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Pozdrav nove glavne in odgovorne urednice

V letu 2018, ki je pred nami, naša revija praznuje 15-letnico delovanja. Ob tej priložnosti Fakulteta za upravo Univerze v Ljubljani kot njen izvorni izdajatelj pristopa k prenovi prednostnih točk razvoja revije in uredniške strukture.

Revija pri tem ostaja zvesta svojemu poslanstvu glede teoretičnega in praktičnega razvoja javne uprave. Javna uprava je namreč eden ključnih družbenih podsistemov, ki neposredno vpliva na razvoj celotne družbe. To velja še toliko bolj v sodobnem času, ko se vloga države in javne uprave spreminja, saj sicer ni moč reševati kompleksnih upravljavskih problemov, ki jih s seboj prinašajo globalizacija, reregulacija, privatizacija, finančna, migracijska in povezane krize, deficit legitimnosti oblasti, zastareli upravljavski modeli itd. Še več pozornosti pa se posveča znanstveni naravi in proevropski usmerjenosti revije. Zgoraj omejene izzive pač lahko premostimo, kot kažejo akademske analize in praktične primerjalne izkušnje, le sistemsko in sodelovalno. Zato si javna uprava in vsi njeni deležniki zaslužimo interdisciplinarno pogojene študije upravnega sistema in njegovih elementov. Javna uprava in njeno raziskovanje v naši reviji tako zasledujeta: (1) odprtost prek nacionalnih in disciplinarnih meja, (2) osredotočenje na posebnosti in pomen javne uprave kot družbenega sistema ter (3) vsebinsko in metodološko znanstveno relevantnost izbranih aktualnih tem.

K temu smo se posebej zavezali člani novega uredniškega odbora, ki deluje od tekoče številke v ožji in širši sestavi. Ožji uredniški odbor (glavna in odgovorna urednica, tehnična urednica ter pet področnih urednikov) skrbi za sprotno izvajanje programske politike revije. Na strateški ravni pa delo usmerja prenovljen približno 20-članski uredniški odbor, ki ga sestavljajo zlasti v osrednjem evropskem prostoru z javno upravo povezani ugledni strokovnjaki.

Naše današnje delo temelji na spoštovanja vrednem izročilu dosedanjih urednikov, avtorjev, recenzentov in drugih zaslužnih posameznikov in partnerskih institucij. Ravno to izročilo pa nas po drugi strani zavezuje k nadaljnjim izboljšavam. Vabljeni k sodelovanju tudi vi!

V Ljubljani, decembra 2017

Izr. prof. dr. Polonca Kovač

A Note from the New Editor-in-Chief

In the up-coming 2018, our journal celebrates 15th anniversary. The Faculty of Administration, University of Ljubljana, as the original founder of the journal, takes this opportunity to renew its developmental priorities and editorial structure.

The journal will still contribute to the theoretical and practical progress of public administration. Namely, public administration is one of the vital social subsystems that directly affect the development of the whole society. This is all the more true in the modern times, when the role of the state and the public administration has been changing, since without such evolvement it is not possible to challenge the complex and wicked issues about globalisation, reregulation, privatisation, migrations, financial and related crises, the legitimacy deficit, obsolete governance models, etc. However, we will pay more attention to the scientific character and the pro-European focus of the review. We believe that above-mentioned challenges can be overcome only systematically and cooperatively, as proven by academic analyses and practical comparative experiences. Therefore, the public administration and all its stakeholders deserve interdisciplinary determined studies of the administrative system and its elements. The goals of public administration and its research in our journal are thus: (1) openness across national and disciplinary boundaries, (2) a focus on the specifics and importance of public administration as a societal system, and (3) the substantive and methodological scientific relevance of selected current topics.

The respective guidelines are the framework for the new editorial team which acts on two levels. Editor-in-chief, technical editor and five field editors conduct the operational implementation of the journal's programme, while the editorial board, with app. 20 distinguished European and global scholars, takes care of strategic issues.

Our work today is based on the respectful tradition of its editors, authors, reviewers and other meritorious individuals and partner institutions. It is this tradition that, on the other hand, obliges us to make further improvements. You are cordially invited to participate!

Ljubljana, December 2017

Assoc. Prof. Dr. Polonca Kovač

Public Policy Design and Implementation in Slovenia¹

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ABSTRACT

Public policy design and implementation is a complex process, and so decision makers try to monitor all of the policy lifecycle stages in a particular policy domain. However, the question of coherent integration of various policy activities arises, including agenda-setting, ex-ante evaluation, formulation, decision-making, implementation, ex-post evaluation of individual policies, sector-specific ones, and even horizontal ones. Therefore, it is important to investigate and understand the reasons why an individual country, such as Slovenia, does not exploit all potential aspects of carrying out policy activities in a systematic and coherent manner. This article explores and analyzes Slovenian practice in policy design based on an in-depth empirical study among key public policyholders and decision makers. Furthermore, the authors identify the key success factors that facilitate or inhibit the development and progress of public policies, programs, and projects (PPPP) in Slovenia. The key findings indicate a particular lack of a professional policy unit to monitor the process holistically and the absence of ex-post evaluation. A need for a systemic solution in public policy design is established, which would merge different authorities' efforts, epistemic communities, and the public in developing a structural multilevel model for good public governance.

¹ Corresponding author: dr. Jernej Mencinger, jernej.mencinger@fu.uni-lj.si. This article is a result of the project Development of the model for monitoring and evaluation of development programmes and projects in public sector, No J5-7557. The authors acknowledge the project was financially supported by the Slovenian Research Agency. More: <http://atena-kronos.si/en/>.

Key words: public policy, cycle, evaluation, public administration, good governance, Slovenia.

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1 Introduction

In many countries, effective shaping of public policies, programs, and projects (PPPP), let alone their implementation and monitoring, institutionalization, and evaluation, is one of the weakest points of public governance. In this regard, Slovenia is no exception because it faces many difficulties in formatting development goals, public policies, and programs in all key areas of public service performance and authority. The European Commission constantly issues warnings about delays in implementing directives in various areas, such as in social policy, transport, energy efficiency, environment, and financial services. This is represented by the index of European directives' implementation into legislation (i.e., the transposition deficit), for Slovenia totaling 1.7% in 2016, exceeding the EU target level (1.0%) and average (1.5%; EC, 2017). Nevertheless, agenda-setting, formulating, decision-making, implementing, and evaluating public policies is undoubtedly a complex process. Therefore, it is difficult to identify the effects of PPPP, either upwards in relation to European development policies, trends, and directives, and even more so downwards from concrete public politics towards implementation of programs and projects. Development in the public domain cannot be judged only through the eyes of the economy because it encompasses a set of different public policies in the country and is exposed to a number of interests, constraints, and guiding principles that often even conflict. It is the aspiration of every developed country to harmonize different public policies by using balanced and sustainable approaches (von Raggamby and Rubik 2012).

