Union.

State prosecutors participate in and are also supported by Eurojust, which assists in obtaining evidence and necessary information to decide whether to commence or continue criminal proceedings or in facilitating MLA requests. There has been a rise in the number of requests for assistance from State prosecutors through Eurojust during pre-trial procedures. In 2014, Slovenian competent authorities requested operational assistance from other member States through Eurojust in 104 cases; in 2015, 109 cases. Money-laundering was in the second position among the criminal offences dealt with in these cases (17 cases), while fraud, including business fraud and tax evasion, occupies the first position (30 cases). The number of cases in which Slovenia has been requested to provide assistance via Eurojust was 41 in 2014 and 49 in 2015. The majority of these requests were related to money-laundering, fraud and drug trafficking.

Direct communication between judicial authorities for MLA is also allowed between non-EU member States on the basis of treaties or if reciprocity applies (para. 3 of art. 515, CPA). But it is quite rare to use direct communication between judicial authorities from non-EU countries. Mutual legal assistance with those countries mostly takes place through official channels, which are not very fast.

The current legal framework allows cooperation and coordination with other countries on asset identification, seizure, and confiscation. As noted above, the OMLP is the central authority for transmitting requests under the relevant conventions.

Articles 160.a and 160.b of the CPA also enable the formation of specialized investigative teams (SITs) and joint investigative teams (JITs). JITs can include officers of competent authorities of a foreign country and may operate in or outside the territory of Slovenia. Furthermore, the representatives of competent authorities of the European Union, such as Europol, Eurojust, and OLAF, may also participate in the JIT. The tasks, measures, guidance, and other powers must be carried out in accordance with the agreement on the establishment and operation of the JITs. The agreement has to be concluded on the initiative of the State Prosecutor General, the Head of the District State Prosecution Office or the Head of the Specialized Prosecutor's Office. It could also be created upon the initiative of the competent authority of other States.

## **Criminal Procedure Act**

### Article 160a

*(1) The public prosecutor may in exercising his authority under this Act set guidelines for police work and work of the statutory competent body within the ministry responsible for defence (Article 158), by giving directions, expert opinions and proposals for the information gathering and execution of other measures coming within the competence of the police, with a view to detecting a criminal offence and its perpetrator or gathering information necessary for his decision.*

*(2) The procedure, instances, terms and manner of the directing and informing referred to in the preceding paragraph shall be prescribed by the Government of the Republic of Slovenia.*

### Article 160b

*(1) In the case which is the subject to the pre-trial procedure, investigation or criminal procedure in one or more countries, the police may cooperate with the police staff of the other country in the territory or outside*

*the territory of the Republic of Slovenia in carrying out tasks and measures in the pre-trial procedure and investigation procedure for which it is responsible following the provisions of this Act.*

*(2) In carrying out the tasks and measures referred to in the previous paragraph, the police shall be directed by the State Prosecutor pursuant to Article 160.a of this Act and may cooperate with the State Prosecutors of the other country in the territory and outside the territory of the Republic of Slovenia in carrying out the stated activity and in exercising other powers in compliance with the provisions of this Act (joint investigation team).*

*(3) The tasks, measures, guidance and other powers referred to in the previous paragraphs of this Article must be carried out in accordance with the agreement on the establishment and operation of joint investigation team in the territory of the Republic of Slovenia or other countries that shall be concluded on a case by case basis by the State Prosecutor General or under his authorisation by his deputy with the State Prosecution Office, Court, Police or other competent authorities of other states as set out in the Council Framework Decision of 13 June 2002 on joint investigation teams (Official Journal of the European Union, No. L 162/1, 20.6.2002) or in the existing international treaty concluded with a country not being a member of the European Union after obtaining the opinion of the Director General of the Police. The agreement shall be concluded on the initiative of the State Prosecutor General, the Head of the District State Prosecution Office or the Head of the Group of State Prosecutors for Special Affairs or on the initiative of the competent authority of another state.*

*(4) The agreement referred to in the previous paragraph shall lay down which authorities are to conclude the agreement, in which case the joint investigation team will act, the purpose of functioning of the team, the State Prosecutor of the Republic of Slovenia who is its Head in the territory of the Republic of Slovenia, other team members and the duration of its functioning. The State Prosecutor General must notify in writing the Ministry of Justice of the concluded agreement.*

*(5) The police personnel, State Prosecutors or other competent authorities of other states shall carry out tasks, measures, guidance and/or other powers referred to in the first and second paragraphs of this Article in the territory of the Republic of Slovenia only within the framework of the joint investigation team in compliance with the provisions of the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article.*

*(6) If so provided for in the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article, the representatives of competent authorities of the European Union such as for instance EUROPOL, EUROJUST and OLAF may participate in the joint investigation team. The representatives of competent authorities of the European Union shall exercise their powers in the territory of the Republic of Slovenia only within the framework of the joint investigation team in compliance with the provisions of the agreement as stipulated in the third paragraph of this Article.*

*(7) The police organisation units and State Prosecution Offices of the Republic of Slovenia are obliged to offer all the necessary assistance to the joint investigation team.*

*(8) The head of the joint investigation team shall make a report in writing to all its members and the General State Prosecutor upon the completion of the work done by the joint investigation team.*

The State Prosecutor General must notify the MoJ in writing about the concluded agreement. SITs can be established to investigate complex economic and organized crime, which usually needs longer and coordinated operations of a number of authorities and institutions. The State prosecutor or his/her representative may, ex officio or upon a written initiative of the police, establish a specialized investigative team together with the heads of individual authorities or institutions. The competent State prosecutor is in charge of managing and directing the work of the team and determining the method of operation. The State prosecutor may include, for example, tax authorities in the special investigation team if:

- i) he/she deems that a parallel financial investigation is needed in the particular case (when a criminal offence results in a material benefit);
- ii) when temporary measures for securing assets have been taken in order to secure confiscation at a later stage;
- iii) he/she deems that the collection of financial data is necessary in order to decide whether to issue an

indictment.

In the reference period, twelve SITs have been formed, and six are still operational.

The Forfeiture of Illegal Origin Act also contains provisions on international cooperation largely coordinated and implemented by State prosecutors who are authorized to conduct financial investigations.

### **Forfeiture of Illegal Origin Act**

#### Article 19 International cooperation

*(1) Where materials need to be obtained from other countries for financial investigation purposes under this Act, the state prosecutor may request such materials directly from the competent authorities of other countries on the basis of an international treaty or on the principle of reciprocity.*

*(2) The state prosecutor may also use the data received from the competent authorities of other countries for financial investigation purposes without prior request unless this is contrary to an international treaty. The state prosecutor may send the data obtained during the financial investigation to a competent authority of a foreign country without prior request by such authority.*

#### *Police service and its cooperation at the international level*

According to article 115 of the Police Tasks and Powers Act, if police officers in the performance of police tasks collect personal and other data on persons from existing databases, State authorities and legal persons that keep databases pursuant to the law and within or in relation to their activities must provide the required personal and other data free of charge upon a written or similar demonstrable request, so that the powers and tasks under this Act may be exercised and performed and that the interests of the rule of law are protected and effectively implemented.

### **Police Tasks and Powers Act**

#### Article 115 (Obligation to provide data)

*(1) If police officers in the performance of police tasks collect personal and other data on persons from existing data bases, state authorities and legal persons that keep data bases pursuant to the law and within or in relation to their activities, must provide the required personal and other data free of charge upon a written or similar demonstrable request, so that the powers and tasks under this Act may be exercised and performed and that the interests of the rule of law are protected and effectively implemented.*

*(2) The Minister may decide that, in cases referred to in the preceding paragraph, entities may only notify the persons whom the data concern of such data provision after the expiry of a specified time limit, which shall not exceed five years.*

*(3) The provision of the preceding paragraph shall also apply to the presentation to the person whom the provided data concern of a list of entities to which their personal and other data were provided in a particular period of time.*

At the Criminal Police Directorate of the General Police Directorate (CPD GPD), the International Police Cooperation Division represents the central service of the Slovenian Police for international operational cooperation (INTERPOL Ljubljana, Europol National Unit, SIRENE Slovenia, liaison officers) and operates at all times. This division consists of two sections:

- International Operations Section (IOS), which is responsible for the exchange of information in operational cases, and
- SIRENE Section, which covers alerts on persons and objects.

The Europol National Unit (within IOS) is a constituent part of the International Police Cooperation Division and serves as a link between Europol and competent state authorities in Slovenia: organizational units of the police, FURS, and the OMLP. It uses a secure SIENA channel to communicate.

Part of the Europol national unit is also the Slovenian liaison bureau at Europol headquarters, with liaison officers who are members of the Slovenian Police. Liaison bureaus at Europol headquarters are part of a platform of law enforcement authorities from Europol partner countries, which makes it possible for operational information to be exchanged quickly.

Liaison officers use secure emails to exchange information. Through regular information exchanges and participation in joint operations and other activities, the police cooperate with law enforcement authorities of the neighbouring and other countries in the fight against money-laundering.

In operational work and training, Slovenian Police actively cooperate with Europol, INTERPOL, SIRENE, CEPOL, and SEPA.

A request received by the International Police Cooperation Division must come via the official INTERPOL, Europol or liaison officers' network channel.

#### *International cooperation among FIUs (arts. 104-113, AML Law)*

The international cooperation in relation to ML/TF among FIUs is stipulated in the framework of Chapter 6.3 of the AML Law. The provisions concerning international cooperation refer to cooperation between the OMLP and foreign financial intelligence units, regardless of their organizational status, and cooperation with the European Commission.

The general principle for international cooperation is defined in article 104 of the AML Law (*for the text of the article, please refer to article 58 of the Convention*). Cooperation between the OMLP and foreign FIUs refers to the exchange of data, information, and documentation concerning clients, transactions, assets, and property regarding which there are grounds to suspect money-laundering, predicate criminal offences, or terrorist financing. Cooperation encompasses:

- a request submitted by the OMLP to foreign financial intelligence units,
- a request submitted by foreign financial intelligence units to the OMLP,
- exchanges based on a spontaneous initiative by the OMLP or foreign financial intelligence units.

Furthermore, the OMLP may issue a written order temporarily suspending a transaction for a maximum of three days also on the basis of a reasoned and written request by the FIU of a member State or a third country responsible for the prevention of ML/TF and inform the competent authorities thereof (para. 1 of art. 96, AML Law).

### **Act on the Prevention of Money Laundering and the Financing of Terrorism**

#### Article 96 (Order temporarily suspending a transaction)

*(1) The Office may issue a written order temporarily suspending a transaction for a maximum of three working days if the Office considers that there are reasonable grounds to suspect money laundering or terrorist financing, and it shall inform the competent authorities thereof.*

*(2) The purpose of the temporary suspension is to give the Office the necessary time to analyse suspicious transactions, other data, and information and to forward its findings to competent authorities.*

The OMLP is a member of the EGMONT group since its establishment. The exchange of information with foreign FIUs takes place in a secure way, mostly via the Egmont Secure Web or FIU.NET, where appropriate.

The OMLP has concluded and signed 44 MOUs, as can be seen below:

List of signed MoU (as of 14 June 2017)



	Country	FIU	Date of signature
1	USA	FINCEN	22.11.1996 (FINCEN) 29.11.1996 (UPPD)
2	Belgium	CTIF-CFI	23.06.1997
3	Italy	UIC - <u>Ufficio Italiano dei Cambi</u>	08.09.1998 (UIC) 25.09.1998 (UPPD)
4	Croatia	USPN	04.02.1999 (UPPD) 11.02.1999 (USPN)
5	Czech Republic	FAU	28.05.1999
6	Romania	National Office for the Prevention and Control of Money Laundering	28.02.2000
7	Slovakia	FIU in the Bureau of the Financial Police	27.07.2000
8	Cyprus	MOKAS	13.06.2001
9	Bulgaria	BFI	14.06.2001
10	Latvia	Office for the Prevention of Laundering of Proceeds Derived from Criminal Activity	12.07.2001
11	Italia	GFI - <u>Guardia di Finanza</u>	01.02.2002
12	Lithuania	Financial Crime Investigation Service	15.05.2002 04.06.2002
13	Macedonia	<u>Urad za preprečevanje pranja denarja</u>	06.06.2002
14	Monaco	SICCFIN	29.01.2003
15	Albania	Directory of Coordinating the Fight against Money Laundering	17.01.2003 30.01.2003
16	Poland	General Inspector of Financial Information	03.06.2003
17	<i>Australia</i>	The Australian Transaction Reports and Analysis Centre (AUSTRAC)	29.10.2003
18	<i>Ukraine</i>	State Department for Financial Monitoring within Ministry of Finance	11.12.2003 12.12.2003
19	<i>Serbia</i>	<u>Republička komisija za sprečavanje pranja novca</u>	30.03.2004
20	<i>Estonia</i>	Money Laundering Information Bureau	11.06.2004
21	Israel	Money Laundering Prohibition Authority	24.06.2004
22	Russia	Financial Monitoring Federal Service	09.12.2004
23	<i>Montenegro</i>	Administration for the Prevention of Money Laundering	28.12.2004
24	Georgia	Financial Monitoring Service	18.01.2005
25	Canada	Financial Reports and Analysis Centre	26. 6. 2005
26	Chile	Financial Analysis Unit	30. 6. 2005
27	BIH	Financial Intelligence Department of the	27. 10. 2005

28	San Marino	Banca Centrale della Repubblica di San Marino, Ufficio Antiriciclaggio	31.1.2006 7.2.2006
29	Dutch Antilles	Meldpunt Ongebruikelijke Transacties	15.12.2006 11.1.2007
30	Moldavia	Centre for Combating Economic Crimes and Corruption	27.10.2008
31	Malta	Financial Intelligence Analysis Unit	27.5.2009
32	Kosovo	Financial Intelligence Centre	21.10.2009
33	Aruba	Reporting Center Unusual Transactions Aruba	20.11.2009
34	Honduras	Unidad de Informacion Financiera	10.1.2011 24.01.2011
35	Iran	FIU Islamska republika Iran	14.6.2011
36	Mongolia	Financial Information Unit	12.7.2011
37	Saudi Arabia	SAFIU - Saudi Arabia Financial Investigation Unit	12.7.2011
38	Sri Lanka	FIU of the Central Bank of Sri Lanka	15.7.2011 9.8.2011
39	Vatican	Autorita di Informazione Finanziaria	9.4.2013 15.4.2013
40	Japan	JAFIC	11.6.2013 14.6.2013
41	Panama	UAF	21.10.2013 12.11.2013
42	Lichtenstein	EFFI	12.3.2014
43	St. Maarten	FIU St. Maarten	30. 11. 2016 30. 12. 2016
44	China	CAMLMAC	22.5.2017 6.6.2017

### Slovenia provided the following examples and statistics:

- 1) At the local level, there have been some cases where the exchange of information was needed from other public authorities to provide the police with information from the land register (Local Court), records of the FURS, register of bank accounts (Agency of the Republic of Slovenia for Public Legal Records and Related Services), register of vessels (Slovenian Maritime Administration), aircraft register (Civil Aviation Agency) and others.

According to article 142 of the CPA, all State agencies shall be bound to extend the necessary assistance to courts and other agencies participating in criminal procedure, especially in matters concerning the detection of crime or the tracing of perpetrators. The CPA lays down in article 148(1) that if grounds exist for suspicion that a criminal offence liable to the public prosecution has been committed, the police shall be bound to take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his/her accomplice do not go into hiding or flee, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conclusion of the criminal proceedings.

### Criminal Procedure Act

#### Article 142

*All state agencies shall be bound to extend the necessary assistance to courts and other agencies participating in criminal procedure, especially in matters concerning the detection of crime or the tracing of perpetrators.*

#### Article 148

*(1) If grounds exist for suspicion that a criminal offence liable to public prosecution has been committed, the police shall be bound to take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings.*

Article 156(5) of the CPA stipulates that if there are reasons to suspect that a criminal offence liable to the public prosecution has been committed or is being prepared and that in order to uncover the criminal offence or its perpetrator, it is necessary to obtain information on the holder or the authorized person of a particular bank account, savings deposit or money deposit, renter or authorized person of a safe deposit box and the time when they were or are used, the police may request a bank, savings bank, payment institution or electronic money institution to provide them with this information without delay, upon a written request, also without the consent of the individual whom the information refers to.

### **Criminal Procedure Act**

#### Article 156

...

*5) If there are reasonable grounds for suspecting that the criminal offence for which a perpetrator is being prosecuted ex officio has been committed or is being prepared, and in order to uncover this criminal offence or the perpetrator thereof it is necessary to obtain information on the holder or the authorised person of a certain payment account, savings account or cash deposit, on the renter or the authorised person of a safety deposit box and on the period in which they were or are being used, the police may, by a written request, order the bank, savings bank, payment institution or the electronic money company to furnish them without delay such information even without the consent of the person to whom these information refers.*

- 2) Official information on concrete cases investigated by the police in individual countries is exchanged via official channels such as Europol, INTERPOL, ARO, OMLP network, etc. The Slovenian Police is member of the Anti-Money Laundering Operational Network (AMON), a network of experts from the police and the State Prosecutor's Office, through which informal information is exchanged.
- 3) At the policy level, inter-departmental working groups can be established, while at the operational level, multidisciplinary working groups can be established under the provisions of article 160.a of the CPA and article 14 of the Forfeiture of Assets of Illegal Origin Act. At the operational level, cooperation and coordination is arranged, especially among the Public Prosecution, the police, the OMLP, and when complex cases of money-laundering are dealt with. In many situations, other State bodies are also involved, such as FURS, Supervisory authorities, etc.

### **Forfeiture of Assets of Illegal Origin Act**

#### Article 13 Directing the financial investigation

*During the financial investigation, the state prosecutor may direct the work of the police, the Tax Administration of the Republic of Slovenia (hereinafter: DURS), CURS, the Office of the Republic of Slovenia for the Prevention of Money Laundering, and other competent state bodies by giving them compulsory instructions, professional opinions and suggestions for gathering intelligence and the performance of other measures within their competence with a view to identifying assets of illegal origin, determining their value and gathering the information required to issue a decision on temporary security of forfeiture, temporary and permanent forfeiture of assets of illegal origin.*

#### Article 14 Financial investigation team

*(1) For financial investigation purposes, the head of the competent state prosecutor's office shall establish a financial investigation team ex officio upon the written proposal of the police, DURS, CURS and the Office of the Republic of Slovenia for the Prevention of Money Laundering.*

*At the end of the financial investigation, the head of the team referred to in the preceding paragraph shall prepare a written report and send it, together with the information gathered, to the head of the competent state prosecutor's office. The report shall include detailed information and evidence gathered on the assets for which there are grounds for suspicion that they may be of illegal origin, on the transfers of such assets to related parties, on the related parties' assets, and on the reasons for any temporary security of forfeiture or temporary forfeiture of assets of illegal origin.*

*(3) The provisions of the act governing claim enforcement and protection and the communication of data on the list of debtor's assets shall apply, mutatis mutandis, to the definition of asset details.*

*(4) The provisions on specialized investigation teams of the act governing criminal proceedings shall apply, mutatis mutandis, to the establishment, structure, management and direction of the financial investigation team.*

*(5) When no financial investigation team is established for investigation purposes, an investigation report written in accordance with paragraphs (2) and (3) of this Article shall be prepared by the competent state prosecutor.*

The legal basis for operational cooperation and coordination is stipulated by the CPA. In accordance with article 160.a of the CPA, a State prosecutor in exercising its powers under the act, inter alia, directs the work of the police, the work of the JIGs (art. 160.b, CPA) and the work of other competent State bodies and institutions in the fields of taxes, duties, financial management, securities, competition protection, prevention of money-laundering, prevention of corruption, eradication of illicit drugs, and inspection. Routing takes place with mandatory instructions, expert opinions and proposals for gathering information and the implementation of other measures to which those authorities and institutions are responsible for detecting the criminal offence and the offender and gathering information necessary for its decision on prosecution.

- 4) In cases of complex crimes, particularly in the fields of economic crimes, corruption and organized crimes, which are subject to pre-trial and require the long-lasting oriented operation of several bodies and institutions aforementioned, the head of the competent State Prosecutor's Office by its own motion or at the written initiative of the police, or the heads of individual bodies and institutions, should set up SITs managed and directed by a competent State prosecutor, and the members of the teams are appointed by the heads of relative bodies and institutions.
- 5) Cooperation and coordination of law enforcement is specifically regulated by the "Decree on the cooperation of the State prosecutorial service, the police and other competent State bodies and institutions in detection and prosecution of perpetrators of criminal offences and operation of specialized and joint investigation teams".

Since 2010, the OMLP has been represented in nine specialized investigation teams established under the provisions of article 160.a of the CPA and in 19 financial investigation teams established under article 14 of the Forfeiture of Assets of Illegal Origin Act.

In cases when pre-trial procedure, investigation or court proceedings may take place in several different jurisdictions, JITs involving the representatives of competent authorities of those jurisdictions can be established under article 160.b of the CPA.

In the area of combating ML/TF, the police and FURS cooperate closely with the OMLP. The special agreements on cooperation among these authorities have been concluded.

Below are described two JITs and one SIT, which were established in money-laundering cases:

**1)** A JIT involving Slovenia (the Specialised State Prosecutor's Office of the Republic of Slovenia) and

Germany (Department of Public Prosecution Bochum) was set up on the initiative of Slovenia on 14 May 2014. Its purpose was to investigate and dismantle an organised crime network active in the area of illegal betting, specifically in relation to manipulated sporting events, in addition to the related offences of bribery, fraud including betraying, corruption and related money laundering. Defendant A and B were charged with bribery and defendant C with corruption. Defendant A was convicted as charged to a combined sentence of three years of imprisonment and a fine of 25,346 Euros. Defendant B was also sentenced to one year of imprisonment and to fine of 6,600 euros. The trial is on-going for defendant C.

Slovenia on 21 November 2014 joined a JIT set up by Finland, Romania and United Kingdom. Its purpose was to facilitate the investigations of offences committed by an organised criminal group in the above-mentioned countries, notably: offences committed on the Internet, including offences related to compromising websites, gaining unauthorized access to servers, stealing data, distributing and/or selling stolen data and money laundering. Eleven defendants were charged for various criminal offences: grand larceny; attack on information systems; use of a counterfeit bank, credit, or other card; and money laundering. Some of the defendants were sentenced to a prison term and a fine; others were given suspended sentences and for one defendant the trial is on-going.

**2)** In 2015-2016, Slovenian police investigated a case of ML and its predicate offence involving the fraudulent use of businesses' information systems. Malicious software was used to hack and access the information system of foreign companies registered abroad. In particular, through malicious software the suspects sent e-mails to companies' accounting departments using the director's e-mail account. The e-mails instructed the accounting departments of the respective company to transfer money into the bank account of a dummy company which the suspects had founded for criminal purposes. In order to register and found the dummy company and open the bank account the suspects also had provided false data (forged identity cards).

Once the money had been transferred by various legal entities to the bank account of the dummy company, the suspects further transferred through e-banking these sums to domestic and foreign bank accounts of other companies. In the course of the preliminary proceedings, the court found that the suspects had tried to launder 1.7 million EUR of illegal proceeds. In cooperation with the OMLP, 1.4 million euros were frozen and subsequently seized.

Given that the suspects had carried out money transfers abroad and had withdrawn money at ATMs and banks in various jurisdictions, many formal and informal meetings were held with foreign law enforcement authorities (Croatia, Bosnia and Herzegovina, Seychelles, Hong Kong, Latvia). Close cooperation was ensured with representatives of the Croatian law enforcement authorities and extensive operational information was exchanged with representatives of the Bosnian law enforcement authorities via INTERPOL. In addition, an MLA request was sent to obtain data from law enforcement authorities from the Seychelles and Hong Kong.

Example of an SIT:

In 2013 the head of the State Prosecutor's Office in Maribor set up a SIT including experts from the Criminal Police, the Tax Authority, the Ministry of Finance, the OMLP, the Ministry of Economic Development and Technology, the Market Inspectorate and the state prosecutor in relation to a case of alleged usury, fraud and money laundering committed by several natural and legal persons. SIT's mandate was to collect evidence and the necessary information to decide whether to initiate criminal proceedings against the suspects and to file a criminal report. As a result of SIT's work, State Prosecutor's Office in Maribor filed an indictment in December 2016 against six persons (two natural and four legal persons) for committing the continuous crimes of usury, fraud, embezzlement and unauthorised use of another's property. The criminal proceedings are still underway.

**(b) Observations on the implementation of the article**

Slovenia has established a Financial Intelligence Unit (FIU) (arts. 2 and 19, Organization and Competence of Ministries Act) and has domestic coordination meetings and platforms such as the Permanent Coordination Group,



which serves as a platform for meetings and discussions of relevant bodies. These bodies represent all supervisory authorities and meet periodically to address relevant issues.

The relevant provisions of the CPA and the Forfeiture of Assets of Illegal Origin Act (FAIOA) impose an obligation on all State agencies to cooperate with investigation authorities with respect to the investigation of any criminal offense (arts. 142, 148 and 156, CPA and art. 8, FAIOA).

Slovenia has a legal mechanism for cooperation among domestic competent authorities. The legislation establishes obligations for the competent authorities to transmit necessary data on money-laundering and to exchange information where appropriate. The CPA allows the representatives of non-investigative authorities to be included in the JITs to investigate criminal offences related to ML/TF.

In addition, Slovenia has a legal framework for cooperation at the international level through various competent authorities. As a member of the European Union, Slovenia has established a sound framework for international cooperation with the EU member States.

### ***(c) Successes and good practices***

**Slovenia has established domestic coordination meetings and platforms which meet periodically and represent all supervisory authorities.**

### ***Paragraph 2 of article 14***

*States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

As a member of the European Union, Slovenia has an obligation to implement legally binding acts of the Community. In 2007, EU Regulation No 1889/2005 on Controls of Cash Entering or Leaving the Community (Regulation 1889/2005/EC) entered into force. Based on the Regulation 1889/2005/EC, a declaration system for incoming and outgoing cross-border transportation of currency and bearer negotiable instruments (BNIs) is implemented by the Foreign Exchange Act, which requires the competent authorities to implement the Regulation 1889/2005/EC and the sanctions for breaches thereof.

A declaration is required for all physical cross-border transportation, whether by travellers or through mail and cargo. This requirement is set up in article 14 of the Foreign Exchange Act, requiring customs to conduct supervision of the nature and quantity of cash transported into or out of the Community by residents and non-residents in passenger transport, goods transport and mail.

Obligation to declare cash (currency or BNIs) is prescribed in article 3 of the Regulation 1889/2005/EC imposing on any natural person entering or leaving the Community and carrying cash of a value of €10,000 or more an obligation to declare that sum to the competent authorities of the member State. According to article 2(2) of the Foreign Exchange Act, the customs authority (FURS) is designated as the competent authority responsible for the implementation of the Regulation 1889/2005/EC.

