

**GOOD PRACTICES IN SLOVENIA
WITH REGARD TO ARTICLE 7 – 9 AND 12 OF THE UNCAC**

1. **Conflict of interests, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the United Nations Convention against Corruption**

 2. **Implementation of article 12 of the United Nations Convention against Corruption, including the use of public-private partnerships**
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I. GOOD PRACTICES IN GENERAL

UNCAC Article 8 – Codes of conduct for public officials

(establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, establishing measures and systems requiring public officials to make declarations to appropriate authorities on their outside activities, investments, assets and substantial gifts or benefits...).

Good practice reported by Slovenia:

- the Commission's activities in relation to the National Assembly for adoption of a code of conduct for the MPs

The Commission welcomed the idea initiated by the President of the National Assembly on reviving the old initiative on preparation and adoption of the code of conduct for the MPs. Some of the latest scandals showed a lack of both guiding principles as well as efficient mechanisms to guide and sanction misconduct of the MPs. The Commission participated in a meeting with the President and discussed the possibilities for adoption of such a conduct which was later declined by the political parties' representatives. The idea is still pending.

- opinion provided to the Civil Servants Council on draft code of conduct

The Civil Servants Act foresees preparation and adoption of the code of conduct for civil servants by the Civil Servants Council. The Commission took the opportunity to enter into a discussion on its content, unfortunately only at its final stage. As one of the Commission's tasks stipulated in article 12 of the IPCA is also to prepare starting points for codes of conduct they were presented at the Civil Servants Council's meeting.

By such a proactive approach the Commission not only showed the importance of codes of conduct to become a more widespread tool but also that institutions and people can turn to the Commission for its advice in this respect.

UNCAC Article 9 – Public procurement and management of public finances

Good practice reported by Slovenia:

- **upgrade of the tool for scrutinizing public expenses called Supervisor**

In 2011 the Commission notified the UNODC WG on Corruption Prevention about launch of this application.

Currently the Commission is testing the upgrade of the application which will enable overview of all affiliated companies as well as management boards and supervisory boards of all companies. The reason for such an upgrade is to be able to have an overview of also those private companies in which a controlling interest or a dominant influence is held either by the State or a local community. In the past such an overview was not possible as state property and property of municipalities was not listed properly allowing a complete list of the property. Such lack of information prevented efficient control over such property and allowed for malversations of public officials when selling off, renting, exchanging property at for the public sector unfavourable conditions.

Such an upgrade will also enable not only the Commission but also other supervisory and law-enforcement bodies to conduct their responsibilities more efficiently.

- **enquiry with all municipalities on the inclusion of the anti-corruption clause in their contracts as stipulated by the IPCA**

The IPCA prescribed obligation of the public sector body or organisation to include an anti-corruption clause into contracts when they exceed 10.000 EUR (excluding VAT) with bidders, the suppliers of goods and services, or contractors.

The anti-corruption clause defines actions that both parties have to sustain in the process of obtaining or concluding business or when omitting due supervision over the implementation of contractual obligations or any other act or omission which causes a public sector body or organisation damage or by which the representative or the agent of the public sector body or organisation, the other contracting party or its representative, agent or intermediary are put, in a position to obtain an undue advantage.

The purpose of including the anti-corruption clause into the contract is to raise awareness of both parties of which act they have to sustain as they are deemed to be corrupt.

In order to increase awareness of the clause the Commission notified all municipalities to include the clause into the contracts they enter as well as, as part of its supervisory role, demanded from all municipalities to send information on the contracts that should have had the clause included but didn't and called upon them to make necessary steps to improve that.

Such a step was taken not only to follow the objective of the raise awareness but also enables the Commission to disregard any objections due to lack of information when conducting misdemeanour proceeding.

