Groupe d'Etats contre la corruption
Group of States against corruption

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Evaluation Report on Slovenia

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I. INTRODUCTION

1. Slovenia was the first GRECO member to be examined in the second Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr Wolfgang SCHIMD, Senior Prosecutor, Prosecution Office, Germany; Mrs Jane LEY, Deputy Director, Government Relations and Special Projects, U.S. Office of Government Ethics, United States of America and Mrs Aušra BERNOTIENE, Deputy Director, Department of International Law and European Integration, Ministry of Justice, Lithuania. This GET, accompanied by two members of the Council of Europe Secretariat, visited Ljubljana from 2 to 7 September 2003. Prior to the visit the GET experts were provided with a very comprehensive reply to the Evaluation questionnaire (document Greco Eval II (2003) 3E) as well as copies of relevant legislation.

2. The GET met with officials from the following governmental organisations: Office for Prevention of Corruption, Ministry of Justice, Ministry of Interior (Internal Administrative Affaires Bureau, Organisation and Development of Administration Bureau and Local Self-Government), Police (Complaint Internal Affaires, Assistance to police Officers Division, Criminal Investigation Police), Supreme State Prosecutor Office, Ministry of Finance (Taxation Department, Office for Money Laundering Prevention), Court of Audit, Supreme Court, Administrative Court, Security Market Agency, Human Rights Ombudsman, Mayor of Ljubliana, Public Relations and Media Office, District Public Procurement Office and State Revision Commission. Moreover, the GET met with members of the following institutions: Chamber of Commerce, Trade Unions of Public Institutions, Slovenian Institute of Auditors, Institute of criminology at the Faculty of Law, Institute of Public Administration at the Faculty of Law, Medical Chamber of Slovenia, Journalist Association of Slovenia, NGO – Transparentnost Association.

3. It is recalled that GRECO agreed, at its 10th Plenary meeting (July 2002), that the 2nd Evaluation Round would run from 1st January 2003 to 30 June 2005 and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would deal with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 13, 19 - paragraph 3 - , and 23 of the Convention;
   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

   Slovenia ratified the Criminal Law Convention on Corruption on 12 May 2000.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the present report is to evaluate the effectiveness of measures adopted by the Slovenian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains first a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Slovenia in order to improve its level of compliance with the provisions under consideration.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Legislation on confiscation

5. In Slovenia, the confiscation of criminal proceeds aims basically to restore pecuniary circumstances as they were before the criminal offence was committed. Confiscation is treated independently from the section of the Penal Code dealing with the sanctions for the offence committed and is not taken into account in their determination. The general legal framework is determined by a) Chapter 7 of the Penal Code – *Confiscation of property benefits gained by committing of criminal offence* – (see Appendix I), which contains detailed provisions describing grounds for/methods of confiscation of property, the protection of injured parties and confiscation from legal persons; b) Articles 498-507 of the Criminal Procedure Act (see Appendix II), which describe the procedure of confiscation and c) Article 69 of the Penal Code - *Confiscation of Objects Gained Through the Committing of Criminal Offence* - (see Appendix III), which regulates confiscation of objects and instrumentalities.

6. According to Article 498 of the Criminal Procedure Act, ["*objects (…) shall be confiscated even when criminal proceedings do not end in a verdict of guilt*"]. Moreover, a *"court shall render the ruling on confiscation even when a provision to that effect is not contained in the judgement of conviction"*, particularly *"where so required by the interests of public safety or by moral considerations"* (see Appendix II). Besides cases where the criminal procedure ends in a judgement stating that the accused person is guilty, money or property can also be confiscated when facts indicating that they originate from criminal offences - Articles 252 (criminal offence of money laundering)[1] and 162, 168, 247, 248, 267, 268 and 269 of the Penal Code (criminal offences of corruption) - are established. In this case, the investigating judge, at the request of a pre-trial panel[2] composed of three district court judges, collects evidence and investigates all the circumstances of importance for the determination of unlawful origin of money or property or illegally given or received bribes. At the end of those investigations, the non-trial panel issues a special resolution, which is notified to the owner of money or properties confiscated and who is thus entitled to appeal (Article 498a – see Appendix II).

7. Article 96 paragraphs 1 and 2 of the Penal Code provides for the main regulations applicable to confiscation (see Appendix I). Value confiscation is possible. Economic advantages or property benefit acquired through or owing to the commission of a criminal offence are estimated *ex officio*: courts and other law enforcement agencies responsible for conducting the criminal investigations gather evidence which is significant for estimating property benefits. When the court considers that the assessment of property benefits calls for a specialist's opinion, it may engage an expert. Nevertheless, the court may fix the amount of property benefits at its own discretion, if a precise estimate would entail excessive difficulties and the proceedings would thereby be unduly protracted.

8. Property may also be confiscated from persons to which it was transferred free of charge or for a sum of money that does not correspond to its actual value, if such persons knew or could have known that this property had been gained through or owing to the commission of a criminal

[1] The wording of Article 252 (see Appendix IV) makes clear that the money laundering offence i) is an "all-crimes" one and subsequently all the corruption offences are predicate offences for money laundering purposes; ii) is not exclusively "knowledge" based but also "a perpetrator who should and could have known that money or property was acquired through the performance of an unlawful activity, shall be sentenced to imprisonment"; iii) includes own funds or "self" laundering.

[2] A panel of professional judges sitting *in camera* and who take decisions on issues related to the preliminary proceedings.

offence. With regard to beneficiaries, the knowledge that property derives from crimes is not necessary. A property may also be confiscated when transferred to close relatives[3], unless such persons demonstrate that the full price had been paid for the property in question.

9. The confiscation of assets belonging to legal persons is provided for in Article 98 of the Penal Code (see Appendix I). Expenditures for gaining the proceeds may not be deducted.

10. Article 97 of the Penal Code is worded as follows: *"If the injured party has been awarded his claim for damages [suffered owing to commission of a criminal offence] by the Criminal court, the latter shall order the confiscation of property only insofar as such property exceeds the adjudicated claim of the injured party"*. It is also provided that the criminal court may ask the injured party to bring his/her claim for damages before a civil court in cases where estimating compensation for damages caused is particularly difficult and would thereby unduly delay the entire criminal proceeding. Moreover, any injured party, which has not made a claim for compensation of damages in the course of criminal proceedings, may start a civil action for the adjudication of his/her claim within six months from being notified of the confiscation order.

Provisional measures

11. Interim measures are mainly regulated by Articles 109, 502 and 507 of the Criminal Procedure Act. Article 109 provides for all cases related to temporary measures aimed at protecting the interests of persons who claim compensation for damages, while Article 502 deals with procedures concerning confiscation of property benefits (see Appendix V). Besides those provisions, it is worth mentioning that the OMLP is empowered to suspend any transaction for 72 hours, if it believes that there exist well-founded reasons to suspect a money laundering case. Legislation provides for the application of interim measures to all criminal offences, including proceeds of corruption.

Management of seized assets

12. Article 506a of the Criminal Procedure Act provides that *"(1) The court which ordered the storage of seized items or the temporary securing of a request for the deprivation of pecuniary advantage or property to the value of the pecuniary advantage, shall be obliged in such instances to proceed with particular despatch. It must act as a good manager with respect to the seized items and property serving as temporary security, as well as to items and property given as bail".* It also establishes that in cases where the storage of the item involves "disproportionate costs" or its value decreases owing to the seizure, the court can order that such property or item be sold, destroyed or donated for public benefit. The "Decree on the Procedure of Managing Seized Items, Property and Security deposits" of March 2002 regulates all the procedures related to managing items and property as defined in Article 506a. Article 3 provides that the court can order that items be deposited and managed by executors – bailiffs – appointed in accordance with the relevant law and that the management, storing, sale and destruction of items and property seized be supervised by the "Commission for seized Items", which is composed of judges, representatives of the Ministry of the Interior and prosecutors.

[3] "Close relatives" means: a spouse, brother, sister or first cousin up to three times removed, a relative by marriage up to twice removed, adoptive parent, adopted child, foster parent, foster child or other person living in the same household as the perpetrator.

Statistics

13. As to statistical data and information about confiscation and/or freezing and seizure of instrumentalities and proceeds of crime in relation to corruption, the Slovenian authorities mentioned only one case that occurred in 2000: the Criminal police Directorate and the Office for Money Laundering Prevention (hereafter "OMLP") investigated a case where some Slovenian companies had transferred money representing illegal proceeds or paid bribes connected with non-recurring funds previously obtained from the Ministry of Economy to a bank account of an "off-shore" company registered in the USA. In this case, an investigating judge issued a decree ordering some interim measures aimed at preventing the use of approximately 522,000 euros.

14. With regard to money laundering investigations, prosecutions and convictions made in relation to the predicate offence of corruption, the OMLP has dealt with 9 cases: in 2 cases, the OMLP`s record was sent to the Police (1 in 1999 and 1 in 2000) and in the 7 remaining, initiated by the Police, 4 are being investigated by the OMLP, while 3 have been concluded by the OMLP. According to the OMLP's data, the only complete data available, only 1 case (in which 12 criminal reports have been filed) is in the final stage of criminal investigation.

The OMLP

15. According to Article 20 of the Law for Money Laundering Prevention, the OMLP may start investigating a case in which "*a transaction or a particular person raises suspicion of money laundering*" also on the basis of "*a substantiated written initiative*" from State bodies (police, courts, Public Prosecution Office, Intelligence and Security Agency, the Bank of Slovenia, Agency for the Securities Market, Agency for Insurance Supervision or the inspectorate bodies of the Ministry of Finance). The Anti-corruption Division set up in 2000 within the Criminal Police Directorate has sent to the OMLP seven records containing facts which might indicate money-laundering originating from the predicate offence of corruption. On the basis of such information, the OMLP can trace the assets and, if necessary, temporarily suspend any suspicious transaction if there are reasons to believe that sums originate from criminal offences (corruption).

Corruption and mutual legal assistance: provisional measures and confiscation

16. As to corruption offences, there is no special system applicable to request international legal assistance concerning provisional/confiscation measures - general provisions on international legal assistance (Articles 514 - 520 of the Criminal Procedure Act) are relevant. The basic principle is the subordination of national law to international agreements (Article 514). Courts and prosecutors' offices are the judicial authorities authorised to issue requests for international legal assistance in confiscation matters. The request may be transmitted either via central authority according to the Convention STE 141 - in Slovenia, the OMLP - or via the central authority according to the European Convention on Mutual Assistance in Criminal Matters - in Slovenia the Ministry of Justice. According to Article 516 paragraph 3 of the Criminal Procedure Act, the court is the responsible institution in relation to requests from other countries for international legal assistance: *"The permissibility and the manner of performance of an act requested by a foreign agency shall be decided by the court pursuant to domestic regulations"*.

b. Analysis

17. The provisions of the Penal Code (Articles 69 and 96) are adequate to confiscate the instrumentalities and proceeds of corruption in connection with a conviction. First of all, it is to be welcomed that confiscation of the proceeds of crime is mandatory. In addition, the GET was

informed that confiscation covers everything that the offender has gained from the offence. The court must therefore not subtract the "costs" which the offender has incurred from what he has gained. This simplifies confiscation and requires no particular evidence to be provided or calculations to be made during the investigation and court proceedings. The GET regards it as positive that not only the proceeds of the offence can be confiscated but also a property equivalent to the proceeds of the offence where confiscation of the proceeds of offence is not possible. There is also satisfactory regulation of the possibility of obliging accused or convicted persons to pay a corresponding sum within two years when the proceeds of the offence or property equivalent to the proceeds of the offence cannot be confiscated. The long duration of proceedings ascertained by the GET is nevertheless detrimental, in its opinion, to the success of the seizure of assets. The GET was informed that criminal proceedings normally last three years and longer before a judgment is delivered[4]. Also the prosecuting authorities do not very often avail themselves of provisional seizure during the investigation procedure. This leaves the offender in possession of the proceeds of the crime throughout the investigation procedure, and there is serious danger of his putting by not only the property assets acquired from the offences but also his other assets, so that these are no longer available at the time of conviction and consequently he is not in a position to pay a sum of money within 2 years. The GET's concern over the court's backlog and excessive length of proceedings is also examined below in paragraph 44.