A written declaration system for all travellers carrying cash of a value of €10,000 or more is prescribed by paragraphs 3 and 4 of article 3 of the Foreign Exchange Act pursuant to article 3 of the Regulation 1889/2005/EC. The declaration of cash specified in paragraph 1 of article 3 of the act has to include the declarer's details (including full name, date, place of birth, and nationality), the owner of the cash, the intended recipient of the cash, the amount and nature of the cash, the origin and intended use of the cash, the transport route and the means of transport. The information specified above should be submitted to the customs authority in written form.

Sanctions for breaches of the provisions related to false declarations are prescribed in articles 16 and 17 of the Foreign Exchange Act. If the natural or legal person submits false or incomplete information to the customs

authority when declaring the transportation of cash into or out of the Community, an administrative sanction of a fine between €500 and €42,000 can be imposed under article 16 of the Foreign Exchange Act. A fine might also be imposed on the responsible person of the legal person.

Another sanction prescribed in case of undeclared cash under paragraph 2 of article 14 of the Foreign Exchange Act is the seizure of an entire consignment of undeclared cash if it amounts to €10,000 or more and the means of transport according to article 17 of the Foreign Exchange Act.

## **Regulation 1889/2005/EC**

### Article 3 Obligation to declare

*1. Any natural person entering or leaving the Community and carrying cash of a value of EUR 10 000 or more shall declare that sum to the competent authorities of the Member State through which he is entering or leaving the Community in accordance with this Regulation. The obligation to declare shall not have been fulfilled if the information provided is incorrect or incomplete.*

*2. The declaration referred to in paragraph 1 shall contain details of:*

- (a) the declarant, including full name, date and place of birth and nationality;*
- (b) the owner of the cash;*
- (c) the intended recipient of the cash;*
- (d) the amount and nature of the cash;*
- (e) the provenance and intended use of the cash;*
- (f) the transport route;*
- (g) the means of transport.*

*3. Information shall be provided in writing, orally or electronically, to be determined by the Member State referred to in paragraph 1. However, where the declarant so requests, he shall be entitled to provide the information in writing. Where a written declaration has been lodged, an endorsed copy shall be delivered to the declarant upon request.*

## **Foreign Exchange Act**

### Article 3 (cash, competent authority and data transmission)

*(1) For the purposes of this Act, cash means:*

- bearer negotiable instruments, including bearer cash instruments, such as traveller's checks, transferable instruments (including checks, debentures and money orders) issued to bearer, unrestricted, issued for the benefit of the fictitious payee or in other forms allowing the transfer of the address at the time of handover, and incomplete instruments (including checks, debentures and money orders) which are otherwise signed but without indicating the payee's name, and*
- cash (banknotes and coins in circulation).*

*(2) The implementation of Regulation 1889/2005 / EC is the responsibility of the customs authority.*

*(3) The cash declaration referred to in the first paragraph of this Article shall contain details of the applicant (including full name, date and place of birth and nationality), the cash owner, intended recipient of the cash, the amount and type of cash, the origin and purpose of the use of the cash, the route of transport and the transport means.*

*(4) The information referred to in the previous paragraph shall be provided to the customs authority in writing.*

### Article 14 (scope and controls of the customs authority)

*(1) The customs authority shall exercise control over the type and quantity of cash transferred to the Community or from the Community by residents and non-residents in the passenger, goods and postal traffic.*

*(2) The customs authority shall confiscate all undeclared cash, if that amount is EUR 10,000 or more, and*



*the means of transport referred to in Article 17 of this Act.*

*(3) Where the return of forfeited cash which has not been seized in a misdemeanor proceeding is not possible or the right of return has become obsolete in accordance with the law governing the tax procedure, the forfeited cash shall be revenue from the state budget.*

*(4) The head of the customs authority shall decide on the transfer of the funds referred to in the previous paragraph from sub-accounts opened for seized cash to the sub-account of the Budget of the Republic of Slovenia.*

*( 5 ) The regulation on the retention of forfeited cash shall be issued by the Minister.*

#### Article 15 (deleted)

### IV. CHAPTER PROVISIONS ON VIOLATIONS

#### Article 16 (violations)

*(1) A fine of EUR 2,100 to EUR 42,000 shall be imposed on a legal person, with a fine of EUR 820 up to EUR 16,400 a sole proprietor or an individual pursuing an activity, and a fine of EUR 500 to 5,000 if:*

*1. to bring into the Community or to withdraw from the Community a cash amount of EUR 10,000 or more (Article 3) without notification to the customs authority;*

*2. performs exchange transactions in contravention of the conditions referred to in Article 8 of this Act;*

*3. provide incorrect or incomplete information to the customs authority when declaring cash entry or withdrawal from the territory of the Community;*

*4. performs exchange operations without the permission of the Bank of Slovenia.*

*(2) A fine of EUR 820 to 4,100 shall also be imposed on a responsible person of a legal person, a responsible person of a sole proprietorship of an individual or a responsible person of a self-employed person, or a responsible person of a state body or a self-governing local community.*

*(3) In an expedited offense procedure, the offender referred to in the preceding paragraphs may also be fined in excess of the minimum prescribed level if the fine is prescribed in the range.*

#### Article 17 (withdrawal of items)

*(1) In cases where the perpetrator fails to submit adequate proofs of the origin of the cash, on the basis of which it is possible to unambiguously determine the origin of the cash and their authenticity, in addition to the fine, a minor sanction shall be imposed on the seizure of items used or intended. for the commission of the misdemeanor, or for the commission of the offense.*

*(2) If adequate proof of the origin of the cash is not provided in the proceedings, the cash referred to in point 1 of the first paragraph of Article 16 of this Act may be withdrawn even if it is not the perpetrator's property.*

*(3) If the value of the object of the offense referred to in point 1 of the first paragraph of Article 16 of this Act exceeds one third of the value of the means of transport in which it was hidden, such means of transport shall also be considered as the object of the offense and shall be forfeited.*

*(4) The means of transport used for the provision of public transport services shall be confiscated unless it is the property of the offender, only if the owner knows that it has been used for the offense.*

#### **Slovenia provided the following examples and statistics:**

Number of cash declarations / cash non-declarations / cash seizures / penalties from 2014 to 2016:

	Cash declarations	Cash non-declarations	Cash seizures	Penalties
2014	115	1	11000 EUR	500 EUR
2015	136	/	/	/
2016	105	/	/	/

### (b) Observations on the implementation of the article

Regulation (EC) No 1889/2005 on controls of cash entering or leaving the Community supported by the Foreign Exchange Act requires all persons entering or leaving the EU to declare cash and bearer negotiable instruments equal or in excess of €10,000 to the customs authority which is responsible for centralizing, collecting, registering and processing the information contained in the declarations (arts. 3 and 14, Foreign Exchange Act).

Sanctions for undeclared, false, or incomplete information to the customs authority range from a fine between €500 and €42,000 to the seizure of the consignment and means of transportation (arts. 14-17, Foreign Exchange Act).

### Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

### (a) Summary of information relevant to reviewing the implementation of the article

With regard to electronic transfers, the EU Regulation 2015/847 on Information Accompanying Transfers of Funds (Regulation 2015/847) is directly applicable in all EU member states. The Regulation entered into force on 26 June 2017; thus, the credit and financial institutions are obliged to implement its provisions.

In addition, Slovenia has already prepared a draft of the regulation implementing the EU Regulation 2015/847 in order to define competent supervisory authorities and the sanctions in case of non-compliance. According to the draft regulation, the BoS was foreseen to be the competent supervisory authority with the power to impose adequate sanctions.

Obligations arising from the previous Regulation (1781/2006) are included within the existing BoS's guidance. In the same manner, the obligations of the new Regulation 2015/847 were covered in the new version of BoS's guidance. The new BoS's guidance was adopted at the end of 2017.<sup>141</sup>

As regards the money or value transfer services, these services may be conducted only by entities having authorization for payment services issued by the BoS or a competent authority from a member state. In addition, the Act on Payment Systems and Services provides fines in the cases when payment services are conducted by any other non-authorized entities.

Currently, only five institutions offer money or value transfer services in Slovenia (two banks act as agents of Western Union, two banks act as agents of MoneyGram, and one Western Union agent operating outside the banking sector). According to the AML Law (art. 4), all the institutions are obliged persons and are supervised by the BoS.

<sup>141</sup> EU Regulation no. 2015/847, which replaced EU Regulation no. 2006/1781, is directly applicable in Slovenia since 26 June 2017. **Developments after the country visit:** Following adoption of EU Regulation 2015/847 all the deficiencies have been addressed. Slovenia is re-rated as compliant with R.16 according to [Moneyval Follow-up report](#) from December 2018.

More detailed information on AML/CFT preventive measures (including the transfer of funds) is provided in Chapter 5 and the Technical Compliance Annex (Recommendation 16) of Slovenian MER.

## **EU Regulation 2015/847**

### Article 4 Information accompanying transfers of funds

1. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payer:

- (a) the name of the payer;
- (b) the payer's payment account number; and
- (c) the payer's address, official personal document number, customer identification number or date and place of birth.

2. The payment service provider of the payer shall ensure that transfers of funds are accompanied by the following information on the payee:

- (a) the name of the payee; and
- (b) the payee's payment account number.

3. By way of derogation from point (b) of paragraph 1 and point (b) of paragraph 2, in the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number(s).

4. Before transferring funds, the payment service provider of the payer shall verify the accuracy of the information referred to in paragraph 1 on the basis of documents, data or information obtained from a reliable and independent source.

5. Verification as referred to in paragraph 4 shall be deemed to have taken place where:

- (a) a payer's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or
- (b) Article 14(5) of Directive (EU) 2015/849 applies to the payer.

6. Without prejudice to the derogations provided for in Articles 5 and 6, the payment service provider of the payer shall not execute any transfer of funds before ensuring full compliance with this Article.

### Article 7 Detection of missing information on the payer or the payee

1. The payment service provider of the payee shall implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

2. The payment service provider of the payee shall implement effective procedures, including, where appropriate, ex-post monitoring or real-time monitoring, in order to detect whether the following information on the payer or the payee is missing:

- (a) for transfers of funds where the payment service provider of the payer is established in the Union, the information referred to in Article 5;
- (b) for transfers of funds where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2);
- (c) for batch file transfers where the payment service provider of the payer is established outside the Union, the information referred to in Article 4(1) and (2) in respect of that batch file transfer.

3. In the case of transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked, before crediting the payee's payment account or making the funds available to the payee, the payment service provider of the payee shall verify

*the accuracy of the information on the payee referred to in paragraph 2 of this Article on the basis of documents, data or information obtained from a reliable and independent source, without prejudice to the requirements laid down in Articles 69 and 70 of Directive 2007/64/EC.*

*4. In the case of transfers of funds not exceeding EUR 1 000 that do not appear to be linked to other transfers of funds which, together with the transfer in question, exceed EUR 1 000, the payment service provider of the payee need not verify the accuracy of the information on the payee, unless the payment service provider of the payee:*

- (a) effects the pay-out of the funds in cash or in anonymous electronic money; or*
- (b) has reasonable grounds for suspecting money laundering or terrorist financing.*

*5. Verification as referred to in paragraphs 3 and 4 shall be deemed to have taken place where:*

*(a) a payee's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or*

*(b) Article 14(5) of Directive (EU) 2015/849 applies to the payee.*

#### Article 8 Transfers of funds with missing or incomplete information on the payer or the payee

*1. The payment service provider of the payee shall implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.*

*Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee, on a risk-sensitive basis.*

*2. Where a payment service provider repeatedly fails to provide the required information on the payer or the payee, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider, or restricting or terminating its business relationship with that payment service provider.*

*The payment service provider of the payee shall report that failure, and the steps taken, to the competent authority responsible for monitoring compliance with anti-money laundering and counter terrorist financing provisions.*

#### Article 14 Provision of information

*Payment service providers shall respond fully and without delay, including by means of a central contact point in accordance with Article 45(9) of Directive (EU) 2015/849, where such a contact point has been appointed, and in accordance with the procedural requirements laid down in the national law of the Member State in which they are established, to enquiries exclusively from the authorities responsible for preventing and combating money laundering or terrorist financing of that Member State concerning the information required under this Regulation.*

The implementation is governed by the regular AML/CFT supervision regime, and in this respect, no sanctions have been imposed.

#### ***(b) Observations on the implementation of the article***

Slovenia has various provisions for electronic transfers and money remitters. These include European Union Regulation 2015/847 on Information Accompanying Transfers of Funds, the guidance note of 18 February 2019 on information accompanying transfers of funds, and European Union Regulation 260/2012 establishing technical and business requirements for credit transfers and direct debits in euros.

The Regulation 2015/847 establishes specific rules on the information that should accompany transfers in relation to both the payer and payee throughout the payment chain. Such information should be kept by the payment service provider for five years, and where it is necessary, this period can be extended for another five years.

In the case of missing or incomplete information, the payment service provider must have effective risk-based procedures for deciding whether to execute, reject or suspend a transfer of funds that lacks the required information.

#### ***Paragraph 4 of article 14***

*4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Measures to prevent ML/TF in Slovenia are ensured by taking into account the FATF standards and EU legal framework. The new AML Law is in line with the European Union Fourth Anti-Money Laundering Directive 2015/849/EU and the revised FATF Recommendations 2012.

As a member of MONEYVAL, Slovenia is required to consider guidelines, public statements, working group reports, and any other relevant documents issued by the FATF and MONEYVAL.

In addition, European supervisory authorities (EBA, ESMA, EIOPA) also have a mandate (according to the Directive 2015/849) to issue guidance, regulatory technical standards and opinions to ensure common understanding and implementation of the Directive across the EU. After the relevant guidance and technical regulatory standards are published, each member State is required to declare whether it is planning to comply or to explain the reasons for non-compliance. In this respect, Slovenian financial supervisory authorities (BoS, ISA, and SMA) are required to consider EU guidance in the process of issuing their own guidance, which is also required by the AML Law.

The Basel Committee for Banking Supervision also issues AML/CFT guidance in order to highlight the elements of effective management of AML/CFT risks.

All these guidelines are taken into account by the BoS in the process of updating existing AML/CFT guidance for the banking sector. It is expected that the updated AML/CFT guidelines will be adopted by the end of 2017.

#### **Slovenia provided the following examples and statistics:**

FATF guidelines are broadly taken into consideration. Regarding the financial industry, the guidelines, technical standards and opinions issued by the EU supervisory authorities (EBA, ESMA, EIOPA) are the most relevant.

The most credible indicator of compliance with AML/CFT international standards and guidelines is the last MER Slovenia.

#### ***(b) Observations on the implementation of the article***

Slovenia uses guidelines, mandatory regulations, standards and policies issued by various international instruments and bodies, such as FATF and MONEYVAL, for the development of its own AML/CFT regime. In addition, Slovenia is required to comply with the legal framework of the EU on the implementation of policies and regulations against ML/TF.

#### ***Paragraph 5 of article 14***

*5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.*

***(a) Summary of information relevant to reviewing the implementation of the article***

The Slovenian Police actively participates in several projects, notably in CARIN, an informal international network to cooperate in all aspects of criminal prosecution and set up an effective confiscation mechanism of proceeds of crime.

The Slovenian Police also assists the national authority for international and national action in asset recovery (ARO), and is designated as a contact point of the Expert Information Centre at the Office of the State Prosecutor General.

The Forfeiture of Assets of Illegal Origin Act determines the work methods of law enforcement authorities and also includes various forms of international cooperation through the asset recovery office (arts. 19 and 48). On the basis of an agreement with the Office of the State Prosecutor General, the Police performs tasks of the asset recovery office at the national level.

The Slovenian Police participates as a partner in the Twinning project “Support to the fight against money laundering” in Bosnia and Herzegovina to assist in their fight against money-laundering. The Slovenian Police is also part of the Anti-Money Laundering Operational Network (AMON), a network of experts from police and prosecution services, through which representatives often exchange informal information.

The OMLP actively participates in the EGMONT’s activities as a member. A number of representatives of the OMLP work as members of the Expert Group on Money Laundering and Terrorist Financing (EGLMTF) and the Financial Intelligence Unit (FIU) Platform. Both groups were established by the EU Commission. Furthermore, a representative of the OMLP serves as the head of the Slovenian delegation at the Committee of Experts on the Evaluation of AML/CFT measures (MONEYVAL) of the Council of Europe. A representative of the OMLP also attends meetings of the Working Party on Financial Services at the Council of the EU.

The OMLP has been recently involved in the Twinning project to support the former Yugoslav Republic of Macedonia and Bosnia and Hercegovina in the fight against money-laundering.

In addition, annual regional conferences were organized with neighbouring countries aimed at exchanging experiences and best practices related to AML/CFT regimes.

To effectively combat crime at the local level, the Government has adopted the Decree on the cooperation of the State prosecutorial service, the Police and other competent State bodies and institutions in the detection and prosecution of perpetrators of criminal offences and the operation of SITs and JITs. The decree promotes and regulates forms of cooperation between different national authorities. Specifics on JITs are described under subparagraph 1 (b) of article 14, which is one of the forms of regional and global cooperation among different authorities.

Slovenia is also a member of the Committee of Experts on the Evaluation of Anti-Money-Laundering Measures and the Financing Terrorism (MONEYVAL), a body within the Council of Europe, whereas the Police has membership in different international bodies (INTERPOL, Europol, Schengen area, SECI Centre - an association of police and customs authorities of thirteen countries of South-East Europe, CARIN, etc.) which to a large extent facilitates cooperation in the above-mentioned fields.

The promotion and development of the global, regional and other levels of international cooperation among law enforcement authorities are conducted mostly by MLA activities.

*See also the summary under subparagraph 1(b) of article 14 of the Convention.*

**Slovenia provided the following examples and statistics:**

The Slovenian Police participates in projects such as ARO, CARIN, AMON, and Twinning BIH. From 2010 to 2016, the Slovenian Police received and replied to 1061 requests from other countries for money-laundering checks. During the same period, the Slovenian Police sent out 504 requests for cooperation to foreign colleagues.

At the moment, the OMLP has concluded and signed 44 MOUs.

*Please see the information provided under paragraph 1 (b) of article 14 of the Convention.*



### ***(b) Observations on the implementation of the article***

Slovenian competent authorities actively participate in bilateral, regional and international cooperation in order to combat money-laundering, including through various networks, platforms and initiatives, such as Interpol, Europol, Egmont Group, CARIN, ARO, and so on.

## **V. Asset recovery**

### ***Article 51. General provision***

*1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

**Slovenia has provided the below information for its implementation of the provision under review:**

The general principle in Slovenia's legal system is that no one shall retain the property gained through or in relation to the commission of a criminal offence.

Slovenia has the legal framework for both criminal confiscations under the Criminal Code (CC) and civil confiscation under the Forfeiture of Assets of Illegal Origin Act (FAIOA). There are no limits as to the type and nature of property subject to confiscation. Different avenues can be pursued to reach the final confiscation. In criminal law, the Slovenian system recognizes the classic conviction-based confiscation and also non-conviction-based confiscation, limited to corruption and money-laundering offences. The court can also apply extended confiscation in cases of organized crime; however, the burden of proof is not reversed. Further, there is a possibility of civil forfeiture for an extensive catalogue of crimes, and it is non-conviction-based forfeiture with a reversed burden of proof.

Money, valuables, and any other property gained through the commission of an offence must be confiscated ex officio (art. 499, CPA). If the direct benefit cannot be confiscated, then the property of equivalent value is subject to confiscation. Proceeds or property acquired or at the disposal of a criminal organization are also subject to confiscation.

Financial investigations (as per the CPA) are to be carried out in parallel with criminal investigations. In practice, financial investigations are part of regular investigatory activities of the criminal proceeds. In the course of financial investigations, the police gather evidence related to the criminal offence and the proceeds of crime. The police can seize the instrumentalities, the objects of the criminal offence and any evidence. Although confiscation of instrumentalities is deemed a common practice, there have been cases where this principle has not been applied, as the police are not authorized to freeze or confiscate the proceeds of crime. They can, however, propose to the State prosecutors to request such measures taken by the court. Only State prosecutors are authorized to file such requests before the court. The court, if finding the request reasonable, should approve it within 2-3 days.

Provisional measures can be ordered against the accused/the suspect, the recipient of the proceeds of crime, or the third person who is the final 'beneficiary' of the proceeds (art. 502, CPA). The order can be set for a duration of three months and prolonged further (art. 502b(3), CPA). This measure can be imposed prior to the official launching of the investigation or prior to the filing of the criminal complaint and, in such cases, can last up to a maximum of one year. In the course of the investigation, the total duration of the provisional measure may not last more than two years. Once the criminal complaint has been filed and until the first instance proceeding has been finalized, the total duration of the provisional measure cannot exceed three years (art. 502b(4), CPA). Overall, from the time it is imposed up until the final court decision, the provisional measure may not last longer than ten



years (art. 502b(5), CPA). The defendant is informed about the application of the provisional measure only when it has been ordered by the judge. The defendant can appeal the order, but the appeal does not suspend the implementation of the measure.

The importance of the confiscation of proceeds is seen from various documents adopted by the State Prosecutor's Office. The State Prosecutor's Office has defined its strategic goals in the Prosecution Policy document adopted in 2012.<sup>142</sup> The document prioritizes, inter alia, the fight against economic crime (including money-laundering) and, in parallel, confiscation of criminally obtained assets. State prosecutors have also advised that at the strategic level, a Working Group (set up in 2012 based on the Strategy of Controlling Economic Crime) has monitored, evaluated and coordinated the implementation of the decree on the cooperation of prosecutors, police and other institutions in the detection and prosecution of perpetrators of criminal offences and operation of SITs and JITs, thus fostering the effective confiscation of proceeds of crime. As for the operational level, guidelines on civil forfeiture have been developed.

State prosecutors have an important role in cases when the confiscation of proceeds is taken into consideration in the criminal procedure, and there is a danger that those proceeds could be used for further criminal activity or to conceal, alienate, destroy or otherwise dispose of them in order to prevent or render substantially difficult their confiscation after the completed criminal procedure. The State prosecutor can also, on the request sent by a State party, file a motion for provisional securing of the request for the confiscation of proceeds. Such securing is ordered by the court. The court may also order such provisional securing in the pre-trial procedure if there are reasonable grounds for suspicion that a criminal offence has been committed (arts. 502/1 and 502/2, CPA).

#### *Relevant provisions of the CPA*

Article 514 of the CPA establishes that international assistance in criminal matters is administered pursuant to the provisions of the act, and articles 515/1 and 515/2 describe the mechanism of how the requests for legal assistance are transmitted to foreign authorities.

Article 516/1 of the CPA lays down that the Ministry of Foreign Affairs should send petitions for legal aid received from foreign agencies to the MoJ, which should forward the petitions to the circuit court, in whose territory resides the person who should be served with a document, or interrogated, or confronted, or in whose territory an investigative act should be conducted, for its consideration. If the petition refers to an act that is under the jurisdiction of the State Prosecutor's Office under domestic law, the MoJ shall send the petition to the State Prosecutor's Office, in the area of which the act needs to be conducted.

Article 516/4 of the CPA establishes that the permissibility and the manner of performance of an action requested by a foreign agency shall be decided by the court pursuant to domestic regulations (*for the text of the article, please see below*).

#### *Forms of international cooperation*

As stated in the summary provided under subparagraph 1(b) of article 54 of the Convention, international legal assistance in criminal matters is implemented in three different forms depending on the requesting State and requested measures.

The first is international cooperation between the EU member States. In this case, the cooperation is regulated by the Cooperation in Criminal Matters with the Member States of the European Union Act. This act enables informal and direct communication between competent bodies of the member States.

### **Cooperation in Criminal Matters with the Member States of the European Union Act**

#### Article 203

*(1) Regarding recognition and enforcement the domestic court shall decide by decision on the basis of the following documents:*

- 1. A decision ordering the seizure or temporary protection, which is to be enforced;*
- 2. The form set out in Annex 11 of this Act, completed and certified by the competent authority of the issuing State;*

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<sup>142</sup> Such policies are adopted upon designation of the new Prosecutor General, so the new strategy is expected to be in place in May 2017.

### *3. Translation of the certificate into Slovene or English.*

*(2) If the certificate has not been sent, it is incomplete or obviously contrary to the decision, the competent domestic court may:*

*1. Designate the authority of the State of the order which issued the decision an appropriate period within which it should send or supplement it or correct the certificate;*

*2. Adopt another relevant document sent by the authority of the State of the order;*

*3. Approve the request if the submitted data are sufficient for the decision.*

*(3) If, for the purpose of ensuring the validity of evidence, the competent authority of the State of instruction requests the execution of a decision under the rules and procedure laid down in the law of the State of the order, the domestic court shall grant such a request if this is not contrary to the fundamental principles of law in force in the Republic of Slovenia.*

*(4) The law of the Republic of Slovenia shall apply to additional coercive measures which are necessary for the enforcement of the decision.*

*(5) The domestic court must decide as soon as possible, if possible within twenty-four hours of receipt of the decision.*

*(6) The decision shall be sent to the competent authority or to the person who executes it.*

*(7) The decision shall be served to persons, who are affected by it, and the state prosecutor.*

*(8) The persons referred to in the preceding paragraph may file a complaint against the decision within eight days of receipt of the decision. An appeal against a decision cannot be challenged by the substantive basis arising from the freezing or insurance decision. The appeal shall not delay the execution of the decision. The Senate of the High Court must decide on the appeal within three days. The revision of the procedure and the request for the protection of legality are not admissible.*

*(9) If the seizure or insurance and also the seizure of an object or proceeds are proposed in the same case, the domestic court shall also decide on this proposal and implement it in accordance with the provisions of Chapter 15 of this Act.*

The second form is a cooperation between countries with international agreements and bilateral treaties. In those cases, the cooperation is conducted in a way foreseen in the agreement or treaty.

The third form is cooperation with non-EU countries and countries with which Slovenia has no agreements. In such cases, all requests are received through the MoJ or the diplomatic channels and in urgent cases through the INTERPOL. In cases of criminal offences of money-laundering or criminal offences connected to money-laundering, requests can also be sent to the body responsible for the prevention of money-laundering.

#### *Mechanisms for the implementation of MLA requests*

In case the State Prosecutor's Office receives a request for the confiscation of proceeds of crime, property, equipment, or other instrumentalities, the actions of State prosecutors vary according to the requesting States parties. If the requesting State party is an EU member, then the request is considered, and if the conditions are met, the State prosecutor files one of the above-mentioned motions within the criminal proceedings in Slovenia. If the requesting State party is a non-EU member, the State prosecutor must act in accordance with the possible bilateral agreement, and if there is no agreement, according to general provisions of the CPA, the request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of Slovenia and does not prejudice its sovereignty and security (Para. 4 of art. 516, CPA).