- **external auditing of the Commission's finances**

Although it only became an obligation with the adoption of the IPCA in June 2011 at the initiative of the newly appointed Commission, the internal audit of the Commission's operations by an external

auditing authority was ordered at the end of 2010 and concluded in 2011. The internal audit was conducted by the Secretariat-General of the Government of Republic of Slovenia and it focused on the Commission's managing of public finances for the period before resuming its responsibilities in October 2010. As of June 2011 internal audit will be a regular obligation of the Commission to be conducted every three years.

Such an external auditing not only unveiled some of the deficiencies in managing but also enabled the new Commission to correct them and to set an example for all other institutions which do not have an internal auditing department and therefore do not subject their managing of public finances to any auditing at all.

- **Project Transparency**

In order to promote transparency and prevent conflict of interest the Commission for the Prevention of Corruption (hereinafter: the Commission) has started a Project Transparency part of it focusing on the assets declared by the Commission, that is the three members of this collective body. By making their assets declarations available to the public the members not only allowed the public to scrutinize the accuracy of their declarations but also set an example for all other institutions and officials.

The assets declarations are available at the Commission's website (<https://www.kpk-rs.si/sl/projekt-transparentnost/kpk-v-stevilkah/premozenjsko-stanje-funkcionarjev-komisije>).

Other information available to the public within the Project Transparency is the Commission's budget with a breakdown reflecting money being spent for the salaries and for the rent as they are the highest expenses (<https://www.kpk-rs.si/sl/projekt-transparentnost/kpk-v-stevilkah/kadrovska-in-financna-sredstva-kpk>).

The Commission's work efficiency is reflected through numbers of cases handled and resolved, misdemeanour procedures conducted, prepared opinions, trainings provided etc. which are available to the public and regularly updated both on the Commission's website (<https://www.kpk-rs.si/sl/projekt-transparentnost/kpk-v-stevilkah/delo-kpk>) as well as monthly in the Commission's monthly electronic newsletter KPK Vestnik.

- **Informational packages for the MPs, the ministers and state secretaries**

According to the Slovenian Integrity and Prevention of Corruption Act (hereinafter: IPCA) (Article 12) the Commission shall, among other things, prepare expert groundwork for strengthening integrity. As IPCA stipulates different tools and instruments for strengthening integrity such are assets declarations, restrictions on business activities due to conflict of interest, incompatibility of office, obligations with regard to lobbying, all of them pertaining to officials and high-ranking civil servants, as a part of its role to raise awareness on the expected integrity of the above mentioned employees of the public sector the Commission prepared an informational package for the members of the National Assembly, the ministers as well as state secretaries in order to inform them on the rights, but above all, their obligations with regard to avoidance to conflict of interest situations.

The informational package included:

- a letter of the Commission reminding the new officials of their obligations as stipulated in the IPCA,
- brochures on lobbying, restrictions on business activities due to conflict of interest, asset declarations,
- a systemic explanatory note on lobbying as well as
- the last KPK Vestnik (a monthly electronic newsletter issued by the Commission) which covered a topic on obligations of the new and the officials whose office was about to cease with regard to asset declarations, restrictions on business etc as stipulated by the IPCA.

The purpose of the informational package was to inform the new officials of their responsibilities in a friendly manner thus raising awareness on the topics regulated by the IPCA and at the same time guarantee that these obligations are respected in the future; disregard of these obligations may be subjected to a punishment as it constitutes a misdemeanour prescribed by the IPCA.

- **presentation of lobbying regulations to the MPs and governmental officials**

With the adoption of the IPCA in June 2010 lobbying has become regulated bringing new challenges both to the Commission as the supervisory body for their implementation as well as for the addressees for being able to recognise lobbying contacts and report them to the Commission as well as to achieve that all persons taking up lobbying activities register with the Commission as lobbyists.

In order to raise awareness of the addressees the Commission at the invitation of the Office of the Prime Minister and the Cabinet of all Ministers presented new lobbying regulations to its members. Furthermore, at the invitation of the President of the National Assembly the Commission presented the regulations also to all MPs as the ones being most often targeted by lobbyists and thus having to be familiar with the regulations and obligations they impose – the presentation was organised as a special session of the National Assembly and a discussion on practical examples was held afterwards.