18. The existing legal provisions (Articles 109, 502 and 507 of the Criminal Procedure Act) are sufficient to permit provisional seizure of the instrumentalities and proceeds of corruption. The GET had the impression, however, that provisional seizure of the instrumentalities and proceeds of corruption is rarely used, and that, hitherto, only small sums have been confiscated, although confiscation of the instrumentalities and proceeds of crime is mandatory at the judgment stage if the legal requirements are met. In the GET's view, only where seizure has taken place early on can subsequent confiscation under the terms of a judgment be effectively enforced. There would seem to be a number of reasons for this: Slovenia is in the throes of change, and many new laws have been passed in the last few years. These have to be implemented in prosecution practice, which is not possible within a short period of time. Moreover, not all police officers, prosecutors and judges have a sufficient knowledge of the provisions concerning the implementation of the seizure of assets. In the GET's opinion, it is necessary to train them in applying the provisions concerning provisional seizure of the proceeds from criminal offences.

19. Finally, as far as the GET was able to ascertain, neither the police nor the prosecuting authorities have specific guidelines on how to go about tracking down offenders' assets. However, this is necessary in a free market economy as there are countless ways of transferring assets and investing them at home or abroad. Examination of bank records, insurance policies and trade, company, property, motor vehicle and other registers is one of the tools used by investigators concerned with the confiscation of assets. Further tools include the examination of tax documents, contracts of sale, companies' articles of association, stock exchange transactions, administration of assets, casinos and travel documents. **The GET recommended that, in order to promote the use in practice of the legal provisions on temporary seizure of proceeds of crime, 1) the prosecution service make full use of the legal provisions on temporary seizure at the very beginning of an investigation – including, if appropriate, at the preliminary stage –, 2) the Criminal investigation Department's police officers and prosecutors be given specific training in application of the legal provisions and 3) support in the form of measures such as model documents for the provisional seizure (of bank**

[4] The period of three years was mentioned not as an official average.

deposits, shares, real estate etc.) be prepared and made available to police officers, investigating judges and prosecutors.

20. The GET also had the impression that the process of starting investigations in corruption cases and especially using special investigative techniques is so complex that it is very difficult to obtain substantial evidence of a criminal offence and to identify or seize the instrumentalities and proceeds of corruption or equivalent assets. As a result, it is not clear, particularly in the case of complex economic offences, whether there is a simple and quick way in which the police can start the investigation of the corruption cases and arrange the necessary measures, including freezing/seizure of proceeds of crime. From what the GET has seen, things have to go through several hierarchical stages in the police, with a quite large number of decision-makers, also from different spheres of responsibility, until a senior officer gives permission to inform the prosecuting authorities that an investigation has been started and discuss with them the further measures of investigation that need to be taken. **The GET recommended that the police specialised anti-corruption unit should be positioned close enough to the top of the Police services, with clear and short lines of responsibility and accountability, guaranteeing quick and direct contacts with the prosecution service.**

21. Moreover, the GET realized during the visit that the prosecuting authorities are not always rapidly provided with sufficient documents and information to enable them to decide whether measures should be taken to seize assets and whether legal assistance measures are necessary. In the GET's opinion, in cases of economic crimes and corruption, only investigations that are started rapidly are likely to be successful. Transactions are carried out in the greatest secrecy, it is in no one's interest to be found out, often the only evidence consists of fleeting traces, offenders pass themselves off as serious individuals and witnesses seem never to have heard, seen or said anything. In many cases, therefore, investigations are only successful where there is an element of surprise. For that reason, **the GET recommended that the prosecution service be swiftly informed about investigations so that it can assume leadership thereof and speedily decide whether provisional measures for the deprivation of property must be taken.**

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

General structure

22. After its independence in 1991, Slovenia inherited the administrative structures from the former Yugoslavia. Following a thorough administrative reform in the field of public administration and local self-government, a double track system was introduced on 1 January 1995: the government, government agencies, ministries and administrative units on one side, and municipalities as basic local communities on the other. In Slovenia, no distinction is made between central and local administration: public administration, local self-government and entities having public authorisations (public services) are mostly identified with regard to their competencies. Public administration functions centrally and territorially (58 administrative units throughout the country) and its activities are directed by the Government. Municipalities (193 in 2002) deal autonomously with their own affairs and also form associations. A Regions Act, is currently under consideration and, once enacted, will change some of the basic structure, notably establishing regions.

Legislation on organisation

23. In Slovenia, the general principles governing the organisation and work of the State administration are contained in the Constitution: duties of administrative bodies and employment in the State administration (Articles 120 - 122), local self-government (Articles 138-144) (see Appendix VI). Major provisions on public administration are:

- The Public Administration Act provides rules on and a definition of different state administration bodies (ministries, ministerial bodies and administrative units): definition of administrative tasks, separation of politics and profession in leading structure of ministries, relations among ministries and autonomous bodies, relations among administrative units and ministries. It also introduces a new concept establishing a clear separation between the political and administrative structures within the ministries (ministers and state secretaries being political, and director-generals, secretary-generals and directors, administrative managers).
- The Inspections and Supervision Act regulates the organisation and coordination at central and decentralised levels of inspectorates' competencies and measures, their organisation and independence, inspection procedures and the status of inspectors.
- The Public Agencies Act sets up public agencies as autonomous legal entities in the field of self-regulation, based on a particular law. This law regulates the new status of holders of public authorisations and stipulates the rules within which they shall operate.
- The Civil Servants Act introduces many new rules on, *inter alia*, decentralisation, a transparent work system, open competition and sanctions, obligatory professional examinations, fixed-term employment, a transparent promotion system (merit related), termination of duties, inspection supervision, strengthening of social partnership.

24. All these texts were adopted between May and June 2002. It is also worth mentioning: the Public Establishment Act (to be prepared during year 2003), the General Administrative Procedure Act and Decree on handling of documentation for public administration bodies.

Public integrity

25. A "Resolution on the anti-corruption policy" is under consideration as an attachment to the Public Integrity Act, which is under consideration by the Parliament (already adopted by the Government and planned to be passed in Spring 2004). In the draft law, there is a chapter 5 dealing with integrity plans assessment and verification. It gives the "Integrity Commission"[5] a role in supervising these plans. Article 41 of the Act states that "*Each State administration and local authority shall have an integrity plan*" and provides for some criteria for establish them. Plans will be submitted under deadlines established by the Commission (see more details in Appendix VII).

Access to information

26. Slovenia has recently adopted the "Act on the Access to Information of Public Character" that establishes a procedure allowing every citizen free access to information of a public character from state and local community institutions, public agencies, public funds and other entities of public law, holders of public authorisations and providers of public services. Every year, the government will publish a catalogue of those agencies. Information of public character is deemed

[5] The Commission for Prevention of Corruption should replace the Office for Prevention of Corruption and it will be responsible, *inter alia,* for collecting and reviewing the data on the reports on the implementation of integrity plans.

to be all information related to those agencies' sphere of activities, such as documents, dossiers, registers, records or documentary material. Anyone may ask for information either in writing or orally, the two forms of request differ only with respect to the legal remedies available in case the request is rejected: right to appeal before an administrative court in case of written request, no remedies available in case of oral requests. The Act also enumerates when no access is allowed: information designated as secret according to the law; for state security reasons; confidentiality of international relations; business secrecy (applicable to certain activities of State companies, which are protected by confidentiality rules) and such. A certain number of State agencies are obliged to publish some categories of information on the Internet, providing access to such information free of charge.

27. Government activities are made known to the public by means of press conferences, presentations on the Internet and by other means of information and telecommunication media by the government office responsible for information services and the government public relations representative. The Government responds to all questions, initiatives and proposals, primarily through the ministries and government offices. Applications and complaints addressed to the Prime Minister are dealt with and answered by the competent office of the Prime Minister in cooperation with the competent ministries and government offices. Plans for Government activities in the field of legislation are set out in the annual action programme, whereas other activities are outlined in budgetary documentation. The action programme for 2003 contains, *inter alia*, plans for adopting the Act on the Participation of Public in the Passing of Regulations, which is to be submitted to the government in September 2003. The Local Government Act provides that the members of a self-governing local community decide on the issues of local government through councils. A draft of the Local Government Act is being prepared in line with the European Charter of Local Self-Government, including a special chapter on the right of the public to be informed. On occasion public participation is provided for in the laws dealing with specific government actions. For example, the Spatial Planning Act includes provisions related to public participation in providing recommendations to and attending public meetings on land-use legislation or the regulation of land use.

Administrative procedures

28. In conformity with the General Administrative Procedure Act, everyone having an interest in an administrative procedure has the right to challenge administrative decisions taken at the first instance (see numbers of complaints in Appendix VIII). Third parties can also appeal if the decision affects their rights or legal benefits.

29. The legality of final individual acts issued by state and local community bodies as well as public authority holders on the rights, obligations and legal benefits of individuals and organisations is decided by the competent courts in an administrative dispute: the Administrative Court and the Supreme Court. After all legal remedies, including administrative dispute, have been exhausted, an individual may lodge a constitutional complaint due to violations of human rights and fundamental freedoms contained in individual legal acts.

The Ombudsman

30. The institution of Human Rights Ombudsman (hereinafter "Ombudsman") was introduced in December 1991. Its main functions are defined by Article 159 of the Constitution, which stipulates that an Ombudsman shall be established by law "*to protect human rights and fundamental rights in relation to state authorities, local self-government authorities and bearers of public authority*". The second paragraph of this Article states that "*special ombudsmen for the rights of citizens*

may also be established by law for particular fields" (to date, no special ombudsmen have been appointed). The law then establishes the Ombudsman's powers and tasks: access to all information and documents, regardless of their level of confidentiality; access to all premises of state bodies; invite state officials to consultation; summon anyone as a witness. Failure to respect the Ombudsman's requests is an offence. The possibility of invoking the principles of justice and good governance enables the Ombudsman to assert broader principles of justice, which are not defined in legislation. The law on the Ombudsman grants no explicit competences in relation to prevention or detection of corruption. According to Article 145 of the Code of Criminal Procedure, the Ombudsman is – like any other public official – obliged to report to the competent authorities all criminal offences of which s/he is aware. The Ombudsman's reports are public.

Employment in the State administration

31. Article 122 of the Constitution provides that "employment in state administration is possible only on the basis of open competition, except in cases provided by law."[6] Open competition is used in order to provide for new employment of public officials as laid down in the provisions of the new Civil Servants Act, effective in June 2003 (hereafter the "Act") provides for open competition for new employment: vacancies are advertised; candidates who satisfy the competition conditions[7] are selected and their qualifications are tested in the selection procedure (first on the basis of documentation submitted, then by written tests, oral interview or other forms of testing). Candidates recruited may receive a probationary contract. Before deciding on external recruitments, the manager has to verify whether it is possible to fill the vacant post by transferring civil servants from within the same body or, if not, from another body through an internal competition. In addition to the general conditions laid down by labour law regulations, further conditions may be determined for obtaining public official jobs, such as courses of education or vocational qualifications, functional or special skills, and special qualifications. If so provided by a particular law, other conditions for the performance of work may also be set (in some cases, knowledge of national communities can be required). Regulations do not provide for a system of periodical rotation of staff employed within the sectors of public administration considered vulnerable to corruption.

Training

32. As of 1st January 1997, an Administrative Academy was established within the Ministry of the Interior that mostly deals with the systematisation, organisation and operational aspects of the public administration, staff qualifications for administrative tasks and the conduct of professional examinations and other tests. The majority of the on-going programmes is organised in the form of workshops that require active participant involvement and cooperation[8]. Methods such as various situation simulations, role-play, case studies, discussions, debates and teamwork have shown to be the most popular, judging by feedback provided by participants.

[6] For example, the Law on foreign affairs foresees specific procedures for the appointment of diplomats who are not, as a consequence, subject to the general rules on public competitions.

[7] The Civil Servants Act provides that a person applying for employment may not be a person who has convicted of any criminal offence that is considered an impediment and has three conditions: (1) citizen; (2) not finally convicted for an intentionally committed criminal offence prosecuted out of official duty, and has not been sentenced to unconditional sentence of imprisonment for a term of more than 6 months (3) no criminal proceeding described in (2) has been instituted against the person.

[8] In 2002, the Academy organised 4 seminars on «Professional Ethics as an Element of the Modernisation of an Administrative Organisation » with 173 participants; in 2003, 3 seminars with 77 participants.