### **Criminal Procedure Act**

#### **Article 516(4)**

*(4) The permissibility of the act requested by a foreign authority and the manner of its implementation shall be decided on by the competent national authority pursuant to national regulations and international agreements. The request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of the Republic of Slovenia and does not prejudice its sovereignty and security".*

If the motion is granted, the competent authority in Slovenia notifies the requesting country of the time and place of implementing certain procedural acts. Representatives of competent authorities of the requesting country and other participants in the proceedings and their counsels may be present when the act of assistance is implemented if their presence and/or cooperation is probably useful for the appropriate implementation of legal assistance requests.

The legal framework ensures that the return of assets is one of the key principles in the legal system of Slovenia.

**Slovenia provided the following examples and statistics:**

Table: Frozen, seized, confiscated and recovered property following conviction (2010-2016)

(“Conviction based” refers to instances in which the order was applied as part of the sentencing for an underlying predicate offence. Conversely, “non-conviction-based” refers to confiscation executed following the civil proceedings as per the FAOIO law).

2010-2016*								
	Property frozen		Property seized		Property confiscated		Property recovered following conviction**	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
Conviction - based (as per CPC) regarding ML offences	58	77.603.697	4	1.231.650	12	2.274.274 and luxury car	18	6.334.115
Non-conviction - based (civil confiscation as per FAOIO)***	20	16.333.570	3	74.626,82	3	2.176.574	n/a	n/a
<b>Total</b>	<b>78</b>	<b>93.937.267</b>	<b>7</b>	<b>1.306.276,82</b>	<b>15</b>	<b>4.450.848 and luxury car</b>	<b>18</b>	<b>6.334.115</b>
FT	-	-	-	-	-	-	-	-
* Data for 2015 and 2016 is not final								
** Order of restitution								
*** Only for listed criminal offences as set in the FAOIO								

<sup>2</sup> Order of restitution is imposed as a part of a criminal sanction in cases when the assets or their equivalent could not be confiscated from the perpetrator or other recipient. In practice, this means that the perpetrator is obliged to pay (within the maximum of two years) an amount of money equivalent to the benefit made through committing the crime.

**(b) Observations on the implementation of the article**

The asset recovery legal framework in Slovenia consists mainly of the CPA, CC, FAIOA, AML Law, and the Act on Cooperation on Criminal Matters with Members of the European Union.

These allow for criminal, civil, and non-conviction-based forfeiture. In addition, the Convention can be directly applied in Slovenia pursuant to article 8 of the Constitution. Its application is, however, difficult in practice, given the absence of clear domestic policy and procedure.

A number of law enforcement, financial and judicial institutions play a role in the asset recovery process. These include the police, FIU (Office for Money-Laundering Prevention), State prosecutors, the CPC and courts. The police department is the law enforcement authority with competence over the criminal investigation of corruption and other serious crimes under the Police Tasks and Powers Act. In practice, the police conduct investigations and trace assets, and the State prosecutors request measures for their freezing, seizing and confiscation before the

courts. There is no single national institution specialized in the tracing, securing, confiscation, and management of assets. **It is recommended that Slovenia assess whether the creation of a comprehensive system for the effective management of assets, including a specialized authority/unit for the management of assets prior to their return, would be beneficial.**

**(c) Technical assistance needs**

Slovenia needs technical assistance in the creation of a confiscated asset management institution.

**Article 52. Prevention and detection of transfers of proceeds of crime**

**Paragraph 1 of article 52**

*1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.*

**(a) Summary of information relevant to reviewing the implementation of the article**

**Verification of the identity of customers**

*Customer Due Diligence (arts. 4 and 16 – 21, AML Law)*

Pursuant to the AML Law (art. 16(1)), every obliged person is required to conduct Customer Due Diligence measures (CDD measures), which include the following steps:

- a. customer identification and verification,
- b. identification of the ultimate beneficial owner,
- c. obtaining data on purpose and indented nature of the business relationship and other relevant data required by the AML Law, and
- d. on-going monitoring.

CDD measures are required in the following situations (art. 17 (1), AML Law):

- a. when establishing a business relationship with a customer,
- b. when executing a transaction exceeding the amount of €15,000,
- c. when there is a doubt on the adequacy of obtained data and documentation and
- d. always when there is a suspicion of ML/TF referring to the customer, transaction, or source of funds.

Besides these grounds, CDD measures are required for all occasional transactions exceeding €1,000 (art. 18, AML Law). If the obliged person is not able to conduct prescribed CDD measures, the relation should not be established, and the transaction should not be executed.

The obliged person is required to conduct CDD measures, but at the same time, the AML Law allows the possibility of CDD measures being conducted by a third party (on behalf of the obliged person). In this regard, the AML Law defines entities that can act as third-parties and the manner of obtaining customers' data and documentation from third parties (art. 52). The obliged person shall verify in advance whether the third party entrusted to carry out CDD measures meets all the conditions stipulated by the AML Law. CDD performed for the obliged person by a third party may not be accepted as appropriate if, within this procedure, the third party has determined and verified the identity of a customer in the customer's absence. Regardless of the fact that CDD is conducted by a third party, the ultimate responsibility for appropriate CDD measures remains on obliged persons. (arts. 51 – 55, AML Law)

Article 52 of the AML Law also states that a shell bank or other similar credit institutions which do not or may not pursue their activities in the country of registration cannot act as a third party. Article 54 of the AML Law sets procedures for obtaining data and documentation from a third party.

The AML Law also imposes the obligation of implementing a risk-based approach. In this respect, the obliged person is required to conduct a risk assessment and ensure adequate CDD measures, which are proportionate to the risk. According to the AML Law, simplified CDD is allowed for low-risk customers, while enhanced CDD is required for high-risk customers (arts. 13-15, 57-58, and 59-63, AML Law).

As regards the identification of the ultimate beneficial owner (UBO), it is a vital part of CDD measures regardless of any threshold or type of entity (arts. 33-43, AML Law). Obligated entities in Slovenia are required to identify their customers, including occasional ones, as well as all beneficial owners (art. 12, AML Law). They are also required to verify the identities of their clients, set up their risk profiles, and implement an appropriate risk management system (art. 16, AML Law). Beneficial owners are defined under article 35 of the AML Law. Article 16 also creates the obligation to obtain information on the beneficial ownership of all accounts.

On-going monitoring is also a vital part of CDD measures. Within the monitoring, the obliged person is required to check whether the customer's business activities are in line with the purpose and intended nature of the established business relationship and its usual business activities. Within the on-going monitoring, the obliged person must regularly update obtained data and documentation about the customer. Regarding the high-value accounts, they should be treated within the unusual transactions for which it is required to take further steps in order to know the background of such transactions, including identifying the source of wealth and source of funds (arts. 49-50, AML Law).

According to article 16 of the AML Law, CDD comprises determining the beneficial owner of the customer. When there are doubts about the veracity and adequacy of previously obtained data about a customer or beneficial owner, the obliged person shall perform CDD in accordance with the terms and conditions provided in the AML Law.

According to article 33 of the AML Law, a beneficial owner shall be any natural person who ultimately owns, supervises, or otherwise exercises oversight of a customer or a natural person on whose behalf a transaction is carried out. The obliged person shall carry out measures to determine a beneficial owner as an integral part of the CDD.

*More detailed information on AML/CFT preventive measures is provided in Chapter 5 and Technical Compliance annex of Slovenian MER.*

*Obligated persons (art. 4, AML Law)*

*Please see the summary under subparagraph 1(a) of article 14 of the Convention.*

*Tasks and duties of obliged persons, identification of beneficial owners (art. 12, 16, 35, and 41, AML Law)*

## **Act on Prevention of Money Laundering and Financing of Terrorism**

### Article 12 (Tasks and obligations of obliged persons)

*(1) For the purpose of detecting and preventing money laundering and terrorist financing, obliged persons shall carry out tasks stipulated by the present Act and regulations adopted on the basis thereof in the course of their business.*

*(2) The tasks referred to in the preceding paragraph shall comprise:*

- 1. preparing a risk assessment of money laundering and terrorist financing;*
- 2. establishing policies, controls and procedures to successfully mitigate and manage risks of money laundering and terrorist financing;*
- 3. applying measures to acquire knowledge about the customer (hereinafter: customer due diligence) under the terms and conditions and in the manner provided by the present Act;*
- 4. reporting prescribed and requisite data and submitting evidence to the Office in accordance with*

*the provisions of the present Act;*

*5. appointing an authorised person and assistants of the authorised person and ensuring conditions for their work;*

*6. providing regular professional training for workers and ensuring regular internal control of the performance of tasks as per this Act;*

*7. preparing a list of indicators for identifying customers and transactions in respect of which reasonable grounds to suspect money laundering or terrorist financing exist;*

*8. ensuring protection and retention of data and management of records required by this Act;*

*9. implementing policies and procedures of a group and measures for detecting and preventing money laundering and terrorist financing in branches and majority-owned subsidiaries located in third countries;*

*10. implementing other tasks and obligations as per the provisions of this Act and regulations adopted on the basis thereof.*

#### Article 16 (Elements of customer due diligence)

*(1) If not otherwise provided by this Act, customer due diligence shall comprise:*

*1. establishing the customer's identity and verifying the customer's identity on the basis of authentic, independent and objective sources;*

*2. determining the beneficial owner of the customer;*

*3. obtaining data on the purpose and intended nature of the business relationship or transaction, as well as other data pursuant to this Act;*

*4. regular monitoring of business activities undertaken by the customer through the obliged person.*

*(2) In implementing the measures referred to in points 1 and 2 of the preceding paragraph of this Article, obliged persons shall verify that any person who acts on behalf of the customer has the right to representation or is authorised by the respective customer, and according to the provisions of this Act, establish and verify the identity of any person who acts on behalf of the customer.*

*(3) The obliged person shall implement all the measures of customer due diligence referred to in paragraphs 1 and 2 of this Article, whereby it may determine the scope of measures by taking into account the risk of money laundering and terrorist financing.*

*(4) In determining the scope of implementation of the measures referred to in paragraphs 1, 2 and 3 of this Article, the obliged person shall take into account at least:*

- the purpose of concluding and nature of a business relationship;*
- the amount of assets, value of property or scope of transactions;*
- duration of a business relationship; and*
- compliance of business with the purpose of concluding business relationship.*

*(5) The obliged person shall define procedures for implementing the measures referred to in paragraphs 1, 2, 3 and 4 of this Article in its internal regulations.*

*(6) The obliged person shall submit to the supervisory bodies referred to in Article 139 of this Act at their request respective analyses, documents and other information with which it proves the suitability of implemented measures in terms of established risks of money laundering and terrorist financing.*

#### Article 35 (Beneficial owner of a corporate entity)

*(1) Pursuant to this Act, a beneficial owner of a corporate entity shall be:*

*1. any natural person who:*

*- is an indirect or direct owner of a sufficient business share, shares, voting or other rights based on which the person participates in the management of the corporate entity; or*

*- indirectly or directly participates in the capital of the corporate entity with a sufficient share; or*

- has a controlling position in the management of the corporate entity's funds;

2. any natural person who indirectly provides or is providing funds to a corporate entity and on such grounds has the possibility of exercising control, guiding or otherwise substantially influencing the decisions of the management of the corporate entity concerning financing and business operations.

(2) The indication of direct ownership of a natural person or natural persons referred to in indents 1 and 2 of point 1 of the preceding paragraph in the corporate entity shall be ownership of at least 25% of the business share, voting or other rights on the basis of which the natural person participates in the management of the legal entity, or ownership of 25% and one share.

(3) The preceding paragraph shall apply, *mutatis mutandis*, when determining the indirect ownership of a legal entity in the corporate entity under control:

- one or several natural persons, or
- one or several legal entities under the control of the same one or several natural persons.

(4) A natural person who has controlling position in the management of a corporate entity's funds, or who in any other way exercises control, guiding or otherwise substantially influences the decisions of the management of the corporate entity as referred to in paragraph 1 of this Article, may be determined, *inter alia*, on the basis of conditions to be observed by a corporate entity that controls one or several subsidiaries in the preparation of the consolidated annual report as per the Act governing companies.

(5) If no natural person is determined as a beneficial owner as per the provisions of this Article – provided that all possible measures are taken to determine the beneficial owner and on the condition that there are no reasons to suspect money laundering or terrorist financing in relation to the transaction, person, property or assets – one or several persons in management positions shall be deemed as the beneficial owner(s) of the corporate entity.

(6) If doubt arises as to whether the determined natural person is the beneficial owner as per the provisions of this Article, one or several persons in management positions shall be deemed as the beneficial owner(s) of the corporate entity.

#### Article 41 (Obligations of business entities related to identifying a beneficial owner)

(1) The business entities referred to in Articles 35 and 36 hereof entered in the Slovenian Business register must identify the data on their beneficial owner or owners according to the method defined in Articles 35 and 36 hereof.

(2) The business entities referred to in Article 37 must identify the data on their beneficial owner as per Article 37 hereof if their operations result in tax liabilities in the Republic of Slovenia.

(3) The business entities referred to in preceding paragraphs shall set up and manage precise records of data on their beneficial owners that are updated upon every change of data. The content of the records is prescribed in paragraph 16 of Article 137 hereof.

(4) Pursuant to this Act, the business entities referred to in paragraphs 1 and 2 of this Article shall keep the data on their beneficial owners for a period of five years from the day of termination of the beneficial owner's status.

(5) If the business entity referred to in paragraph 1 and 2 of this Article is terminated, a court or authority managing the termination proceedings or status change of the entity without a known successor must order that the data storage on beneficial owners be provided for the period referred to in the preceding paragraph prior to the termination of the business entity.

(6) The provision of this Article shall not apply to business entities that are:

- sole proprietors;
- individuals performing an activity independently;
- single-member limited liability companies; and
- direct or indirect budget users.

(7) The provisions of this Article shall not apply to business entities which are companies in an organised market in which they are obliged to comply with a disclosure requirement that provides suitable



*transparency of ownership information as per the legislation of the European Union or comparable international standards.*

#### Article 44 (Register of beneficial owners)

*(1) A register of beneficial owners (hereinafter referred to: register) in which accurate and updated data on beneficial owners is kept shall be set up for the purpose of providing transparency of ownership structures of business entities and thus prevent abuses of business entities for money laundering and terrorist financing. By setting up the aforementioned register, obliged persons are provided access to relevant data for the needs of implementing customer due diligence, and the law enforcement, courts and supervisory bodies referred to in Article 139 hereof are provided with respective access for the needs of implementing the duties and powers concerning the prevention and detection of money laundering and terrorist financing.*

*(2) The Agency of the Republic of Slovenia for Public Legal Records and Related Services (hereinafter referred to as: register administrator) shall maintain and manage the register.*

*(3) The business entities referred to in Articles 35, 36 and 37 hereof, except for:*

- sole proprietors;*
- individuals performing an activity independently;*
- single-member limited liability companies; and*
- direct or indirect budget users shall enter the data on their beneficial owners and owners' changes*

*in the register within eight days from the entry of the business entity in the Slovenian Business Register or Tax Register if they are not entered in the Slovenian Business Register, or within eight days from the change of data.*

*(4) The provisions of this Article shall not apply to business entities which are companies in an organised market in which they are obliged to comply with a disclosure requirement that provides suitable transparency of ownership information as per the legislation of the European Union or comparable international standards.*

*(5) Business entities shall be responsible for the accuracy of the data entered.*

The Act on the Prevention of Money Laundering and Terrorist Financing foresees the establishment of the register of beneficial owners. The purpose of the register is to provide transparency of ownership structures of business entities and thus prevent abuses of business entities for money-laundering and terrorist financing.

#### *Risk-based approach and risk management (arts. 13-15, AML Law)*

An obliged person has to prepare a risk assessment for individual groups or customers, business relationships, transactions, products, services, or distribution channels and take into account factors of geographical risk with respect to their potential misuse for money-laundering or terrorist financing.

The risk assessment should be prepared by the obliged person according to the guidelines issued by the competent supervisory body and by observing the reports on the findings of national and transnational risk assessments. The findings of risk assessment have to be documented and updated by the obliged person at least every two years. Documented findings shall be available to the competent supervisory bodies at their request.

Upon all important changes in its business processes, such as the introduction of a new product, new business practice, including new distribution channels, new technology for new and existing products, or organizational changes, the obliged person shall perform a relevant assessment of how the changes affect the exposure of the obliged person to the risk of ML/TF.

To carry out efficient mitigation and management of the risk of ML/TF identified, the obliged person has to establish efficient policies, controls, and procedures that are proportional to its activity and size (such as the size and structure of the obliged person, the scope and structure of business operations, types of customers with which the obliged person conducts business, and types of products offered by the obliged person) (art. 15(1)).

The policies, controls, and procedures referred to in the previous paragraph shall include (art. 15(2)):

- development of internal policies, controls, and procedures that refer to:
  - o models of risk management,
  - o customer due diligence,
  - o reporting of data to the OMLP,
  - o protection and retention of data and management of records,
  - o internal control of the performance of tasks in the field of detecting and preventing money-laundering and terrorist financing,
  - o provision of compliance with regulations, and
  - o secure employment and, if required, security clearance of employees as per the Act governing classified information, and
- Establishment of an independent internal audit department verifying internal policies, controls, and procedures referred to in the preceding point if the obliged person is a medium-sized or large company as per the Act governing companies.

The AML Law stipulates that the risk assessment should be prepared by the obliged person according to the guidelines issued by the competent supervisory body, and if the obliged person assesses that a customer presents little risk of money-laundering or terrorist financing, it may implement measures or simplified CDD according to the provisions of the AML Law on simplified CDD (arts. 14, 56-58).

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*For articles 13 – 15 of the AML Law, please see subparagraph 14 (a) of article 14.*

#### *Due diligence relying on third parties (arts. 51-55, AML Law)*

Under the conditions stipulated by the AML Law, an obliged person entering into a business relationship may rely on a third party to apply CDD measures. The obliged person shall verify in advance whether the third party entrusted to carry out CDD meets all the conditions stipulated by the AML Law. CDD performed for the obliged person by a third party may not be accepted as appropriate if, within this procedure, the third party has determined and verified the identity of a customer in the customer's absence. An obliged person who relies on a third party in respect of customer due diligence shall remain responsible for the correct CDD procedure under the AML Law.

#### *Treatment of unusual transactions (art. 50, AML Law)*

In relation to complex or unusually high transactions or transactions that have an unusual structure or have no clearly evident commercially or legally justified purpose or do not comply with or conform to the usual or expected business operation of the customer, the obliged person shall:

- examine the background and purpose of these transactions, including the origin of the proceeds and assets, to such an extent as the circumstances allow; and
- record and keep its findings.

If the obliged person determines that an unusual transaction presents an increased risk of money-laundering or terrorist financing, it has to use one or several measures of enhanced CDD as prescribed in the provisions of the AML Law governing the measures of enhanced CDD procedures.

When dealing with unusual transactions, the obliged person has to exercise due diligence of customers, business relationships or transactions related to the following countries:

- included in the list of high-risk third countries with strategic deficiencies where no suitable measures of preventing or detecting money-laundering or terrorist financing apply. In these cases, the obliged person must apply the measures of enhanced CDD referred to in article 59 of the AML Law (Enhanced CDD). The obliged person has to take into consideration the delegated act adopted by the European Commission as per article 10 of Directive 2015/849/EU, which defines high-risk third countries where no suitable measures to prevent or detect ML/TF apply. The OMLP has to publish the information on these countries on its website.

- with a great possibility of money-laundering or terrorist financing. The list of countries is prepared by the OMLP, whereby it shall also take into account data from competent international organizations. The OMLP publishes the information on these countries on its website.

Article 16(4) of the AML Law establishes that in determining the scope of implementation of the measures referred to in the article, the obliged person shall take into account the amount of assets, value of property, or scope of transactions.

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### Article 50 (Treatment of unusual transactions)

*(1) In relation to complex or unusually high transactions or transactions which have an unusual structure or have no clearly evident commercially or legally justified purpose or do not comply or conform with the usual or expected business operation of the customer, the obliged person shall:*

- *examine the background and purpose of these transactions, including the origin of the proceeds and assets, namely to such an extent as the circumstances allow; and*
- *record and keep its findings.*

*(2) If the obliged person determines that an unusual transaction presents an increased risk of money laundering or terrorist financing, it shall use one or several measures of enhanced customer due diligence as prescribed in the provisions of this Act governing the measures of enhanced customer due diligence.*

*(3) When dealing with unusual transactions, the obliged person shall exercise due diligence of customers, business relationships or transactions related to countries:*

- 1. included on the list of high-risk third countries with strategic deficiencies where no suitable measures of preventing or detecting money laundering or terrorist financing apply; or*
- 2. with a great possibility of money laundering or terrorist financing.*

*(4) In the cases referred to in point 1 of the preceding paragraph, the obliged person must apply the measures of enhanced customer due diligence referred to in Article 59.*

*(5) For the purposes of point 1 of paragraph 3 of this Article, the obliged person shall observe the delegated act adopted by the European Commission as per Article 10 of Directive 2015/849/EU and which defines high-risk third countries where no suitable measures to prevent or detect money laundering and terrorist financing apply. The Office shall also publish the information on these countries on its web site.*

*(6) The list of countries referred to in point 2 of paragraph 3 of this Article shall be prepared by the Office, whereby it shall also take into account data from competent international organisations. The Office shall publish the information on these countries on its web site.*

### *Enhanced CDD measures (art. 59, AML Law)*

Enhanced customer due diligence includes additional measures stipulated by the AML Law in the following cases:

- entering into a correspondent banking relationship with a respondent bank or similar credit institution located in a third country;
- entering into a business relationship or carrying out a transaction with a customer who is a politically exposed person as referred to in article 61 of the AML Law;
- when beneficiaries of life insurance or unit-linked life insurance and beneficial owners of the beneficiary are politically exposed persons as referred to in article 62 of the AML Law;
- when a customer or transaction is linked with a high-risk third country;
- when it assesses that a customer, business relationship, transaction, product, service, country or geographic area present an increased risk of money-laundering or terrorist financing;
- when an increased risk of money-laundering or terrorist financing is established within the national risk assessment.

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### Article 59 (General)

*(1) Enhanced customer due diligence shall, in addition to the measures referred to in paragraph 1 of Article 16 of this Act, include additional measures stipulated by this Act in the following cases:*

- 1. entering into a correspondent banking relationship with a respondent bank or similar credit institution located in a third country;*
- 2. entering into a business relationship or carrying out a transaction referred to in points 2 and 3 of paragraph 1 of Article 17 and Article 18 of this Act with a customer who is a politically exposed person as referred to in Article 61 of this Act;*
- 3. when beneficiaries of life insurance or unit-linked life insurance and beneficial owners of the beneficiary are politically exposed persons as referred to in Article 62 of this Act;*
- 4. when a customer or transaction is linked with a high-risk third country.*

*(2) The obliged person must apply enhanced customer due diligence procedure in all cases referred to in paragraph 1 of this Article and:*

- 1. when as per paragraph 2 of Article 14 of this Act, it assesses that a customer, business relationship, transaction, product, service, country or geographic area present an increased risk of money laundering or terrorist financing;*
- 2. when an increased risk of money laundering or terrorist financing is established as per point 3 of paragraph 2 of Article 9 and the regulation referred to in paragraph 4 of Article 9.*

*(3) In determining customers, business relationships, transactions, products, services, distribution channels, countries or geographic areas regarding which it assesses that they present an enhanced risk of money laundering or terrorist financing, the obliged person shall take into account factors of increased risk determined by the minister responsible for finance in the rules.*

*(4) In determining measures of enhanced customer due diligence, obliged persons shall consider the guidelines of supervisory bodies referred to in Article 139 of this Act on the risk factors and measures that may be adopted in these cases.*

*(5) In determining measures of enhanced customer due diligence, the Bank of Slovenia, Securities Market Agency and Insurance Supervisory Agency shall also consider the guidelines issued by European supervisory authorities.*

### *Politically exposed persons (art. 61, AML Law)*

Politically exposed persons (PEPs) are regulated by the AML Law, and the definition of PEPs includes family members and close associates of persons having a prominent public function. There is no distinction between domestic and foreign PEPs, and in all these cases, enhanced CDD measures are required.

The obliged person has to establish a suitable system of risk management, which also includes a procedure to determine whether a customer or its statutory representative or authorized person is a PEP. This procedure is based on the risk assessment referred to in article 13 of the AML Law and is defined in its internal act while taking account of the guidelines of the competent supervisory body referred to in article 139 of the AML Law. Political exposure is also established for beneficial owners of the customer.

A PEP referred to in the preceding paragraph is any person who is or has been entrusted with a prominent public function in a member State or a third country in the previous year, including immediate family members and close associates. There is no distinction between foreign and domestic PEPs.

When a customer enters into a business relationship or effects a transaction, or when a customer on whose behalf a business relationship is entered into or a transaction effected, or the customer's statutory representative, authorized person or beneficial owner is a PEP, the obliged person takes, in addition to the regular measures the following enhanced CDD measures:

- obtain data on the customer's financial position and data on the source of funds and property that are, or will be, a subject of a business relationship or transaction, namely from the documents and other documentation submitted by the customer;
- an employee of the obliged person who conducts the procedure for entering into a customer relationship with a politically exposed person has to obtain the written approval of his/her superior occupying a senior management position prior to entering into such a relationship.
- after a business relationship has been entered into, the obliged person has to monitor with due diligence the transactions and other business activities affected through the obliged person by a politically exposed person.

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### Article 61 (Politically exposed persons)

*(1) The obliged person shall establish a suitable system of risk management which also includes a procedure to determine whether a customer or its statutory representative or authorised person is a politically exposed person. This procedure based on the risk assessment referred to in Article 13 shall be defined in its internal act while taking account the guidelines of the competent supervisory body referred to in Article 139 of this Act. Political exposure is established also for beneficial owners of the customer.*

*(2) A politically exposed person referred to in the preceding paragraph shall be any person who is or has been entrusted with a prominent public function in a Member State or a third country in the previous year, including immediate family members and close associates.*

*(3) Natural persons who are, or have been, entrusted with prominent public function shall be the following:*

- a) heads of state, prime ministers, ministers and their deputies or assistants;*
- b) elected representatives in legislative bodies;*
- c) members of management bodies of political parties;*
- d) members of supreme and constitutional courts and other high-level judicial authorities against whose decisions there is no ordinary or extraordinary legal remedy except in exceptional cases;*
- e) members of courts of audit and boards of governors of central banks;*
- f) heads of diplomatic missions and consulates and representations of international organisations, their deputies and high-ranking officers of armed forces;*
- g) members of the management or supervisory bodies of undertakings in majority state ownership;*
- h) representatives of bodies of international organisations (such as presidents, secretaries-general, directors, judges), their deputies and members of management bodies or holders of equivalent functions in international organisations.*

*(4) Immediate family members of the person referred to in paragraph 2 of this Article shall be the following: spouse, cohabitee, parents and children and their spouses or cohabitees.*

*(5) Close associates of the person referred to in paragraph 2 of this Article are all natural persons who are known to be joint beneficial owners or have any other close business relationships with a politically exposed person. A close associate is also a natural person who is the only beneficial owner of the business entity or similar foreign law entity which is known to have been established to the actual benefit of a politically exposed person.*

*(6) When a customer entering into a business relationship or effecting a transaction, or when a customer on whose behalf a business relationship is entered into or a transaction effected, or the customer's statutory representative, authorised person or beneficial owner is a politically exposed person, the obliged person shall take, in addition to the measures referred to in paragraph 1 of Article 16 of this Act within the enhanced customer due diligence procedure, the following measures:*

- 1. obtain data on the customer's financial position and data on the source of funds and property that are, or will be, a subject of a business relationship or transaction, namely from the documents and other documentation submitted by the customer; if this data cannot be obtained in the manner described above, the obliged person shall obtain them directly from the written statement of the customer;*

2. An employee of the obliged person who conducts the procedure for entering into a business relationship with a customer who is a politically exposed person shall obtain the written approval of his/her superior responsible person occupying a senior management position prior to entering into such relationship.