- **Public insight into property**

The surveying and mapping authority of the Republic of Slovenia launched a portal called Public insight into property allowing insight into property. The application enables the public to check the value of a particular property. As such is a good tool to allow scrutinizing the value of property where owners are known to the public

A shortcoming of this application with regard to its transparency is the fact that its search engine only allows to scrutinize the owners when they are legal entities – identification of an owner is possible via registration number of the legal entity. Although at first the portal enabled its visitors to search the property by name of its owner, the Information Officer prohibited search engine enabling that.

II. GOOD PRACTICES REGARDS CONFLICT OF INTERESTS

Because of the fact that provisions on conflict of interests, reporting acts of corruption, assets declarations and public-private partnership are in Slovenian legal system since 2010 in majority updated, changed and modernised, we would like to emphasis those in more wider content. Provisions of new Integrity and Prevention of Corruption Act and Commission for the Prevention of Corruption, which is responsible to implement and supervise it, are covering also define articles (7—9 and 12) of UNCAC as follows:

SLOVENIAN LEGISLATION ON CONFLICT OF INTEREST, GOOD PRACTICES AND PRACTICAL EXAMPLES

CONFLICT OF INTEREST

(Incompatibility of office, Restrictions on business activities due to conflict of interest and Conflict of interest)

Good practices reported by Slovenia:

- new provisions of Integrity and Prevention of Corruption Act (hereinafter: IPCA) in this matter;
 - wide range of persons who are subjects of these new provisions;
 - penalties for violations;
 - control and supervision of such provisions; etc.
- establishments and maintenances of records of public officials and cases where Commission found the existence of conflicts interests; violations on business activities and Incompatibility of offices;
- preparation of legal opinions, explanations and interpretation of the statutory provisions and other materials relating to incompatibilities and conflicts of interest with an emphasis on responding to the questions by public and formal institutions;
- organisations of seminars regards Conflict of Interests;
- online submission of report about violation of the Integrity and Prevention of Corruption Act (reports about acts of corruption, unethical or other unlawful behaviour, incompatibility of office, conflict of interest etc.).

Slovenian legal system (IPCA) defines obligation to avoid Conflict of Interests in promoting and strengthening transparency and “fair play” within the processes and procedures of exercising public authority, public functions and public affairs. IPCA¹ institutes aimed at absolute prohibition (prevention) of **certain conflict of interests**:

- incompatibility of office and prohibition of activities for officials,
- restriction of business between public sector institutions and enterprises connected to officials or their family members.

¹ Subsidiarity of IPCA: IPCA applies to the public sector, unless issues are regulated otherwise by any other law).

Conflict of interest means *circumstances in which the private interest of an official person influences or appears to influence the impartial and objective performance of his/her public duties.*

Private interest of an official person means *a pecuniary or non-pecuniary benefit which is either to his/her advantage or to the advantage of his/her family members or other natural or legal persons with whom s/he maintains or has maintained personal, business or political relations.*

According to IPCA every official person² must pay attention to any actual or possible conflict of interest and shall make every effort to avoid it.

IPCA further on defines that official person who, upon taking up a post or office or during the performance of his/her official duties finds out that a conflict of interest has arisen or might arise must:

- 1) ***immediately inform his/her superior in writing, and if s/he has no superior, the Commission for the Prevention of Corruption (if not, official person can be punished with a fine of not less than 400 and not more than 1200 euro) , and***
- 2) ***immediately cease to perform any work with regard to the matter in which the conflict of interest has arisen, unless the delay would pose a risk.***

The superior or the Commission must decide on the conflict of interest within 15 days and immediately communicate the decision to the official person.

- ❖ **The second (or first) possibility: *self-exclusion of official person*** from the matter in which the conflict of interest has arisen



The purpose and the goal: an official person may not use his/her office or position to advance his/her personal interests or the personal interests of another person.