Policy analysis and associated stages in the policy cycle are well elaborated in theory. The main aim of this research is to identify, elaborate, and explore the key success factors that influence the effectiveness of PPPP in Slovenian public administration when looking at the entire policy cycle process of PPPP. Hence, we explore the extent to which strategic, institutional, regulatory, financial, and organizational aspects influence the development and progress of PPPP in Slovenia. These aspects are scrutinized using structured and semi-structured interviews with policymakers from various public policies. The methodological approach selected makes it possible to present the views of policymakers on the importance of 1) strategic policy cycle activities in the long term, 2) institutionalization of policy design within the government sector, and 3) the regulatory, 4) financial, 5) methodological, and 6) organizational perspective on the functioning and development of PPPP in Slovenia. In this regard, we conducted twenty-two interviews with selected senior officials that had obtained valuable experience as policymakers in various fields of PPPP.

The main contribution of this research is to validate how those dimensions/factors of PPPP design are perceived and considered by policymakers, and

whether neglecting them may have detrimental effects on carrying out PPPP. To our knowledge, our study is the first attempt to elaborate the PPPP design in Slovenia in such a comprehensive and systematic way by addressing a number of key success factors and/or perspectives. Moreover, most studies conducted in this field focus on each policy cycle stage individually. Thus, the information obtained helps answer the following key questions of this research: 1) whether there is a systematic and comprehensive approach in PPPP designing throughout the entire policy cycle process (i.e., agenda-setting, policy formulation, decision-making, policy implementation, and policy evaluation) and 2) whether there is a distinctive politico-administrative dichotomy between stakeholders in the policy process. Both pivotal research problems are considered through the lens of inter-related dimensions/factors, such as strategic, institutional, regulative, methodological, financial, and organizational framework in PPPP design in Slovenia. Thus, our research relies on the typical policy cycle framework to explore in functioning of the policy design framework in Slovenia. This simple and linear segmentation of the policy process into phases allows us a clearer identification of possible inconsistencies within the policy cycle stages and to what extent those factors have an influence in the development of PPPP. Moreover, the politico-administrative relation is presented to characterize an ideal structure and dynamic among stakeholders in the policy process. This illustrative governing framework is considered to distinguish between the political and administrative process in PPPP development. However, the generalization of both theoretical aspects present a limitation of our research due to some drawbacks related to the simplification and fragmentation of reality in exploring the policy cycle process and politico-administrative relations. This allows us to establish and verify the theoretical underpinnings on how these selected factors/dimension influence the functioning and develop of PPPP in Slovenia. Thus, our descriptive empirical research provides a better understanding of the policy process, focusing on the issues listed above. In this respect, we would like to establish some guidelines in order to make PPPP more predictable and manageable for policymakers throughout the entire public policy cycle.

This article is organized as follows. The first part of the article examines, summarizes, and presents the current status and findings concerning theoretical aspects of PPPP development and implementation focusing on the whole public policy cycle and politico-administrative relations. We continue by presenting the findings of an empirical analysis carried out between January and September 2017 in Slovenian public administration. The final part of the article discusses some of the most interesting findings concerning the issues raised. We conclude by listing some of the key recommendations for decision makers in Slovenia and comparable countries.

2 The Public Policy Cycle

The theoretical underpinning of our comprehensive research is based on the policy cycle framework.² Namely, the policy cycle framework allows policymakers to examine and assess the policy process according to a continuous system via subsequent stages. However, this approach has some limitations related to the simplification and fragmentation of reality in exploring the policy cycle process (see Jann and Wegrich, 2007). As highlighted by Jann and Wegrich (2007), the policy cycle description leans more towards a prescriptive and regulatory perspective in understanding the policy process. This means that an analytical and descriptive approach is less pronounced in the policy decision-making process, which to a certain degree does not resemble reality. According to current literature, the policy cycle process distinguishes five stages (agenda-setting, policy formulation, decision-making, policy implementation, and policy evaluation), which may lead to termination or modification (Howlett et al., 2003; Jann and Wegrich, 2007; Savard and Banville, 2012). This segmentation of the policy process into a linear sequence is constructed in accordance with a problem-solving model, theoretically based on rational behavior models of planning and decision-making, which are widely used in organizational theory and public administration (Jann and Wegrich, 2007). However, this division of the policy process cycle into various stages represents the most widely used analytical framework to explore the establishment of different PPPP.

The initial stage of the policy cycle process serves as a platform for identifying a public policy problem that has arisen in a society that requires attention and possible intervention by policymakers or the government. This is a crucial stage for policymakers to decide and select which public problem highlighted by the public or media should be targeted and why this is important or crucial for society. Thus, agenda-setting for public policies in principle encompasses the definition of the problem and the search for policy alternatives. Moreover, the selection and determination of the public problem and, hence, shaping agenda-setting to tackle the problem are inherently connected with a political process (see Jann and Wegrich 2007; Howlett et al., 2003; Princen, 2007; Fawzi, 2017). Policymakers should therefore explore and recognize the social and political background underlying this issue and analyze deficiencies in the current policy process. The insights gained into the policy should subsequently be used to create an agenda for the future development of public policies (UK Essays, 2013). However, the main limitation of this prelude stage before the decision-making process is which issues are listed on the agenda and which are denied or postponed. This controversy is based on the interaction between the political and democratic process (Damore et al., 2012), which may lead to a gap between theoretical assumptions and practice in society.

² The policy cycle concept was established by Lasswell in the 1950s (see Savard and Banville, 2012; Jann and Wegrich, 2007).

The previous stage is followed by policy formation and a decision-making process³ in the policy cycle. What actually becomes part of agenda-setting and later the subject of policy formation and the decision-making process is greatly determined by influential actors. Non-governmental stakeholders are often initiators of public policies; however, state institutions still play the main role in reformulating a public policy problem and mostly in decision-making; their formal position gives them the power of policymaking (Hill, 2009; Wheelan, 2011). According to Howlett et al. (2003) and Savard and Banville (2012), this stage enables policymakers to search for possible solutions to the policy problem and decide about them based on an evaluation of their impact on options for the problem and certain constraints (i.e., financial and methodological). Namely, policymakers must decide which possible solutions to the problem can be applied by considering the financial constraint of state funds. In addition, methodological constraints shape the formulation of the policy process through institutional influence (i.e., a procedure is predetermined by the regulatory framework of the government) or by the interaction and influence of various stakeholders (i.e., agents, social or interest groups, think tanks, etc.) involved in this policy process. Especially interaction and agreement among stakeholders and the government is crucial for shaping and formulating the framework of public policy development. Thus, less strict agreement between social groups and policymakers can in essence achieve a better and more innovative outcome in formulating public policies (Savard and Banville, 2012). Moreover, policy formation defines policy objectives, which leads to the constitution of government programs and projects of public policies. Research on policy formation and decision-making focuses on theory and practice. Namely, from the former perspective this stage utilizes a wide range of organizational, incremental, and institutional theories related to decision-making using approaches such as the public choice model and the garbage can model (defined by Cohen et al., 1972; Jann and Wegrich, 2007; Sidney, 2007).