3. After a business relationship has been entered into, the obliged person shall monitor with due diligence the transactions and other business activities effected through the obliged person by a politically exposed person.

(7) When a politically exposed person as referred to in this Article ceases to be entrusted with a prominent public function, the obliged person shall continue to take appropriate measures for the period of 12 months. After this period, the obliged person shall re-assess the possible continued risk presented by this person and take appropriate measures by taking into account the risk until it considers that the respective person no longer presents a risk.

*Special procedures for customers and transactions related to high-risk countries (art. 63, AML Law)*

### **Act on Prevention of Money Laundering and Financing of Terrorism**

#### Article 63 (Due diligence of customers from high-risk third countries)

(1) if a customer or transaction is related to a high-risk third country referred to in paragraph 5 of Article 50 of this Act, the obliged person within the scope of enhanced customer due diligence and in addition to the measures referred to in paragraph 1 of Article 16 of this Act shall take at least the following measures:

1. obtain additional data on the activity of the customer and update the data on the identification of the customer and its beneficial owner more frequently;

2. obtain additional data on the purpose and foreseen nature of a business relationship and data on the reasons for the intended or effected transaction;

3. obtain data about the source of assets and property that is, or will be, the subject of the business relationship or transaction;

4. an employee of the obliged person who conducts the procedure for entering into a business relationship with a customer from a high-risk third country shall obtain the written approval of his/her superior responsible person occupying a senior management position prior to entering into such relationship.

5. after a business relationship has been entered into, the obliged person shall monitor the transactions and other business activities effected through the obliged person by a person from a high-risk third country with due diligence.

(2) The obliged person does not have to take the additional measures referred to in the preceding paragraph if the customer is a branch or majority-owned subsidiary with its registered office in the European Union established in a high-risk third country if the respective branch or subsidiary fully implements the policies and procedures of a group that are equal or equivalent to the provision of this Act. In these cases, the obliged person shall adjust the scope of measures to the risk assessment of money laundering and terrorist financing referred to in Article 13 of this Act.

*Provisions on the list of indicators for the identification of customers and transactions in respect of which reasonable grounds to suspect ML/TF exist (arts. 85 and 86, AML Law)*

### **Act on Prevention of Money Laundering and Financing of Terrorism**

#### Article 85 (Obligation to compile and use the list of indicators)

(1) Obligated persons shall draw up a list of indicators for identifying customers and transactions in respect of which there are reasonable grounds to suspect money laundering or terrorist financing.

(2) In compiling the list of indicators referred to in paragraph 1 of this Article, obliged persons shall take

*into account in particular the complexity and scope of implementing the transactions, unusual patterns, value or relation of transactions which have no apparent economic or evident lawful purpose and/or are not in compliance or are disproportionate to the usual or expected business of a customer, as well as other circumstances related to the status and other characteristics of the customer.*

*(3) Obligated persons shall be obliged to use the list of indicators referred to in paragraph 1 of this Article when determining the grounds to suspect money laundering or terrorist financing or other circumstances relating thereto.*

*(4) The minister responsible for finance may prescribe the obligatory inclusion of individual indicators on the list of indicators to identify customers and transactions in respect of which reasonable grounds to suspect money laundering or terrorist financing exist.*

#### Article 86 (Participation in preparing the list of indicators)

*The Office, Bank of Slovenia, Securities Market Agency, Insurance Supervision Agency, Financial Administration of the Republic of Slovenia, Agency for Public Oversight of Auditing, Slovenian Audit Institute, Chamber of Notaries of Slovenia, Bar Association of Slovenia, and associations and societies whose members are bound by this Act shall also participate in drawing up a list of indicators as referred to in paragraph 1 of the preceding Article.*

Within the last MONEYVAL evaluation, which was completed in May 2017, special focus (apart from technical compliance) was given to identifying whether the AML/CFT is effective. For this purpose, different types of data, reports, analysis and statistics were provided to the evaluation team. The overall assessment of AML/CFT preventive measures, including the relevant statistics, are available in Chapter 5 of the MER Slovenia.

#### ***(b) Observations on the implementation of the article***

Obligated entities in Slovenia are required to identify their customers, including occasional ones as well as all beneficial owners (art. 12, AML law). They are also required to verify the identities of their clients, to set up their risk profiles and implement an appropriate risk management system (art. 16, AML law).

Beneficial owners are defined under article 35 of the AML law. Article 16 also creates the obligation to obtain information on the beneficial ownership of all accounts. In accordance with the AML law, in December 2017, Slovenia also established a registry of beneficial ownership which collects, stores and registers data on beneficial ownership relating to various entities (art. 44, AML Law).

Article 61 of the AML law defines Politically Exposed Persons (PEPs) and requires obliged entities to have risk-based procedures to carry out customer due diligence (arts. 13-15, AML Law). Articles 50 of the AML Law require financial institutions to apply enhanced due diligence measures to customers identified as high risk. To this end, article 59 provides for an indicative list of potentially higher-risk factors, to which financial institutions must pay particular attention, and article 63 of the AML Law is applicable to customers or transactions related to high-risk countries. Its article 85 provides examples of potentially suspicious indicators for purposes of account-opening and general monitoring, including types of clients, accounts, services and transactions. Foreign politically exposed persons are included in the screening tools pursuant to article 61 of the AML Law.

Obligated entities are required to submit Suspicious Transaction Reports (STRs) to the FIU (art. 69, AML Law). In case of non-compliance, entities can get financial penalties of up to €5,000,000 or initiation of administrative proceedings by their supervisory entities (arts. 163-172, AML Law).

#### ***(c) Successes and good practices***

Slovenia has established a “Register of Beneficial Ownership Information”.



### ***Subparagraph 2 (a) of article 52***

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

### ***(a) Summary of information relevant to reviewing the implementation of the article***

The obliged persons have access to the guidance on the issues that need to be covered during the risk assessment in accordance with article 154 of the AML Law, which requires the supervisory bodies to independently, or in cooperation with other supervisors, issue recommendations and guidelines on the implementation of individual provisions of the AML Law.

In addition, competent supervisory authorities (arts. 139 and 151) are obliged to issue guidelines in order to ensure a common understanding of AML/CFT provisions among obliged persons (art. 154).

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#### Article 154 (Issuing recommendations and guidelines)

*With a view to ensuring uniform implementation of the provisions of this Act and the ensuing regulations by obliged persons, the supervisory bodies referred to in Article 139 hereof shall independently, or in cooperation with other supervisory bodies, issue recommendations and guidelines on the implementation of individual provisions of this Act by the obliged persons referred to in Article 4 hereof.*

The guidelines contain a description of factors that may be taken into consideration when preparing a risk assessment for individual groups or customers, business relationships, transactions, products, services or distribution channels, and take into account factors of geographical risk with respect to their potential misuse for ML/TF.

As regards the banking sector, the BoS has issued the AML/CFT guidelines, including the Chapter on Risk Assessment, which provides for criteria that should be taken into account in the determination of the risk profile of customer or business relationship (e.g. client, geographical area, type of product/service). Apart from these criteria, banks may use any other criteria.

In carrying out the risk assessment, the obliged entities must also take into account the “Rules on factors of potentially lower or higher risk situations of money-laundering or terrorist financing” issued by the Ministry of Finance, findings of the National Risk Assessment and of the Supra-national Risk Assessment on the level of the European Union.

In addition, the AML Law imposes an obligation to conduct the National Risk Assessment (NRA) to assess AML/CFT risks and adopt appropriate measures to mitigate identified risks at the state level (arts. 8 and 9). In this regard, Slovenia conducted the NRA in 2015, and regarding the banking sector, some high-risk products/services were identified, such as the payment accounts and money remittance. The summary of the NRA report was published on FIU’s website, and the banking sector was informed of the main findings through a circular letter issued by the BoS.

Regarding the banking sector and relevant AML/CFT training, the Banking Association is playing an important role and has organized several AML/CFT trainings and workshops in cooperation with the BoS and FIU.<sup>143</sup>

Based on the results of the NRA, “Regulation on the sectors or activities of lower or increased risk of money-laundering or terrorist financing” is foreseen to be adopted by the Government.

With regard to the types of accounts and transactions on which particular measures should be taken, the MoF has

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<sup>143</sup> More detailed information on AML/CFT risks and preventive measures is provided in Chapter 1 and Chapter 5 and Technical Compliance Annex of Slovenian MER.

been drafting a revised version of the “Rule on factors of low and increased risk of money-laundering and terrorist financing”. The Rules will determine the risk factors regarding customers, business relationships, transactions, products, services or distribution channels, and geographical risk factors with respect to their potential misuse for ML/TF.

### **Slovenia provided the following examples and statistics:**

#### *Guidelines*

BoS’s guidelines were issued in 2008 and made available on its website. The guidelines are presented in trainings organized by the Banking Association. The section referring to risk assessment was updated in 2013. The existing AML/CFT guidelines cover the following sections:

- AML/CFT system within the bank
- Obligation and duties arising from the AML Law
- Risk Assessment
- Obligation and duties arising from the Regulation EC 1781/2006
- IT support

On-going monitoring activities and procedures to detect unusual and suspicious activities are covered as well.

The Securities Market Agency (SMA) adopted guidelines for the prevention of ML/TF on 15 September 2010.<sup>144</sup>

The ISA issued guidelines on the implementation of individual provisions of the AML Law - Guidelines for Money Laundering and Terrorist Financing Prevention of 23 February 2011.

In February 2015, the FURS issued guidelines for the implementation of the AML Law for concession operators and organizers of games of chance.<sup>145</sup>

On 12 October 2010, the Bar Association of Slovenia, in accordance with article 90 of the AML Law, adopted the guidelines for lawyers and law firms with regard to the implementation of the provisions in the field of detection and prevention of ML/TF.

The Slovene Institute of Auditors (SIA) has issued guidelines for audit companies supporting them to be compliant with AML/CFT regulations. Upon inspections, the SIA also issues recommendations for ML/TF procedures improvements if necessary. The SIA has also issued templates for written rules with which audit companies must comply.

In addition to these, the following guidelines have been adopted by various authorities:

- Guidelines for the Legal Entities and Natural Persons Conducting Business Relating to the Trade in Precious Metals and Precious Stones and Products Made from These Materials (30 July 2009)
- Guidelines for the Legal Entities and Natural Persons Conducting Business Relating to the Real Property Transactions (30 July 2009)
- Guidelines for Credit Providers and Credit Intermediaries (14 January 2010)

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<sup>144</sup> There are 14 sections: (i) purpose, (ii) general remarks on money laundering and terrorist financing, (iii) national and international legislation, (iv) general principles of combating money laundering and terrorist financing, (v) risk-based approach, (vi) client due diligence, (vii) implementation of measures for detection and prevention of money laundering and terrorist financing in own branches and majority-owned subsidiaries located in third countries, (viii) monitoring of clients, business activities, (ix) reporting information, (x) education and professional training, (xi) internal control and risk management, (xii) data protection, (xiii) authorized person for prevention of money laundering and terrorist financing, (xiv) legal nature and validity of guidelines. There are also 6 annexes: (i) list of indicators for identification of clients and transactions in respect of which reasonable grounds to suspect money laundering, (ii) list of indicators for identification of clients and transactions in respect which reasonable grounds to suspect terrorist financing, (iii) list of equivalent third countries that prescribe and comply with the standards concerning the detection and prevention of money laundering and terrorist financing, (iv) list of countries subject to restrictive measures, (v) list of other entities subject to restrictive measures, (vi) list of countries known for high level of corruption.

<sup>145</sup> Available at: [http://www.fu.gov.si/drugo/posebna\\_podrocja/igre\\_na\\_sreco/Izdaja\\_smernic](http://www.fu.gov.si/drugo/posebna_podrocja/igre_na_sreco/Izdaja_smernic)

- Guidelines for the Implementation of the Prevention of Money Laundering and Terrorist Financing Act for Concessionaires and Operators Offering Games of Chance (6 November 2006)
- Guidelines for the Implementation of the Prevention of Money Laundering and Terrorist Financing Act for Dealers in Precious Metals and Precious Stones and Products Made from These Materials (June 2009)
- Guidelines for the Prevention of Money Laundering and Terrorist Financing by the Security Market Agency (15 September 2010)
- Guidelines for the Implementation of the Prevention of Money Laundering and Terrorist Financing - Bar Association of Slovenia (12 October 2010)
- Guidelines for the Prevention of Money Laundering and Terrorist Financing by the ISA (23 February 2011)
- Guidelines for the Implementation of the Prevention of Money Laundering and Terrorist Financing Act for Lenders and Credit Intermediaries (14 January 2010)
- Guidelines for the Implementation of the Prevention of Money Laundering and Terrorist Financing Act for Legal Entities and Natural Persons Undertaking Accounting Activity (14 December 2010)<sup>146</sup>
- Guidelines for the Implementation of the Prevention of Money Laundering and Terrorist Financing Act for Legal Entities and Natural Persons Undertaking Real Estate Transaction Activity (30 July 2009)
- Recommendations and Guidelines for Notaries According to the Prevention of Money Laundering and Terrorist Financing Act (11 September 2018)
- Guidelines for the Implementation of Measures Regarding the Prevention of Money Laundering and Terrorist Financing for the Banking Sector (October 2008)<sup>147</sup>

According to the provisions of paragraph 3 of article 140 of the AML Law, the BoS, SMA and ISA, when planning and performing inspection supervision, shall take into account also guidances of the European supervisory bodies.

As evident from the MER Slovenia, appropriate guidance has been issued, but they need to be amended according to the new AML Law adopted in 2016.

#### ***(b) Observations on the implementation of the article***

Under the AML Law, competent supervisory authorities are obliged to issue guidelines as prescribed in subparagraph 2(a) of article 52 of the Convention, independently or in cooperation with other supervisory authorities, including to ensure uniform implementation of provisions of the AML Law (arts. 139 and 154).

The competent authorities have issued relevant advisories as stipulated by the AML law. However, at the time of the country visit, it was noted that all guidelines must be revised in accordance with the provisions of the new AML Law adopted in 2016. It is reported that the Government and the competent authorities have been taking appropriate measures in this regard.

#### ***Subparagraph 2 (b) of article 52***

*2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:*

...

*(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.*

<sup>146</sup> In cooperation with the Chamber of Accounting services (CAS)

<sup>147</sup> **Developments after the country visit:** Guidelines were updated on 15. 11. 2019 and then again on 28 May 2022.

***(a) Summary of information relevant to reviewing the implementation of the article***

There are no legal provisions in the AML Law requesting the OMLP (FIU) to notify financial institutions, at the request of another State Party or on its own initiative, of the identity of natural or legal persons to whose accounts enhanced CDD should be required. At the same time, the OMLP can circulate warning letters in order to notify financial institutions of the identity of high-risk persons.

When the State Prosecutor's Office receives a notification or request from another State party or in cases when a State prosecutor detects suspicious transactions, relevant information or the request is immediately passed to the OMLP. Thereafter, the State Prosecutor's Office deals with those transactions when the suspicions are confirmed or when the criminal charge or other notification is passed to the State Prosecutor's Office. In case of a request from another State party, the State prosecutor deals with such requests according to the rules of mutual legal assistance.

The OMLP can also request ongoing monitoring of a customer's financial transactions as prescribed below.

**Act on Prevention of Money Laundering and Financing of Terrorism**

Article 98 (Request for ongoing monitoring of a customer's financial transactions)

*(1) The Office may request in writing from the obliged person the ongoing monitoring of the financial transactions of a person in respect of whom there are reasonable grounds to suspect money laundering or terrorist financing, or of another person in respect of whom there are reasonable grounds to believe that he/she has participated or has been engaged in the transactions or business of said person, and it may request continuous data reporting on the transactions or business undertaken by the persons concerned within the obliged person. In its request, the Office shall be obliged to set a time limit within which obliged persons must forward the data requested.*

*(2) The obliged person shall forward the data referred to in the preceding paragraph to the Office before the transaction or business has been effected, and shall state the time limit in which the transaction is expected to be executed.*

*(3) If, due to the nature of the transaction or business, or due to other justified reasons, the obliged person cannot act as provided for in paragraph two of this Article, it shall be obliged to forward the data to the Office as soon as possible or on the following working day at the latest. The obliged person shall be obliged to explain in the report the reasons for not acting in accordance with the provisions of paragraph two of this Article.*

*(4) The application of the measure referred to in paragraph one of this Article may continue for no longer than three months; however, for substantiated reasons the duration may be extended each time by one month, but for no more than six months in total.*

**Slovenia provided the following examples and statistics:**

Police submit motions to the OMLP only in cases when the police suspect the existence of the elements of the criminal offence of money-laundering in the phase of pre-trial proceedings in the investigation of other criminal offences (intrinsic police activity). The police filed 16 motions to the OMLP in 2013, 25 motions in 2014, 26 motions in 2015 and 20 motions in 2016.

Statistics on mutual legal assistance regarding state prosecution is not available.

***(b) Observations on the implementation of the article***

There are no explicit legal provisions in the AML Law that set requirements for the FIU to notify financial institutions, at the request of another State party or on its initiative, of the identity of natural and legal persons to whose accounts enhanced customer due diligence should be required. At the same time, Slovenia reported that the FIU can circulate warning letters in order to notify financial institutions (obliged persons) of the identity of high-risk persons.

### **Paragraph 3 of article 52**

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Pursuant to the AML Law (art. 129), obliged persons must keep the financial and corresponding documentation that relates to CDD or executed transactions for ten years after the termination of the business relationship, the completion of a transaction, a customer's admission to a casino or gaming hall, or a customer's access to a safe, unless a longer period for retention is determined by another act (art. 129).

Article 49 of the AML Law requires obliged entities to carry out proper account monitoring and regularly update the information received for CDD purposes.

### **Act on Prevention of Money Laundering and Financing of Terrorism**

#### Article 49 (Due diligence in monitoring business activities)

(1) The obliged person shall monitor business activities undertaken by the customer through the obliged person with due diligence and thus ensure knowledge of the customer, including the origin of assets used in business operations. Monitoring business activities undertaken by the customer through the obliged person shall include:

- verifying the customer's business operation for the purpose and intended nature of the business relationship established by the customer through the obliged person;
- monitoring and verifying the customer's business operation's compliance with his/her regular scope of business;
- verifying and updating obtained documents and data on the customer.

(2) For a customer that is a legal entity, verifying and updating the obtained documents and data referred to in the preceding paragraph shall include:

1. verifying the data on the company, address and registered office of the legal entity;
2. verifying the data on the personal name and permanent or temporary residence of the legal entity's statutory representative;
3. verifying the data on the beneficial owner of the legal entity;
4. verifying the validity of the authorisation referred to in paragraph 3 of Article 24 of this Act;
5. determining whether the legal entity's statutory representative or authorised person or beneficial owner has become a politically exposed person during the business relationship.

(3) When the transactions referred to in paragraph 1 of Article 17 of this Act are carried out on behalf of, and for the account of, a foreign legal entity by its branch, the obliged person shall obtain, in addition to the data referred to in the preceding paragraph, the following data within the verification and update of obtained documents on the customer:

1. data on the address and registered office of the foreign legal entity's branch;
2. data on personal name and permanent residence of the foreign legal entity's statutory representative.

(4) The obliged person shall ensure the scope and frequency of measures referred to in paragraph 1 of this Article appropriate to the risk of money laundering or terrorist financing to which it is exposed in carrying out individual transactions or in business operations with an individual customer. The obliged person shall determine the risk on the basis of Article 13 of this Act and by taking into account Article 9 of this Act.

*Notwithstanding the above stated, the obliged person must ensure that the obtained documents and data on the customer are updated at least after five years from the last customer due diligence if the customer has effected at least one transaction with the obliged person in the last twelve months.*

Article 129 (Retention period of data within the obliged person)

*(1) An obliged person shall keep data obtained on the basis of Articles 16, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 43, 48, 49, 50, 54, 58, 59, 60, 61, 62, 63, 68, 69, 96, 97 and 98 of this Act and the corresponding documentation referring to customer or individual transaction due diligence for 10 years after the termination of a business relationship, the completion of a transaction, a customer's admission to a casino or gaming hall, or a customer's access to a safe, unless a longer period for retention is determined by another act.*

*(2) The corresponding documentation referred to in the preceding paragraph shall include copies, records, or originals of the following documentation:*

- *official documents for discovering and verifying the identity of a customer,*
- *documentation of business relationships and accounts,*
- *documentation on business correspondence,*
- *transcripts and records required to recognise and trace domestic or cross-border transactions,*
- *documentation related to discovering the background and purpose of unusual transactions, and*
- *other corresponding documentation that has been acquired or drafted during customer due diligence or during an individual transaction.*

*(3) Obligated persons shall keep the data and the corresponding documentation concerning the authorised person and their deputy, the professional training of employees, the performance of internal control and risk management referred to in Articles 13, 76, 77, and 80 of this Act for four years after appointing the authorised person and their deputy, the completed professional training, and performed internal control and the analysis of effects due to changes in the obliged person's business processes related to the risk of money laundering or terrorist financing.*

*(4) After the expiry of the periods referred to in the preceding paragraphs of this Article, personal data shall be erased, unless determined otherwise by another Act.*

*(5) In the event of the liquidation of an obliged person, the authority performing the liquidation procedure or carrying out a status change of an obliged person without a known successor shall inform the Office prior to the liquidation of the obliged person and ensure that data and corresponding documentation are retained for the periods set forth herein.*

In comparison with the requirement of the EU Directive 2015/849, which sets a period of five (5) years for data retention, the Slovenian AML/CFT legislation is stricter, as it defines a period of ten (10) years for data retention. In addition, record-keeping requirements cover CDD records and transactions, including all other correspondent documentation associated with the business relationship or transaction. Besides, when CDD is conducted by a third party, all CDD data must be immediately submitted to the obliged person, while upon request, the third party is also required to provide all associated documentation.

The corresponding documentation referred to in the preceding paragraph shall include copies, records, or originals of the following documentation (art. 129(2), AML Law):

- official documents for discovering and verifying the identity of a customer,
- documentation of business relationships and accounts,
- documentation on business correspondence,
- transcripts and records required to recognize and trace domestic or cross-border transactions,
- documentation related to the exploration of the background and purpose of unusual transactions, and
- other corresponding documentation that has been acquired

Obligated persons have to keep the data and the corresponding documentation concerning the authorized person and their deputy, the professional training of employees, the performance of internal control and risk management for four years after appointing the authorized person and their deputy, the completed professional training, and performed internal control and analysis of effects due to changes in the obliged person's business processes related



to the risk of money-laundering or terrorist financing. In the event of the liquidation of an obliged person, the authority performing the liquidation procedure or carrying out a status change of an obliged person without a known successor shall inform the OMLP prior to the liquidation of the obliged person and ensure that data and corresponding documentation are retained for the periods set forth herein.

The FURS shall keep data from the records - the declaration of cash for 12 years from the date it acquires them. These data and information shall be destroyed upon the expiry of this period (art.130, AML Law).

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#### Article 130 (Period for data retention at the Financial Administration of the Republic of Slovenia)

*The Financial Administration of the Republic of Slovenia shall keep data from the records referred to in paragraphs four and five of Article 137 of this Act for a period of 12 years from the date it acquires them. These data and information shall be destroyed upon the expiry of this period.*

The Slovenian FIU - OMLP has to keep the data and information from the records maintained by it, under the AML Law, for 12 years from the date when the OMLP acquires them unless another act determines a longer period. These data and information shall be destroyed upon the expiry of this period. (art.132, AML Law)

### **Act on Prevention of Money Laundering and Financing of Terrorism**

#### Article 132 (Retention period of data within the Office)

*(1) The Office shall keep the data and information from the records maintained by it under this Act for a period of 12 years from the date when the Office acquired them, unless another Act determines a longer period. These data and information shall be destroyed upon the expiry of this period.*

*(2) The Office shall not inform the person concerned that data and information about him/her have been compiled, nor shall such information be disclosed to a third person.*

*(3) The person to whom the data and information refer shall have the right to inspect his/her personal data and/or to obtain their original, print-out or copy:*

*- for the records referred to in points 1, 2, 3, 4, 5, and 12 of paragraph four of Article 136 of this Act, eight years after the data were collected;*

*- for the records referred to in points 6, 7, 8, 9, 10, and 11 of paragraph four of Article 136 of this Act, after the final verdict or any other decision on criminal offence or other offence, and/or after the limitation of criminal prosecution, and/or immediately after the final decision of the competent authority that no measures shall be taken against the person to whom the data and information refer.*

*More detailed information on AML/CFT preventive measures (including record-keeping obligation) is provided in Chapter 5 and Technical Compliance Annex (Recommendation 11) of Slovenian MER.*

Violations in relation to data retention were not detected, and there were only a few cases when sanctions were imposed. Banks regularly submit all records and documentation upon FIU's request. Slovenia noted that this is an additional indicator that, in practice, there are no serious deficiencies related to data retention.

#### **(b) Observations on the implementation of the article**

Article 132 of the AML law provides that records and files should be kept for at least 12 years in a durable medium. Furthermore, article 49 of the AML Law requires obliged entities to carry out proper account monitoring and regularly update the information received for customer due diligence purposes.

Article 129 of the AML law provides that obliged entities should keep due diligence data and documentation for ten years unless a more extended period is specified by another act.