It should also be stressed that Commission for the Prevention of Corruption of the Republic of Slovenia is (since June 2010) responsible body to take all necessary procedures for investigating the possible conflicts of interests as follows:

- if there is a possibility that a conflict of interest has arisen in the official conduct (act) of official person, the Commission ***initiates a procedure for establishing the actual existence of***

² Officials, high-ranking civil servants, and other public servants as well as managers, and members of the management and supervisory boards of public sector entities (Public sector entities are state bodies and local communities; public agencies, public funds, public institutes and public business institutes; other entities governed by public law, which are indirect user or state or local budget; and public undertakings and private companies in which a controlling interest or a dominant influence is held either by the State or a local community).

the conflict of interest and its consequences (it can be done within two years of the performance of the official acts).

- In case of establishing conflict of interests, the Commission has the following competences/duties:
 - *to inform the competent authority or the employer of the official person and set the time limit by which the competent authority or the employer is obliged to inform the Commission of measures taken in this respect, and*
 - *in case of intentional breaking of obligation to avoid conflict of interests, the Commission informs also all other competent authorities.*

In previous year 2011 Commission for the Prevention of Corruption dealt with a total of 30 cases where violations of the provisions of avoiding conflicts of interest were in place (conflict of interests was identified in four cases; three cases were sent to other competent authorities; in remaining cases conflict of interests were not confirmed).

Furthermore, at the request and questions of various authorities and public, Commission for the Prevention of Corruption issued:

- 27 opinions, guidelines or recommendations in relation with the notion of conflict of interest,
- approximately 170 opinions and answers.

Example of identified conflict of interest in public sector:

*Commission for the Prevention of Corruption received question (allegation) about **possible conflict of interest of three municipal councillors and members of the Local Commission for mandates, elections and appointments** (hereinafter Local Commission) in one of the local municipalities in Slovenia. Anonymous writer explained that members of Local Commission are at the same time municipal councillors.*

When allegation came it was time to nominate, select and appoint new supervisory directors of one company. Three municipal councillors which were at the same time also members of local Commission nominated themselves for candidates; voted in Local Commission for themselves as the most suitable candidates and also confirmed themselves on the Municipality Council plenary.

Conclusions:

- *all three were in conflict of interest when they were voting for the most suitable candidate at Local Commission plenary (they did not exclude themselves from the voting);*
- *one was in conflict of interest as a member of Municipality Council because he voted in a process where he was a candidate for supervisory director;*
- *We also started misdemeanour procedure (fine 400 – 1200 EUR).*

Restrictions on business activities due to conflict of interest

Good practice reported by Slovenia:

- new provisions of Integrity and Prevention of Corruption Act (hereinafter: IPCA) in this matter;
- automatization of detection of violations through Supervisor;
- establishments and maintenances of records of public officials and cases where Commission found the existence of violations of these provisions;
- preparation of legal opinions, explanations and interpretation of the statutory provisions;
- organisations of seminars;

IPCA defines number of restrictions on business activities amongst public and private bodies as follows:

A public sector body or organisation which is committed to conducting a public procurement procedure in accordance with the regulations on public procurement or which carries out the procedure for granting concessions or other forms of public-private partnership, **may not order goods, services or construction works, enter into public-private partnerships or grant special and exclusive rights**³ to entities in which the official who holds office in the body or organisation concerned or in cases where the official's family member has the following role:

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

The mentioned prohibition also applies to the public sector body or organisation's business dealings with the official or the official's family member as a natural person.

A contract or other forms of obtaining funds that are in conflict with the above mentioned prohibitions **shall be null and void.**

Regards the prevention of such violations Commission for the Prevention of Corruption:

- prepared online electronic form for reporting entities which are subject to the restrictions of business activities (it also allows a direct and automated publishing all entities on the Commission's web site - <https://www.kpk-rs.si/en>);
- in 2011 prepared and published several legal opinions and answered approximately 160 questions related to restrictions of business activities;
- launched in 2011 a project to establish a system for the automatic identification of transactions (violation of provisions on restriction of business activities) through the online application Supervisor. The system confirmed 61 violations so far.