When making decisions about policy agenda and formulating the policy process, policymakers must determine the anticipated methods and policy tools that needed to be applied for each policy program and project. The formulation of this process and definition of methods need to be outlined in line with the legislative framework, which supports PPPP design and its realization. Moreover, these accepted solutions/alternatives must include a detailed description of the process timeline and how the responsibility is shared among agents and government institutions. This articulation is followed by a decision-making process in which the policymakers have to decide about political and practical feasibility, acceptability, and financial repercussions. Thus, this stage of policy process is found among stakeholders in government bureaucracies, interest groups, think tanks, legislative government boards, and so on, which gives them immense power to decide about policy choices. In the context of the institutional and regulatory framework, different countries pursue various approaches that most often depend on 1) whether they are primarily striving

3 The distinction between policy formation and the decision-making process as separate and independent sub-stages is vague from the theoretical perspective (see Jann and Wegrich, 2007).

for a participative democracy within a society or efficient and effective public governance, and 2) which political, legal, and cultural setting is characteristic for a certain country in terms of systems that are more regulatory determined or free market-oriented (Radaelli and De Francesco, 2007; Kovač et al., 2009; Bevir, 2011; OECD, 2015b). However, when formatting the policy process and deciding on approaches, the stakeholder should be aware of limited rationality. This implies that a particular selection of solutions and alternatives cannot provide an optimal or the most effective strategy in policy design. Thus, this must be taken into account when designing and selecting possible solutions to the policy problem (Sidney, 2007).

The subsequent independent stage is the implementation of policy decisions into reality. Namely, government decisions written in the form of legislation, directives, and strategic plans must be realized in practice. In most cases, the implementation of PPPP is one of the weakest points in the performance of various state administrations. From a theoretical perspective, the implementation of PPPP leans on established theories, such as institutional theory (Cerny, 1990; Heywood, 2000; Ostrom, 2011; Skocpol, 1997), system theory (Easton, 1953, 1965; Sabatier, 2007; Stewart and Ayres, 2001), theory of rational choice (Ostrom 1986, 1999; Buchanan and Tullock, 1962; Olson, 1965), and theory of good governance (Bang and Esmark 2009; Esmark, 2011; Kooiman, 2003). These theories define the behavior of institutions and individuals within them, which also has a major influence on the success of development programs and projects performed by them. Moreover, most studies of this stage show a divergence between theoretical expectations and how defined policy programs and projects are carried out in practice. The major role in implementing programs and projects is transferred to public servants in the state administration. Thus, the implementation of public policies depends, on the one hand, on the behavior and personality of public servants. This aspect is closely related to the organizational culture developed in government institutions, which has an impact on the implementation of the policy process through individually shaped norms in ideological and professional terms. In addition, some agencies in administration have developed their own specific rules, which influence the outcome of the policy process (e.g., following a more restrictive interpretation of rules in migration and asylum policy). On the other hand, institutional factors may play a crucial role in changing their behavior or affecting them when implementing public policy according to government agendas. In this regard, the implementation of PPPP is also influenced by other external interest groups or stakeholders (Savard and Banville, 2012). These factors can even exacerbate the gap between theoretical expectations and practical outcomes.

Currently, policymakers focus on the evaluation process, which is mostly a result of embedded rational behavior in the policy cycle process. It is obvious that the direction of policies in any public area requires continuous monitoring and evaluation of impacts, which is aimed at determining the efficiency and effectiveness of implementing measures and financial requirements. In practice, the implementation of various measures and activities that are

an integral part of public programs and individual projects may, for various reasons, cause a deviation from the envisaged impacts. Deviations may jeopardize the effectiveness of the program and further prevent achievement of the targets set in the stage of PPPP adoption. It is therefore necessary to continuously monitor PPPP implementation, which allows timely identification of possible deviations and rapid adaptation to altered circumstances (i.e., modification of programs and projects or public policy problem redefinition, starting with agenda-setting). Thus, the evaluation stage is embedded in all policy cycle stages and not only in the final stage (Jann and Wegrich, 2007). This makes it possible to compare the achieved and expected effects of PPPP implementation according to its timing. The aim of PPPP evaluation is to identify deviations in the impacts of a selected program or project in relation to the expected impact of the pursuit of public policy. The proposed impact is defined as the difference between the impact of public policy implementation (the actual state) and the impact or the outcome in the case of a public policy's lack of action (i.e., non-intervention).

The state as the (predominant) PPPP holder should adopt better policies and regulations and is encouraged to do so by OECD programs and policies and by the EU in particular (cf. Radaelli and De Francesco, 2007; SIGMA, 2014; Kovač, 2017). In such a sense, ex-ante and ex-post evaluation are policy analysis methods intended to support the authorities in formulating, adopting, implementing, and monitoring improvements of the PPPP system in the sense of good governance. Evaluation affects the quality of policies particularly because it provides decision makers with a clear and in-depth picture of what a policy will cause when implemented, thus making the choice between political alternatives on possible decisions in the respective area easier, as shown by elaboration of the PPPP design steps. In particular, in the framework of the political-administrative process or public governance, an ex-ante evaluation should serve as a basis for the political (usually government) choice among several alternative proposals or solutions to open social problems developed by administrative professionals. Furthermore, ex-post evaluation would address the process with a feedback loop in order to implement PPPP consistently, efficiently, and effectively in long run. For such reasons, evaluation should also be considered one of the foundations for establishing political and professional accountability for adopting selected PPPP (see Schuppert, Considine, and Azfal, cited in Bevir, 2011). Hence today the authorities—either the state or others (e.g., regulatory agencies)—play a much different role than in the past. They are not superior to other social groups, but instead need to proportionally coordinate the interests in society between subsystems such as business, NGOs, and individuals. The purpose of evaluating PPPP and its redefinition is to either maintain the existing policy and measures or more or less comprehensively amend them to improve the state of affairs and/or solve newly arising problems (Coglianese and Kagan, 2007; OECD, 2015b).

According to the literature, the reasons for poor conditions are mostly systemic and partially connected to the operating principles of politics.

Therefore, when preparing, formulating, implementing, and evaluating PPPP more attention and responsibility should be paid to the management level, which is poorly organized and displays weak skills for preparing long-term development policies and even more so for their regular monitoring and evaluating their effects. Moreover, a review of recent literature shows that long-term monitoring of public policies is of key importance for improvements in the public policy cycle. The purpose of long-term approaches to policy planning is undoubtedly to avoid or to adapt to radical changes in the external environment, which can certainly significantly change the course of a public policy. Capano (2012) places the management of major changes in the context of policy dynamics, with the temporal dimension being an important aspect of PPPP planning. Hence, policymakers should be aware of the importance of long-term PPPP planning. The next section presents our analysis on how various factors influence the public policy process in Slovenia.