#### **Paragraph 4 of article 52**

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

#### **(a) Summary of information relevant to reviewing the implementation of the article**

##### *Corresponding banking relationships with credit institutions of third countries (art.60, AML Law)*

When entering into a corresponding banking relationship with a bank or a similar credit institution located in a third country, an obliged person must apply enhanced CDD measures and obtain the following data, information and documentation:

- date of issue of the authorization to perform banking services, and name and registered office of the competent authority from the third country that issued the authorization;
- description of the performance of internal procedures relating to the detection and prevention of ML/TF, in particular to CDD procedures, procedures for determining beneficial owners, for reporting data on STRs and customers to the competent authorities, for keeping records, internal control and other procedures adopted by the bank or other similar credit institution with respect to detecting and preventing ML/TF;
- description of systemic arrangements in the field of detection and prevention of money laundering and terrorist financing applicable in the third country where the bank or other similar credit institution is established or registered;
- a written statement that the bank or other similar credit institution does not operate as a shell bank;
- a written statement that the bank or other similar credit institution has no established business relationships with shell banks and that it does not establish or conduct transactions with shell banks;
- a written statement that the bank or similar credit institution is subject to administrative supervision in the country of its head office or registration and is, in accordance with the legislation of the country concerned, under the obligation to comply with laws and other respective regulations governing the detection and prevention of ML/TF.

An employee of the obliged person establishing the correspondent relationship and conducting the enhanced CDD procedure shall obtain the written approval of his/her superior responsible person occupying a senior management position prior to entering into such a relationship (art. 60(2), AML Law).

The obliged person must not enter into or continue a correspondent banking relationship with a respondent bank or another similar credit institution located in a third country if:

- no relevant data have been obtained in advance;
- the employee of the obliged person failed to obtain prior written approval of his or her superior responsible person for entering into the correspondent relationship;
- the bank or other similar credit institution located in the third country does not have in place a system for detecting and preventing ML/TF, or is not, in accordance with the legislation of the third country where it is established or registered, under the obligation to comply with laws and other relevant regulations concerning the detection and prevention of ML/TF;
- the bank or other similar credit institution located in the third country operates as a shell bank or enters into correspondent or other business relationships and effects transactions with shell banks (art. 60, AML Law).

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### Article 60 (Corresponding banking relationships with credit institutions of third countries)

(1) *When entering into a corresponding banking relationship with a bank or similar credit institution located in a third country, the obliged person shall apply the measures referred to in paragraph 1 of Article 16 of this Act within enhanced the customer due diligence procedure and shall also obtain the following data, information and documentation:*

*1. date of issue of the authorisation to perform banking services, and name and registered office of the competent authority from the third country that issued the authorisation;*

*2. description of the performance of internal procedures relating to the detection and prevention of money laundering and terrorist financing, in particular to customer due diligence procedures, procedures for determining beneficial owners, for reporting data on suspicious transactions and customers to the competent authorities, for keeping records, internal control and other procedures adopted by the bank or other similar credit institution with respect to detecting and preventing money laundering and terrorist financing;*

*3. description of systemic arrangements in the field of detection and prevention of money laundering and terrorist financing applicable in the third country where the bank or other similar credit institution is established or registered;*

*4. a written statement that the bank or other similar credit institution does not operate as a shell bank;*

*5. a written statement that the bank or other similar credit institution has no established business relationships with shell banks and that it does not establish or conduct transactions with shell banks;*

*6. a written statement that the bank or similar credit institution is subject to administrative supervision in the country of its head office or registration and is, in accordance with the legislation of the country concerned, under the obligation to comply with laws and other respective regulations governing the detection and prevention of money laundering and terrorist financing.*

(2) *An employee of the obliged person establishing the correspondent relationship referred to in paragraph 1 of this Article and conducting the enhanced customer due diligence procedure shall obtain the written approval of his/her superior responsible person occupying a senior management position prior to entering into such relationship.*

(3) *The obliged person shall obtain the data referred to in paragraph 1 of this Article by inspecting public or other accessible data records, or by inspecting documents and business records submitted by the bank or other similar credit institution located in the third country.*

(4) *The obliged person shall document the implementation of measures referred to in the preceding paragraphs.*

(5) *The obliged person shall not enter into or continue a correspondent banking relationship with a respondent bank or other similar credit institution located in a third country if:*

*1. no data referred to in points 1, 2, 4, 5 and 6 of paragraph 1 of this Article have been obtained in advance;*

*2. the employee of the obliged person failed to obtain prior written approval of his/her superior responsible person for entering into the correspondent relationship;*

*3. the bank or other similar credit institution located in the third country does not have in place a system for detecting and preventing money laundering and terrorist financing, or is not, in accordance with the legislation of the third country where it is established or registered, under the obligation to comply with laws and other relevant regulations concerning the detection and prevention of money laundering and terrorist financing;*

*4. the bank or other similar credit institution located in the third country operates as a shell bank or enters into correspondent or other business relationships and effects transactions with shell banks.*

*Prohibition on conducting business with shell banks (art. 66, AML Law)*

According to the AML Law provisions, it is prohibited to start or continue a correspondent relationship with a bank that has no physical presence (shell bank). It is also prohibited to have business relations with any other credit or financial institution, which might allow shell banks to use their accounts.

As regards the establishment of shell banks in Slovenia, this is not possible because the institution applying for a banking license is required to have a seat in Slovenia.

**Act on Prevention of Money Laundering and Financing of Terrorism**

Article 66 (Prohibition on conducting business with shell banks)

*The obliged person shall not enter into or continue a correspondent banking relationship with a respondent bank that operates or may operate as a shell bank, or other similar credit or financial institution known to allow shell banks to use its accounts.*

*More detailed information on AML/CFT preventive measures (including the prohibition of doing business with shell banks) is provided in Chapter 5 and Technical Compliance Annex (Recommendation 13) of the Slovenian MER.*

**Slovenia provided the following examples and statistics:**

As it is strictly prohibited to initiate a business or correspondent relationship with a shell bank, no statistics of the termination of such business relationships or imposed sanctions are available. In addition, an entity applying for a banking licence is required to have a seat in Slovenia. All applicants are bound by these criteria and there are no examples of denial of licences on such a ground.

**(b) Observations on the implementation of the article**

The establishment of “shell banks” is prohibited (arts. 60 and 66, AML Law). Financial institutions are prohibited from establishing or maintaining correspondent banking relationships with any fictitious financial institution and must verify that their correspondents abroad are subject to the same obligation (art. 66, AML Law).

An entity applying for a banking license is required to have a seat in Slovenia.

**Paragraph 5 of article 52**

*5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The CPC, which is the responsible institution for collecting and analysing assets and interest declarations, uses data from declarations and performs different proactive analysis to identify possible violations.

*For information on the asset declaration system, please see the summary under paragraph 4 of article 8 of the Convention.*

**(b) Observations on the implementation of the article**

The system of asset declarations in Slovenia provides for a fine of between €400 and €1,200 for non-compliance (art. 77, IPCA). Details on the propriety of this sanction were not provided. Declarations may not be shared with

competent authorities in other jurisdictions.

**It is recommended that Slovenia:**

- **assess the effectiveness of its asset declaration system, including the revision of sanctions for non-compliance in conjunction with the financial disclosure system.**
- **consider taking measures to allow for the sharing of declarations with competent authorities in other jurisdictions and provisions on the reporting of accounts held in foreign jurisdictions.**

**Paragraph 6 of article 52**

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Financial Administration Act (FAA) stipulates that all natural persons and business entities (legal persons, entrepreneurs, etc.) must inform the tax authorities about the number of all bank accounts they hold abroad. This obligation stands for all natural persons, including public officials.

Pursuant to point 7 of paragraph 1 of article 49 of the FAA, payment accounts held abroad must be declared. In accordance with the FAA, any taxpayer who has an open account abroad must notify this account to the financial administration authority within eight days of the opening of the account.

**Financial Administration Act**

Article 49 (contents of tax register)

*(1) The tax register shall contain the following information for natural persons:*

- 1. tax code,*
- 2. information about the commitment for each type of tax,*
- 3. Identification information: personal name, gender, date and place of birth, date of death, citizen's unique identification number,*
- 4. citizenship information,*
- 5. information on the resident status of the taxable person and the tax number assigned in the country of residence with the taxable person who has the status of non-resident,*
- 6. address of permanent and temporary residence, address for service (municipality, settlement, street, house number, addition to house number, apartment code, postal code and date of registration of residence),*
- 7. **the number of payment accounts in the Republic of Slovenia and abroad,***
- 8. other information on the natural person (employed / unemployed, employer, information on whether he / she is registered at the employment office, pensioner, farmer, student, student),*
- 9. information about the family (personal name and address of permanent or temporary residence and tax number of the spouse or person with whom the person in the living community lives, who is legally assimilated to the marriage or persons according to the regulations governing marriage and family relations); , with whom a person in a registered same-sex partner community lives, personal name and address of permanent and temporary residence of dependents and their tax ID),*
- 10. information on persons authorized to represent a natural person (tax number, personal name, address of residence, type of representative, limits of powers of representation, date of authorization, date of termination of authorization, electronic certificate information),*

11. information on the e-mail address and the electronic certificate, if the individual has it,  
12. information on capital investments at home and abroad (company name, registered office, organizational form of the company, amount and date of investment),

13. reason for entry (permanent residence, temporary residence, obtaining taxable income, taxable movable property, taxable movable property, pursuit of business, other),

14. information on insolvency proceedings,

15. information on compulsory social security.

(2) The tax register shall contain, for legal persons, associations of non-legal persons, without legal personality, direct users of state and municipal budgets, and other persons engaged in the activity, the following information:

1. tax code,

2. information about the commitment for each type of tax,

3. company or name, headquarters and address (municipality, settlement, street, house number, house number addition, postal code, all necessary telephone and fax numbers, official e-mail address),

4. information on establishment (date of commencement or termination, registration authority, registration number),

5. legal form or type of activity, additional organizational form,

6. the amount of share capital,

7. tax period,

8. information on the method of determining the tax base,

9. information on the resident status of the taxable person and the tax number assigned in the country of residence to the taxpayer who has the status of non-resident,

10. information on the number and location of business and other premises used for the pursuit of activities and the generation of income,

11. data on business units at home and abroad,

12. information on the founders, members or members (tax number, name and company name, address of residence or seat, country of residence or seat, type and extent of liability, date of entry and date of exit, amount of contribution),

13. information on capital investments at home and abroad (company name, registered office, organizational form of the company abroad, amount and date of investment),

14. information on the persons authorized to represent the legal person and other persons engaged in the activity (tax number, personal name, address of residence, type of representative, limits of powers of representation, date of authorization, date of termination of authorization, electronic certificate information ),

15. an identification number assigned by the business registry operator,

16. activity codes according to the standard activity classification (class code and subclass code),

17. numbers of payment accounts in the Republic of Slovenia and abroad,

18. tax numbers and payment account numbers in the Republic of Slovenia and abroad also for related persons determined by the taxation law,

19. the tax number, business name or personal name, registered office and address of the person who keeps the books of account, if the business books are not kept with the taxable person,

20. information on insolvency proceedings and compulsory winding-up proceedings,

21. information on status changes.

(3) If the person referred to in the first and second paragraphs of this Article is also an employer, the number of employees, tax numbers of employees and the date of payment of income from employment shall also be entered in the tax register.

(4) If the Business Register of Slovenia or other register or records for the person referred to in item 12 or 14 of the second paragraph of this Article do not contain information on the tax number, it shall send to the

*financial office a unique personal identification number, registration number or other identifiers kept for this person.*

The form used for notifying tax authorities of the foreign payment account must be accompanied by a copy of the bank document or other documents showing the data on the foreign payment account to enable the Financial Office to check the correctness or accuracy of the data. Taxpayers may send the form (with the above-stated proof) by regular mail or via the e-Tax portal as their own document, or they may file it in person at all financial offices.

A fine of between €200 and €1,200 may be imposed on a natural person for failure to notify the Slovenian Financial Administration of a foreign payment account. The above fine is only applicable to unnotified payment accounts held abroad. If other tax irregularities have occurred as a result of the failure to report a payment account or other financial accounts (e.g. an unreported interest that should have been reported and taxed in Slovenia), additional fines may be imposed.

Regarding the bank accounts held in Slovenia, the Tax Administration can access the Bank account register and obtain information about the number of all bank accounts opened in Slovenia. Bank accounts that are opened abroad must be communicated to the Tax Administration, as explained above.

The Slovenian Financial Administration exchanges its data with foreign counterparts in three ways: on the basis of the request, spontaneously and automatically. At present, the data on financial accounts opened abroad by Slovenia's residents can be obtained if required for the implementation and enforcement of the national tax legislation. Data may be obtained at the request, i.e. a request for the information referring to the taxpayer in question, who is a resident of Slovenia, is sent to a foreign competent authority. The automatic exchange of data between competent authorities is ensured in the prescribed manner without a prior request for particular categories of information.

Slovenia is a signatory State to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. Thus the country has committed itself to implement the Standard for Automatic Exchange of Financial Account Information in Tax Matters, which was adopted by the OECD Council on 15 July 2014. The first reporting on financial accounts is planned for September 2017. On the basis of automatic exchange of information, the Slovenian Financial Administration will receive data on the financial accounts from financial institutions (banks, savings banks, investment entities, brokerage companies, mutual funds, insurance companies, etc.), concerning deposit accounts (transaction, business, check, savings, etc.) and custodial accounts, etc., which have been opened abroad by Slovenian residents. If a deposit account (business, check, and savings, etc.) has been opened abroad, Slovenia will also receive information on the total gross amount of interest paid and credited to the financial account during the calendar year.

Regarding the obligation for public officials in Slovenia to declare all assets and incomes, it is pointed out that public officials need to declare also all accounts and other assets/incomes in foreign countries. However, CPC can monitor and check assets and incomes located only in Slovenia. As a consequence, the CPC cannot sanction the possible violations in this regard.

#### **Slovenia provided the following examples and statistics:**

Based on the established violations of the obligation to notify the tax authorities of payment accounts opened abroad, the Slovenian Financial Administration in 2014, 2015, and 2016 considered 987 offences, for which 883 fines and 104 warning notices were imposed in accordance with the Minor Offences Act. The total value of imposed fines amounted to € 873,200. More detailed data are shown in the table below:

2014	2015	2016
246 offences	207 offences	534 offences
189 fines and 57 warning notices	172 fines and 35 warning notices	522 fines and 12 warning notices
EUR 199,200.00 fines imposed	EUR 177,400.00 fines imposed	EUR 496,600.00 fines imposed



***(b) Observations on the implementation of the article***

Slovenian legislation provides for the reporting to the tax authority of accounts in which all persons (including public officials) have an interest in or signature or other authority over in foreign jurisdictions (art. 49, Financial Administration Act).

***Article 53. Measures for direct recovery of property***

***Subparagraph (a) of article 53***

6. Each State Party shall, in accordance with its domestic law:

*(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention*

***(a) Summary of information relevant to reviewing the implementation of the article***

In accordance with the Civil Procedure Act, any physical or legal person can be the party to the procedure. A State party is a legal person of public law. It is reported that under the laws of Slovenia, there is no obstacle for foreign states to initiate a civil action to establish ownership of an asset. With reference to the described provision, it is automatically recognized as the party in the procedure.

Special procedures of notification about the possibility of filing an action before the Slovenian Court are not explicitly foreseen by the law.

**Civil Procedure Act**

Chapter Four

PARTIES AND THEIR STATUTORY REPRESENTATIVES

Article 76. Any natural or legal person may sue or be sued in civil litigation.

*Special regulations shall define those who may be a party to a civil litigation in addition to natural or legal person. In exceptional cases and with legal effect limited to the case under consideration, the civil court may recognize the capacity to sue also to those forms of association which are not capable to sue pursuant to the first and second paragraphs of the present Article, when it finds that with respect to the dispute in question they meet the other essential conditions for suing or being sued, especially if they possess assets that can be subject to execution.*

*No appeal shall be allowed against the decree on recognition of the capacity to sue in a particular litigation issued in pursuance of the third paragraph of the present Article.*

Obligations Code Section 2: Infliction of Damage Subsection 1: General Principles

Article 131. Basis for liability

*(1) Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former.*

*(2) Persons shall be liable for material damage and activities that result in major risk of damage to the environment, irrespective of culpability.*

*(3) Persons shall also be liable for damage irrespective of culpability in other cases defined by law.*



## **(b) Observations on the implementation of the article**

Natural and legal entities are entitled to initiate civil action, sue for compensation, and be recognized as the legitimate owners of property acquired through an offence established in accordance with the Convention (art. 76 of the Civil Procedure Act and art. 131 of the Obligations Code).

Its extension to foreign States is not clear. Slovenia has also never had a case involving a foreign State as a civil party nor a civil recovery case.

### ***Subparagraph (b) of article 53***

*Each State Party shall, in accordance with its domestic law:*

*...*

*(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The legal basis for the compensation for damages is provided in the Obligations Code. The law enables courts to decide on the actions of the injured parties for compensation of damages for breaches of obligation, including for the commission of corruption offences established under the Convention if the conditions for compensation are met (unlawful action, actual damage, causal link and liability).

Compensation of damage includes the restoration of the conditions prior to the occurred damage and financial compensation when restoration is not possible.

#### **Obligations Code**

##### Section 2: Infliction of Damage Subsection 1: General Principles

##### Article 131. Basis for liability

- (1) Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former.*
- (2) Persons shall be liable for material damage and activities that result in major risk of damage to the environment, irrespective of culpability.*
- (3) Persons shall also be liable for damage irrespective of culpability in other cases defined by law.*

##### Article 132. Damage

*Damage comprises the diminution of property (ordinary damage), prevention of the appreciation of property (lost profits), the infliction of physical or mental distress or fear on another person, and encroachment upon the reputation of a legal person.*

#### **I. Reimbursement of Material Damage**

##### Article 164. Re-establishment of previous situation and monetary compensation

- (1) The liable person shall be obliged to re-establish the situation prior to the occurrence of the damage.*
- (2) If through the re-establishment of the previous situation the damage is not entirely rectified the liable person shall be obliged to pay monetary compensation for the remainder of the damage.*
- (3) If the re-establishment of the previous situation is impossible or if the court is of the opinion that it is not necessary for the liable person to do such, the court shall order the liable person to pay appropriate monetary compensation to the injured party.*

(4) *The court shall award monetary compensation to the injured party if the latter so demands, unless the circumstances of the case in question justify the re-establishment of the previous situation.*

#### Article 169. full Compensation

*When considering the circumstances arising after the infliction of damage the court shall award the injured party compensation in the amount necessary to restore the injured party's financial situation to what it would have been without the damaging act of omission.*

The statistics of these types of cases are not gathered separately.

#### **(b) Observations on the implementation of the article**

*Please see the observation under subparagraph (a) of article 53.*

#### **Subparagraph (c) of article 53**

*Each State Party shall, in accordance with its domestic law: ...*

*(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

In Slovenian law, there is no legal provision that explicitly establishes that a foreign State is recognized as a legitimate owner of the property acquired through the commission of an offence in accordance with this Convention. However, the return of confiscated property is possible and property will be returned to a foreign State when the foreign State is recognized as the legitimate owner of the property returned or to be returned.

#### **(b) Observations on the implementation of the article**

*Please also see the observation under subparagraph (c) of article 53 of the Convention.*

**It is recommended that Slovenia verify and ensure that another State party is allowed to initiate civil action, sue for compensation and be recognized as the legitimate owner of property acquired through an offence established in accordance with the Convention.**(e) Technical assistance needs

Slovenia needs technical assistance in capacity building for implementing the provision under review.

#### **Article 54. Mechanisms for recovery of property through international cooperation in confiscation**

##### **Subparagraph 1 (a) of article 54**

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

There are three different forms of international cooperation for the purpose of MLA. The first form involves the

enforcement of interim decisions issued by competent authorities of EU Member States under the Cooperation in Criminal Matters with the Member States of the European Union Act. The Act enables informal and direct communication between competent bodies (art. 5).

Article 200 (conditions for enforcement) of the Cooperation in Criminal Matters with the Member States of the European Union Act allows for direct enforcement of foreign interim decisions from the EU Member States:

*(1) The domestic court shall enforce the seizure of objects or the temporary securing of the seized proceeds of a crime, issued by the judicial authority of another Member State in criminal proceedings for an offence punishable by both the law of the issuing State and under the law of the Republic of Slovenia.*

*(2) Without determining double criminality, the domestic court shall execute the decision referred to in the preceding paragraph if the offence referred to in the second paragraph of Article 9 of this Act is an offence.*

The second form of international cooperation is cooperation based on international agreements and bilateral treaties. In those cases, cooperation is conducted in a way foreseen in an agreement.

The third form takes place in cases of cooperation with non-EU countries and countries with no agreements. In such cases, the request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of the Republic of Slovenia and does not prejudice its sovereignty and security (art. 516, CPA).

## **Criminal Procedure Act**

### Article 516

*(1) The Ministry of Foreign Affairs shall send petitions for legal aid received from foreign agencies to the Ministry of Justice which shall forward them for consideration to the circuit court in whose territory resides the person who should be served with a document, or interrogated, or confronted, or in whose territory an investigative act should be conducted.*

*If the request refers to the implementation of an act which, according to the national law, falls under the jurisdiction of the state prosecutor's office, the Ministry of Justice shall send the request into the consideration of the state prosecutor's office in whose territory of jurisdiction the act needs to be implemented.*

*2) If several courts have the relevant jurisdiction, the territorial jurisdiction shall be acknowledged to the court which is competent to implement the first act stated in the request". If several state prosecutor's offices have the relevant jurisdiction, the territorial jurisdiction shall be acknowledged to the state prosecutor's office which is competent to implement the first action stated in the request". If a foreign authority makes a request for the implementation of several acts, some of which, according to the national law, fall under the court's jurisdiction, and some under the state prosecutor's office's jurisdiction, the request shall be sent to the state prosecutor's office which shall implement the acts under its jurisdiction and shall propose to the court to implement the acts within the jurisdiction of the court.*

*(3) In instances referred to in the second paragraph of Article 515 of this Act petitions shall be transmitted to the court or to the state prosecutor's office by the Ministry of the Interior.*

*(4) The permissibility of the act requested by a foreign authority and the manner of its implementation shall be decided on by the competent national authority pursuant to national regulations and international agreements. The request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of the Republic of Slovenia and does not prejudice its sovereignty and security.*

*5) Notwithstanding the provision of the fourth paragraph of this Article, the act of assistance can be implemented in a manner as determined in the legislation of the requesting country if such manner of implementing the act is in compliance with the main principles of the national criminal proceedings.*

*(6) The competent authority in the Republic of Slovenia shall, on the request of the competent authority of the requesting country, notify the latter on the time and place of implementing a certain procedural act. The representatives of competent authorities of the requesting country and other participants in the proceedings and their counsels may be present in implementing the act of assistance if it is probable that*

*their presence and/or cooperation are useful for the appropriate implementation of legal assistance. The authority competent to implement the act of assistance shall decide upon it.*

There are no specific regulations on the enforcement of interim decisions emanating from civil proceedings. The Civil Procedure Act provides that the recognition and enforcement of foreign court decisions for legal aid are guaranteed if so provided by international agreements of the Republic of Slovenia and in all cases where reciprocity in provisions of legal aid is recognized. The court shall deny legal aid to a foreign court if the performance of the requested procedural act is contrary to the laws of the Republic of Slovenia.

### **Civil Procedure Act**

#### Article 175

*The courts of the Republic of Slovenia shall provide legal aid to foreign courts when so is provided by international agreements and in all cases where reciprocity in provisions of legal aid is recognized. If doubt is raised in respect of reciprocity, the Ministry of Justice shall pass a binding opinion thereon.*

*The court shall deny legal aid to a foreign court if performance of the requested procedural act is contrary to laws of the Republic of Slovenia. In such event, the court competent to provide legal aid shall forward the request to the Supreme Court to pass a final decision thereon.*

*Provisions of the second paragraph of Article 174 of the present Act shall also apply to the proceedings with a request by foreign court.*

#### Article 175

*The courts of the Republic of Slovenia shall provide legal aid to foreign courts when so is provided by international agreements and in all cases where reciprocity in provisions of legal aid is recognized. If doubt is raised in respect of reciprocity, the Ministry of Justice shall pass a binding opinion thereon.*

*The court shall deny legal aid to a foreign court if performance of the requested procedural act is contrary to laws of the Republic of Slovenia. In such event, the court competent to provide legal aid shall forward the request to the Supreme Court to pass a final decision thereon.*

*Provisions of the second paragraph of Article 174 of the present Act shall also apply to the proceedings with a request by foreign court.*

The Forfeiture of Assets of Illegal Origin Act provides for civil forfeiture (art. 26). The Act provides for the possibilities for temporary security and forfeiture of assets (arts. 20 and 24) and international cooperation for the purpose of the Act (art. 48).

### **Forfeiture of Assets of Illegal Origin Act**

#### Article 20 Conditions for temporary security of forfeiture

*(1) The court shall order temporary security for the forfeiture of assets of illegal origin on the proposal of the state prosecutor provided that the following conditions have been satisfied:*

*- that there are reasonable grounds to suspect that a Suspect, an Accused Person, a Convicted Person or a Testator has committed a listed criminal offence;*

*- the data and evidence gathered for the period under financial investigation show a clear discrepancy between the income less taxes and contributions paid by a Suspect, an Accused Person, a Convicted Person or a Testator and the value of assets owned, used, enjoyed or held and transferred to related parties by such persons or passed by such persons to their respective successors;*

*- that there is a risk of the owner using these assets for criminal purposes, either alone or through other persons, or there is a risk of the owner hiding, disposing, destroying or otherwise holding these assets with a view to preventing or making the forfeiture of these assets more difficult; and*

*- that the assets which are the subject of the application for temporary security under this Act are not the subject of the security or forfeiture of the proceeds from or relating to a listed criminal offence in accordance with the provisions of the act governing criminal proceedings.*

(2) *The subject of security under this Act may also be the assets for which temporary security of the forfeiture of the proceeds has been ordered and subsequently revoked if a change to or cancellation of the provisional security ordered in the trial proceedings has remained in force due to a procedure planned to be introduced by the competent tax authority.*

#### General provision

#### Article 48

(1) *International cooperation for the purposes of this Act shall be carried out in accordance with international agreements. If there is no international agreement that governs this area or resolves any open issues, international cooperation shall be carried out in accordance with the provisions of this Act.*

(2) *International cooperation within the meaning of the provisions of this Act shall include the provision of assistance in the identification, temporary security and forfeiture of assets of illegal origin.*

(3) *The powers of the State Prosecutor's Office or the court with regard to international cooperation shall be determined in accordance with the regulations on international legal assistance in criminal matters.*

#### Terms and conditions

#### Article 49

*Assistance to the competent authority of a foreign country shall be provide under the following terms and conditions:*

*1. the requested measure shall not be contrary to the fundamental principles of internal legal order;*  
*2. the implementation of the requested measures shall not harm the sovereignty, legal order or other interests of the Republic of Slovenia;*

*3. the standards of fair trial shall be applied to asset forfeiture proceedings conducted in a foreign country.*

#### ***(b) Observations on the implementation of the article***

Slovenia does not require a treaty prior to rendering international cooperation, including for asset recovery purposes. If the requesting State Party is an EU member, the request is considered following a motion filed by the State prosecutor in accordance with the European Union Cooperation Act. If the requesting State is a non-EU member, the State prosecutor must act in accordance with any bilateral agreement, or if there is no agreement: the general provisions of the CPA which states, amongst other things, that that the request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of Slovenia and does not prejudice its sovereignty and security (art. 516, CPA).