Incompatibilities

33. The 1992 Act on Incompatibility of Holding Public Office with a Profit-Making Activity refers to all persons who perform representative or executive functions in state bodies and bodies of local communities: the President of the Republic, the President of the Government and ministers, state secretaries and all other officials in the state administration, the mayors and other officials on a local or regional level ("functionaries"). Article 2 stipulates the general rule that during his/her function a public official cannot perform a profit-making activity, which is incompatible under the act with his/her office. The Act then makes a distinction between a public official who performs his/her functions on a professional basis and those who perform their tasks on a "non-professional basis". The first category cannot perform any profit-making activity that could affect the objective performance of his/her duties (running a business that does not result in an income and scientific, cultural, artistic or journalistic activities are not considered as profit-making activities). A public official who does not perform his functions professionally (at State level: members of the National Council; at local level: mayors – they can also perform their functions professionally – and members of the territorial councils) can perform a profit-making activity to private ends if this does not affect the performance of his/her functions. If a public official or a member of his/her family holds more than 25% of shares in a company, this company is banned from having business relations with public companies or public bodies without a permit from the special Commission of the National Assembly[9] which is issued only if the business is not linked to his/her public activity. In addition to the restrictions on functionaries, Article 100 of the Civil Servants Act includes provisions on impartiality, restrictions on profit-making activities for individuals holding certain positions within the civil service and restrictions on businesses contracting with the Government if those same civil servants have more than 20% ownerships of business. After termination of their office, certain professions such as customs officers, police officers, prosecutors, judges cannot perform for a certain period work similar to that performed during their office.

Code of ethics

34. Public officials in general and police officers, prosecutors, judges, lawyers, officials working in services for the execution of penal sanctions, tax officers, accountants and several other professions have their own codes of conduct, which detail mainly the following principles: loyalty, efficiency, effectiveness, integrity, fairness, impartiality, prohibition of discrimination, prohibition of undue preferential treatment for any group of individuals, prohibition of abuse of position, prohibition of receiving gifts and advantages. In addition to the codes of conduct, a number of statutory rules are in force for public officials, prosecutors and judges. The main common aspects are: substantive arguments as well as liability for decisions taken; prohibition of abuse of confidential information (including after the termination of office), of receiving any gifts that would represent an obligation to return the favour or to grant a special procedure to the donor, of undue exploitation of official position, influence or knowledge, of obtaining financial benefits through activities outside the office, competition clauses. In case of violation of statutory provisions, disciplinary sanctions can be applied.

[9] The Commission is specifically entrusted to supervise the implementation of the measures in place to prevent conflict of interests and incompatibilities. It collects and analyses above all data on the financial situation of public officials and their spouses, communicated to it every two years. The cited data, with the exception of salaries which are paid from the budget, are not public. If the commission estimates that a public official received gifts or acquired benefits that have affected the performance of his/her functions (or that his/her - and/or of his/her family members - financial situation has increased exceptionally), it informs the relevant responsible persons of the office where the person works, who then must separately determine that the public servant is engaged in a breach of the law before beginning the procedure for the termination of the office.

35. Most codes envisage sanctions in case of violations. For example, Article 28 of the general Code of conduct for public officials stipulates that the code has to be implemented and that breaches of the code can result in a disciplinary proceeding against the public official initiated by his/her superior; Article 123 of the Civil Servants Act establishes that conduct contrary to the Code of conduct is considered as "minor disciplinary violation"[10]. In other cases (Code of Police Ethics, Code of Conduct for Public Prosecutors, …), a special "arbitration courts of honour" decides on possible breaches of the codes. There is no collection of data/information on breaches of codes of conduct. According to information provided by the Slovenian authorities, management practise is practically nonexistent in the implementation of codes of conduct, mainly because of lack of experience/practise in this field (most of codes date from the early 90's). Even though new employees in the public sector are made aware of the codes of conduct there is almost no institution which would regularly follow the implementation of those codes.

Gifts

36. As a general rule, the Act on Incompatibility of Holding Public Office with a Profit-Making Activity (see also paragraph 35) states that a public official - as well as members of his/her family - can not receive gifts in relation with the performance of his/her office. Supervision of the Act is ensured by the special Commission of the Parliamentary Assembly (see footnote 7). In addition, Article 11 of the Civil Servants Act provides for certain restrictions and duties of civil servants (and members of their family) in respect to the acceptance of gifts: they can not accept gifts relating to their work, with the exception of protocol (offered by representatives of States or international organisations) and occasional gifts of low value (not exceeding 15.000 tolars - 64 euros, or gifts received from the same persons not exceeding the total value of 30.000 tolars - 128 euros - in a given year). Civil servants are obliged to inform donors that gifts exceeding the value mentioned above become employer's property. Article 123 of the Act lists "violation of duties and restrictions related to the acceptance of gifts" as a serious disciplinary violation[11]. In addition to the administrative measures, Articles 267 (Acceptance of Bribe) and 268 (Giving of Bribe) of the Penal Code criminalise passive and active bribes including the acceptance and giving of a gift. Sanctions provided are set from a monetary fine up to three (active bribery)/five (passive bribery) years' imprisonment. Sanctions also exist (fine or imprisonment for not more than 1 year) with respect to "*whoever accepts a gift … in order to use his official rank and influence to intervene so that a certain official act or not be performed*…". In all those cases, gifts are confiscated.

Obligation to report criminal offences

37. As also indicated in GRECO's First Evaluation Round Report (paragraph 67), "*in addition to a general obligation to report criminal offences (Article 145 of the Code of Criminal Procedure), it is a criminal offence for officials – as well as for anybody else* (Article 146 of the Criminal Procedure Act) *- not to report certain specific offences ["for which the punishment of more than three years' imprisonment is prescribed"] coming to their knowledge, including passive bribery (Articles 285 to 286 of the Criminal Code*)". Failure to report active bribery is not covered, because this offence is punished by a maximum of three years' imprisonment[12]. Article 12 of the general Code of

[10] Disciplinary measures for minor disciplinary violations are: 1) Warning and 2) fine not exceeding 15% full-time salary.

[11] Disciplinary measures for serious disciplinary violations are: 1) fine, up to 20/30 % of full-time salary received when violation was committed; 2) dismissal from position; 3) dismissal from title and appointment to a lower position; 4) termination of the contract.

[12] After the on-site visit, the GET was informed that on November 2003, the Government of the Republic of Slovenia had sent to the Parliament a draft Law on Amendments to the Penal Code for adoption. It also contains proposals for more

conduct for civil servants describes rules concerning the reporting of behaviour which is contrary to the code. The Office of the Government for the Prevention of Corruption (OPC) is the competent authority to which public officials have to report any ethical misconduct of other civil servants, as provided by Article 12, even without disclosing their identity. Since it became operational on 13 July 2001 and until 7 April 2003, the OPC had received 30 complaints[13].

38. According to the Civil Servants Act, disciplinary proceedings are to be introduced by the civil servant's manager on his/her own initiative or following a proposal by the civil servant's superior, by inspectors or trade union representative, when they find that disciplinary violation has been committed. The manager may conduct the disciplinary proceedings and decide on disciplinary responsibility by himself, or appoint a disciplinary commission for this purpose.[14] During the disciplinary proceedings, a hearing is held with the civil servant concerned. The civil servant concerned is suspended from work until the end of disciplinary proceedings, if his/her presence is considered harmful to the interests of service or might obstruct the conduct of disciplinary proceedings.[15] If suspicions exist that the civil servant could have committed a criminal offence, the competent state prosecutor must be informed. In such a case, a separate criminal procedure can be initiated.

b. Analysis

39. The GET observed that the public administration has been going through substantial reorganisation since 1994 when it began to reform the administrative structures of the former Yugoslav state. While fundamental administrative structures that reflect the need to combat corruption are in place, further changes are anticipated. For example, the Government is intending to engage shortly in an internal reorganisation and there is currently a project that is intended to result in a law governing the Regions. A number of recent administrative reform laws are intended, in part, to strengthen the checks and balances of and, where appropriate, the independence of the various entities of public administration. In particular, while they have just been established or are in the process of being established, the inspectorates authorized by the Inspections and Supervision Act (see paragraph 23) should complement the activities of the Court of Audit and, to some extent the Ombudsman, in strengthening appropriate checks and balances and transparency of public administration. Because a significant amount of legislation and secondary legislation became effective within weeks of the visit of the GET, there was insufficient information available to the GET to evaluate the efficiency and effectiveness of much of the *organisation* of the public administration. The GET was pleased to note that the anti-corruption strategy, now under consideration by the National Assembly as an attachment to the proposed Law on Prevention of Corruption, does anticipate internal Government evaluation of the organization of public administration as an element of the fight against corruption.

40. With regard to the *organisation* of the civil servants within the public administration, the Civil Servants Act also became effective immediately preceding the visit of the GET. Provisions of the

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severe sanctions for active bribery under Articles 248 (currently up to three years; proposed: from 6 months to 5 years) and 268 (currently up to three years; proposed: from 1 to 5 years).

[13] The complaint taking function of the OPC will cease if the new Law on Prevention of Corruption is passed.

[14] Members of the disciplinary commission must have higher professional education and no less than five years of working experience.

[15] A draft decree on disciplinary procedure for public administration agencies, judiciary and local community administrations, prepared by the Ministry of the Interior, is under consideration. It provides detailed provisions on the principles of disciplinary procedure, the institution and conduct of disciplinary proceedings, disciplinary responsibility and legal remedies available to civil servants against orders on disciplinary responsibility. It also states that civil servants have the right to appeal against the decision issued by the disciplinary body at the first instance. They will have the right to seek judicial protection in courts competent to adjudicate labour disputes.

Act provide, in part, for open competition for most positions, transparent system of work posts, titles and promotions, obligatory professional training, performance evaluation and procedures for disciplinary sanctions. However, judicial personnel, personnel in state prosecutor's office, state attorney's office, diplomats, professional members of the Slovenian Army, civil servants in the fields of defence, civil protection and rescue, police officers, inspectors, employees in the customs and tax administration, personnel in the service for execution of sentences, authorised public officers in security services and other public officers with special authorizations, may be governed by specific legal provisions if necessary due to the nature of the tasks or the performance of special duties and authorizations[16]. Employees of public companies and commercial companies, where the state or local communities are controlling shareholders or have prevailing influence, and functionaries are not deemed to be civil servants for this Act and will not be governed by its terms. This Act replaced the Public Servants Act. Given the lack of any implementation history of the Civil Servants Act, the GET was unable to assess the effectiveness of this new merit personnel system in the fight against corruption. The GET was pleased to note that assessment of the implementation of the Act has already been anticipated and that the Ministry of the Interior is responsible for developing an assessment of the implementation of this Act for the Government.

41. With regard to general *transparency*, Slovenia recently passed the Access to Information Act which provides for public access to documents. This Act does not contain provisions regarding the public's right to be present during certain types of government proceedings where decisions are made. A decree of November 2001 on the use of documents by public administrative bodies contains provisions requiring documentation (i.e. the saving of an e-mail or a voice mail record), a document retention system and an archival system. These systems are generally necessary to support adequate and appropriate access to public information. In addition, there are plans for an Act on the Participation of Public in Passing of Regulations which should provide, in part, more transparency of process and there are some specific laws that provide for participation in certain proceedings. (An example of the latter would be the Spatial Planning Act that has requirements for notice to and participation of the public.)

42. At the time of the GET's visit, the Access to Information Act had not yet been implemented as certain of the final steps necessary had not yet been taken. Article 39 of the Constitution gives everyone the right to obtain information of a public character "in which he has a well founded legal interest under law." The GET understood that pursuant to Article 17 of the Act, every request of information is presumed to be based upon a well-founded legal interest and no requestor would be required to provide legal grounds for the request. The determination that must be made before responding to a request of information is whether the information is of a "public character" and available under the Act. The implementation of this Act may have the unintended effect of limiting this right through the procedures chosen; the Act requires entities to publish certain information outright and also publish a systemized catalogue of contents of information of a public character. If this catalogue is designed and considered by each entity to be an exclusive list rather than an inclusive list, the catalogue may have the practical effect of limiting the public's access to information that should be available. **The GET recommended to establish a regular assessment in order to: 1) ensure that the organisation of the public administration (as provided by legislation or executive decree) does not create opportunities for corruption; 2) evaluate the effects of the new recruitment and career system on the nomination and retention of highly qualified persons and 3) ensure that the provisions of the Law on access to information be implemented. The results of this assessment should be made public.**

[16] See footnote on page 6.

43. With regard to the *functioning* of the public administration, the GET is aware that rapid changes in new laws and administrative systems always result in some lack of understanding on the part of the public as well as the public officials who are charged with implementing them. Consequently, the manner in which the public administration functions will be affected by those changes and, normally, the familiarity that comes with time, training and experience will assist in achieving more efficiency and effectiveness. In general, however, the GET was unable to assess appropriately the functioning of many of the new procedures required of the public administration. The GET noted, however, that there did not appear to be standardized administrative procedures for the challenging administrative decisions of the wider public service.