3 Methodological Approach and Data Characteristics

There are a great number of possible quantitative, qualitative, and mixed methods available and used in public policy analysis and evaluation (see Khandker et al., 2009). It seems that quantitative methods are more frequently used and more reliable when research focuses on the substantive aspects of individual public policy, which was not the case in our research. However, qualitative methods such as focus groups, interviews, and so on can offer much better insight for the in-depth analysis of the factors influencing successful implementation of PPPP. There are also an increasing number of cases in which mixed methods were used (Creswell, 2014; Kustec Lipicer 2009, 112; Burch and Heinrich, 2015). To identify the key driving forces and barriers in successful functioning and design of PPPP, we conducted an empirical analysis using a methodological approach combining structured and semi-structured interviews to gather information for our case study. Although interviewing as a research method is perceived as a relatively undemanding methodology to be utilized (Yin, 2009), we should be aware of its advantages and drawbacks when conducting such research (Gill et al., 2008). Namely, this methodological approach is the most suitable for our inquiry about the shaping and functioning of PPPP in Slovenian public administration because it provides and facilitates a more thorough understanding of this complex social and cultural phenomenon (Yin, 2009) in the public policy environment. Interviews are the most widely used tool for collecting information in qualitative research. In our case study, interviews are used as a method to obtain insight from policymakers (Gill et al., 2008; Alshenqeeti, 2014) on how public policies through their policy cycle operate in practice. Hence, it allows us to establish and verify the theoretical presumption on how strategic, institutional, regulatory, methodological, financial, and organizational changes influence the progress and process of PPPP development. At the same time, our preferred methodological strategy in this case study is also

based on a relatively small sample of possible policymakers with experience in managing PPPP in Slovenia.

In contrast to questionnaires, interviewing as a qualitative approach enables us to collect information based on the detailed insights and knowledge of policymakers about this topic due to the individual setting, which is harder to obtain in a group environment (Kvale, 1996; Cohen et al., 2007; Gill et al., 2008). Moreover, a combination of structured and semi-structured interviews with policymakers makes possible verbal administration of predetermined questions to clarify or further elaborate responses when required and offers flexibility to further pursue a participant's responses or information in a more rigorous manner on specifics in public policy development. In-depth individual interviewing mitigates the potential problems of relevance, validity, inconsistency, or literacy of predesigned interview questions about the holistic view on the functioning and development of PPPP in Slovenia. However, the interview process is time-consuming due to the complex characteristics in designing, conducting, and analyzing it (Alshenqeeti, 2014).

When designing interviews for our research, we also critically examine its structure by conducting a piloting session with a policy expert to improve its content and determine the relevance and validity of questions in elaborating the public policy process. This step helps us anticipate possible problems when applying them to our sample of interviewees in order to gather information. This is crucial when analyzing and establishing relations among key variables and concepts (i.e., strategic, institutional, regulatory, methodological, financial, and organizational) in public policy development in Slovenia. Our interviews also combine closed-ended with open-ended questions, which allows us to obtain quantitative and qualitative information from the interviews. Hence, we used a qualitative approach (i.e., interviews) where most of our questions were quantified using the Likert scale with a five point scale (see Appendix for the interview structure and questions). The integrations of quantitative and qualitative approach can be classified as mixed method design, which is gaining on popularity in public policy analysis. Combining both methods allows us to obtain a better understating of PPPP design in Slovenia. In this regard, the obtained quantitative scores are used as a complementary method to support our qualitative research approach. The information obtained from interviews alleviate the analysis of collected quantitative data. This study shows the most focal quantitative results.

We performed twenty-two interviews with senior officials from February to September 2017, covering various fields of PPPP in Slovenia. The selection process for interviewees and public policies included parallel consideration of the following factors. First, we tried to cover the most relevant public policies in our research that have significant influence on the functioning of Slovenian public administration and beyond. In this regard, our sample structure follows the program classification of PPPP, defined by the Ministry of Finance. This classification shows the budget structure, divided into individual public

policies, their major programmes and associated projects, which are financed and implemented by the state authorities. The program classification consists of 24 various public policies (see MF, 2017). Another possible classification is according to the functions of government sector (i.e., COFOG), which shows the allocation of public/state funds into 10 government expenditure categories, following the European System of National Accounts (ESA-2010). The advantage of this classification/division is allowing an international comparison across sectors on a macro level. The used classification suits our research purpose, since it provides a better insight in individual policies about the taken measures and activities by policymakers in order to achieve certain policy goals/objectives (Maher, 2011). Table 1 provides the sample structure of covered PPPP in our research.

The second principle taken into account in the selection process was that the senior officials contacted have long-term professional experience in enforcing and implementing changes in these public policies. Following this condition represents a limitation of our research, since it reduces the number of eligible and appropriate interviewees. Our broad sample included 32 appropriate candidates, which was then reduced to 22 interviewees. Hence, our panel includes previous ministers, state deputy secretaries, and heads of institutes or departments at national ministries. By following these principles, the selection strategy made it possible to diminish the political influence in setting candidates in a certain position in public administration and thus allowed us to preserve the objectivity of their answers. However, the selection process accounts some weaknesses of our research. We are aware that the conventional distinction between a political and professional/administrative relation is ambiguous in the policy process. As thoroughly discussed above, the interaction between politicians as goals-setters and apolitical administration as implementers is interrelated and therefore hard to completely segregate among them. This accounted notion represents a caveat of our research, although our objective was to include professional and apolitical policymakers in our sample.

Table 1. *The sample structure of PPPP sectors*

| PPPP sectors | | | |
|-----------------------------|-------------------------------|--------------------------|---------------------|
| Spatial planning policy | Labour and social policy | Science and research | Traffic policy |
| Migration and asylum policy | Budget policy | Environmental protection | Consumer protection |
| Migration and asylum policy | Administrative Law and Policy | Education | Consumer protection |
| Tax policy | Local self-government | Health policy | Health policy |
| Education (primary) | Digital policy | Health policy | |
| Education (tertiary) | Digital policy | Cultural policy | |