**It is recommended that Slovenia take measures to provide for the direct enforcement of foreign interim decisions emanating from countries outside the European Union, including decisions emanating from civil proceedings.**

#### ***Subparagraph 1 (b) of article 54***

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

...

*(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and*

***(a) Summary of information relevant to reviewing the implementation of the article***

Article 245 of the Criminal Code (CC) prescribes mandatory confiscation in cases of conviction for the criminal offence of money-laundering, including when the predicate offence is committed outside Slovenia or if the funds are of foreign origin. Also, the general rule prescribed in article 74 of the CC (according to which nobody shall retain the property gained through or owing to the commission of a criminal offence) stipulates that proceeds of a criminal offence are determined in criminal proceedings ex officio and effective measures should be adopted to ensure full confiscation of those proceeds. It is also reported that both the nature of proceeds and the ownership do not have an impact on these measures.

**Criminal Code**

Article 74

- (1) Nobody shall retain the property gained through or owing to the committing of a criminal offence.*
- (2) The property shall be confiscated according to the judgement passed on the criminal offence under conditions laid down in this Penal Code.*

Article 245 Money Laundering

- (1) Whoever accepts, exchanges, stores, disposes, uses in an economic activity or in any other manner determined by the act governing the prevention of money laundering, conceals or attempts to conceal by laundering the origin of money or property that was, to his knowledge, acquired through the commission of a criminal offence, shall be punished by imprisonment of up to five years.*
- (2) Whoever commits the offence under the preceding paragraph, and is simultaneously the perpetrator of or participate in the criminal offence with which the money or property under the preceding paragraph were acquired, shall be punished to the same extent.*
- (3) If the money or property under paragraphs 1 or 2 of this Article is of high value, the perpetrator shall be punished by imprisonment of up to eight years and by a fine.*
- (4) If an offence referred to in the above paragraphs was committed within a criminal association for the commission of such criminal offences, the perpetrator shall be punished by imprisonment of one up to ten years and by a fine.*
- (5) Whoever should and could have known that the money or property had been acquired through a criminal offence, and who commits the offences from paragraphs 1 or 3 of this Article, shall be punished by imprisonment of up to two years.*
- (6) The money and property referred to in the preceding paragraphs shall be confiscated.***

In case of offences other than money-laundering, the State prosecutor shall propose the confiscation of objects used or intended to be used, or gained through the commission of a criminal offence, as the proceeds gained through the commission of a criminal offence or by reason of the commission thereof shall be determined in criminal proceedings ex officio.

**Criminal Procedure Act**

Article 498a

- (1) Except in the cases when the criminal procedure ends in a verdict of guilty, the money or property of illegal origin referred to in Article 252 of the Penal Code as well as unlawfully given and accepted bribe referred to in Articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code shall be seized also if:
  - 1) those elements of a criminal offence referred to in Article 252 of the Penal Code have been proved which show that the money or property referred to in that Article originate from crimes or*
  - 2) those elements of a criminal offence referred to in Articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code have been proved which indicate that an award, gift, bribe or any other proceeds were given or accepted.**
- (2) The panel (sixth paragraph of Article 25) shall issue a special decision on the seizure upon a reasoned*

*proposal of the state prosecutor; prior to this the investigating judge shall, upon the request of the panel, gather the data and investigate all the circumstances which are relevant for the decision on the illegal origin of money or property or on the unlawfully given and accepted bribe.*

*(3) A certified true copy of the decision referred to in the previous paragraph shall be served on the owner of the seized money, property or bribe if his identity is known. If the identity of the owner is not known the decision shall be posted on the court bulletin board and, after eight days, it shall be regarded that the unknown owner has been served the decision.*

*(4) The owner of the seized money, property or bribe shall be entitled to appeal against the decision referred to in the second paragraph of this Article if he considers that statutory grounds for seizure do not exist.*

Paragraph 3 of article 499 of the CPA states that if the injured party has filed an indemnification claim to recover the objects acquired through the commission of a criminal offence or receive the monetary equivalent thereof, the proceeds shall only be determined for that part which exceeds the indemnification claim.

## **Criminal Procedure Act**

### Article 499

*(1) Proceeds acquired through the commission of a criminal offence or by reason of the commission thereof shall be determined in criminal proceedings ex officio.*

*(2) The court and other agencies conducting the proceedings shall be bound to gather evidence and inquire into circumstances material to the determination of proceeds.*

*(3) If the injured party has filed an indemnification claim to recover the objects acquired by the commission of a criminal offence or to receive the monetary equivalent thereof, the property benefit shall be determined only for that part which exceeds the indemnification claim.*

Therefore, regarding articles 53 and 54 of the Convention, State Parties, as an injured party, have the right to file an indemnification claim. Recognition of this claim by courts ensures that the return of the assets to another State Party is guaranteed.

When the MLA request is received under the Convention and above mentioned articles, it must be executed with reference to the national law that regulates MLA. If it is a third country, the procedure is set by the CPA, and in the case of an EU member State, it is regulated by the Cooperation in Criminal Matters with the Member States of the European Union Act.

For the purpose of freezing and confiscation with non-EU states, MLA is conducted under provisions of various treaties, including the 1990 and 2005 Council of Europe Conventions, or the CPA. Cooperation with competent authorities of the EU member States is regulated in Chapters 20 and 22 of the Cooperation in Criminal Matters with the Member States of the European Union Act implementing inter alia the Council Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence, the Council Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

Slovenia has the authority to take appropriate action in response to requests by foreign countries to identify, seize, and confiscate proceeds, instrumentalities used in or intended for use in money-laundering, terrorist financing and/or predicate offences and/or property of corresponding value.

The State Prosecutor's Office has an important role, especially when the confiscation of proceeds is taken into consideration in the criminal proceeding and when there is a danger that the accused alone or through other persons should use these proceeds for a further criminal activity or conceal, alienate, destroy or otherwise dispose of it to prevent or render their confiscation substantially difficult. In such cases, the State prosecutor files a motion for a provisional securing of the request for the confiscation of proceeds. This motion can be filed in the criminal procedure as well as in pre-trial. If the motion is substantiated, the court orders a provisional securing.

In the case of cooperation with non-EU countries and countries with no agreements, all requests are sent and received through the MoJ or the diplomatic channels and, in urgent cases, over the INTERPOL. In cases of criminal offences of money-laundering or criminal offences connected to the criminal offence of money-



laundering, requests can also be sent to the body responsible for the prevention of money-laundering.

Under the Cooperation in Criminal Matters with the Member States of the European Union Act, the competent authorities of Slovenia act in such a manner that enables, as far as possible, the attainment of the purpose of cooperation for the benefit of conducting criminal proceedings in another member State or Slovenia, or for the benefit of conducting other proceedings regulated by this Act, among which is confiscation.

The State Prosecutor's Office handles all cases with international elements with great priority. Therefore, all requests are addressed as soon as possible. Under the Cooperation in Criminal Matters with the Member States of the European Union Act, cooperation in criminal matters must be conducted with priority and expeditiousness if the same applies to matters of the same type under the legal order of Slovenia.

*See also summary under subparagraph 1(b) of article 14 of the Convention.*

The statistics of these types of cases are not gathered separately.

### ***(b) Observations on the implementation of the article***

Confiscation of proceeds and instrumentalities of money-laundering is prescribed (art. 245, CC), including when the predicate offence is committed outside Slovenia or if the funds are of foreign origin.

### ***Subparagraph 1 (c) of article 54***

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

...

*(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

According to articles 498 and 498(a) of the CPA, Slovenia provides for the possibility of non-conviction-based forfeiture, including where a suspect is deceased, has absconded, or is otherwise unavailable.

#### **Criminal Procedure Act**

##### Article 498

*(1) Objects which pursuant to Penal Code may or have to be seized shall be seized even when criminal proceedings do not end in a verdict of guilty if there is a danger that they might be used for a criminal act or where so required by the interests of public safety or by moral considerations.*

*(2) A special ruling thereon shall be issued by the agency before which proceedings were conducted at the time when proceedings ended or were discontinued.*

*(3) The court shall render the ruling on the seizure of objects from the first paragraph of this Article even where a provision to that effect is not contained in the judgement of conviction.*

*(4) A certified copy of the decision on the seizure of objects shall be served on the owner if his identity is known.*

*(5) The owner of the objects shall be entitled to appeal against the decision referred to in the second and third paragraphs of this Article if he considers that statutory grounds for seizure do not exist. If the ruling from the second paragraph of this Article was not rendered by the court, the appeal shall be heard by the panel of the court (sixth paragraph of Article 25) which would have had the jurisdiction to adjudicate in first instance.*

## Article 498a

*See subparagraph 1(b) of article 54 of the Convention.*

The Government has considered taking measures to allow confiscation of property acquired through or involved in the commission of an offence without a criminal conviction. The CPA prescribes in articles 498 and 498(a) non-conviction-based confiscation.

Article 498 prescribes that objects which pursuant to CC may or have to be seized shall be seized even when criminal proceedings do not end in a verdict of guilty, if there is a danger that they might be used for a criminal offence or where so required by the interests of public safety or by moral considerations.

Article 498(a) of the CPA stipulates that money or property of unlawful origin referred to in article 245 of the CC and illegally given or accepted bribes referred to in articles 151, 157, 241, 242, 261, 262, 263 and 264 of the CC shall also be confiscated:

- 1) if those elements of criminal offences referred to in article 245 of CC, which indicate that money or property from the aforementioned article originate from criminal offences are proven, or
- 2) if those elements of criminal offences from articles 151, 157, 241, 242, 261, 262, 263 and 264 of the CC, which indicate that a reward, gift, bribe or any other form of a material benefit was given or accepted, are proven.

If these conditions are met the State prosecutor must file a reasoned motion. The panel of three district judges shall issue a special ruling on the motion. Before The special ruling, the investigating judge shall, at the request of the panel, collect data and investigate all the circumstances of importance for the determination of the unlawful origin of money or property or illegally given or received bribes. The beneficial owners have the right to appeal if they believe that there are no legal grounds for the confiscation (*for the rights of bona fide third parties, see the response under paragraph 9 of article 55 of the Convention*).

## **Criminal Code**

### Article 73 (Confiscation of Objects)

- (1) *Objects used or intended to be used, or gained through the committing of a criminal offence may be confiscated if they belong to the perpetrator.*
- (2) *Objects under the preceding paragraph may be confiscated even when they do not belong to the perpetrator if that is required for reasons of general security or morality and if the rights of other persons to claim damages from the perpetrator are not thereby affected.*
- (3) *Compulsory confiscation of objects may be provided for by the statute even if the objects in question do not belong to the perpetrator.*

*For more details on non-conviction-based civil forfeiture, please see the summary under article 51 of the Convention,*

There is also non-conviction-based civil forfeiture provided for certain types of criminal offences under the Forfeiture of Assets of Illegal Origin Act.

## **Forfeiture of Assets of Illegal Origin Act.**

### Article 4

*For the purposes of this Act, the following definitions shall apply:*

4. *“Testator” shall mean a deceased person against whom pre-trial or trial proceedings could not be commenced or have been stopped, but there remain grounds for suspicion that he has committed a criminal offence, or shall mean a person against whom pre-trial or trial proceedings have been stopped due to his death, or for whom there are grounds for suspicion that he has committed a criminal offence.*
5. *“Legal Successor” shall mean a person who has inherited assets of illegal origin from a Suspect, an Accused Person, a Convicted Person, a Testator or their heirs, if such person is aware or should have been aware that the assets in question had been acquired illegally.*

10. "Criminal offence" shall mean a criminal offence defined by the Criminal Code (hereinafter: KZ-1):

- terrorism (Article 108 of KZ-1);
- terrorist financing (Article 109 of KZ-1);
- establishing slavery relations (Article 112 of KZ-1);
- human trafficking (Article 113 of KZ-1);
- exploitation through prostitution (Article 175 of KZ-1);
- the presentation, production, holding and transmitting of pornographic material (paragraphs (2), (3) and (4) of Article 176 of KZ-1);
- the manufacture and trade of harmful remedies (paragraphs (1), (2) (4) and (5) of Article 183 of KZ-1);
- the manufacture and trade of tainted foodstuffs and other products (paragraphs (1), (2) (4) and (5) of Article 184 of KZ-1);
- the production and trafficking of illicit drugs, illicit drugs used in sport, and precursors for the manufacture of illicit drugs (Article 186 of KZ-1);
- rendering an opportunity for the consumption of narcotic drugs or illicit drugs used in sport (Article 187 of KZ-1);
- the organisation of pyramid schemes and illegal gambling (Article 212 of KZ-1);
- an offence against the economy (Chapter 24 of KZ-1) which may be punishable by imprisonment of up to two years or more;
- the acceptance of bribes (Article 261 of KZ-1);
- giving bribes (Article 262 of KZ-1);
- the acceptance of benefits for illegal intermediation (Article 263 of KZ-1);
- giving gifts for illegal intermediation (Article 264 of KZ-1);
- criminal association (Article 294 of KZ-1);
- the manufacture and acquisition of weapons and instruments intended for the commission of a criminal offence;
- illegal manufacturing and trafficking in arms or explosives (Article 307 of KZ-1);
- other criminal offences committed in a criminal organisation; or
- other premeditated criminal offences punishable by five years or more in prison if they are the source of assets of illegal origin.

#### Assets of illegal origin

##### Article 5

(1) *The assets of a Suspect, an Accused Person, a Convicted Person or a Testator shall be deemed to be of illegal origin if there are reasonable grounds to suspect that they have committed a listed criminal offence, unless it has been demonstrated that such assets have been acquired from lawful income, i.e. in a lawful manner.*

Data on mutual legal assistance concerning confiscation is not available.

#### **(b) Observations on the implementation of the article**

Slovenia provides for the possibility of non-conviction-based forfeiture, including where a suspect is deceased, has absconded, or is otherwise unavailable (arts. 498 and 498(a), CPA).

### **Subparagraph 2 (a) of article 54**

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### *Criminal procedure*

Indirect enforcement in Slovenia of interim measures can be requested by a foreign State party in the absence of a court order. According to article 515 of the CPA, in such a case, the request must be sent through diplomatic channels to the Ministry of Justice, which then forwards the request either to a court or a State prosecutor's office based on the nature of the requested acts (*for the text of the article, please see subparagraph 1(b) of article 14 of the Convention*).

Article 514 of the CPA stipulates that legal assistance in criminal matters shall be administered pursuant to the provisions of the CPA unless provided otherwise by international agreements. Thus, if the requests for MLA are registered, the general provisions of the CPA described below are applied to the procedure of enforcement of measures stipulated in the provision of the Convention under review.

According to article 502(1) of the CPA, when the confiscation of proceeds is taken into consideration in the criminal procedure, and there is a danger that the accused alone or through other persons should use these proceeds for a further criminal activity or conceal, alienate, destroy or otherwise dispose of it to prevent or render substantially difficult their confiscation after the completed criminal procedure, the court shall order, on a motion of the State prosecutor, a provisional securing of the request for the confiscation of proceeds.

#### **Criminal Procedure Act**

##### Article 502

(1) *Where the seizure of proceeds is applicable and if there is danger that the defendant could, on his own or through other persons, use these proceeds for further criminal activities or could conceal, alienate, destroy or otherwise make use of these proceeds and thus precluded or rendered the seizure of proceeds difficult, the court shall on its own authority order temporary securing of the claim upon motion of the state prosecutor.*

(2) *Such securing may be ordered by the court also during the pre-trial procedure if there are well-grounded reasons for the suspicion that a criminal offence has been committed through which or because of which proceeds were gained or that such proceeds were obtained for another person or transferred to that person.*

(3) *The securing referred to in the previous paragraphs may be ordered against a defendant or suspect, against the recipient of the proceeds or other persons to whom proceeds were transferred provided that these proceeds may be seized in accordance with the Penal Code.*

The court may also order such provisional securing in the pre-trial procedure if there are reasonable grounds for suspicion that a criminal offence has been committed by means of which or for which the proceeds were acquired, or such proceeds were acquired for another person or transferred to another person (art. 502(2), CPA).

The securing may be ordered against the accused or suspect, against the recipient of the proceeds or against another person to whom they were transferred, provided they can be confiscated as laid down in the provisions of the CC (art. 502(3), CPA).

According to article 502(a) of the CPA, the provisional securing of the request for the confiscation of proceeds shall be ordered by a ruling issued by the investigating judge in the pre-trial procedure or during the investigation. After the charge sheet is filed, the ruling out of the main hearing shall be issued by the presiding judge, while at the main hearing, it shall be issued by the panel. In the ruling ordering provisional securing, the court shall specify

the property subject to the provisional securing, the manner of securing and the duration of the measure. The ruling shall include an explanation.

## **Criminal Procedure Act**

### Article 502a

*(1) Temporary securing of the claim for the seizure of the proceeds shall be ordered by the decision issued by the investigating judge in the pre-trial and investigation procedure. After the charge sheet has been filed, the decision shall be issued by the presiding judge outside the main hearing or by the panel of judges at the main hearing.*

*(2) The decision referred to in the previous paragraph shall be served on the state prosecutor, the suspect/defendant and the person against whom the temporary securing was ordered (participants). The decision shall be sent to the competent body or person for the execution. The decision shall be served on the suspect/defendant and the person against whom the temporary securing was ordered upon or after the execution, however, without unnecessary delay.*

*(3) The person issuing the decision must enable the suspect/defendant and the person against whom the temporary securing was ordered access to all files related to the case.*

*(4) If temporary securing is not ordered the decision shall be served only on the state prosecutor who may file a complaint against the decision.*

*(5) The suspect/defendant and the person against whom the temporary securing was ordered may file a complaint against the decision referred to in the first paragraph of this Article within eight days and propose the hearing to be carried out by the court. The court shall serve the complaint on other participants and lay down the time limit for replying. The complaint shall not stay the execution of the decision.*

*(6) The court shall decide on the hearing in view of the circumstances of the case and taking into account the statements in the complaint. If the court does not announce a hearing, it shall decide on the complaint on the basis of the submitted documents and other material and it shall explain its decision in the ruling on the complaint (eighth paragraph of this Article).*

*(7) The person filing the complaint and other participants should be able to express their position on the proposed and ordered measures in the complaint and at the hearing and to give their opinion, statements and proposals regarding all the issues related to the temporary securing.*

*(8) After the participants at the hearing express their position on all the issues and the evidence is presented, if it is required for making the ruling on the complaint, the court shall decide on the complaint. In the ruling on the complaint the court shall dismiss the complaint by applying Article 375 of this Act mutatis mutandis, grant the complaint and reverse or change the decision on the temporary securing, or reject the complaint.*

*(9) The participants shall be entitled to appeal against the ruling referred to in the previous paragraph. The appeal shall not stay the execution of the ruling.*

With reference to article 502(b) of the CPA, in the pre-trial procedure and after the issuance of the ruling on the introduction of investigation, the provisional securing may be ordered for up to three months. After the charge sheet has been filed, the duration of the provisional securing shall not be longer than six months. The period mentioned above may be extended by the same periods. The total duration of the provisional securing prior to the introduction of the investigation or, if an investigation has not been introduced prior to filing the charge sheet, shall not be longer than one year. In the investigation, the total duration of provisional securing shall not be longer than two years. After the filing of the charge sheet before the announcement of the judgment by the court of the first instance, the total duration of provisional securing shall not exceed three years. Before the execution of the final court decision on the confiscation of proceeds, the total provisional securing may not last longer than ten years.

## **Criminal Procedure Act**

### Article 502b

*(1) In the decision ordering temporary securing the court must state the property which is the subject of securing, the manner of securing (first paragraph of Article 272 and first paragraph of Article 273 of the*

*Execution of Judgements in Civil Matters and Insurance of Claims Act) and the duration of the measure. The decision must contain an explanation.*

*(2) When determining the duration of the measure the court must take into account the phase of the criminal proceedings, the type, nature and seriousness of the criminal offence, the complexity of the issue as well as the volume and importance of the property which is the subject of temporary securing.*

*(3) During the pre-trial procedure as well as after issuing the decision to institute the investigation the temporary securing may last three months. After the charge sheet has been filed the temporary securing may not last longer than six months.*

*(4) The time limit specified in the previous paragraph may be extended for the same periods of time. Before the investigation is instituted or, if it has not been instituted, before the charge sheet is filed the total duration of the temporary securing may not be longer than one year. During the investigation the total duration of the temporary securing may not be longer than two years. After the charge sheet has been filed and until the judgement of the court of first instance is passed the total duration of the temporary securing may not be longer than three years.*

*(5) Until the execution of the final court decision on the seizure of the proceeds the total duration of the temporary securing may not be longer than ten years.*

With reference to article 502(č) of the CPA, the court must make a decision on the motion for an order, extension, amendment or abolition of provisional securing particularly speedily. If provisional securing was ordered, the authorities in the pre-trial procedure must proceed immediately, and the criminal procedure shall be considered preferential.

Regarding article 502(č) of the CPA, the court shall notify ex officio the competent tax authority by a copy of its decision of the ordering, changing and cancellation of temporary securing for the forfeiture of proceeds.

#### *Civil procedure*

Slovenia can provide assistance relating to interim measures under articles 48, 49, 52 and 53 of the FAIOA. The form and content of the requests are governed by article 51 of the same act.

#### **Forfeiture of Assets of Illegal Origin Act**

##### Article 48

*Please see subpara. 1(a) of article 54*

##### Article 49 Terms and conditions

*Assistance to the competent authority of a foreign country shall be provided under the following terms and conditions:*

- 1. the requested measure shall not be contrary to the fundamental principles of internal legal order;*
- 2. the implementation of the requested measures shall not harm the sovereignty, legal order or other interests of the Republic of Slovenia;*
- 3. the standards of fair trial shall be applied to asset forfeiture proceedings conducted in a foreign country.*

##### Article 51 The contents of the request

*(1) A request for international cooperation shall include the following:*

- 1. the name of the body requesting cooperation;*
- 2. data on the person to whom the request relates (full name, date and place of birth, nationality and place of residence) and data on the company and its registered office in the case of a legal entity;*
- 3. data on the assets for which cooperation is requested and their relationship to the person referred to in the preceding point;*
- 4. specific measures to be carried out and the legal framework of the host country as the basis for*

*the exercise of its powers.*

*(2) In addition to the data referred to in the preceding paragraph, a request for the temporary security of assets of illegal origin shall also specify the circumstances that give rise to valid reasons for a suspicion that the assets are of illegal origin and that pre-trial or trial proceedings have been launched for a listed criminal offence or that a person has been convicted of such criminal offence. The request shall be accompanied by the documents, applications and decisions that gave rise to such circumstances.*

*(2) A request for the enforcement of a valid court decision to forfeit assets of illegal origin shall be accompanied by a copy of the valid court decision.*

#### Article 52 Procedure

*(1) The state prosecutor's office shall verify compliance with all terms and conditions under this Act upon receipt of a request to do so. If the request lacks all the necessary details, the competent authority of a foreign country shall be invited to provide the missing components within a time limit of no less than three months; otherwise, the request shall be rejected.*

*(2) If the existence and whereabouts of the assets of the person for whom temporary security has been requested need to be determined in order to grant a request, the state prosecutor shall act in accordance with the financial investigation provisions of this Act.*

*(3) If the granting of the request is subject to the performance of a procedural act which, under this Act, falls within the competence of the court on the state prosecutor's proposal, the request shall be referred to the Specialized State Prosecutor's Office of the Republic of Slovenia. The proposed measure shall be decided on by Ljubljana District Court.*

#### Article 53 Temporary security of forfeiture of assets of illegal origin

*(1) The court shall either grant or reject the request of the competent authority of a foreign country for temporary security for the forfeiture of assets of illegal origin.*

*(2) The provisions of this Act shall apply, mutatis mutandis, to the decisionmaking procedure on the request and provision of temporary security.*

*(3) Temporary security for the forfeiture of assets shall be in force until the valid conclusion of criminal proceedings in the host country or until the conclusion of the proceedings for the forfeiture of assets of illegal origin.*

*(4) If the proceedings referred to in paragraph (2) of this Article are not completed within two years of the date of the temporary security decision, the temporary security shall be cancelled. The court shall notify the competent body of a foreign country of its intention to return the assets within six months of the expiry of the aforementioned deadline. The court may exceptionally extend the security by no more than two years, provided that the competent authority of a foreign country submits additional evidence. The costs of temporary security of assets shall be borne by the host country.*

#### Article 54 Implementation of the provision on the forfeiture of assets of illegal origin

*(1) Assets of illegal origin shall be forfeited when the competent authority of a foreign country submits to the court evidence that the proceedings for the forfeiture of assets of illegal origin have been validly concluded in its respective country.*

*(2) The provisions of the act governing the recognition and enforcement of foreign court decisions in civil matters shall apply to the recognition and enforcement procedure.*

*(3) Forfeited assets of illegal origin shall be treated in accordance with the provisions of this Act unless otherwise provided by an international agreement.*

*In case of EU Member States, article 200 of the Cooperation in Criminal Matters with the Member States of the European Union Act applies.*



## Cooperation in Criminal Matters with the Member States of the European Union Act

### Article 200 (conditions for enforcement)

(1) *The domestic court shall enforce the seizure of objects or the temporary securing of the seized proceeds of a crime, issued by the judicial authority of another Member State in criminal proceedings for an offence punishable by both the law of the issuing State and under the law of the Republic of Slovenia.*

(2) *Without determining double criminality, the domestic court shall execute the decision referred to in the preceding paragraph if the offence referred to in the second paragraph of Article 9 of this Act is an offence.*

### **(b) Observations on the implementation of the article**

Article 200 of the Cooperation in Criminal Matters with the Member States of the European Union Act allows, inter alia, the direct enforcement of foreign interim decisions from EU member States for the seizure of assets. The provisions of this act provide detailed guidance on the recognition and enforcement of freezing orders in Slovenia, issued by a judicial authority of another Member State of the European Union, in criminal proceedings, in order to collect evidence to ultimately confiscate property. Slovenian legislation does not provide for the direct enforcement of foreign interim decisions outside the European Union.

### **Subparagraph 2 (b) of article 54**

2. *Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:*

...