44. The GET is aware that a process critical to a sound public administration and the fight against corruption is the opportunity to seek a timely and effective response to an appeal to the courts after appropriate administrative remedies have been pursued. The GET frequently heard and read in other public evaluations of Slovenia that the court system is experiencing a large backlog of cases, in large part due to matters that were not dealt with before independence. The GET also notes the courts are making serious attempts to address this backlog. However, new legislation dealing with administrative procedures, with merit civil service, with access to information, and with public procurements all include provisions allowing for the appeal of certain decisions to the courts. If the courts cannot handle such matters in a timely fashion, then those with the means to afford to wait or to use the fact of the delays as a tactic will be able to use the system in a manner that can actually thwart anticorruption efforts. The GET observed that as a part of its effort to reduce the backlog of cases in the courts, it may be helpful for the judiciary and those representing the Government in the proceedings to establish internal performance goals with deadlines, and if possible, to explore the use and publicity, where appropriate, of the availability of other measures, such as alternative dispute resolution.

45. The GET noted that there are no general rules on conflicts of interest for employees of private companies holding concessions and/or which have the authority to issue licenses on behalf of the public. For example, the Chamber of Commerce holds the concession to issue trucking permits and the medical Chamber of Slovenia issues medical licenses. The Act on Incompatibilities and the new Civil Servants Act prohibit certain specific outside activities, limit the ability of businesses which have a certain percentage ownership by some public officials (and their families) from contracting with the Government and limit certain gifts. The Act on Incompatibilities applicable to functionaries does not protect government decision making processes from conflicts that arise between an official's responsibilities and other financial and fiduciary interests. For example there is no requirement to abstain from taking official actions affecting a private company with whom the individual is seeking employment. The absence of an effective conflict of interest standard does expose to potential corruption, the decision-making processes of the public administration as well as those entities which carry out licensing functions on behalf of the public. The GET noted that the anti-corruption strategy does include the need to address conflicts of interest. **The GET therefore recommended that a conflict of interest restriction that provides for consistently applied and enforceable standards be adopted for all those who carry out or have carried out functions on behalf of the public.**

46. The *rights* afforded to civil servants will shortly increase through the implementation of a number of newly enacted laws including the Civil Servants Act and the Act on Salaries in the Public Sector. The former provides for a generally merit civil service with opportunities to appeal personnel decisions and the latter for better systemization of pay. Both laws are not yet fully implemented and will need assessment by the Government with the participation of civil servants. The *duties* of civil servants are also more clearly defined in title I of the Civil Servants Act and the

duties of functionaries in the Law on the Incompatibility of Holding Public Office and Performing Profit-Making Activity. With regard to the latter, functionaries are also required to file confidential financial declarations upon entry into the position as well as every two years. The GET understands that the proposed Public Integrity Act will expand the range of individuals covered by restrictions similar to those now contained in the current Law on Incompatibility and it will subsume the financial declarations requirement of the Judicial Services Act. A newly established Commission for the Prevention of Corruption will be responsible for collecting and reviewing the data on the reports (see footnote 5). There is no indication in any discussion of the proposed Public Integrity Act or in the Anti-corruption strategy that the reports will be reviewed for purposes of accuracy or for preventive purposes through providing personalized advice to the filers on how to avoid potential conflicts of interest. The primary purpose of review will be to assist in identifying those businesses that may not contract with the Government and to determine if the gifts or other financial benefits reported are not appropriate. **The GET recommended that any requirement for the filing of a financial declaration have an effective mechanism for enforcement, for instance that intentionally false statements made on the reports be actionable under the criminal code, that information required to be reported is related to restrictions of office including any new conflict of interest standard, and if reports are required, that they provide a basis for counselling in ways to avoid potential conflicts of interest.**

47. With regard to *codes of conduct*, Slovenia did adopt a general Code of Conduct in January 2001 based upon the Council of Europe model. There is little indication that it has been used effectively as a tool to help prevent misconduct or corruption; certainly there has been little effort to educate officials about the code. There are also a number of codes of conduct applicable only to certain professionals such as prosecutors, judges, police, tax officials and medical professionals. In addition, the new Civil Servants Act requires yet another code of conduct. The Anti-Corruption Strategy does not anticipate the development of one code of conduct for the entire public administration.

48. Whether there is one or more, a code of conduct is most useful in preventing more serious breaches of law when it is fair and well-known by those subject to it as well as the public, when there are mechanisms for providing training and education about the code as well as individualized advice to those with questions, when principles enumerated in the codes are supported by the actions as well as the words of senior leadership, when those professions which are allowed to regulate themselves understand the true responsibility to the public the burden of self-regulation entails, and, finally, when there are appropriate and effective mechanisms for enforcing the provisions of the codes. The GET found an admitted lack of education, training and awareness of the code or codes applicable to various individuals in the public administration as well as a lack of enforcement. It also found that in certain cases there was a real misunderstanding of which codes applied to which public officials. With regard to enforcement, it appeared that violations of the codes were rarely addressed with administrative sanctions; the new disciplinary procedures available under the Civil Servants Act may help with this regard. Currently however, the GET understood in its conversations with Slovenian officials that most entities relied only on the criminal code as the way to address misconduct. The GET notes that lack of a criminal conviction is not the standard to which public officials should aspire and that Slovenia is losing a critical opportunity to prevent more serious misconduct and corruption by not promoting and then enforcing administrative codes of conduct containing standards of a loftier nature. The GET is pleased to note that the draft Anticorruption Strategy also recognizes this missed opportunity and includes provisions with regard to education, training, counselling and more effective administrative enforcement of codes. **The GET therefore recommended that the draft anti-corruption strategy be adopted and that its provisions to promote education, training and counselling on codes of conduct and other standards of**

public service be implemented without delay; the GET also recommended that the Commission for Prevention of Corruption be provided with some authority to review, in a public fashion if appropriate, the manner in which each employing entity is providing preventive services as well as enforcing the codes.

49. There are requirements in the criminal code with regard to reporting corruption as well as a provision in the general code of conduct. The Office of for the Prevention of Corruption is currently the entity to which one might provide information regarding a breach of the general code of conduct. While it has no authority to order any corrective action, it has been able through public statements to achieve some action on the part of the employing entity of those accused of misconduct, if not the official themselves. The GET was aware that the proposed Public Integrity Law does not include a similar role for the Integrity Commission possibly because of overlapping responsibilities of other organizations in the field of non-criminal misconduct. However, the GET observed that the Integrity Commission could consistently refer any complaints that it does receive to the appropriate body and to follow up on the manner in which the complaint was handled.

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition

50. Legal persons are divided into two main categories: legal persons of public law and legal persons of private law. The latter are divided into commercial (capital and personal) companies and other legal persons of civil law. Commercial companies are: private unlimited companies, limited partnership companies, joint stock companies, limited partnership joint stock companies, and limited liability companies. The legal and contractual capacity of legal persons do not differ among each other. Requirements for the establishment of legal persons vary depending on the business concerned[17].

Registration and access to data

51. The registration system for legal persons is as follows:

1. partners draw up a partnership agreement (or similar act) and appoint the first representative of the company;
2. the company's representative requests that the company be entered into the Register of Companies;
3. the Register of Companies verifies whether all the required documents are complete, in particular the partnership agreement. In the case of capital companies, the Register of

[17] In the case of capital companies, which are prevailing in number, the requirements are:
(a) a minimum capital: 2.1 million tolars (approximately 9,000 euros) for a limited liability company and 6 millions (approximately 25,600 euros) for a joint stock company. No authorised capital is required to establish a personal company or an institution;
(b) the contract of partnership be drawn up by a notary who, among other things, verifies the identity of the partners;
(c) the register of companies checks whether or not the company being established has paid the minimum authorised capital and whether all the other formal conditions have been met;
(d) no permission from an administrative body is required to establish a company;
(e) capital companies may be established by just one partner;
(f) unless special permission is granted, a limited liability company may have a maximum of 50 partners;
(g) a partner in a legal person may be any person, including foreign citizens or legal persons.

Companies also verifies whether the share capital has been paid. As to the company's representative, the Register of Companies verifies whether there are any obstructions with regard to the entry of the company in the Register of Companies;

4. the legal person is then entered in the Register of Companies - this signifies that the legal person is formed;
5. the first representative of the legal person is at the same time entered in the Register of Companies.

Associations are registered by administrative bodies and follow a slightly different procedure.

52. As a general rule, there are no limitations on participation of legal persons in other legal persons. In the case of limited liability companies and institutions, anyone can have access to the Register of Companies' data concerning membership in companies. On the other hand, the public has no access to data on joint stock companies' membership held by the registry of the Central Clearing and Deposit Company, except shareholders. Every legal person may have more than one bank account, but the numbers thereof should be publicly accessible via Internet.

Limitations on exercising functions in legal persons

53. Articles 62 and 67 of the Penal Code provide that a person found guilty of an offence, including a corruption offence, can be barred from holding certain positions or exercising certain functions, including managerial functions in a legal person. According to Article 246 (for board members or managers in the case of capital companies) and Article 449 (for managers in limited liability companies) of the Companies Act any natural person with unlimited contractual capacity may be a board member, except:

- a person who has been sentenced because of a criminal act connected with the economy, working relations or social security, legal transactions, the management of social or natural resources, public or private property, for a period of five years after the sentence becomes definitive, and not before two years have passed since the prison sentence has been served;
- a person against whom a security measure prohibiting him/her from carrying out his/her profession has been ordered, for the duration of this prohibition;
- if as a member of the management board of a company for which a bankruptcy proceeding was started, a person is finally ordered to pay damages to claimants.

Legislation on the liability of legal persons

54. According to the Law on Liability of Legal Persons for Criminal Offences of 1999 (hereafter "the Law" – see Appendix IX), legal persons can be held liable if a criminal offence was committed by the perpetrator (natural person) in the name of, on behalf of or for the benefit of the legal person as a result of:

- carrying out an illegal resolution, order or endorsement of its management or supervisory bodies;
- an influence (inducement or enabling the perpetrator) by its management or supervisory bodies;
- lack of mandatory supervision of the legality of subordinated employees by its management or supervisory bodies.

Corporate liability exists also if a legal person has at its disposal illegally obtained property or uses objects (benefit) gained through a criminal offence. All grounds for liability of legal persons are applicable to the criminal offences of active bribery, trading in influence and money laundering.

55. A legal person can be held liable even if the advantage was only potential or has not been realised. The Penal Code provides for two exceptions (applicable in general to natural and legal persons) to the general principle of responsibility for the criminal offence if the benefit has not occurred: when the realised benefit is not a factual ingredient of the offence and when the attempt is punishable.

56. Article 5 of the Law states that in case corporate liability is established, a legal person shall be held liable in spite of the fact that the perpetrator (natural person) is not criminally liable (insanity and similar institutions excluding criminal liability). According to the Slovenian authorities, it is possible to assign liability to a legal person in a case where the physical perpetrator has not been convicted (acquittal). On the contrary, legal person can not be held liable when the offender has not been identified: the identification of the offender is the prerequisite for establishing all factual ingredients of a crime and for establishing that harm has not occurred by accident, for example. According to Article 27 (2) of the Law, criminal proceedings against legal persons are initiated and carried out together with proceedings against the natural person and a single decision is taken. Nevertheless, when legal obstacles (for example immunity from prosecution) exist with regard to the natural person, proceedings against legal persons may be initiated anyway. The liability of legal person does not preclude (or exclude) liability and criminal proceedings against any natural person who may be the perpetrator, instigator of, or accessory to active bribery, trading in influence and money laundering. Since the Law entered in force in 1999, there were no proceedings instituted against legal persons for corruption and trading in influence.

Sanctions

57. The Law (Articles 13 to 25) foresees the following sanctions in the case where a legal person is held liable for active bribery, trading in influence and money laundering:

- Sentences: fine between 500,000 tolars (approximately 2,100 euros) and 150,000,000 tolars; expropriation of property; winding-up of legal person.
- Suspended sentence.
- Safety measures: publication of the judgement; prohibition of a specific commercial activity (see Appendix IX for details).