The sample covers fifteen different public policies (see Table 1). A more detailed look at our sample shows that public policies can be divided into three different levels of distribution. First, we can divide included public policies whether the policy process was evaluated by an external or internal professional in the field of interest. Most public policies were assessed by policymakers working in the public administration or government (13 out of twenty-two policy experts are characterized according to this sample distribution, accounting 59%). It follows that 9 public policy sectors were evaluated by professionals outside the government. Moreover, some of public policies were appraised by an individual within or outside the government. For example, migration and asylum, health, education, digital, and consumer protection policies can be characterized this way. However, when exploring the policy process in education, we gathered opinions from two internal policymakers and one external policymaker. In contrast, health policy process and functioning was assessed by two external and one internal stakeholders. In addition, our panel of interviewees can be divided into whether they are enforcing changes in public policies at the decision-making or realization level. In this context, the policy cycle process in health policy is characterized by two external experts, whereby one of them creates programs and projects at the decision-making level, and the other looks at the realization of those designed programs and projects in practice. Another example is related to the assessment of budget and tax policy. Our sample includes an expert dealing with the design of budget consolidation policy, which is part of the decision-making function in the policy process. This process is implicitly and mutually related with the realization process of measures in the field taxation. Nevertheless, the majority of interviewees assess the policy process from a decision-making angle (91 % or twenty out of twenty-two interviews). Another classification in our sample is the distinction between vertical or sectoral and horizontal programs and projects within certain public policies. Most of our interviews cover the vertical coordination of programs and projects in policymaking (77 % or seventeen out of twenty-two interviews are more in line with the vertical coordination of enforced changes in the decision-making process). Table 2 summarizes a detailed distribution of our sample according to listed categories above.

Table 2. *The sample categorization of PPPP*

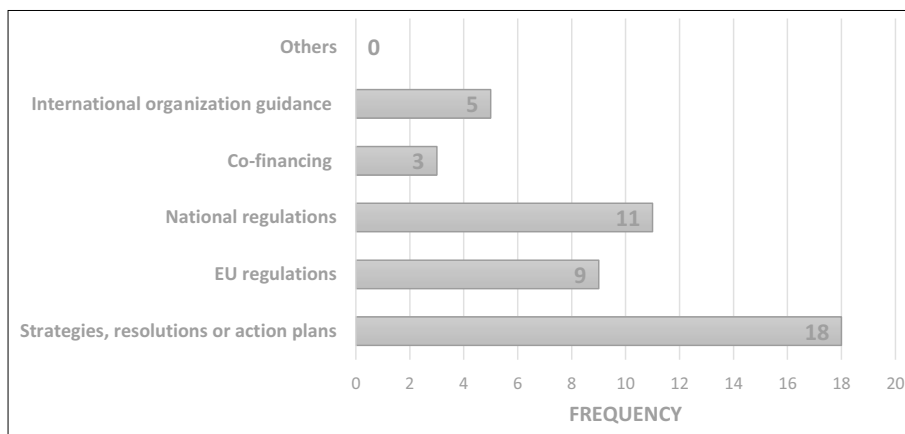
| Governance level | | Policy scope | | Position of interviewees | |
|------------------|--------------|--------------|------------|--------------------------|----------|
| Decision-makers | Implementers | Sectoral | Horizontal | Internal | External |
| 20 (91%) | 2 (9%) | 17 (77%) | 5 (23%) | 13 (59%) | 9 (41%) |

Source: own calculations.

Our interview is divided into seven sections of questions. In Appendix we have disclose the whole interview structure and questions. The first section refers to general information and explores which instruments for designing public policies are used in Slovenian administration. Designing PPPP needs to be supported by various instruments in order to utilize certain goals and prospects in their development. Our inquiry regarding the use of the main instruments for managing the entire policy cycle in public policies reveals that most policymakers in Slovenia act in accordance with strategies, resolutions, or action plans in their field (eighteen public policies rely on such documents). In general, this result is in line with the conceptual framework that those designing the policy process follow strategies. Nevertheless, these documents must be consistent with national and supranational rules. Thus, as expected, the next most commonly used instruments in shaping public policies are national (eleven interviewees acknowledged their contribution) and/or EU regulations (nine public policymakers considered them a vital instrument in their functioning), which obviously must be acknowledged by policymakers when designing changes in PPPP. This is related to the fact that Slovenia is a member the EU, meaning that legislation should be harmonized and applied in all member states.

Nevertheless, some public policies are under national restrictions and autonomous, and so the policy can be shaped individually according to national priorities and views on its development. For example, to some extent, shaping of cultural programs and projects can be viewed as an independent and autonomous public policy at the national level. Due to the impact of international and recognized institutions on governance, policymakers recognize and comply with their guidelines on how changes should be applied in order to improve the policy process and strengthen its development. Thus, international organization guidance is the fourth most frequently adopted policy instrument. Only three times did policymakers highlight (co)financing as vital instrument in designing policy decisions. This implies that most public policies covered in our research appear to be financially independent in the policymaking process. On the one hand, this is related to the selection of public polices in our sample. On the other hand, this is also due to the fact that funding from various sources (e.g., the Cohesion Fund) has been reduced, which is partly associated with the current financial crisis. In addition, Slovenia established certain public policies with the help of funding from the EU and now their development is mostly financed by national funds. Figure 1 shows the frequencies of answers regarding the use of the main instruments in designing and monitoring the entire policy cycle process.

Figure 1. Use of main instruments in shaping PPPP



Source: own calculations.

4 Empirical Results of PPPP Design in Slovenia

The focal point of our interviews was to determine which factors have a significant impact on the decision-making process in shaping PPPP in Slovenian public administration. In this regard, we identified six interrelated components: strategic, institutional, regulation, methodological, financial, and organizational. Hence, the aim was to analyze and explore how changes in those critical factors facilitate or inhibit the policy process at all of its stages (i.e., agenda-setting, ex-ante evaluation, policy formulation, decision-making, policy implementation, and ex-post evaluation). Moreover, we want to explore whether the policy design process in Slovenia follows a systematic and coherent approach in PPPP development.

The evidence shows that most policymakers agree or strongly agree with the notion that changes in these categories have a substantial impact on the development of the policy process in various public policies. Looking at the top box scores, up to 70% of respondents feel that strategic determinants are pivotal in the policy process, which is followed by organizational (37%), regulation-related (35%), and finally financial and institutional factors (both 29%). When looking at the top two box scores, the importance of predetermined determinants rises, although their priority sequence slightly changes. Table 3 shows the top and top two-box scores for all categories. We can confirm a high level of relevance and the validity of our depicted determinants in shaping public policies in Slovenia because roughly 70% or more policymakers confirmed this notion. Consequently, the results obtained from our empirical analysis may be useful for practitioners in understanding the complexity of public policy development. In the next stage of our analysis, we asked policymakers to discuss each individual determinant and how those have an impact on establishing better development of public policies and their derived programs and projects.

Table 3. *Top box and two-box scores for the relevance of various factors*

| | Top box score | Ranking | Top two-box score | Ranking |
|----------------|---------------|---------|-------------------|---------|
| Strategic | 0.70 | 1 | 0.80 | 2 |
| Institutional | 0.29 | 4 | 0.67 | 6 |
| Regulation | 0.35 | 3 | 0.90 | 1 |
| Methodological | 0.25 | 5 | 0.70 | 5 |
| Financial | 0.29 | 4 | 0.71 | 4 |
| Organizational | 0.37 | 2 | 0.79 | 3 |

Source: own calculations.