*(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The competent Slovenian authorities - District Courts must receive the MLA request and order for confiscation. With reference to the national law, the requests for search and seizure require dual criminality. With reference to paragraph 4 of article 516 of the CPA, the permissibility of the actions requested by a foreign authority and the manner of its implementation shall be decided on by the competent national authority pursuant to national regulations and international agreements. The request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of Slovenia and does not prejudice its sovereignty and security (*for article 516 of the CPA, please see subparagraph 2(a) of article 54 of the Convention*).

According to the law, for freezing the assets in domestic cases, only the State prosecutor is competent to file a motion for a provisional securing of the request for the confiscation of proceeds. In that case, if a requesting State Party sends a request for seizure, the State prosecutor evaluates the request. If the conditions for freezing are met, then the State prosecutor files the above-mentioned motion. The conditions for freezing of assets in a pre-trial are met if there are grounds for suspicion that a criminal offence has been committed by means of which or for which the proceeds were acquired, or such proceeds were acquired for another person or transferred to another person. In a criminal proceeding, the condition for provisional securing is met if there is a danger that the accused alone or through other persons should use these proceeds for a further criminal activity or conceal, alienate, destroy or otherwise dispose of it in order to prevent or render substantially difficult their confiscation after the completed criminal procedure.

If the request meets the conditions, then the State prosecutor files a motion. The files that substantiate the request can be sent directly, by diplomatic means or by MoJ. The form of the request depends on the requesting country (EU country or country with a bilateral agreement or another country).

***(b) Observations on the implementation of the article***

Indirect enforcement in Slovenia of interim measures may be requested by a foreign State party in the absence of a court order. In such a case, the request must be sent through diplomatic channels to the Ministry of Justice (art. 515, CPA). Slovenia can provide assistance relating to interim measures (art. 49, FAIOA). It is not clear whether the standard used to determine assistance is a reasonable basis to believe that there are sufficient grounds for taking actions provided in the provision under review. The form and content of the requests is governed by article 51 of FAIOA.

***Subparagraph 2 (c) of article 54***

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

***(a) Summary of information relevant to reviewing the implementation of the article***

Please see the summary provided under subparagraphs 2 (a) and (b) of article 54 of the Convention where the procedure for freezing and confiscation is described.

***(b) Observations on the implementation of the article***

Slovenia does not have additional measures making it possible to preserve property for confiscation on the basis of foreign arrest or criminal charges issued by a foreign court.

**It is recommended that Slovenia consider taking measures making it possible to preserve property for confiscation on the basis of foreign arrests or criminal charges issued by a foreign court.**

***Article 55. International cooperation for purposes of confiscation***

***Paragraph 1 of article 55***

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

***(a) Summary of information relevant to reviewing the implementation of the article***

The State prosecutor is competent for filing motions for provisional securing of the request for the confiscation of proceeds and motions for the confiscation of objects and proceeds regarding the confiscation of proceeds of crime, property, equipment or other instrumentalities.

Slovenia does not have explicit legal arrangements for coordinating seizure and confiscation actions with other countries. Relevant provisions of the CPA and FAIOA could apply in practice since it appears that coordination

could be arranged on a case-by-case basis when authorities receive and implement a request for seizure and confiscation. Furthermore, the Expert Information Centre (EIC), a unit within the Office of the State Prosecutor General, has a coordinating and facilitating role in cooperation with the EU member States for the purpose of confiscation. It keeps a central register of all proposals and orders related to confiscation, provides expert assistance to State prosecutors on the matter, and operates as the contact point between domestic and foreign competent authorities.

In case the State Prosecutor's Office receives a request for the confiscation of proceeds of crime, property, equipment or other instrumentalities, the actions of State prosecutors vary according to the requesting State party. If the requesting State party is an EU Member State, then the request is considered, and if the conditions are met, the State prosecutor files one of the above-mentioned motions within the criminal proceedings in Slovenia (art. 200). If the requesting State party is a non-EU member, the State prosecutor must act in accordance with a possible bilateral agreement and, if there is no agreement, according to general provisions regulated in CPA. According to article 516 of the CPA, the request for international criminal assistance may be granted if the implementation of the act of assistance is not in conflict with the legal order of Slovenia and does not prejudice its sovereignty and security. If the motion is granted, the competent authority in Slovenia notifies the requesting country of the time and place of implementing a certain procedural act (art. 516, CPA). Representatives of competent authorities of the requesting country and other participants in the proceedings and their counsels may be present in implementing the act of assistance if it is probable that their presence and/or cooperation are useful for the appropriate implementation of legal assistance (*for articles 515 and 516 of the CPA, please see subparagraph 2(a) of article 54 of the Convention*).

The recognition and enforcement of foreign judgments or confiscation orders in Slovenia are provided in art. 517 of the CPA.

## **Criminal Procedure Act**

### Article 517

*(1) National courts may grant the motion of the state prosecutor or request of the competent foreign authority for the execution of the prison sentence, security or other sanction of the criminal court which is implemented through deprivation of liberty or a fine under the final criminal judgment of a foreign court, if so stipulated by an international treaty or on the basis of reciprocity and if the following requirements are complied with:*

- *the person agrees with the execution of the sentence in the Republic of Slovenia, except in the cases referred to in the second paragraph of this Article;*
- *the judgment does not entail a violation of the main principles of the legal order of the Republic of Slovenia;*
- *the decision was issued on an offence punishable by a prison sentence or a fine pursuant to the national law;*
- *the decision was not issued on the political or military criminal offence;*
- *that the execution of sentence has not become statute-barred pursuant to the national legislation;*
- *the person has not been sentenced for the same offence by a final judgment or acquitted under a final decision or the criminal proceedings against this person has been stopped under a final decision or the indictment against the person was dismissed under a final decision;*
- *this person in question is a Slovenian citizen and has permanent or temporary residence in the Republic of Slovenia;*
- *in cases where a criminal court's safety precaution or some other measure is implemented by deprivation of liberty, the national law prescribes the same measure;*
- *the judgment was issued in the presence of the person, unless the requesting state submits the relevant evidence that the person has been invited personally or that the person has been notified on the time and venue of the proceedings through the counsel authorised in accordance with the national law, which was the reason why the judgment was issued in the person's absence, or if the person declared to the competent authority that he did not object to the decision.*

*(2) The consent of the person referred to in the first indent of the preceding paragraph shall not be required if the person has avoided the execution or further execution of the criminal judgment referred to in the preceding Article through his arrival or abscondment to the Republic of Slovenia.*

## **Criminal Procedure Act**

### Article 506.a

*(1) The court which ordered the storage of confiscated objects or the provisional securing of a request for the confiscation of proceeds or property in the value of the proceeds, shall proceed with particular speed in such instances. It shall act as a good manager with respect to the confiscated objects and property serving as provisional security, as well as to objects and property given as bail (Articles 196 to 199).*

*(2) If the storage of the confiscated objects or the provisional securing of a request from the preceding paragraph involves disproportionate costs or if the value of the property or the objects is decreasing, the court may order that such property or objects be sold, destroyed or donated for the public benefit. Prior to taking a decision on this, the court must obtain the opinion of the owner of the property or objects. If the owner is not known or it is not possible to service the owner with the summons to give an opinion, the court shall post the summons on the bulletin board of the court and after eight days it shall be deemed that the service has taken place. If the owner does not give an opinion within eight days after the service of the summons, it shall be deemed that he has consented to the property or objects being sold, destroyed or donated.*

*(3) Relevant state bodies, organisations with public authorisation, executors and financial organisations shall take care of the storage of the confiscated objects and bail and of the provisional securing of requests referred to in the first paragraph of this Article.*

*(4) The procedure for managing confiscated objects and property and bails referred to in the first paragraph of this Article shall be prescribed by the Government of the Republic of Slovenia.*

### Article 507

*(1) Unless stipulated otherwise in this Chapter, other provisions of this Act shall apply mutatis mutandis to the procedure for the application of security measures, confiscation of proceeds, bribes and money or property of unlawful origin, and revocation of suspended sentence.*

*(2) The provisions of Articles 498.a to 506.a of this Act which refer to the confiscation of money or property of unlawful origin, bribes and other proceeds shall apply mutatis mutandis to the confiscation of property in a value matching the proceeds (Articles 96 and 98 of the Penal Code).*

*(3) The provisions of Article 499 of this Act shall apply mutatis mutandis to the pre-trial and investigative procedure; in addition to the bodies before which the criminal procedure is taking place, other bodies stipulated by this Act shall also participate in the collecting of data and the investigation of the circumstances material for the determination of proceeds.*

## **Forfeiture of Assets of Illegal Origin Act**

### Conditions for temporary security of forfeiture

#### Article 20

*(1) The court shall order temporary security for the forfeiture of assets of illegal origin on the proposal of the state prosecutor provided that the following conditions have been satisfied:*

- *that there are reasonable grounds to suspect that a Suspect, an Accused Person, a Convicted Person or a Testator has committed a listed criminal offence;*
- *the data and evidence gathered for the period under financial investigation show a clear discrepancy between the income less taxes and contributions paid by a Suspect, an Accused Person, a Convicted Person or a Testator and the value of assets owned, used, enjoyed or held and transferred to related parties by such persons or passed by such persons to their respective successors;*

- that there is a risk of the owner using these assets for criminal purposes, either alone or through other persons, or there is a risk of the owner hiding, disposing, destroying or otherwise holding these assets with a view to preventing or making the forfeiture of these assets more difficult; and

- that the assets which are the subject of the application for temporary security under this Act are not the subject of the security or forfeiture of the proceeds from or relating to a listed criminal offence in accordance with the provisions of the act governing criminal proceedings.

(2) The subject of security under this Act may also be the assets for which temporary security of the forfeiture of the proceeds has been ordered and subsequently revoked if a change to or cancellation of the provisional security ordered in the trial proceedings has remained in force due to a procedure planned to be introduced by the competent tax authority.

#### Order for temporary security

#### Article 21

(1) Temporary security shall be ordered for a Suspect, an Accused Person, a Convicted Person or a Testator for which there are reasonable grounds to suspect that they hold assets of illegal origin, or for a Legal Successor or a Related Party provided there are reasonable grounds to suspect that the assets of illegal origin have been transferred to such persons.

(1) The court order shall include data on the owner, a description of the acts serving as evidence of a listed criminal offence, the time and place of its commission, and the statutory definition of such criminal offence, the assets that are the subject of security and the method and duration of security. The decision shall be substantiated.

(3) The court shall establish the amount of assets of illegal origin and order security to be provided on the basis of the evidence submitted by the state prosecutor. The court shall not enter into an assessment of the legality of the bases for the acquisition of assets, but shall restrict itself only to an assessment of proportionality on the basis of the data submitted.

(4) If the decision on temporary security cannot be served on the owner of the assets since his address is unknown or cannot be ascertained, the court shall designate *ex officio* a proxy for the temporary security procedure.

Statistics regarding motions for provisional securing of the request for the confiscation of proceeds and regarding motions for the confiscation of objects and proceeds are not available.

#### ***(b) Observations on the implementation of the article***

The recognition and enforcement of foreign judgments or confiscation orders in Slovenia are provided in art. 517 of the CPA. It is not clear whether it is possible to enforce foreign judgments or orders for freezing, seizing or confiscating assets in Slovenia unless they relate to criminal proceedings.

**It is recommended that Slovenia take measures to provide for the direct enforcement of foreign interim decisions emanating from countries outside the European Union, including decisions emanating from civil proceedings.**

#### ***Paragraph 2 of article 55***

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

***(a) Summary of information relevant to reviewing the implementation of the article***

Paragraph 2 of article 52 of the Forfeiture of Assets of Illegal Origin Act provides for the possibility of taking measures to identify, trace and freeze proceeds of crime, property, equipment or other instrumentalities referred to in the provision of the Convention under review.

**Forfeiture of Assets of Illegal Origin Act**

Article 52 Procedure

*(2) If the existence and whereabouts of the assets of the person for whom temporary security has been requested need to be determined in order to grant a request, the state prosecutor shall act in accordance with the financial investigation provisions of this Act*

**Criminal Procedure Act**

Article 148

*(1) If grounds exist for suspicion that a criminal offence liable to public prosecution has been committed, the police shall be bound to take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings.*

*(2) With a view to executing the tasks from the preceding paragraph the police may: seek information from citizens; inspect transportation vehicles, passengers and luggage; restrict movement within a specific area for a specific period of time; perform what is necessary to identify persons and objects; send out a wanted circular for persons and objects; inspect in the presence of the responsible person specific facilities, premises and documentation of enterprises and other legal entities, and undertake other necessary measures. The facts and circumstances established in individual actions which may be of concern for criminal proceedings, as well as the objects found and seized, shall be indicated in the record, or an official note shall be made thereon.*

Article 502è

*The court must be especially quick in taking the decision on the proposal for ordering, extending, changing or withdrawing temporary securing. If temporary securing has been ordered, the bodies in the pre-trial procedure must take very quick action and the criminal proceedings shall be regarded with priority.*

*Please also see the summary under article 54 of the Convention.*

***(b) Observations on the implementation of the article***

Paragraph 2 of article 52 of the Forfeiture of Assets of Illegal Origin Act and articles 148 and 502è of the Criminal Procedure Act provide for the possibility of Slovenia taking measures to identify, trace and freeze proceeds of crime, property, equipment or other instrumentalities upon a request from another country.

***Paragraph 3 of article 55***

*3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:*

*(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property*



and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Forfeiture of Assets of Illegal Origin Act provides for the required content of foreign requests.

**Forfeiture of Assets of Illegal Origin Act**

**Article 51**

*See subparagraph 2 (a) of article 54 of the Convention.*

*See also the summary under paragraph 1 of article 55 of the Convention.*

Although complete statistics on conviction-based confiscation are not available, statistics are available on the same type of confiscation concerning money-laundering offences (*please see the summary under article 51 of the Convention*).

State prosecution does not gather data on non-conviction-based confiscation.

**(b) Observations on the implementation of the article**

The form and content of incoming requests from foreign jurisdictions is governed by article 51 of the FAIOA.

**Paragraph 4 of article 55**

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

**(a) Summary of information relevant to reviewing the implementation of the article**

*Please see the summary under subparagraph 1(a) of article 55 of the Convention.*

**(b) Observations on the implementation of the article**

*Please see the observations under subparagraph 1 of article 55 of the Convention.*

**Paragraph 5 of article 55**

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.



***(a) Summary of information relevant to reviewing the implementation of the article***

The relevant information is available at the UNODC webpage:

<https://track.unodc.org/LegalLibrary/Pages/home.aspx?country=Slovenia>

***(b) Observations on the implementation of the article***

Slovenia submitted copies of its pertinent laws at the time of the review.

***Paragraph 6 of article 55***

*6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Slovenia reported that the Convention is directly applied in Slovenia.

***(b) Observations on the implementation of the article***

Slovenia noted that the Convention can be directly applied in Slovenia pursuant to article 8 of the Constitution. Its application is, however, difficult in practice given the absence of clear domestic policy and procedure.

***Paragraph 7 of article 55***

*7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.*

***(a) Summary of information relevant to reviewing the implementation of the article***

Slovenia has no de minimis rule; therefore, the low value of the proceeds of the crime is not an obstacle in executing the request. In case of a lack of evidence, Slovenia can demand additional information and evidence, etc., within an appropriate time limit. If the requesting State Party does not supply such evidence, the State prosecutor can reject the request, as it has no ground to file a motion.

Pursuant to article 52 of the Forfeiture of Assets of Illegal Origin Act, the State Prosecutor's Office can request from a foreign State additional supporting documents within three months.

**Forfeiture of Assets of Illegal Origin Act**

Procedure

Article 52

*(1) The state prosecutor's office shall verify compliance with all terms and conditions under this Act upon receipt of a request to do so. If the request lacks all the necessary details, the competent authority of a foreign country shall be invited to provide the missing components within a time limit of no less than three months; otherwise, the request shall be rejected.*

*(2) If the existence and whereabouts of the assets of the person for whom temporary security has been requested need to be determined in order to grant a request, the state prosecutor shall act in accordance with the financial investigation provisions of this Act.*

(3) *If the granting of the request is subject to the performance of a procedural act which, under this Act, falls within the competence of the court on the state prosecutor's proposal, the request shall be referred to the Specialized State Prosecutor's Office of the Republic of Slovenia. The proposed measure shall be decided on by Ljubljana District Court.*

**(b) Observations on the implementation of the article**

Pursuant to article 52 of the Forfeiture of Assets of Illegal Origin Act, the State Prosecutor's Office can request a foreign State to provide additional supporting documents within three months. If the requesting State fails to provide the required documents within this timeframe, the request will be rejected.

**Paragraph 8 of article 55**

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

**(a) Summary of information relevant to reviewing the implementation of the article**

Regarding expenditure and lifting of a provisional securing, article 502c of the CPC is in place.

**Article 502c of the CPA** reads as follows:

*(1) The court may, by a ruling, extend the provisional securing ordered by a ruling from the first paragraph of Article 502.a of this Act upon a reasoned motion of the public prosecutor, taking into consideration the criteria referred to in the first paragraph of Article 502 of this Act and the time limits referred to in the fourth and fifth paragraph of Article 502.b of this Act. Prior to its decision on the motion, the court shall submit the motion to other participants to make a statement about it and set a reasonable time limit for reply.*

*(2) On a reasoned motion of the public prosecutor, the suspect or accused or the person against whom a provisional securing was ordered and taking into consideration the criteria referred to in the first paragraph of Article 502 of this Act, the court may order a new manner of securing and repeal the former ruling on provisional securing. Prior to its decision on the motion, the court shall submit the motion to other participants to make a statement about it and set a reasonable time limit for reply. The decision repealing the measure shall be executed after the execution of the decision by which the new manner of provisional securing is ordered.*

*(3) The court shall abolish provisional securing on a motion of participants. The court may also abolish the provisional securing ex officio due to the expiry of the time limit or if the public prosecutor dismisses crime report or states that he will not institute the criminal prosecution or that he abandons it. The public prosecutor shall notify the court of his decision.*

*(4) If the court considers that the provisional securing is no longer necessary, it shall invite the public prosecutor to make a statement about it within a specified time limit. If the public prosecutor does not make a statement within the time limit or if he does not oppose the abolition of provisional securing, the court shall abolish the provisional securing."*

As cited, the CPA does not provide an opportunity for the requesting State Party to present its reasons in favour of continuing the measure. But it is very likely that the State prosecutor would ask the requesting State party for an opinion, as the provisional securing has been ordered on behalf of its request.

Articles 20 and 53 of the Forfeiture of Assets of Illegal Origin Act specify conditions pertaining to refusal or any provisions relating to the lifting of provisional measures.

**Forfeiture of Assets of Illegal Origin Act**

Conditions for temporary security of forfeiture

## Article 20

(1) *The court shall order temporary security for the forfeiture of assets of illegal origin on the proposal of the state prosecutor provided that the following conditions have been satisfied:*

- *that there are reasonable grounds to suspect that a Suspect, an Accused Person, a Convicted Person or a Testator has committed a listed criminal offence;*
- *the data and evidence gathered for the period under financial investigation show a clear discrepancy between the income less taxes and contributions paid by a Suspect, an Accused Person, a Convicted Person or a Testator and the value of assets owned, used, enjoyed or held and transferred to related parties by such persons or passed by such persons to their respective successors;*
- *that there is a risk of the owner using these assets for criminal purposes, either alone or through other persons, or there is a risk of the owner hiding, disposing, destroying or otherwise holding these assets with a view to preventing or making the forfeiture of these assets more difficult; and*
- *that the assets which are the subject of the application for temporary security under this Act are not the subject of the security or forfeiture of the proceeds from or relating to a listed criminal offence in accordance with the provisions of the act governing criminal proceedings.*

(2) *The subject of security under this Act may also be the assets for which temporary security of the forfeiture of the proceeds has been ordered and subsequently revoked if a change to or cancellation of the provisional security ordered in the trial proceedings has remained in force due to a procedure planned to be introduced by the competent tax authority.*

## Temporary security of forfeiture of assets of illegal origin

### Article 53

(1) *The court shall either grant or reject the request of the competent authority of a foreign country for temporary security for the forfeiture of assets of illegal origin.*

(2) *The provisions of this Act shall apply, mutatis mutandis, to the decision-making procedure on the request and provision of temporary security.*

(3) *Temporary security for the forfeiture of assets shall be in force until the valid conclusion of criminal proceedings in the host country or until the conclusion of the proceedings for the forfeiture of assets of illegal origin.*

(4) *If the proceedings referred to in paragraph (2) of this Article are not completed within two years of the date of the temporary security decision, the temporary security shall be cancelled. The court shall notify the competent body of a foreign country of its intention to return the assets within six months of the expiry of the aforementioned deadline. The court may exceptionally extend the security by no more than two years, provided that the competent authority of a foreign country submits additional evidence. The costs of temporary security of assets shall be borne by the host country.*

### ***(b) Observations on the implementation of the article***

Slovenia legislation specifies conditions pertaining to refusal or any provisions relating to the lifting of provisional measures (arts. 20 and 53, FAIOA). However, the CPA does not provide for an opportunity for a requesting State party to present its reasons in favour of continuing the provisional measure taken pursuant to this article.

**It is recommended that Slovenia take measures to ensure that whenever possible, the requesting State party is given an opportunity to present its reasons in favour of continuing the measure before lifting of provisional measures.**

## **Paragraph 9 of article 55**

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### **Criminal Code**

##### Article 76

(1) If an injured party has been awarded an indemnification claim in the criminal proceedings, the court shall order the forfeiture of proceeds if they exceed the injured party's awarded indemnification claim.

(2) An injured party who has been referred by a criminal court to litigation proceeding regarding his indemnification claim, may claim compensation from the confiscated amount, if the litigation begins within six months of the final decision of the court with which it was referred to the litigation proceeding and if he demands repayment from the confiscated amount within three months of the final decision with which his indemnification claim was awarded.

(3) An injured party who has not filed indemnification claim in criminal proceedings may request repayment from the confiscated amount, if the litigation proceeding has begun within three months of the day on which he learned of the decision with which the proceeds were confiscated, but at the latest within two years of this final decision, and if he demands repayment from the confiscated amount within three months of the final decision with which his indemnification claim was awarded.

Paragraph 3 of article 499 of the CPA states that if the injured party has filed an indemnification claim to recover the objects acquired by the commission of a criminal offence or to receive the monetary equivalent thereof, the proceeds shall only be determined for that part which exceeds the indemnification claim.

#### **Forfeiture of Assets of Illegal Origin Act**

##### Article 30

(1) The seizure of the property of an unlawful source to the owner does not affect the rights held by a third person on this property, unless, at the time of acquisition of these rights, they knew or could have known that the property was acquired illegally.

(2) The court *ex officio*, immediately upon receipt of the lawsuit, verifies whether all third parties are known in the proceedings and whose rights or legal benefits, regarding which has not yet been decided by a final decision, could be affected by the judgment issued. Third parties who are not involved shall be called upon to make a statement of entry into the litigation proceeding in accordance with the Act governing civil proceedings within one month, as regarding co-plaintiffs and the participation of other persons in litigation proceeding, court warns them of the legal consequences of Article 32 and informs them of the right referred to in the fourth paragraph of Article 33 of this Act.

(3) Under the conditions determined by the Criminal Code regarding the protection of the injured party, whose assets were confiscated as proceeds gained through or due to committing a criminal offence, the injured party has a status of a third party referred to in the preceding paragraphs, who is a party in criminal proceedings due to a catalogical offence against the suspect, defendant, a convicted person or a deceased person, due to an indemnification claim.

(4) Pursuant to the provisions of the preceding paragraphs, the rights established by third parties, which do not prevent the forfeiture of property of unlawful origin, shall be exercised regarding confiscated property in accordance with the provisions of the fourth paragraph of Article 33 of this Act.

#### **Criminal Procedure Act**

##### Article 498

...

(4) A certified copy of the decision on the seizure of objects shall be served on the owner if his identity is known.

*(5) The owner of the objects shall be entitled to appeal against the decision referred to in the second and third paragraphs of this Article if he considers that statutory grounds for seizure do not exist. If the ruling from the second paragraph of this Article was not rendered by the court, the appeal shall be heard by the panel of the court (sixth paragraph of Article 25) which would have had the jurisdiction to adjudicate in first instance.*

#### Article 498a

...

*(3) A certified true copy of the decision referred to in the previous paragraph shall be served on the owner of the seized money, property or bribe if his identity is known. If the identity of the owner is not known the decision shall be posted on the court bulletin board and, after eight days, it shall be regarded that the unknown owner has been served the decision.*

*(4) The owner of the seized money, property or bribe shall be entitled to appeal against the decision referred to in the second paragraph of this Article if he considers that statutory grounds for seizure do not exist.*

#### Article 502a

...

*(5) The suspect/defendant and the person against whom the temporary securing was ordered may file a complaint against the decision referred to in the first paragraph of this Article within eight days and propose the hearing to be carried out by the court. The court shall serve the complaint on other participants and lay down the time limit for replying. The complaint shall not stay the execution of the decision.*

*(6) The court shall decide on the hearing in view of the circumstances of the case and taking into account the statements in the complaint. If the court does not announce a hearing, it shall decide on the complaint on the basis of the submitted documents and other material and it shall explain its decision in the ruling on the complaint (eighth paragraph of this Article).*

*(7) The person filing the complaint and other participants should be able to express their position on the proposed and ordered measures in the complaint and at the hearing and to give their opinion, statements and proposals regarding all the issues related to the temporary securing.*

*(8) After the participants at the hearing express their position on all the issues and the evidence is presented, if it is required for making the ruling on the complaint, the court shall decide on the complaint. In the ruling on the complaint the court shall dismiss the complaint by applying Article 375 of this Act mutatis mutandis, grant the complaint and reverse or change the decision on the temporary securing, or reject the complaint.*

*(9) The participants shall be entitled to appeal against the ruling referred to in the previous paragraph. The appeal shall not stay the execution of the ruling.*

In addition to the above provisions, the following decisions of the Constitutional Court can be considered as an example of the implementation of the provision under review.

#### *Decision of the Constitutional Court no. U-I-2013/14 of 3 December 2015*

The Constitutional Court decided on the request of the District Court in Ljubljana that the second paragraph of article 28 of the Forfeiture of Assets of Illegal Origin Act was inconsistent with the Constitution, insofar as it referred in civil proceedings to article 9 (3) of ZIZ that the objection shall be submitted within eight days of the service of the order of the first instance court. In the proceedings for temporary protection and temporary confiscation of property under the Forfeiture of Assets of Illegal Origin Act, the court must give defendants an additional period of twenty-two days for an objection.