ASSETS DECLARATIONS

Good practice reported by Slovenia:

³ In all other situations (collaborations between public and private sector) the prohibition of business activity does not apply if provisions relating to conflicts of interest are duly complied with.

- new provisions of Integrity and Prevention of Corruption Act in this matter,
- online asset declaration system (electronic e-forms for declaring of assets and reporting changes in assets),
- online submission of report about violations,
- issued opinions and clarifications and other texts,
- yearly random checks for fully inspection of assets declarations,
- organized many seminars.

IPCA defines provisions of declaration and supervision of assets of officials, according to which officials⁴ are obliged to declare to Commission for the Prevention of Corruption all their data on assets (Personal name; personal registration number; address of permanent residence; tax ID number; information on the office or work; information on the work performed immediately before taking office; any other office held or activities performed; information on ownership or stakes, shares, management rights in a company, private institute or any other private activity with a description of the activity, and a designation of the registered name or the name of the organisation; information on stakes, shares, and rights that the entities referred to in the preceding indent have in another company, institute or private activity with the designation of the registered name or the name of the organisation; information on taxable income under the law governing personal income tax that is not exempt from personal income tax; information on immovable property with all the land register information on land plots; monetary assets deposited in banks, savings banks and savings and loan undertakings, the total value of which in an individual account exceeds EUR 10 000; the total value of cash if it exceeds EUR 10 000; types and values of securities if, at the time of the declaration of assets, their total value exceeded EUR 10 000; debts, obligations or assumed guarantees and loans given, the value of which exceeds EUR 10 000; movable property, the value of which exceeds EUR 10 000; and any other information in relation to assets that the person with obligations wishes to provide.).

If Commission finds that, since the last declaration, the assets of the person have increased disproportionately compared to his income derived from the performance of his duties of office or an activity, it invites the person to explain the increase.

If the Commission reasonably suspects that the assets of the person have increased considerably, and the person with obligations has failed to provide an adequate explanation for the increase, and there is a reasonable risk that the person with obligations will have these assets available or will hide or appropriate them, the Commission may propose to competent authority to take all necessary steps to temporarily stop transactions and secure the money and assets for the purpose of seizing unlawfully obtained proceeds or money and assets of illegal origin.

⁴ Professional officials, non-professional mayors and deputy mayors, high-ranking civil servants, managers, persons responsible for public procurement, civil servants of the National Review Commission for Reviewing Public Procurement Award Procedures (hereinafter: the National Review Commission) and the citizens of the Republic of Slovenia who hold office in EU institutions, other EU bodies and other international institutions to which they have been appointed or elected on the basis of secondment or a proposal from the Government of the Republic of Slovenia or the National Assembly and whose obligation to declare their assets is not otherwise regulated by the documents of EU institutions, EU bodies and other international institutions for which they perform duties of the office.

Commission for the Prevention of Corruption in this matter:

- developed an electronic form for the reporting of data on assets;
- established electronic record (base) of the assets declarations;
- In 2011:
 - o 7 assets declarations were sent to the National Bureau of Investigation and the police
 - o 4 summonses issued to officials to submit data on assets;
 - o 49 summonses issued to supplement (complement) the information on the financial situation;
 - o established random checks over assets declarations (randomly selected from a group of officials). Major irregularities, including the disproportionate increase in assets have not been identified.
 - o prepared and published several legal opinions and answered approximately 50 questions related to assets declarations.

Example of question:

The Commission received a question by where person explained that he was in a public procurement commission for the tendering procedure of which value was evaluated on more than € 40,000 excluding VAT. After selecting the most suitable bidder, value of public procurement contract was less than € 40,000 including VAT. Person is now interested if he is required to fill out the assets declaration form.