First, let us take a closer look at how the strategic factor affects the development of public policies in Slovenia. Our premise in this part derives from a theoretical understanding that effective and comprehensive utilization of PPPP must rely on a systematic framework with integrated mandatory targets in the long term. This element should be integrated in created strategic documents by defining a vision for the effective and efficient development of each public policy process at the national and supranational levels. Our research indicates a roughly balanced distribution of public policies in the sample regarding their dependence on a particular institutional framework in shaping its policy process. In particular, the development of nine public policies (39%) are informally shaped in accordance with EU regulations. This implies that the policy process follows the EU regulation framework requirements only to a certain extent. Most public policies can be characterized as such. This type of public policy is followed by those with no obligations from other supranational institutions in designing and implementing policy measures (i.e., the development of eight public policies, or 35%, in our sample is under national restrictions or initiatives). Moreover, 26% or six public policies in our sample have to comply with EU regulation requirements and guidance. This means that they formally operate under the supervision of the European Commission. Our analysis also shows that fourteen out of twenty-two (top two-box score accounts, or 67%) policymakers agree with the notion that the adoption of various strategic documents has a significant impact on the efficiency and effectiveness of the PPPP policy process. Another important aspect is the operationalization and implementation of public policies after enacting different types of strategic documents by government bodies. In this regard, policymakers ranked possible factors that may mitigate the operationalization of public policies. When ranking them according to assigned percentage responses by participants, the following factors contribute to this policy aspect: 1) government support, 2) clearly defined strategic objectives, 3) capacity of the government to engage in the policy process, and 4) organizational capacities of the public sector. Surprisingly, most policymakers (seven) ranked the engagement of public support as the least important

factor in the operationalization process. However, most studies show that a positive public opinion can mitigate the implementation of measures in PPPP (Burstein 2003). Moreover, 42% of respondents share the opinion that the current government mostly ignores strategic documents that were adopted and compiled by the previous government. This implies that Slovenian public administration lacks policy capacity and long-term prospects when it comes to the development of PPPP in the future. Table 4 summarizes the results obtained.

Table 4. *Summary of results on the importance of the strategic factor*

| | Yes | Partly | No |
|--|-------------------|--------|------|
| The public policy-making process is formulated and designed in accordance with EU legislation. | 0.26 | 0.39 | 0.35 |
| | Top two-box score | | |
| The adoption of strategic documents has a significant impact on policy processes. | 0.67 | | |
| The operationalization process of public policies depends on the following factors: | Ranking | | |
| Government support | 1 | | |
| Policy capacity of the public sector | 3 | | |
| Clearly defined strategic objectives | 2 | | |
| Organizational capacity | 4 | | |
| Sufficient financial resources | 5 | | |
| The policy process and responsibilities of stakeholders are firmly defined | 6 | | |
| Public support | 7 | | |
| | Top two-box score | | |
| The current government mostly ignores strategic documents compiled by the previous one. | 0.42 | | |

Source: own calculations.

Second, the impact of institutional factors on the public policy process is considered. We wanted to shed light on the institutional structure of public administration regarding enabling and facilitating the functioning of PPPP. In particular, more than half of policymakers (top two-box score 57%) agree that the current institutional framework allows monitoring in all policy cycle stages (i.e., agenda-setting, ex-ante evaluation, policy formulation, decision-making, policy implementation, and ex-post evaluation). However, there is a non-trivial share of respondents (43% of them are undecided or disagree with this notion) that argue that certain stages in the policy cycle are neglected although the institutional framework supports the functioning of the policy process in all stages. This is the case in migration, education at the tertiary level, and cultural and labor policy. Most of the time this is

related to a shortage of and incompetence in organizational capacity and impaired horizontal linkages with other departments. To a certain degree, this is reflected in the response if the institutional framework makes possible a horizontal approach in functioning of PPPP. Although a non-trivial degree of policymakers agree with this notion (the top two-box score is 38%), we found that 38% of respondents are undecided or even disagree (24% of them) with it. A similar explanation can be concluded when considering whether the institutional framework makes it possible to establish accountability of stakeholders in particular stages of the policy cycle process. Namely, most of respondents are undecided (44%) or even disagree with it (the bottom two-box score is 19%). However, a top two-box score of 38% shows that a relevant share of policymakers can determine the responsibility of stakeholders when monitoring the policy process. In addition, our analysis shows that a change of government and subsequent reorganization of ministries has a substantial impact on PPPP functioning. This was confirmed by 70% of respondents in our research. This can be worrying for the sustained and constant development of PPPP. Table 5 presents selected results for this part.

Table 5. *Summary of the effects of the institutional factor*

| The institutional framework: | Bottom two-box score | Undecided | Top two-box score |
|---|----------------------|-----------|-------------------|
| a) Allows monitoring in all policy cycle stages | 0.19 | 0.24 | 0.57 |
| b) Enables a horizontal/sectoral approach | 0.24 | 0.38 | 0.38 |
| c) Makes it possible to determine stakeholder accountability | 0.17 | 0.44 | 0.39 |
| Change of government and reorganization of ministries has a substantial impact on PPPP functioning. | Top two-box score | | |
| | 0.70 | | |

Source: own calculations.

In the third part, our research focuses on the regulatory framework and how exiting regulatory changes influence the development and functioning of PPPP. As shown in Table 3, this is the most important factor considering the top two-box ranking. The evidence of its relevance is related to the fact that the majority of policymakers find a significant causal relationship between realization of PPPP and adjustment of sectoral legislation. This is confirmed by 67% of respondents. When enacting sectoral legislation, around 62% of policymakers agree that most other essential factors or changes are defined and considered in the light of effective and efficient realization of PPPP. However, a comparison of top and bottom two-box scores shows disagreement with the statement on whether policymakers fail to provide adequate resources (i.e., financial, organizational, etc.) when adopting modifications in the sectoral legislation for PPPP. More than half of respondents (52%) disagree

with this notion, whereas 38% of respondents agree with it. This shows a distinctive inconsistency when policymakers try to implement and realize the changes adopted and priorities of the sectoral legislation in practice. Clearly, the majority of policymakers (90%) strongly support the authorization of ex-post regulatory analysis, which would facilitate more systematic functioning and development of PPPP. However, policymakers notice that only changes in regulation or even implementation of new regulations will not entirely solve the problems in development of PPPP. Their main problem is the lack of policy capacity in Slovenian public administration. Table 6 summarizes these results.

Table 6. *Summary of results regarding the PPPP regulation framework*

| | | |
|--|-----------------------------|--------------------------|
| There is a significant causal relationship between realization of PPPP and adjustment of sectoral legislation. | Top two-box score | |
| | 0.67 | |
| Policymakers consider the most essential factor when enacting sectoral legislation. | Top two-box score | |
| | 0.62 | |
| Policymakers provide adequate resources (i.e., financial, organizational, etc.) when adopting modifications in sectoral legislation. | Bottom two-box score | Top two-box score |
| | 0.52 | 0.38 |
| Ex-post regulatory analysis would provide more systematic functioning and development of PPPP. | Top two-box score | |
| | 0.67 | |

Source: own calculations.