Article 26 specifies the various sanctions applicable to legal persons, in relation to the seriousness of the offence. In the case of the winding up of a legal person which has committed a criminal offence, liability passes to the legal successor thereof and sentence will be delivered only when the successor's managing or supervisory bodies knew about the aforementioned offence. Furthermore, Article 21 foresees two types of legal consequences attached to the conviction: 1) prohibition of activity on the basis of licences, authorisations or concessions granted by State bodies and 2) prohibition of acquisition of licences, authorisations or concessions. In order to ensure that the provisions contained in this Article can be applied, implementing legislation would be necessary. The Ministry of Justice holds a record of companies found liable of criminal offences.

Tax regime and accounting

58. Tax legislation does not explicitly forbid payments for corruption purposes, but such payments are not recognized as taxable acknowledged expenses and, in case of audit, they are excluded from tax returns and tax settlements. If such expenses are claimed by a taxpayer, consequently this is considered an offence according to the Tax Procedure Act because incorrect data are declared. The Minister of Finance issued in 2003 an act on "Regulation on fiscally unacknowledged expenses" that lists expenses which are not acknowledged as legal fiscal expenses, including facilitation payments. If during their audits, tax authorities suspect that a criminal offence, including corruption and money laundering, has been committed they have to report the facts to the public prosecutor. Seizure of business documents, including tax records, is allowed as an urgent investigation measure (approved by the investigating judge) during the preliminary criminal procedure or if there are suspicions that a criminal offence was committed.

59. According to the Law on Tax Procedure, taxpayers shall keep business accounts and records, draw up annual reports, tax accounts and keep other records. Business accounts and records shall be kept in such a manner as to make the information available for the assessment of tax liabilities for a period of at least 10 years from the end of the tax year. All legal persons are submitted to the obligation to keep accounting records or books. According to Article 240 of the Criminal Code ("Forgery or Destruction of Business documents"), "whoever enters false information or fails to enter any relevant information into business books (…)" or uses a false business book, document or file or destroys or hides those documents "shall be sentenced to imprisonment for not more than two years". Moreover, Chapter 7, Article 50 and the following of the Companies Act contains provisions concerning Business Books, Annual Reports and Auditing. According to Article 54 paragraph 1, a company must keep business books based on authentic accounting documents; paragraph 2 stipulates that the types of business books shall be regulated in detail by accounting standards, paragraph 3 requires the double entry system of book-keeping. By means of these book-keeping rules, it is ensured that enterprises are required to carry out integrated and orderly accounting. Departures from the rules can be established in the event of audits or on the basis of tax inspections; accounts are also subject to further examination after the discovery of suspicious operations, and furthermore can be seized.

60. Within the tax administration, at the Head Office, there is the Sector for Supervision, which consists of 4 Departments: Control, Auditing (Inspection), Investigation and International Cooperation. The main task of the Control Department is to monitor all possible illegal activities of taxable persons, including bribery and other forms of corruption. The Sector of Supervision has also its own investigation department with special tax investigators (4 persons in the headquarters and 20 in regional offices). The Investigation Department performs preliminary investigation and, upon the suspicion of crime committed, reports to the prosecutor's office. No information on suspected corruption was identified by the tax authorities and subsequently submitted to the prosecution. The GET was informed that in 2002, 364 tax inspectors who work on regional offices made 9,542 examinations of legal persons[18].

Auditing

61. The Court of Audit is an independent body whose 3 members are appointed by the Parliament. Its competence is to control the use of the state budgetary funds by state and local authorities, as well as public commercial companies and other legal entities receiving funds from the state budget. The Court of Audit is accountable to the Parliament. According to the general rule contained in Art. 145 of the Code of Criminal Procedure, the Court of Audit has the obligation to report to the competent authorities criminal offences, including corruption offences, of which it

[18] To date, there are approx. 140,000 legal persons registered in Slovenia.

might be aware. Private accountancy and audit bodies are also bound by the general obligation applied to all citizens (Article 146 of the Criminal Procedure Act) to report any criminal offence of which they are aware. Moreover, a special obligation, applying to these professions, to report to the OMLP any suspicions of money laundering, is provided for by the Law for Money Laundering Prevention.

b. Analysis

62. Article 18 of the Criminal Convention on Corruption sets forth that legal persons can be held liable for criminal offences when they are committed by a natural person "who has a leading position within the legal person". The Slovenian Law on Liability of Legal Persons for Criminal Offences goes beyond that requirement by holding liable the legal person when the criminal offence is committed by any employee (either in a leading or any other position), acting in the name of, on behalf of or for the benefit of the legal person. The aforementioned law is not applicable to state and local self-governing communities, i.e. they cannot be held liable for any criminal offences (including corruption related offences). All the other legal entities, including state-owned companies and political parties, can be held liable for corruption related offences in the same way as any private or public entities that are not exercising state duties. This seems to be the widely acknowledged rule, which fits in the whole concept of corporate criminal liability.

63. The GET found the Law to be comprehensive and all-embracing. It regulates in detail all the issues related to the corporate criminal liability. However, its practical application raises some concern: since the Law entered in force in 1999, not a single legal person was convicted. The GET was explained that the Law is quite new and therefore it is too early to assess its effectiveness. However, the GET is of the opinion that one of the ways to measure the effectiveness of practical implementation of the Law is to look at the number of charges brought against legal persons, criminal cases initiated and solved. The Supreme State Prosecutors Office informed the GET that in 2002, 240 criminal reports were filed against legal persons. Out of that number, 37 were investigated (including 19 in which criminal charges were brought against legal persons) and as many as 115 were dismissed. One or two cases were pending in courts but no one had been concluded. None of those cases relate to corruption. Noteworthy, police officers, prosecutors and judges received some training on corporate liability right after the Law was passed. However, during the meetings both with governmental and non-governmental bodies, the GET was told on multiple occasions that the law "*has not been applied in practice as much as it could be".* One of the reasons mentioned was the lack of training. The police officers admitted that they needed additional training on the matter. Therefore, **the GET recommended that officials from the investigative and judicial authorities make full use of the provisions of the Law on Liability of Legal persons and receive specific training, to complement their skills, on how to better apply these provisions.**

64. The GET is of the view that infringements of the accounting obligations are satisfactorily dealt with in the Slovenian legal system. According to the Companies Act, legal persons must have orderly accounts based on authentic documentation. The punishable nature of using false information or falsified books in accounting, the certification of inaccurate books, or the destruction of accounting documents, are liable to penalties under Article 240 of the Penal Code (see above paragraph 60). As the GET was informed, offences also include the use of inaccurate balance-sheets. Thus the chief offences in connection with accounting, which can also serve to cover up corrupt practices in firms, are liable to penalties. In taxation law too, there are extensive accounting obligations. The relevant documents must be made available to tax inspectors. Nonetheless, investigation procedures – particularly in respect of corruption offences – linked with infringements of accounting obligations have not come to the notice of the GET. This state of

affairs does not seem consistent with reality. The use of incorrect accounting documents to conceal corruption is one of the classic instruments for committing such offences. For instance, in tender documents the amounts to be paid or already paid by way of provision are included in the reckoning. In bills, deliveries which were not made and services which were not provided are entered in order to constitute secret funds with which bribes can be paid. Bills account for services that were delivered not to the invoiced party but to a corrupt state employee who has shared an official commission with the offender/the contractor. In addition, firms often enter in their accounts outlay which is unrelated to the service actually appearing in the accounts but includes other services which benefit the bribe-taker; also, there are entries in the accounts for purported services of off-shore-firms whose sole purpose is getting profits out of the country so that from their foreign location they can keep proceeds of corruption ready for payment to bribe-takers or deposit such money in freshly opened bank accounts on their behalf. During the visit, the skills to identify unlawful payments (hidden corruption) were often admitted as insufficient. In particular, the tax administration admitted the need to have specialised training on anti-corruption matters in order to detect fraud and corruption. Bearing that in mind, **the GET recommended to promote training activities in the fields of book-keeping, auditing and accounting and public invitations to tender and procurement to bodies involved in detection, investigation, prosecution and adjudication.**

65. The law provides for three main criminal sanctions that could be imposed on legal persons, i.e. fines (which are higher than for natural persons), expropriation of property and winding up of legal person (which could be imposed only if the activity of the legal person was entirely or predominantly used for committing criminal offences). Apart from criminal sanctions that, according to the Slovenian authorities, are rarely imposed as the heaviest punishment, legal persons can also be subject to administrative sanctions. The Administrative Code lists a number of offences for which legal persons may be subject to administrative sanctions (fines). However, other specific sanctions, e.g., disqualification from participating in public procurement, exclusion from entitlement to public aids etc., that could more be effective and dissuasive than fines when criminal liability could not be applied are not provided for in the Slovenian legislation. Therefore, **the GET recommended to consider the opportunity of including additional administrative sanctions or other dissuasive measures - targeting legal persons.**

66. The GET was informed that if during the audit a crime or offence is suspected, the auditors submit this information to the police or other law enforcement (or judicial) authorities. This obligation stems from the general obligations to report criminal offences which apply to all public officials and citizens, and thus to the Court of Audit and private professions. During the eight years of the Court of Audit existence, 26 cases were transmitted to the police. In 2002, one of them was related to corruption. In their work, auditors follow general auditing guidelines which do not include any specific provisions on how to identify corruption offences. This, in the GET's view, hampers their ability to determine corruption activities of legal entities. The lack of methodology to identify possible corruption available to auditors and the lack of expertise in anti-corruption matters could constitute a major difficulty in furthering effective anti-corruption work. The representatives of Court of Audit admitted that they lacked sufficient experience in identifying corruption. In this regard, the GET was informed that the Court of Audit is preparing the "General guideline on the role of the Court of Audit in the fight against fraud and corruption" and that it is expected to be finished at the beginning of 2004. The GET observed that the "General guideline on the role of the Court of Audit in the fight against fraud and corruption" should be complemented as soon as possible. It also observed that the obligation for private accountancy and auditing professions to report corruption cases, should be introduced. In this respect, the GET wishes to remind the situation described under paragraph 37 above; due to the minimum level of punishment determining the criminal offences subject to reporting, professionals such as

private auditors are not, to date, punishable in case of non-reporting of active bribery cases (since these crimes are punishable by less than three years' imprisonment and takes note that the Slovenian authorities underlined that active bribery will also be included, due to the foreseen increase of sanctions (see footnote 12).

V. CONCLUSIONS

67. Slovenia has a modern, dense body of law, which makes it possible to combat corruption in a comprehensive manner, guarantees provisional and final deprivation of property, allows the exchange of judicial assistance and also treats legal persons as possible principals in the perpetration of corruption offences. Moreover, a number of recent administrative reform laws are intended to strengthen the checks and balances of and, where appropriate, the independence of the various entities of public administration. However, the practical application of those legal provisions and new policies appears to pose considerable difficulties.

68. In view of the above, GRECO addresses the following recommendations to Slovenia:

i. **that, in order to promote the use in practice of the legal provisions on temporary seizure of proceeds of crime, 1) the prosecution service make full use of the legal provisions on temporary seizure at the very beginning of an investigation – including, if appropriate, at the preliminary stage –, 2) the Criminal investigation Department's police officers and prosecutors be given specific training in application of the legal provisions and 3) support in the form of measures such as model documents for the provisional seizure (of bank deposits, shares, real estate etc.) be prepared and made available to police officers, investigating judges and prosecutors;**

ii. **that the police specialised anti-corruption unit should be positioned close enough to the top of the Police services, with clear and short lines of responsibility and accountability, guaranteeing quick and direct contacts with the prosecution service;**

iii. **that the prosecution service be swiftly informed about investigations so that it can assume leadership thereof and speedily decide whether provisional measures for the deprivation of property must be taken;**

iv. **to establish a regular assessment in order to: 1) ensure that the organisation of the public administration (as provided by legislation or executive decree) does not create opportunities for corruption; 2) evaluate the effects of the new recruitment and career system on the nomination and retention of highly qualified persons and 3) ensure that the provisions of the Law on access to information be implemented. The results of this assessment should be made public;**

v. **that a conflict of interest restriction that provides for consistently applied and enforceable standards be adopted for all those who carry out or have carried out functions on behalf of the public;**

vi. **that any requirement for the filing of a financial declaration have an effective mechanism for enforcement, for instance that intentionally false statements made on the reports be actionable under the criminal code, that information required to be reported is related to restrictions of office including any new conflict of interest**

standard, and if reports are required, that they provide a basis for counselling in ways to avoid potential conflicts of interest;

vii. **that the draft anti-corruption strategy be adopted and that its provisions to promote education, training and counselling on codes of conduct and other standards of public service be implemented without delay; the GET also recommended that the Commission for Prevention of Corruption be provided with some authority to review, in a public fashion if appropriate, the manner in which each employing entity is providing preventive services as well as enforcing the codes;**

viii. **that officials from the investigative and judicial authorities make full use of the provisions of the Law on Liability of Legal persons and receive specific training, to complement their skills, on how to better apply these provisions;**

ix. **to promote training activities in the fields of book-keeping, auditing and accounting and public invitations to tender and procurement to bodies involved in detection, investigation, prosecution and adjudication;**

x. **to consider the opportunity of including additional administrative sanctions or other dissuasive measures – targeting legal persons.**

69. Moreover, GRECO invites the Slovenian authorities to take account of the observation made by the experts in the analytical part of this report.

70. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Slovenian authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2005.

APPENDIX I

PENAL CODE OF THE REPUBLIC OF SLOVENIA

Chapter Seven

CONFISCATION OF PROPERTY BENEFITS GAINED
BY COMMITTING OF CRIMINAL OFFENCE

Grounds For Confiscation of Property

Article 95

(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 the present Code.

Method of Confiscation of Property

Article 96

(1) Money, valuables and any other property benefit gained through or owing to the commission of a criminal offence shall be confiscated from the perpetrator or other beneficiary; when confiscation cannot be carried out, property equivalent to the property benefit shall be confiscated from them.

(2) When the property benefit or property equivalent to the property benefit cannot be confiscated from the perpetrator or other beneficiary, the perpetrator shall be obliged to pay a sum of money equivalent to this property benefit. In justified instances, the court may allow the sum of money equivalent to the property benefit to be paid by instalment, whereby the period of payment may not exceed two years.

(3) A property benefit gained through or owing to the commission of a criminal offence may also be confiscated from persons to which it was transferred free of charge or for a sum of money that does not correspond to its actual value, if such persons knew or could have known that this property had been gained through or owing to the commission of a criminal offence.

(4) When a property benefit gained through or owing to the commission of a criminal offence has been transferred to close relatives of the perpetrator of the criminal offence (relations from Article 230 of this Code) or when, for reason of the prevention of confiscation of property benefits under the first paragraph of this Article, any other property has been transferred to such persons, this property shall be confiscated from them unless they can demonstrate that they paid its actual value.[19]

Protection of the Injured Party

Article 97

[19] See the Law on Amendments and Additions of the Penal Code of the Republic of Slovenia (Pc - A).

(1) If the injured party has been awarded his claim for damages by the Criminal court, the latter shall order the confiscation of property only insofar as such property exceeds the adjudicated claim of the injured party.
(2) The injured party which has been committed by the criminal court to bringing its claim for the recovery of damages in a civil action may satisfy its claim from the value of the confiscated property, provided that it brings a civil claim within six months from the judgement directing it to bring a civil action and under the further condition that it claims settlement from the value of the confiscated property within three months from the judgement awarding its claim.

(3) Any injured party which has not brought its claim for compensation in the form of damages in the course of the criminal proceedings may satisfy its claim from the value of the confiscated property, provided that it brings a civil action for the adjudication of its claim within six months from the day it became aware of the ruling confiscating the property and with the further proviso that it claims settlement from the value of the confiscated property within three months from the judgement awarding its claim.

Confiscation of Property From Legal Person

Article 98

Any property gained by a legal person through or owing to the committing of a criminal offence shall be confiscated. A property benefit or property equivalent to the property benefit shall also be confiscated from legal persons when the persons referred to in the first paragraph of Article 96 of this Code have transferred this property to the legal person free of charge or for a sum of money which does not correspond to its actual value[20].

[20] See the Law on Amendments and Additions of the Penal Code of the Republic of Slovenia (Pc - A).

APPENDIX II

CODE OF CRIMINAL PROCEDURE

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 confiscation 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 confiscation 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 confiscation 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, Article 25) which would have had the jurisdiction to adjudicate in first instance.

Article 498a

(1) Except in instances where the criminal procedure is completed with a judgement in which the accused admits guilt, money or property of unlawful origin from article 252 of the Penal Code of the Republic of Slovenia and illegally given or accepted bribes from articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code of the Republic of Slovenia shall also be seized:
1) if those legal indications of criminal offences from article 252 of the Penal Code of the Republic of Slovenia which indicate that money or property from the aforementioned article originate from criminal offences are proven, or
2) if those legal indications of criminal offences from articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code of the Republic of Slovenia, which indicate that a reward, gift, bribe or any other form of property benefit was given or accepted are proven.
(2) The panel shall issue a special resolution on this (sixth paragraph of article 25) at the reasoned suggestion of the public prosecutor; prior to this, the investigating judge at the request of the panel shall be obliged to collect data and investigate all the circumstances of importance for the determination of unlawful origin of money or property or illegally given or received bribes.
(3) A certified transcription of the resolution from the previous paragraph shall be handed to the owner of the seized money or property or of the property or bribe, if such is known. If the owner is unknown, the resolution shall be confirmed at the court desk and, after eight days, the delivery to the unknown owner shall be deemed to have been performed.
(5) Owners of seized money or property or property or bribes shall have the right to appeal against the resolution from the second paragraph of this article, if they feel that there were no legal grounds for the seizure.[21]

[21] See the Law on Amendments and Additions to the Law on the Criminal Procedure (LCP-A).

Article 499

(1) Property benefits 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 property benefits.
(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.

Article 500

(1) Where the confiscation of property benefits from another recipient of benefits is indicated (Articles 96 ad 98 of the Penal Code of the Republic of Slovenia) that person shall be summoned for questioning in preliminary proceedings and at the main hearing. If a legal entity is involved, summons shall be served on its representative. The latter shall be informed that proceedings may be conducted in his absence.
(2) The representative of a legal person shall be examined at the main hearing, after the defendant. The same shall apply in respect of another recipient of property benefits if he was not summoned as a witness.
(3) The recipient of property benefits and the representative of a legal person shall in connection with determination of property benefits be entitled to move for evidence to be taken and, with the permission of the presiding judge, to put questions to the defendant, witnesses and experts.
(4) The exclusion of the public from the main hearing shall not apply in respect of the recipient of material benefits and the representative of a legal person.
(5) If the court finds only at the main hearing that the issue of confiscation of property benefits demands to be considered it shall interrupt the main hearing and summon the recipient of the benefits or the representative of the legal person.

Article 501

The court shall fix the amount of property benefits using its discretion if an accurate determination would entail undue difficulties or the proceedings would thereby be unduly protracted.

Article 502

(1) Where confiscation of property benefits is warranted the court shall on its own authority order temporary securing of the claim pursuant to provisions applying to the enforcement procedure. In this instance the second and third paragraphs of Article 109 of the present Code shall apply correspondingly.

(2) The court may also order such security in the pre-criminal procedure[22].

Article 503

(1) Confiscation of property benefits may be imposed in the judgement of conviction, in the ruling on judicial admonition or the ruling on educational measure, as well as in the ruling on security measure from Articles 64 and 65 of the Penal Code of the Republic of Slovenia.

[22] See the Law on Amendments and Additions to the Law on the Criminal Procedure (LCP-A).

(2) In the enacting terms of the judgement or ruling the court shall specify the object and the sum confiscated. Where good grounds exist the court shall permit the payment of property benefits in instalments fixing the time limit and the amounts thereof.
(3) Where the court has imposed the confiscation of property benefits on the recipient and a legal person a certified copy of the judgement or ruling shall be served on the recipient of property benefit and the representative of a legal person.

Article 504

The legal person and the recipient of property benefits referred to in Article 500 of the present Code may request the reopening of criminal proceedings in regard of the provision on confiscation of property benefits.

Article 505

The second and third paragraphs of Article 368, 376 and 380 of the present Code shall apply correspondingly to the appeal against the decision on confiscation of property benefits.

Article 506

(1) Where a suspended sentence provides that punishment shall be imposed in case of failure to return property benefits, to recover damage or to meet some other obligation and the defendant fails to comply with that provision within a specified period of time, the court which adjudicated in first instance shall on the motion of the authorised prosecutor or the injured party, or on its own motion, institute proceedings to revoke parole.
(2) The judge assigned to the case shall question the parolee if he can be reached and shall conduct the necessary inquiries to determine facts and collect evidence material to adjudication, whereupon he shall send the files to the panel (sixth paragraph, Article 25).
(3) Thereupon the presiding judge shall schedule the session of the panel, of which he shall notify the prosecutor, the parolee and the injured party. The panel shall hold a session whether the duly summoned parties and the injured person appear or fail to comply with the summons.
(4) If the court establishes that the parolee has failed to comply with the obligation imposed on him by the judgement it shall render a judgement whereby parole shall be revoked and punishment imposed, or it shall fix a new time limit for the fulfilment of the obligation, or annul that stipulation altogether. If the court finds that there are no grounds for any of these decisions, it shall discontinue by a ruling the proceedings for the revocation of the suspended sentence.

Article 506a

“(1) The court which ordered the storage of seized items or the temporary securing of a request for the deprivation of pecuniary advantage or property to the value of the pecuniary advantage, shall be obliged in such instances to proceed with particular despatch. It must act as a good manager with respect to the seized items and property serving as temporary security, as well as to items and property given as bail (Articles 196 to 199).
(2) If the storage of the seized items or the temporary securing of a request from the previous paragraph involves disproportionate costs or if the value of the property or the items is decreasing, the court may order that such property or items be sold, destroyed or donated for the public benefit. Prior to taking a decision on this, the court must obtain an opinion from the owner of the property or items. If the owner is not known or it is not possible to service the owner with the summons for the opinion, the court shall display the summons on the notice 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 or she has consented to the property or items 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 seized items and bail and of the temporary securing of requests from the first paragraph of this Article.
(4) The procedure for managing seized items and property from 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 the present Code shall apply *mutatis mutandis* to proceedings for the application of security measures, confiscation of property benefits, bribes and money or property of unlawful origin and revocation of suspended sentence.
(2) The provisions of articles 498a to 506a of this law which refer to the confiscation of money or property of unlawful origin, bribes and other property benefits shall apply *mutatis mutandis* to the confiscation of property of a value which matches the property benefits (articles 96 and 98 of the Penal Code of the Republic of Slovenia).
(3) The provisions of article 499 of this law shall apply *mutatis mutandis* to the pre-criminal and investigative procedure; in addition to the bodies before which the criminal procedure is proceeding, other bodies stipulated by this law shall also participate in the collecting of data and the investigation of the circumstances of importance for the determination of property benefits.[23]

[23] See the Law on Amendments and Additions to the Law on the Criminal Procedure (LCP-A).

APPENDIX III

PENAL CODE OF THE REPUBLIC OF SLOVENIA

CONFISCATION OF OBJECTS GAINED THROUGH THE COMMITTING OF CRIMINAL OFFENCE

Article 69

1) Objects used or intended for use 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.

APPENDIX IV

PENAL CODE OF THE REPUBLIC OF SLOVENIA

MONEY LAUNDERING

Article 252

(1) Whoever accepts, exchanges, stores, freely uses, uses in an economic activity or in any other manner determined by the law conceals or attempts to conceal by money laundering the true origin of money or property that was, to his knowledge, acquired through the commission of a criminal offence, shall be sentenced to imprisonment for not more than three years.

(2) Whoever commits the offence under the preceding paragraph and is simultaneously the perpetrator of or participant 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 money or property from the first or second paragraph of this Article are of considerable value, the perpetrator shall be sentenced to imprisonment for not more than eight years and punished by a fine.

(4) If the offences under the preceding paragraphs have been committed by several persons who have assembled with the intention of committing such offences, the perpetrator shall be sentenced to imprisonment for not less than one and not more than ten years, and punished by a fine.

(5) Whoever should and could have known that the money or property had been acquired through the commission of a criminal offence, and who commits the offences from the first, second and third paragraphs, shall be sentenced to imprisonment for not more than two years.

(6) Money and property under the first and second paragraphs of this Article shall be seized.[24]

[24] See the Law on Amendments and Additions of the Penal Code of the Republic of Slovenia (PC - A).

APPENDIX V

CODE OF CRIMINAL PROCEDURE

Article 109

(1) Upon a motion by rightful claimants (Article 101) a temporary securing of indemnification claims arising out of a criminal offence may be adjudicated within criminal procedure according to the provisions applying to the procedure for execution.
(2) In the course of investigation the ruling from the first paragraph of this Article shall be issued by the investigating judge. After the charge sheet has been filed such ruling outside the main hearing shall be issued by the presiding judge, and at the main hearing by the panel of judges.
(3) No appeal shall be permitted against a ruling of the panel on temporary security of the claim. In other cases appeals shall be heard by the panel of judges (sixth paragraph, Article 25). The appeal shall not stay execution.