#### *Decision of the Constitutional Court no. U-I-91/15 of 16 March 2017*

The Constitutional Court decided on the request of the District Court in Ljubljana to assess the constitutionality of article 5 (1) in conjunction with the first paragraph of article 34, paragraph 1 of article 4



and the first and second paragraphs of article 5 of the FAIOA. Prior to filing the request, the applicant interrupted the civil procedure for deciding on an action for the confiscation of property of unlawful origin. On the basis of substantive statements in the request, the Constitutional Court first assessed whether the definition of the property of an unlawful origin was in accordance with the requirement for clarity and certainty of the regulations arising from article 2 of the Constitution. In the event of the seizure of the property of unlawful origin, it is a governmental act of a state that has a clear and unambiguous public purpose: i.e., to achieve that an individual cannot retain the property he has acquired illegally or by illegal activity if he cannot prove the legality of the source of property upon the suspicion that he committed certain serious offences. The specific nature of this measure requires the legislator to ensure that the material and procedural conditions for the deprivation of the property of an unlawful origin are clearly and definitely regulated. According to the established constitutional review, this condition is satisfied if the content of the mentioned conditions can be established by means of established methods of interpretation. The Constitutional Court ruled that with the established methods of interpretation, it is possible to determine the content of the definition of the property of illegal origin in article 1 point 4 and in the first paragraph of article 5 of the FAIOA; therefore, the provisions were not inconsistent with the principle of clarity and precision of the law referred to in article 2 of the Constitution. The Constitutional Court further assessed whether the measure for the confiscation of the entire mixed asset in case of the inextricable nature of the property of illegal origin with the property of legal origin is in accordance with the human right to private property referred to in article 33 of the Constitution. It decided that Item 1 of article 4 of the FAIOA, in so far as it defines assets that are mixed with assets of illegal origin, thus allowing for the removal of all mixed assets, is unconstitutional. In order to enable the Constitutional Court to enforce the FAIOA and defend the human right from article 33 of the Constitution, the court determined the manner in which its decision was executed. It stipulated that in the event that the property is a set of mixed assets of unlawful and lawful origin, such an item shall be completely confiscated if the defendant has mixed the assets with a view to the repatriation of unlawful acts or concealment of the unlawful origin of property, under the condition, that the proportion of the assets of unlawful origin in the mixed object is not only insignificant. If there was no such purpose, or if the proportion of the property of unlawful origin in the mixed case is insignificant, the ideal proportion of this item is confiscated, by establishing the co-ownership of the state in a proportion corresponding to the value of the mixed assets of unlawful origin and the defendant's share of his proven legal contribution to this property object. In the third substantive part of the decision, the Constitutional Court assessed the compliance of the regulation of the seizure of assets of unlawful origin insofar as it concerned the spouse of the defendant, with the principle of clarity and precision of legal norms from article 2 of the Constitution. It decided that the regulation in this part was not inconsistent with article 2 of the Constitution.

The Constitutional Court also assessed whether the provision that property of an unlawful origin is taken even if it is a joint property of the defendant and his spouse is in accordance with article 33 of the Constitution. It decided that the regulation interfered with the right from article 33 of the Constitution, but the interference was constitutionally admissible. The Constitutional Court rejected the request for review of the constitutionality of article 5 (1) in conjunction with the first paragraph of article 34 of the FAIOA, which enacted the confiscation of property of an unlawful origin only on grounds for suspecting that a catalogical offence has been committed.

#### ***(b) Observations on the implementation of the article***

Article 30 of the Forfeiture of Assets of Illegal Origin Act protects bona fide owners. The CPA also provides opportunities to protect the rights of bona fide third parties against which the temporary securing has been ordered.

#### ***Article 56. Special cooperation***

*Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out*

*investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

If a national judicial authority (State prosecutor) estimates for well-founded reasons that information concerning criminal offence obtained during the performance of its competences could be required in the implementation of pre-trial criminal or criminal proceedings, or could represent the basis for a request for legal assistance, it may forward such information to, or receive it from, the competent authorities of another EU member State without prior request. (*See also the summary on JITs under subparagraph 1(b) of article 14 of the Convention*)

For the non-EU member States, the exchange of information depends on the bilateral agreements, and in cases of absence of the agreement, information exchange can be granted if the implementation of the act of assistance is not in conflict with the legal order of Slovenia and does not prejudice its sovereignty and security. (*See also the summary on general rules regarding international cooperation*)

Article 518 CPA states that in the case of criminal offences of forgery of money and the bringing in of fake money into circulation, improper manufacture, processing and sale of drugs and poisons, trade in white goods, production and distribution of pornographic material or for any other offence according to which international agreements stipulate the centralization of data, the authority before which the criminal procedure is pending, must send the Ministry of the Interior, without delay, information on the criminal offence and the perpetrator, and the court of first instance, as well as a final judgment. In the case of an offence of money-laundering or an offence related to money-laundering, the information is sent without delay to the authority responsible for the prevention of money-laundering.

Data relating to the offence of money-laundering must be sent to the OPML. According to paragraph 1 of article 121 of the AML Law, the State Prosecutor's Offices and the courts must provide certain information to that office twice a year. Within the meaning of article 23 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, it is also the central authority of Slovenia for transmitting requests and responses, accepting such requests or transmitting them to the authorities competent for their implementation.

*See also the summary on JITs, subparagraph 1(b) of article 14 of the Convention for the description of two JITs and one SIT.*

**(b) Observations on the implementation of the article**

Slovenian legislation does not explicitly prescribe or prohibit the spontaneous transmission of information for the ultimate objective of recovering assets domestically or internationally. However, it is possible in practice through several channels, such as through the Egmont Group, the International Criminal Police Organization (INTERPOL), and Eurojust.

**Article 57. Return and disposal of assets**

**Paragraph 1 of article 57**

*1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Slovenia does not have a central asset management institution. Both for proceedings under the CPA and FAIAO, the court decides on the competent authority for storage and management according to the nature of the assets (art. 506.a, CPA; arts. 24 (3) and 37 and 38, FAIOA). For example, the competent authority for securities is the Slovenian Sovereign Holding; and for movable property the Financial Administration. In both regimes, the court may order that property be sold, destroyed, or donated for the public benefit in case of disproportionate storage



costs or decreasing value. Mechanisms of managing and disposing of frozen, seized or confiscated property are regulated in more detail in the Decree on Procedure of Management of Forfeited Items, Assets and Securities (for criminal proceedings) and the Decree on procedures of Safekeeping, Management and Sale of Assets of Illegal Origin (for civil proceedings). However, Slovenia does not have a comprehensive system in place for effective management over time of complex assets, such as active corporate ones.

With regard to asset sharing, the Act on Cooperation in Criminal Matters with the Member States of the European Union serves as a basis for the country's policy in this context. Asset sharing depends on an agreement with the requesting state. If there is no agreement, then the following rules apply:

- an amount of money that has been confiscated and does not exceed €10,000, or the equivalent amount in another currency, is considered in its entirety revenue of the budget of Slovenia. As concerns sums which exceed €10,000, half of the sum is allocated to the Slovenian State budget and the other half to the ordering State (art. 216);
- objects and property other than money are disposed of in one of the following ways, to be decided by a national court:
  - 1) sold in accordance with national legislation; in this case, the proceeds of the sale are allocated in accordance with the preceding paragraph;
  - 2) transferred to a competent authority of the ordering state; if the confiscation order covers an amount of money, the objects or property may only be transferred to the ordering state when that state has given consent;
  - 3) disposed of in another way in accordance with national law if the preceding paragraphs cannot be applied.

With States which are not members of the European Union, asset sharing is possible if so provided in ratified international documents.

#### *Civil forfeiture*

#### **Forfeiture of Assets of Illegal Origin Act**

#### Effect on other proceedings

#### Article 33

*(1) No tax, enforcement, security, bankruptcy or winding-up proceedings or proceedings for the deletion of a legal entity from the companies register without winding-up or dissolution under summary proceedings shall be commenced for the assets that are the subject of a civil claim after the commencement of the legal proceedings for the forfeiture of assets of illegal origin in order to repay validly established claims to the owner of the assets.*

*(2) The initiated proceedings for the assets referred to in the preceding paragraph that are the subject of a civil claim under this Act shall be suspended until the court has rendered its final judgment on the forfeiture suit.*

*(3) From the beginning of the lawsuit until the final court decision, the limitation periods and statutory deadlines for the performance of acts in the proceedings referred to in paragraphs (1) and (2) of this Act shall be suspended.*

*(4) The creditors who have initiated the proceedings referred to in paragraph (2) of this Article and the persons whose claims against the owner of the assets or rights to a certain level of repayment from the forfeited assets have been validly established may, within two months of the finality of the judgment on the forfeiture of assets of illegal origin, request the State Prosecutor's Office of the Republic of Slovenia make a repayment from the forfeited assets unless they were or should have been aware of the illegal origin of the assets at the time of acquisition of the entitlement.*

*(5) If the total amount of claims referred to in the preceding paragraph exceeds the amount of the forfeited assets, the State Prosecutor's Office of the Republic of Slovenia shall, in the course of the proceedings it conducts under the act governing state prosecution, offer repayment in accordance with the rules on the repayment of creditors in bankruptcy proceedings. If the state prosecutor's offer is not accepted, the State*

*Prosecutor's Office of the Republic of Slovenia shall ex officio request the court commence bankruptcy proceedings for the forfeited assets in accordance with the provisions of the act governing financial operations, insolvency proceedings and compulsory winding-up.*

The monetary value of properties confiscated as a result of civil confiscation (and partially a criminal confiscation in money-laundering cases) is seen from the table attached in the summary under article 51 of the Convention. However, statistics or other reports on the disposal of those assets are not available due to a lack of a comprehensive management system of confiscated property.

**(b) Observations on the implementation of the article**

There is no specific law that mentions and provides for asset returns or the disposal of property to its prior legitimate owners. Furthermore, where requesting States are European Union member States, confiscated property in excess of €10.000 is shared on a 50 percent basis, although non-cash assets may be returned in full to the requesting States.

**It is recommended that Slovenia take measures to ensure that property confiscated as a result of Convention offences may be returned to requesting States in accordance with the Convention, as well as prior legitimate owners, including in the absence of a sentence in the requesting.**

**Paragraph 2 of article 57**

*2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

*Please see the summary provided under paragraph 9 of article 55, and paragraph 1 of article 57 of the Convention.*

**(b) Observations on the implementation of the article**

*Please see the observations under paragraph 1 of article 57 of the Convention.*

**Subparagraph 3 (a) of article 57**

*3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:*

*(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;*

**(a) Summary of information relevant to reviewing the implementation of the article**

*Please see the summary provided under paragraph 1 of article 57 of the Convention.*

**(b) Observations on the implementation of the article**

*Please see the observations under paragraph 1 of article 57 of the Convention.*

**Subparagraph 3 (b) of article 57**

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

**(a) Summary of information relevant to reviewing the implementation of the article**

Please see the summary provided under paragraph 1 of article 57 of the Convention.

**(b) Observations on the implementation of the article**

Please see the observations under paragraph 1 of article 57 of the Convention.

**Subparagraph 3 (c) of article 57**

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

**(a) Summary of information relevant to reviewing the implementation of the article**

Please see the summary provided under paragraph 1 of article 57 of the Convention.

**(b) Observations on the implementation of the article**

Please see the observations under paragraph 1 of article 57 of the Convention.

**Paragraph 4 of article 57**

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

**(a) Summary of information relevant to reviewing the implementation of the article**

Regarding the expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or

disposition of confiscated property, the expenses incurred by Slovenia is compensated according to the Cooperation in Criminal Matters with the Member States of the European Union Act. (arts. 7 and 25).

## **Cooperation in Criminal Matters with the Member States of the European Union Act**

### Costs

#### Article 7

*The costs entailed when implementing the provisions of this Act on the territory of the Republic of Slovenia shall be borne by state authorities and other bearers of public authority competent to conduct proceedings and enforce measures under the national legislation of the Republic of Slovenia.*

### Seizure of objects and temporary securing of a claim for the confiscation of proceeds

#### Article 25

*(1) If the ordering judicial authority so orders in a warrant, or if so provided by the national penal code, the investigating judge shall seize and hand over to the ordering judicial authority any objects which might serve as evidence in criminal proceedings.*

*(2) If, when issuing a warrant, an ordering judicial authority orders the temporary securing of a claim for the confiscation of proceeds, the investigating judge shall order the temporary securing of property in the Republic of Slovenia.*

*(3) A court shall render a decision on the seizure, as provided by the preceding paragraphs, in an order whereby the court decides on the surrender.*

*(4) When rendering a decision pursuant to the first or second paragraphs of this Article, the court shall not verify double criminality if the ordering judicial authority states in the warrant that the case concerns one of the types of criminal offence as referred to in the second paragraph of Article 9 of this Act.*

*(5) The objects, proceeds or property as referred to in the preceding paragraphs shall also be seized and handed over in a case when the surrender cannot take place due to the fact that the requested person has died or absconded.*

*(6) If a national court seizes objects, proceeds or property as referred to in the first and second paragraphs of this Article in the course of conducting ongoing criminal proceedings, it shall retain the objects, or hand them over temporarily to the ordering State on condition that they be returned.*

*(7) The ordering State must return the objects referred to in the first and second paragraphs of this Article if the executing State or a third person is entitled to them. The costs of receiving, storing and returning of the items shall be borne by the ordering State.*

With non-EU member States, the expenses may be deducted if so foreseen by an agreement.

In addition, if significant or extraordinary costs arise due to enforcement, the court shall propose to the competent authority of the member State the allocation of costs and annexing their detailed list (art. 219, Cooperation in Criminal Matters with the Member States of the European Union Act).

State prosecution does not hold the register of the expenses incurred in investigations, prosecutions or judicial proceedings.

### ***(b) Observations on the implementation of the article***

Where requesting States are European Union member States, confiscated property in excess of 10,000 euros is shared on a 50 percent basis, although non-cash assets may be returned in full to the requesting States.

*Please also see the observations under paragraph 1 of article 57 of the Convention.*

## Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

### (a) Summary of information relevant to reviewing the implementation of the article

Please see also the summary provided under paragraph 1 of article 57 of the Convention.

In practice, the instrument of asset sharing is implemented mostly with the EU member States on the basis of European legal instruments and the Cooperation in Criminal Matters with the Member States of the European Union Act.

### (b) Observations on the implementation of the article

Slovenia has not yet concluded agreements on the final disposal of confiscated assets nor returned corruption-related assets to any foreign State.

**It is recommended that Slovenia consider concluding agreements for the final disposal of confiscated property.**

## Article 58. Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

### (a) Summary of information relevant to reviewing the implementation of the article

#### **Act on Preventing of Money Laundering and Financing of Terrorism**

##### Article 104 (General provisions)

(1) The provisions of this Act concerning international cooperation shall apply unless otherwise stipulated by international agreement or a directly applicable EU regulation.

(2) The provisions of this Act concerning international cooperation refer to cooperation between the Office and foreign financial intelligence units, regardless of their organisational status, and cooperation with the European Commission.

(3) Cooperation between the Office and foreign financial intelligence units refers to the exchange of data, information, and documentation concerning clients, transactions, assets, and property

regarding which there are grounds to suspect money laundering, predicate criminal offences, or terrorist financing. Cooperation encompasses:

1. a request submitted by the Office to foreign financial intelligence units,
2. a request submitted by foreign financial intelligence units to the Office,
3. exchange based on a spontaneous initiative by the Office or foreign financial intelligence units.

(4) The office shall cooperate with the European Commission and other competent EU authorities when this is required in order to more easily coordinate and exchange information between the financial intelligence units of Member States regarding important issues in their field of work and cooperation that refers to:

- the discovery of suspicious transactions with cross-border dimensions,
- the standardisation of data and information exchange through a protected, decentralised computer network intended for data and information exchange regarding money laundering and terrorist

*financing among financial intelligence units;*

*- joint analyses of cross-border issues,  
- defining trends and factors relevant to assessing the risk of money laundering and terrorist financing at the national level and at the level of the European Union.*

*(5) For the purpose of data, information, and documentation exchange referred to in paragraph three of this Article, the Office may enter into a cooperation agreement with foreign financial intelligence units.*

*(6) Prior to sending personal data to a foreign financial intelligence unit, the Office shall obtain guarantees that the financial intelligence unit from the country to which data is being sent has a suitable level of personal data protection and that it will use these data only for the purposes set forth herein.*

*(7) The varying definitions of tax-related criminal offences in individual Member States or in third states shall not hinder data and information exchange among the financial intelligence units from Member States or third states, as provided by national legislation.*

#### Article 105 (A request to a foreign financial intelligence unit to submit data)

*(1) In the course of performing its tasks for discovering and preventing money laundering, predicate criminal offences, and terrorist financing, the Office may request in writing that a foreign financial intelligence unit submit data, information, and documentation concerning clients, transactions, assets, and property required in order to process, analyse, discover, and prevent money laundering, predicate criminal offences, or terrorist financing.*

*(2) If the Office requires data, information, and documentation from an obliged person from a different Member State, it shall send a request to the financial intelligence unit of such Member State.*

*(3) The request of the Office referred to in the preceding paragraphs shall contain relevant facts and circumstances concerning reasons to suspect money laundering or terrorist financing, as well as a definition of the purpose for the use of requested data. It may also request the data if a predicate criminal offence related to money laundering is not known at the time that the request is made.*

*(4) The Office may use the data, information and documentation acquired pursuant to the preceding paragraph solely for the purposes stipulated by this Act. The Office may not, without the prior consent of the foreign financial intelligence unit, forward or allow insight into the acquired data, information and documentation to a third person or use them in contravention of conditions and restrictions stipulated by the authority to whom the request was made.*

#### Article 106 (Submitting data and information at the request of a foreign financial intelligence unit)

*(1) The Office shall submit the data, information, and documentation concerning clients, transactions, assets, and property regarding which there are reasons to suspect money laundering or terrorist financing acquired or managed pursuant to the provisions of this Act, and which could be relevant to processing or analysing information on money laundering, predicate criminal offences, or terrorist financing in a different Member State or third state, to a foreign financial intelligence unit at its request, provided that de facto reciprocity applies.*

*(2) When a foreign financial intelligence unit requests that the Office submit data, information, and documentation referring to an obliged person with registered offices in the Republic of Slovenia, the Office shall apply all authorisations available to it pursuant to the provisions of this Act when acquiring data, information, and documentation.*

*(3) The request of a foreign financial intelligence unit referred to in preceding paragraphs shall contain relevant facts and circumstances concerning reasons to suspect money laundering or terrorist financing, and the purpose for the use of requested data shall also be evident. The Office may respond to the request of the foreign financial intelligence unit even if a predicate criminal offence regarding money laundering is not known at the time that the request is submitted.*

*(4) The Office may exceptionally reject the fulfilment of a request submitted by a foreign financial intelligence unit in the following cases:*

*1. if no guarantee concerning personal data protection and the purpose of its use referred to in*

paragraph six of Article 104 of this act is given;

2. if the submission of data and information is contrary to the principles of the *acquis* of the Republic of Slovenia.

The Office shall inform the foreign financial intelligence unit concerning the rejection of the request in writing and the notification shall state and clarify the grounds for rejection.

(5) The data, information, and documentation submitted on the basis of the preceding paragraphs of this Article may be used by foreign financial intelligence units exclusively for the purposes for which they are submitted. The foreign financial intelligence unit may not, without prior consent of the Office, forward or allow viewing of the acquired data, information and documentation to a third person or use them in contravention of the conditions and restrictions stipulated by the Office.

(6) The Office shall give consent to the forwarding of data to third persons referred to in the preceding paragraph as soon as possible and to the greatest extent possible. The Office may refuse to provide third persons with data only in the following cases:

1. if the submission of data exceeds the application of the provisions of this Act;  
2. if the submission of data jeopardises or may jeopardise the course of criminal proceedings in the Republic of Slovenia, or may in any other way prejudice the interests of these proceedings;

3. if the submission of data was disproportionate to the legitimate interests of a natural or legal person or of the Republic of Slovenia;

4. if the submission of data was not in accordance with the basic principles of the *acquis* of the Republic of Slovenia;

5. if no guarantee concerning personal data protection and the purpose of its use referred to in paragraph six of Article 104 of this act is given.

Each refusal to issue a consent shall be suitably clarified.

(7) The Office may set forth additional conditions and restrictions which must be taken into account by a foreign financial intelligence unit in order to use the data referred to in paragraph one of this Article.

#### Article 107 (Submission of data and information concerning beneficial owners at the request of a foreign financial intelligence unit from a Member State)

(1) The Office shall submit data, information, and documentation concerning beneficial owners to a foreign financial intelligence unit from a Member State at its request.

(2) The Office may set forth additional conditions and restrictions which must be taken into account by a foreign financial intelligence unit in order to use the data referred to in the preceding paragraph.

#### Article 108 (Spontaneous submission of data to a foreign financial intelligence unit)

(1) The Office shall forward the data, information, and documentation concerning clients, transactions, assets, and property regarding which there are reasons to suspect money laundering or terrorist financing, acquired or managed pursuant to the provisions of this Act and which could be relevant to processing or analysing information on money laundering, predicate criminal offences, or terrorist financing in a different Member State or third state, to a financial intelligence unit of this Member State or a third state at its own initiative, provided that *de facto* reciprocity applies.

(2) If it is evident from the notification concerning suspicious transactions received by the Office based on Article 69 of this Act that persons, transactions, property, or assets are related to a different Member State, the Office shall send to a financial intelligence unit of this Member State the data referred to in points 1, 2, 8, 11, 12, and 13 of paragraph one of Article 137 of this Act.

(3) In order to exchange data based on this Article, the provisions of this Act contained in the chapter on international cooperation shall apply *mutatis mutandis*.

#### Article 109 (Feedback)



(1) *The Office shall provide a foreign financial intelligence unit, at its request and provided that de facto reciprocity exists, feedback concerning the usefulness and helpfulness of the received data referred to in paragraph one of Article 105 of this Act and the information concerning the results of analyses drafted on the basis of the data received from the foreign financial intelligence unit.*

(2) *The Office may request feedback from a foreign financial intelligence unit concerning the usefulness and helpfulness of the submitted data referred to in paragraph one of Article 106 of this Act and the information concerning the results of analyses obtained on the basis of the submitted data.*

#### Article 110 (Transaction suspension at the initiative of a foreign financial intelligence unit)

(1) *The Office may, under the conditions stipulated by this Act and subject to effective reciprocity, issue a written order temporarily suspending a transaction for a maximum of three working days also on the basis of a reasoned and written request by a foreign financial intelligence unit, and inform the competent authorities thereof.*

(2) *The Office may refuse an initiative given by a foreign financial intelligence unit if, based on facts and circumstances stated in the initiative referred to in the preceding paragraph of this Article, the*

*Office finds that no reasonable grounds have been given to suspect that money laundering or terrorist financing have been committed. The Office shall inform the initiator of the refusal in writing, stating the reasons for the refusal of the initiative.*

(3) *With respect to the order on the temporary suspension of a transaction under this Article, the provisions of Articles 96 and 97 herein shall apply mutatis mutandis.*

#### Article 111 (An initiative provided to a foreign financial intelligence unit to suspend a transaction)

*In conducting its tasks of discovering and preventing money laundering and terrorist financing, the Office may send to foreign financial intelligence units a written initiative to suspend a transaction if it discovers reasonable grounds to suspect that money laundering or terrorist financing have been committed.*

#### Article 112 (Safe communications systems)

*The exchange of data, information, and documentation between the Office and foreign financial intelligence units based on Articles from 104 to 111 of this Act shall be carried out by means of secure communications systems.*

#### Article 113 (Diagonal exchange)

(1) *The Office may also indirectly ask foreign authorities of a Member State or a third state competent for discovering and preventing money laundering and terrorist financing to provide data, information, and documentation, but such data, information, and documentation exchange must be carried out only through a financial intelligence unit of such state by means of secure communications systems.*

(2) *The Office may also, indirectly and upon request, provide foreign authorities of a Member State or a third state competent for discovering and preventing money laundering and terrorist financing with data, information, and documentation, but such data, information, and documentation exchange must be carried out only through a financial intelligence unit of such state by means of secure communications systems.*

(3) *In order to exchange data based on this Article, the provisions of this Act contained in the chapter on international cooperation shall apply mutatis mutandis.*

The annual reports of the work of the OMLP and other relevant information, including statistics, are published on the official website of the OMLP.<sup>148</sup>

*Please refer to the summary provided under subparagraph 1(b) of article 14 of the Convention.*

<sup>148</sup> Available at: [www.uppd.gov.si](http://www.uppd.gov.si) <<http://www.uppd.gov.si>>

### ***(b) Observations on the implementation of the article***

The FIU does not have investigative powers. As a result, it receives and analyses STRs and forwards them, where needed, to the law enforcement authorities. In addition, both the FIU and law enforcement authorities have neither emergency nor temporary freezing powers in Slovenia. As the FIU disseminates information to financial entities, it assesses systemic risks and regularly hosts discussions with financial entities and government authorities. The FIU is an autonomous body under the Ministry of Finance composed of members who are experts in anti-money-laundering, terrorist financing, as well as tax matters. It may cooperate with other FIUs pursuant to its memorandum of understanding and membership in the Egmont Group of Financial Intelligence Units, as well as articles 104 to 113 of Chapter VI of the AML law, which allows the exchange of information between FIUs.

**It is recommended that Slovenia consider granting the FIU and law enforcement authorities emergency or/and temporary freezing powers over suspicious transactions.**

### **Article 59. Bilateral and multilateral agreements and arrangements**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

#### ***(a) Summary of information relevant to reviewing the implementation of the article***

Slovenia concluded two bilateral agreements (with the Republic of Serbia and with Bosnia and Herzegovina) regulating MLA in civil and criminal matters. These agreements do not apply solely to corruption offences but are a general legal basis for MLA requests and institutes. The provision under review does not oblige the member States to conclude such agreements but encourages them to do so if they find it necessary in practice. Since Slovenian national legislation enables MLA even without the existence of the treaty, the flexibility of the system is ensured.

Slovenia has signed agreements for cooperation between law enforcement agencies with regard to the offences contemplated in the Convention with most of the European countries, and Turkey and the United States.

Slovenia is a party to below mentioned international instruments relating to MLA that provide legal instruments for asset recovery and international cooperation:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,
- UN Convention against Transnational Organized crime,
- International Convention for the Suppression of the Financing Terrorism,
- UNCAC,
- European Convention on Mutual Assistance in Criminal Matters of 1959 and its two additional Protocols and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

All these international instruments enable Slovenia to effectively implement the provisions of the Convention on asset recovery and MLA.

#### ***(b) Observations on the implementation of the article***

Slovenian legislation allows mutual legal assistance in the absence of a bilateral or multilateral treaty (chap. 30, CPA). However, Slovenia has concluded bilateral treaties with Serbia and Bosnia and Herzegovina on mutual legal assistance and concluded agreements for cooperation between law enforcement agencies with regard to the offences contemplated in the Convention with almost all the European countries, Turkey and the United States.