The fourth part concerns the weight of the methodological/procedural approach on different stages in the policy cycle process of PPPP. This section focuses on whether policymakers apply suitable methodological approaches and measurements to achieve the comprehensive and systematic development of PPPP. We explored which stages of the policy cycle policymakers focus on and which are neglected. This shows a possible gap between the theoretical understanding of using a systematic and comprehensive approach and realization in practice. We ranked seven policy cycle stages (see Table 7) according to the top two-box scores. Our analysis shows that policymakers are diligent in the following stages: issue identification (75%), decision-making (67%), consultation (57%), and policy implementation (55%). In particular, more than half of respondents think that those policy cycle stages operate according to theoretical premises. Nevertheless, the stage of consultation has a relatively low percentage of affirmation (52%) because some policymakers think that although consultation takes place it is just a formality without any meaningful outcome. Policymakers indicated that stages of policy monitoring and evaluation, policy instrument development for alternative solutions, and preparation of corrective measures are not fully utilized to better exploit the development of PPPP. According to the respondents, corrective measures are mostly not considered during the current adopted strategy. Furthermore,

when it comes to deviations in the policy process, our research indicates that the most common applied measure is modifying PPPP (60% confirmation of respondents). This measure is followed by alternation of regulation of public policy (50%), whereas augmenting or changing strategy documents is the least probable measure to be applied under such circumstances. In particular, 65% of respondents disagree with the stance that changes in strategic documents would be applied when an irregularity or failure in achieving certain public policy goals is noticed. As mentioned, the monitoring and evaluation stage should be improved, especially by applying ex-ante or ex-post analysis to the proposed or enacted measures. Our analysis shows that the financial factor is most viable in both approaches. This implies that policymakers are more concerned about financial consequences when preparing and implementing measures for the development of PPPP. Subsequently, this constraint can have a detrimental effect on its future performance and progress. We asked policymakers which stages of the policy cycle process show a lack of indicators to evaluate PPPP progress and performance. Hence, our analysis indicates that the highest shortage of indicators is in the stage of policy evaluation (56% confirm the scarcity of indicators in this stage), followed by the stages of planning (45%), decision-making (40%), and implementation (40%). This means that roughly half of policymakers notice a deficient coverage of indicators in these stages. Nevertheless, most respondents argue that the main issue is the use and linkage of indicators in analyzing the progress of PPPP. Thus, content-related indicators are missing, which could allow policymakers to quantify the realization of predicted and achieved goals of PPPP in practice. Table 7 shows our analysis of the impact of methodological process on PPPP development.

Table 7. Summary of the impact of the methodological process

| Policymakers focus on the following policy cycle stages: | | Ranking |
|---|----------------------|-------------------|
| a) Issue identification | | 1 |
| b) Preparation of alternative solutions | | 6 |
| c) Consultation | | 3 |
| d) Decision-making | | 2 |
| e) Policy implementation | | 4 |
| f) Monitoring and evaluation | | 5 |
| g) Corrective measures | | 7 |
| The most commonly applied measure for deviations in the policy process by policymakers are: | Bottom two-box score | Top two-box score |
| a) Augmenting and changing strategic documents | 0.65 | 0.00 |
| b) Changing the regulation of public policy | 0.20 | 0.50 |
| c) Modifying PPPP | 0.15 | 0.60 |

| There is a lack of indicators in the following policy cycle stages: | Top two-box score |
|---|-------------------|
| a) Planning | 0.45 |
| b) Decision-making | 0.40 |
| c) Policy evaluation | 0.56 |
| d) Implementation | 0.40 |

Source: own calculations.

In the fifth part of our research, we account for the influence of the financial factor on the functioning of PPPP. In particular, we were interested in whether the structure and stability of policy financing is independent and whether financing is transparent and consistent with binding fiscal constraints (i.e., following performance-based budgeting). A sustainable financial framework allows us to achieve the efficient and effective implementation of various PPPP. In theory this is known as public financial management (PFM), which in the traditional sense deals with how governments manage the budget in its established stages: formulation, approval, and execution (Cangiano et al. 2013). Our analysis shows that the main factors influencing the structure and stability of financial resources are politics and other external factors, such as the financial crisis. This is corroborated by 70% of public policy respondents, considering the top two-box ranks. In contrast, public influence or lobbying has a minor effect on financial flows and structure. As already confirmed above, we again notice a major political influence on the development of PPPP through disruption of financial stability. This is counter to the theoretical background, where political influence ought to be mitigated. Namely, PPPP should be promoted in order to achieve greater wellbeing of society. The impact of the financial crisis is difficult to avoid; however, progress in the most important public policies for the entire society should be preserved. Furthermore, the majority of policymakers agree that the defined strategic goals are covered by explicit target values in the budget. This is in alignment with public financial management systems (e.g., performance-based budgeting) in order to strengthen countries' capacity to better manage their public finances (i.e. preserving fiscal sustainability and soundness of public finance in the long term⁴) and effectively provide high-quality public services for a wider range of users (Cangiano, et al. 2013; Lavrov et al. 2006). Table 8 represents the results of the influence of the financial/economic factor on PPPP design.

⁴ To inspect in detail the implications of fiscal prudence and profligacy, see Mencinger and Aristovnik (2013), Mencinger et al. (2014; 2015).

Table 8. *Summary of the influence of the financial factor*

| The main factors influencing the structure and stability of financial resources | Top two-box score |
|---|--------------------------|
| a) Politics | 0.70 |
| b) Lobbying | 0.20 |
| c) External factors | 0.68 |
| Strategic goals are covered with explicit target values in the budget. | Top two-box score |
| | 0.63 |

Source: own calculations.

The last part of our research deals with the relationship between the organizational factor and development of PPPP. In this regard, we are interested in whether public policies rely on individual organizational policy units, which allows them comprehensive surveillance of the entire policy cycle process when formatting, evaluating, and monitoring PPPP. On the one hand, our analysis indicates that the established organizational policy unit most commonly enables policymakers to format (71%), monitor (79%), and ex-post evaluate the results (57%) of PPPP. In all cases, at least half of the respondents support this statement. On the other hand, objective assessment of alternative policies is less frequently used by policymakers. Only 42% think that this objective of organizational unit is supported and utilized by them. There is a strong positive stance on whether the organizational unit is positioned at a proper administration level in the bureaucratic hierarchy. According to the top two-box score, 75% of respondents consider positioning of the organizational policy unit to be appropriate in the hierarchical structure of public administration. If this organizational unit does not exist, those tasks are assigned and shared among the ministry's departments (58% of the time) or transferred to an ad-hoc formatted work group (42% of the time). In our research, we explored aspects that may have detrimental effects on the development and progress of PPPP. The results show that weak organizational capacity, an unsystematic process of determining goals, and non-existence of a common public policy framework are the most pronounced factors that can negatively influence the policy cycle process of PPPP in Slovenian administration⁵. In addition, policymakers are undecided when asked about the absence of the previous discussed organizational unit and how this would affect the functioning of PPPP. The least problematic factors, although very relevant, are a vague allotment of responsibilities among peers, frequent personnel changes, and inappropriate organizational structure. Table 9 presents the results obtained in this part.