Article 502

(1) Where confiscation of property benefits is warranted the court shall on its own authority order temporary securing of the claim pursuant to provisions applying to the enforcement procedure. In this instance the second and third paragraphs of Article 109 of the present Code shall apply correspondingly.

(2) The court may also order such security in the pre-criminal procedure[25].

Article 507

"(1) Unless stipulated otherwise in this chapter, other provisions of the present Code shall apply *mutatis mutandis* to proceedings for the application of security measures, confiscation of property benefits, bribes and money or property of unlawful origin and revocation of suspended sentence.

(2) The provisions of articles 498a to 506a of this law which refer to the confiscation of money or property of unlawful origin, bribes and other property benefits shall apply *mutatis mutandis* to the confiscation of property of a value which matches the property benefits (articles 96 and 98 of the Penal Code of the Republic of Slovenia).

(3) The provisions of article 499 of this law shall apply *mutatis mutandis* to the pre-criminal and investigative procedure; in addition to the bodies before which the criminal procedure is proceeding, other bodies stipulated by this law shall also participate in the collecting of data and the investigation of the circumstances of importance for the determination of property benefits.[26]

[25] See the Law on Amendments and Additions to the Law on the Criminal Procedure (LCP-A).
[26] See the Law on Amendments and Additions to the Law on the Criminal Procedure (LCP-A).

d) State Administration

Article 120

(Organisation and Work of the State Administration)

The organisation of the state administration, its competence and the manner of appointment of its officers are regulated by law.

Administrative bodies perform their work independently within the framework and on the basis of the Constitution and laws.

Judicial protection of the rights and legal interests of citizens and organisations is guaranteed against decisions and actions of administrative bodies and bearers of public authority

Article 121

(Duties of Administrative Bodies)

Duties of the state administration are performed directly by ministries.

Self-governing communities, enterprises, other organisations and individuals may be vested by law with public authority to perform certain duties of the state administration.

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.

APPENDIX VII

(Unofficial translation)

Chapter 5 INTEGRITY PLAN, ASSESSMENT OF INTEGRITY AND VERIFICATION OF COMPLIANCE OF INSTITUTIONS WITH THE INTEGRITY PLAN

Article 41

State administration and local authority bodies shall have an integrity plan. The integrity plan is a step of legal and statutory measures intended to eliminate and prevent the opportunities for the emergence and growth of corruption in institutions.

It shall contain the following in particular:

- assessment of the corruption exposure of the institution,
- appointment of an individual responsible for the integrity plan,
- description of the work process and methods of decision-making with the determination of exposed tasks,
- preventive measure for reducing the possibility of corruption, and
- other parts of the plan as determined by the instructions from article 44 of this Act.

The institutions referred to in paragraph one of this articles shall draft an integrity plan and notify the Commission following the dead line prescribed by the Commission in the Article 44 of this Act.

The notification shall contain the following:
- statement declaring that the institution was inspected in accordance with the Commission's instructions;
- statement declaring that an integrity plan was drafted on the basis of the inspection;
- a brief assessment of the status determined by the inspection and a summary of the measures for improving integrity;
- signature of the individual referred to in indent 2 of paragraph two of this article.

If the Commission is of the opinion that the integrity plan is insufficient, it shall require the bodies and organisations mentioned in the previous Article to rectify, supplement or harmonise the plan with instructions.

If, on the basis of procedures referred to in the preceding paragraphs, it determines that the plan is suitable, the Commission shall issue a certificate confirming that the integrity plan has been adopted to the institution referred to in paragraph one of this article.

The Commission shall be responsible for training the individual mentioned in indent 2 of paragraph two of this article.

Article 42

The institutions referred to in the preceding article shall make regular checks to determine whether they are in compliance with the integrity plan. As a general rule, the checks shall be held once every two years on the basis of substantiated proposals from the institution's head or the individual referred to in paragraph two of the preceding article, or even more frequently. The checks shall be conducted by the individual referred to in paragraph two of the preceding article, or a different individual or group of

individual trained and appointed by the Commission. The verification shall be conducted in cooperation with the Commission.

The individual verifying compliance with the integrity plan shall draft a report and notify the Commission, which may demand that the report be supplemented, if necessary. If the Commission approves the report, it shall notify the head of the institution, who may propose changes to the integrity plan and other measures intended to improve the plan.

Article 43

On the proposal of a public sector institution not included in those referred to in paragraph one of Article 41 of this Act, as well as on the proposal of a legal entity from the private sector, the Commission may draft an integrity assessment of and make recommendations for improving integrity.

The procedures referred to in the preceding paragraph shall be undertaken by the Commission on behalf of a legal entity from the private sector against payment according to a price list issued by the Commission and confirmed by responsible working body of the Parliament. A price list shall be publishing in the Official Gazette of the Republic of Slovenia.

Article 44

The Commission shall issue and publish guidelines for creating integrity plans and verifying compliance with the plans and integrity.

APPENDIX VIII

Administrative Complaints

YEAR	Complaint dismissed	First instance decision replaced	Total number of complaints
1995	*332*	*418*	*750*
1996	*467*	*384*	*851*
1997	*282*	*772*	*1054*
1998	*302*	*307*	*609*
1999	*206*	*271*	*477*
2000	*203*	*262*	*465*
2001	*226*	*220*	*446*
2002	*123*	*133*	*256*

APPENDIX IX

LIABILITY OF LEGAL PERSONS FOR CRIMINAL OFFENCES ACT

I. FUNDAMENTAL PROVISIONS

Article 1

(1) Under the conditions which in accordance with Article 33 of the Penal Code of the Republic of Slovenia (Official gazette RS, No. 63/94, 70/94 – corr. 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 offences a legal person may be liable and what penalty or other penal sanction may be imposed on a legal person.

Restrictions in the Liability of Legal Persons for Criminal Offences
Article 2

(1) The Republic of Slovenia and local self-governing communities as legal persons shall not be liable for criminal offences.
(2) For legal persons not included under the preceding paragraph the statute may stipulate that for a specific criminal offence all or only certain types of legal person are liable.

Territorial Validity of the Act
Article 3

(1) Under this Act domestic and foreign legal persons shall be liable for criminal offences committed in the territory of the Republic of Slovenia.

(2) Domestic and foreign legal persons shall under this Act also be liable for criminal offences committed abroad if the legal person has its head office in the territory of the Republic of Slovenia or exercises its activity therein and the criminal offence was committed against the Republic of Slovenia, a citizen thereof, or a domestic legal person.

(3) Domestic legal persons shall under this Act also be liable for criminal offences committed abroad against a foreign state, foreign citizen or foreign legal person, where the liability of the legal person is not dependent on the conditions set out in Article 122 and the second paragraph of Article 123 of the Penal Code and the special conditions for the prosecution of a perpetrator under Article 124 of the Penal Code, except the conditions under the third and fifth paragraphs of this article.

II. GENERAL PROVISIONS

1. Conditions under which a Legal Person is Liable for a Criminal Offence

Grounds for the Liability of a Legal Person
Article 4

A legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of or in favour of the legal person:

1. if the committed criminal offence means carrying out an illegal resolution, order or endorsement of its management or supervisory bodies;

2. if its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence;

3. if it has at is disposal illegally obtained property gains or uses objects gained through a criminal offence;

4. if its management or supervisory bodies have omitted obligatory supervision of the legality of the actions of employees subordinate to them.

Limits of the Liability of a Legal Person for a Criminal Offence
Article 5

(1) Under the conditions under the preceding article a legal person shall also be liable for a criminal offence if the perpetrator is not criminally liable for the committed criminal offence.

(2) The liability of a legal person does not preclude the criminal liability of natural persons or responsible persons for the committed criminal offence.

(3) A legal person may only be liable for criminal offences committed out of negligence under the conditions from Point 4 of Article 4 of this Act. In this case the legal person may be given a reduced sentence.

(4) If a legal person has no other body besides the perpetrator who could lead or supervise the perpetrator, the legal person shall be liable for the committed criminal offence within the limits of the perpetrator's guilt.

Liability in the Case of a Change in the Status of a Legal Person
Article 6

(1) A bankrupt legal person may be liable for a criminal offence regardless of whether this was committed before the initiation of bankruptcy proceedings or during them. In this case, however, a sentence shall not be imposed but instead only the expropriation of property gains or the safety measure of expropriation of assets.

(2) If a legal person has been wound up before the legal completion of criminal proceedings it may be deemed liable and the sentence and other sanctions are imposed on the legal person which is its legal successor, if its management or supervisory bodies knew of the committed criminal offence prior to the winding-up of the convicted legal person.

(3) A legal person which is the legal successor of a convicted legal person but whose management or supervisory bodies were not aware of the committed criminal offence shall only be sentenced to the expropriation of property gains or the safety measure of expropriation of assets.

(4) If the legal person is wound up after the legal completion of criminal proceedings, the imposed sanction shall be carried out in accordance with the provisions of the second and third paragraphs of this article.

Necessity
Article 7

(1) A legal person shall not be liable if the perpetrator committed a criminal offence in order to avert from it a danger not caused by itself which does not derive from the permitted actions of other persons or state bodies, whilst the danger that threatened is greater than the danger caused by the criminal offence.

(2) In cases where, as a result of exceeding the limits of necessity, the perpetrator may be given a reduced sentence or have his sentence withdrawn, the legal person may also be given a reduced sentence or have its sentence withdrawn.

Criminal Attempt
Article 8

(1) If the perpetrator intentionally initiated a criminal offence but did not complete it, the legal person shall also be liable for the attempt under the conditions under Article 4 of this Act if the attempt is defined by law as criminal.

(2) The sentence applied against a legal person for a criminal attempt shall be the same as for the completed criminal offence, although a reduced sentence may also be imposed.

(3) If the management or supervisory body voluntarily prevents the perpetrator from completing an initiated criminal offence, the sentence of the legal person may be withdrawn.

Collective Criminal Offence
Article 9

If a legal person is accorded the same grounds of liability with regard to several chronologically-linked criminal offences of the same type, such a legal person shall be liable as though one criminal offence had been committed.

Complicity of Legal Persons
Article 10

(1) Two or more legal persons are engaged in the committing of a criminal offence as accomplices if each meets one of the grounds of liability under Article 4 of this Act.

(2) In the case under the preceding paragraph each legal person shall be sentenced as though it was the only party besides the perpetrator liable for the criminal offence.

General Reasons for Reducing a Sentence or Withdrawal of a Sentence
Article 11

(1) If after the committing of a criminal offence the management or supervisory body voluntarily reports the perpetrator, the legal person may be given a reduced sentence.

(2) If after the committing of a criminal offence the management or supervisory body voluntarily and immediately orders the restitution of illegally obtained gains or provides indemnification for damages caused through the offence or reports information on the grounds for liability for other legal persons, the legal person's sentence may be withdrawn.

2. Sentences and other Sanctions for Legal Persons

Types of Sentence
Article 12

The following sentences may be prescribed for the criminal offences of legal persons:

1) fine;
2) expropriation of property;
3) winding-up of legal person.

Fines
Article 13

(1) The fine which may be prescribed may not be less than 500,000 (five hundred thousand) tolars or more than 150,000,000 (a hundred and fifty million) tolars.

(2) In the case of the legal person's criminal offence having caused damage to another's property, or of the legal person having acquired illegal gains, the highest limit of the fine imposed may be 200 (two hundred) times the amount of such damage or gains.

Expropriation of Property
Article 14

(1) Half or more of the legal person's property or its entire property may be expropriated.

(2) Expropriation of property may be imposed for criminal offences which carry a sentence of five years' imprisonment or a heavier sentence.

(3) In the case of bankruptcy proceedings resulting from the imposing of a sentence of expropriation of property, creditors may be paid off from the expropriated property.

Winding-up of Legal Person
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 sentence of expropriation 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 sentenced to winding-up.

Fixing the Sentence
Article 16

(1) In fixing the sentence for a legal person the court shall consider, in addition to the general rules for fixing sentences under Article 41 of the Penal Code of the Republic of Slovenia, the economic strength of the legal person.

(2) In the case of criminal offences for which in addition to a fine the expropriation of property is prescribed, the court must ensure in fixing the level of the fine that it does not exceed half of the property of the legal person.

Suspended Sentence
Article 17

(1) The court may apply a suspended sentence to a legal person instead of a fine.