*Commission explained, that third paragraph of Article 41 of IPCA defines that persons responsible for public procurement must communicate the information on their assets to the Commission once a year by 31 January of the current year for the previous year if, in the previous year, they participated in a public procurement in which the estimated value of the contract is equal or greater of the threshold for the award of the contract a) for public supply and service contracts: EUR 40 000; and b) for public works contracts: EUR 80 000. In this manner the Commission explained that the basis for defining the obligations for reporting assets is the value of contract at the time of the opening of procedure – estimated value of contract. In this case this value **was estimated** on more than € 40,000 excluding VAT and that is why this person is obliged to register his assets to the Commission.*

REPORTING ACTS OF CORRUPTION

Good practices:

- new provisions of Integrity and Prevention of Corruption Act in this matter,
 - o Commission received more (investigating) powers;
 - o whistleblower protection;

- prevention matters in publishing and identifying corruption cases;
- outstanding public trust in the Commission's work.

The Commission for the Prevention of Corruption may on its own motion, following a report submitted by a legal or natural person or upon a request of public sector institutions initiate proceedings relating to the allegations of corruption, violation of the rules on conflicts of interest, violation of restrictions on business activities, violation of the regulation of lobbying, proceedings related to the assessment and elimination of individual or systemic corruption risks, or to the violation of the ethics and integrity of the public sector.

Following the concluded procedure, the Commission adopts a **principled opinion** or **findings on a specific case**. Mentioned documents do not mean any decision-making on the criminal, minor offence, compensation, disciplinary or any other accountability of a legal or natural person and does not take the form of an administrative decision.

On the other hand the principled opinions of the Commission in particular include its presentation of and position on systemic shortcomings, inconsistencies and problems, and its proposals to improve the situation. The findings of the Commission on a specific case include a statement of facts and an assessment of the relevant conduct in terms of the law, the strengthening of the integrity of the public sector, and corruption risks, as well as an explanation on the conduct required where irregularities and risks have been established.

In the event that the seriously corrupt conduct of an official, a high-ranking civil servant or a manager has been established, the Commission sends to the authority responsible for the appointment and dismissal of the person in question, a proposal for his dismissal and inform the public accordingly. The competent authority must take a position on the Commission's proposal for dismissal within 30 days.

So far (since Commission establishment in 2004) Commission issued and published 236 principled opinions and findings on a specific cases amongst which in 167 cases corruption behaviour was identified. All mentioned decisions are publicly available at Commission's web site (<https://www.kpk-rs.si/sl/nadzor-in-preiskave/odlocitve-in-mnenja-komisije>). Such opinions and findings, as Constitutional court of the Republic of Slovenia stated, have major role in preventing corruption.

Whistleblower protection

According to IPCA any person may report instances of corruption in a State body, local community, by a holder of public authority or other legal persons governed by public or private law, or a practice by a natural person for which he believes that it contains elements of corruption, to the Commission or any other competent body. The identity of the reporting person, who has made a report in good faith must not be established or disclosed.

Besides, IPCA defines that an official person who has reasonable grounds to believe that he has been requested to engage in illegal or unethical conduct, or has been subject to psychological or physical violence to that end, may report such practice to the superior or the person authorised by the superior (hereinafter: the responsible person).

If the reporting persons have been subject to retaliatory measures as a consequence of filing the report, and this has had an adverse impact on them, they have the right to claim compensation from their employer for the unlawfully caused damage. The Commission can offer reporting persons assistance in establishing a causal link between the adverse consequences and retaliatory measures. If the reporting persons are public servants, and if they continue to be the focus of retaliation despite the Commission's demand for stopping with such actions, they may request that their employer transfer them to another equivalent post and inform the Commission of this.

Persons in the Republic of Slovenia can report possible corruptive practice to Police, Public Prosecutors office and Commission for the Prevention of Corruption. We can see that, according to the public opinion surveys, people in this view would report firstly to Police, followed by the Commission and media (source Center za raziskovanje javnega mnenja, Fakulteta za družbene vede – Inštitut za družbene vede: Stališča o korupciji 2010).