(2) With a suspended sentence the court may impose a fine of up to 50,000,000 (fifty million) tolars on the legal person and, at the same time, order that the sentence will not be carried out if the legal person does not commit a further criminal offence within a term defined by the court, which term may not be shorter than one year or longer than five years (the term of suspension).

Safety Measures
Article 18

For the criminal offences of legal persons, in addition to the safety measure of the confiscation of objects as per Article 69 of the Penal Code of the Republic of Slovenia, the following may be imposed as safety measures:

1) publication of the judgement;

2) prohibition of a specific commercial activity.

Publication of the Judgement
Article 19

(1) The safety measure of publication of the judgement shall be applied by the court in cases where it would be beneficial for the public to be informed of the judgement, and especially if publication of the judgement would contribute to removing danger to life or limb or the securing of safety of traffic or some economic good.

(2) The court shall consider, with regard to the importance of the criminal offence and the need for the public to be informed of the judgement, whether the judgement should be published in the press, broadcast by radio or television or by several of the listed means of public information simultaneously, and whether the explanation of the judgement should be published in full or in excerpt form; the court shall see that the means of publication shall enable the informing of all those in whose interest it is necessary to publish the judgement.

Prohibition of a Specific Commercial Activity
Article 20

(1) The safety measure of prohibition of a specific commercial activity means prohibiting a legal person from producing certain products or doing business in certain plants or prohibiting a legal person from involving itself in certain transactions in the traffic of goods and services, or in other commercial transactions.

(2) The safety measure may be applied to a legal person if its further involvement in a given commercial activity would present a danger to life or limb or be harmful to the commercial or financial business of other legal persons or to the economy, or if the legal person has already been sentenced in the last two years for the same or a similar criminal offence.

(3) This safety measure may be applied for a term of six months to five years, to run from the time the judgement becomes legally binding.

Legal Consequences of Conviction
Article 21

(1) Legal consequences of a conviction may come into effect even if a fine was imposed on the legal person.

(2) The following legal consequences of a conviction may come into effect for a legal person:

1. prohibition of activity on the basis of licences, authorisations or concessions granted by state bodies;

2. prohibition of acquisition of licences, authorisations or concessions which are granted by state bodies.

Limitation
Article 22

(1) Limitation of criminal prosecution of a legal person shall be reckoned with regard to the sentence which may by law be imposed on the perpetrator of the criminal offence.

(2) The implementation of a sentence on a legal person shall fall under the statute of limitations when the following period have elapsed since the final judgement with which the sentence was imposed:

1) three years in the case of the implementation of a fine;

2) five years in the case of the implementation of a sentence of expropriation of property or winding-up of the legal person.

(3) The implementation of a safety measure shall fall under the statute of limitations:

1) when six months have elapsed since the final judgement with which the measure of publication of the judgement was imposed;

2) when the term for which the measure of prohibition of a specific commercial activity was applied to a legal person has elapsed.

Application of the General Provisions of the Penal Code
Article 23

The provisions of the General Provisions section of the Penal Code of the Republic of Slovenia shall apply to legal persons unless provided otherwise by this Act.

III. SPECIAL PROVISIONS

Criminal Offences of Legal Persons
Article 24

Legal persons may be liable for the criminal offences from the Specific Offences section of the Penal Code of the Republic of Slovenia and for other criminal offences if so provided by this Act.

Criminal Offences from the Penal Code
Article 25

Legal persons shall be liable for the following criminal offences from the Specific Offences section of the Penal Code of the Republic of Slovenia:

1) from Chapter 16 for criminal offences under Articles 141, 151, 153, 154 and 158-160;
2) from Chapter 17 for criminal offences under Articles 158 and 160;
3) from Chapter 19 for criminal offences under Articles 185, 186 and 187;
4) from Chapter 20 for criminal offences under Articles 188 and 191-196;
5) from Chapter 22 for criminal offences under Articles 205-209;
6) from Chapter 23 for criminal offences under Articles 215-229;
7) from Chapter 24 for criminal offences under Articles 231-244 and 247-255;
8) from Chapter 26 for criminal offences under Articles 268 and 269;
9) from Chapter 28 for criminal offences under Articles 292 and 293;
10) from Chapter 29 for criminal offences under Articles 297, 298 and 310;
11) from Chapter 30 for criminal offences under Articles 318, 319 and 321;
12) from Chapter 31 for criminal offences under Articles 327 and 328;
13) from Chapter 32 for criminal offences under Articles 333-347.
14) from Chapter 35 for criminal offences under Article 387;

Sentences for Criminal Offences
Article 26

(1) The following types of sentences may be imposed on legal persons committing the criminal offences under the preceding paragraph:

1) for criminal offences for which a sentence of up to three years' imprisonment is prescribed for the perpetrator, a fine of up to 75,000,000 (seventy-five million) tolars, or up to 100 (one hundred) times the amount of damage caused or property gained through the criminal offence;

2) for criminal offences for a which a sentence of over three years' imprisonment is prescribed for the perpetrator, a fine of at least 2,500,000 (two million five hundred thousand) tolars, or up to a

maximum of 200 (two hundred) times the amount of damage caused or illegal gain obtained through the criminal offence.

(2) For criminal offences for which a sentence of five years' imprisonment or heavier sentence is prescribed for the perpetrator, a sentence of expropriation of property may be applied instead of a fine.

(3) For criminal offences under the first paragraph of this article, a sentence 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.

IV. PROCEDURE

Unity of Procedure
Article 27

(1) Proceedings shall as a rule be initiated and carried out against the legal person together with proceedings against the perpetrator for the same criminal offence.

(2) In unified proceedings a single charge is lodged against the accused legal person and the accused, and a single judgement is given.

(3) Proceedings against a legal person alone may only be initiated or carried out in cases where it is not possible to initiate or carry out proceedings against the perpetrator for reasons specified by law, or when proceedings have already been carried out against the perpetrator.

Expediency of Initiation of Proceedings
Article 28

The state prosecutor may decide not to request the initiation of criminal proceedings against a legal person if the circumstances of the case show that this would not be expedient because the legal person's participation in the criminal offence was insignificant, because the legal person does not have any property or has so little property that this would not even suffice to cover the costs of the proceedings, because bankruptcy proceedings have been initiated against the legal person, or because the perpetrator of the criminal offence is the sole owner of the legal person against which it would be necessary to initiate proceedings.

Territorial Jurisdiction
Article 29

In cases where under the Code of Criminal Procedure (Uradni List RS, No. 63/94, 70/94 – corr., 25/96-US Decree 5/98 – US Decree 72/98 and 6/99) the territorial jurisdiction of the court is dependent on the place of residence of the accused, but proceedings are only being brought against an accused legal person, the competent court is the court which has jurisdiction over the area in which the head office of the legal person is located, or where the branch office of an accused foreign legal person is located.

Legal Representative of an Accused Legal Person
Article 30

(1) In criminal proceedings the accused legal person shall be represented by a legal representative entitled to do anything the accused is entitled to do under the Code of Criminal Procedure.

(2) Every accused legal person must have a legal representative.

(4) The court must on every occasion establish the identity of the legal representative of the legal person and his entitlement to act as legal representative.

Appointing a Legal Representative
Article 31

(1) The legal representative of an accused legal person is that person who by law, by the ruling of a competent state body, or by the statute, founding document or other ruling of the legal person, is entitled to represent it.

(2) The legal representative of an accused foreign legal person shall be the person who runs its branch office.

(3) If the accused legal person or branch of an accused foreign legal person is represented collectively by several persons, these shall select a legal representative from among themselves. If they fail to do this despite being called to do so by the court, or fail to inform the court of this in writing within the given deadline, the court shall appoint one of them as legal representative.

(4) The legal representative or persons who collectively represent the accused legal person may authorise an other person to act as legal representative. Authorisation must be given in writing or orally in the minutes of the court.

(5) If the legal person is wound up before the legal completion of criminal proceedings, the court shall appoint a legal representative of the accused legal person.

Disqualification of a Legal Representative
Article 32

(1) The legal representative of an accused legal person may not be someone called as a witness in the same matter.

(2) The legal representative of the accused legal person may not be the person against whom proceedings are being brought because of the same criminal offence, except if this is the only member of the accused legal person.

(3) In the cases under the first and second paragraphs of this article the court shall require the accused legal person or branch of the accused foreign legal person to have the competent body of the legal person appoint another legal representative and to inform the court of this in writing within a given deadline.

(4) If the accused legal person does not have a body competent to appoint a legal representative or fails to inform the court within the given deadline whom it has appointed as legal representative, the legal representative shall be appointed by the court.

Handing Written Material to the Legal Representative
Article 33

Written material intended for the legal representative shall be handed to the accused legal person or branch of the accused foreign legal person.

Bringing the Legal Representative to Court
Article 34

If the representative of the legal person fails to come to court when correctly summoned and fails to excuse his absence, the court may order him to be brought to court.

Costs of the Legal Representative
Article 35

The costs of the legal representative of the accused legal person fall within costs of the criminal proceedings. These costs shall be only be paid in advance from the funds of the body conducting the

criminal proceedings for a representative appointed on the basis of the fifth paragraph of Article 31 and the fourth paragraph of Article 32, if the accused legal person does not have funds from which it would be possible to exact them.

Defence Counsel
Article 36

(1) An accused legal person may have defence counsel in addition to a legal representative.
(2) The provisions of the Code of Criminal Procedure on mandatory defence shall not apply to an accused legal person.
(3) The accused legal person may not have the same defence counsel as the accused.

Contents of the Charge
Article 37

The charge against the accused legal person must contain, in addition to the elements prescribed by the Code of Criminal Procedure, the official name or name which the accused legal person legally trades under in accordance with regulations, and its head office, a description of the criminal offence and the grounds for liability of the accused legal person.

Hearing and Final Statement
Article 38

(1) At the main trial the accused is always heard first, followed by the legal representative of the accused legal person.
(2) After the completion of the evidence procedure and the statement of the prosecutor and injured party, the defence counsel of the accused legal person, the legal representative of the legal person, the defence counsel of the accused and finally the accused shall be heard in this order.

Drawing Up of the Written Judgement
Article 39

In addition to what is prescribed by Article 364 of the Code of Criminal Procedure, the written judgement of the court must contain the following:
1) in the introduction, the official name or name which the accused legal person legally trades under in accordance with regulations, its head office, and the full name of the defence counsel who was present at the main trial;
2) in the main judgement, the official or name which the accused legal person legally trades under in accordance with regulations, its head office, and the ruling by which the accused legal person is deemed liable for the offence of which it is accused, by which it is acquitted of this offence or by which the charge is withdrawn.

Partial Annulment of the Judgement of a Court of the First Instance
Article 40

A court of the second instance may annul a judgement against the accused legal person alone or against the accused alone if this part of the judgement may be eliminated without prejudicing proper judgement.

Security Measure
Article 41

(1) For the securing of the exaction of a sentence of expropriation or property or expropriation of gains, the court may, at the proposal of the authorised prosecutor, order temporary securing under the provisions on the exacting and securing of claims. In such cases the second and third paragraphs of Article 109 of the Code of Criminal Procedure shall, *mutatis mutandis*, apply.

(2) If circumstances justify the fear that within the convicted legal person an action will be repeated for which reasonable suspicion exists that the legal person is responsible for it, or if there is a danger of a similar action being committed, the court may by the same procedure in addition to the measures under the preceding paragraph temporarily prohibit the convicted legal person from carrying out one or more specific commercial activities.

(3) If criminal proceedings are introduced against a legal person, the court may at the proposal of the public prosecutor or according to official duty prohibit changes of status which would cause the removal of the convicted legal person from the court register. The prohibition shall be recorded in the court register.

Use of the Code of Criminal Procedure
Article 42

Unless otherwise specified in this Act the provisions of the Code of Criminal Procedure shall, *mutatis mutandis*, apply in criminal proceedings against a legal person even if proceedings are only being brought against a legal person.

V. TEMPORARY AND FINAL PROVISIONS

Article 43

(1) Under the conditions specified by this Act a legal person is also liable for the criminal offences under the first paragraph of Article 392 of the Penal Code of the Republic of Slovenia (Uradni List RS, No. 63/94, 70/94 – corr. and 23/99).

(2) For the criminal offences under the preceding paragraph legal persons shall be imposed the sentences under Article 26 of this Act.

Article 44

This Act shall enter into force ninety days after its publication in the Uradni List Republike Slovenije (Official Gazette of the Republic of Slovenia).

No. 713-01/94-12/6
Ljubljana, on the 8 July 1999

President
of the National Assembly
of the Republic of Slovenia
Janez Podobnik