⁵ The order follows the ranking according to the top two-box scores. The same analogy is used when listing other factors.

Table 9. Summary of the impact of the organizational factor

| The established organizational policy unit most commonly enables policymakers to: | Top two-box score | |
|--|----------------------|-------------------|
| a) Format | 0.71 | |
| b) Objectively assess alternative policies | 0.42 | |
| c) Monitor | 0.79 | |
| d) Ex-post evaluate results | 0.57 | |
| The organizational unit is positioned at a proper administration level. | Bottom two-box score | Top two-box score |
| | 0.08 | 0.75 |
| When an organizational unit does not exist, the policy process tasks are: | | |
| a) Assigned and shared among the ministry's departments (58% of the time) or | 0.58 | |
| b) Transferred to an ad-hoc formatted work group (42% of the time) | 0.42 | |
| Factors that may have detrimental effects on the development and progress of PPPP: | Top two-box score | |
| a) Unsystematic process of determining goals | 0.60 | |
| b) Non-existence of a common public policy framework | 0.60 | |
| c) Vague allotment of responsibilities | 0.52 | |
| d) Inappropriate organizational structure | 0.33 | |
| e) Weak organizational capacity | 0.76 | |
| f) Frequent organizational changes | 0.48 | |
| g) Absence of an organizational unit | 0.50 | |

Source: own calculations.

5 Discussion and Recommendations

The main aim of our research was to shed light on the state of the art in Slovenian PPPP design and implementation, to identify and explore the key driving forces for successful PPPP design. Our assumptions concerning the lack of a holistic approach, strategic planning, long-term sustainable orientations, and professionalism in all stages of PPPP design have largely been confirmed (as defined, among others, by Jann and Wegrich, 2007; Bevir, 2011; Savard and Banville, 2012; von Raggamby and Rubik, 2012).

Our interviewees highlighted several positive approaches and experiences in Slovenian public administration. On the other hand, many seem to mostly exist in name only or are incoherent. For instance, the strategic dimension of PPPP design is strongly emphasized by all experts, but regulation ranks as a primary policy tool in the majority of administrative fields (see the discussion of

results in the previous section). Or: the institutional framework is mostly seen as satisfactory, yet 43% of respondents argue that certain stages in the policy cycle are neglected. The lack of an integral approach is further illustrated by significant differences in the importance of the six sets of factors according to our survey because the range varies between 29% (e.g., institutional and financial factors) and 70%, whereas we expected all of them to be inevitably connected and to see rather minor differences.

Nevertheless, the main gaps identified address a lack of all stages in the policy cycle (consequently, a disconnected cycle) and an absent policy unit as a core center for overall PPPP design and individual policies alike. Even though this is the case, the majority of interviewees evaluate the institutional dimension as almost unimportant (ranking sixth out of six sets of factors; see Table 3). One crucial research finding is that Slovenian administrators underestimate the role of different inevitably connected factors and stages in PPPP design.

In addition, we have established that Slovenia expresses some overall post-transitional eastern European characteristics (see Kovač and Bileišis, 2017, OECD, 2015a), such as formalism with overregulation regarding PPPP adoption and implementation, an overly strong role of daily politics as opposed to professional decision-making, and public consultation and regulatory impact assessments conducted in a rather pro forma manner (if at all). For example, almost 40% of interviewees see EU regulations after over a decade of Slovenia's EU membership (since 2004) as a key guideline to follow when PPPP design is in question. If the national regulations were added, the share increases up to 62% regarding sectoral policies. It is obvious that normativism is often an approach to diminish the accountability of otherwise responsible decision makers because several experts reported that policy becomes valid and financed only when grounded by law, is de facto designed by ministers and their external pressure groups, and is de jure adopted by the parliament. Moreover, politics and polity have grown beyond professional administrators. It is indicative that almost half of respondents (42%) view even strategic documents (usually addressing the mid- or long-term period) prepared by former governments as made obsolete by the current one by simply ignoring these policy papers (e.g., in science, internal affairs, and social welfare). If one intends to introduce a policy, it cannot be done without government support (see Table 4). This is self-evident to a certain extent, but the role of daily politics will seem to be overly influential. A negative effect is seen when the interviewees report that a change of government most significantly affects PPPP functioning (as in 70%; see Table 5) and politics is the main factor in stable financial resources (by 70% of respondents' assessment, see Table 8).

Regarding regulatory impact analysis, public consultation, and reducing red tape, Slovenia has adopted several policy papers and regulations, such as the parliamentary *Resolution on Legislative Regulation* (2009), or constantly improving governmental rules of procedure and supplementary materials. However, the level of compliance is rather low even regarding prescribed

procedures, as reported by non-governmental organizations, the court of audit, and academic research (for more, see Kustec Lipicer, 2009; Kovač, 2017), and our findings regarding methodological factors of PPPP design (see Table 3 with a rank of five out of six). Public support for individual PPPP is regarded as almost not relevant at all (see Table 4), although contemporary sound governance requires shared decision-making in public affairs (for more, see Bevir 2011; cf. OECD 2015b). Regarding ex-post evaluation, 90% of interviewees support this step as an inevitable one, yet monitoring is ranked only fifth and corrective measures as even the last out of seven policy cycle stages in real practice (see Table 7). When asked why officials do not conduct these steps, the answer is usually that daily politics would not allow it, most often because certain decisions need to be adopted as soon as possible with immediate effects in public. In this context, it is not surprising that alternative solutions to a certain issue are almost never designed and discussed. Alternative forms of solutions are assessed as only the sixth most frequent step in the PPPP cycle out of seven, only before the introduction of correction measures. Such phenomena are contrary to the theoretical understanding of the long-term cyclic review of PPPP and good public governance (cf. Capano 2012). In order to overcome complex social problems, an integral and interdisciplinary approach to PPPP is therefore necessary (Raadschelders, 2011).

As the most worrying point, we see a difference between the shares of respondents that evaluate certain policy cycle stages to be carried out in practice (see Table 7). Namely, although issue identification is present as the most frequent, with 75% of answers, the implementation stage is only the fourth (out of seven), with only 55%. Furthermore, when the entire cycle is carried out, only the financial impact and burdens are given attention whereas other consequences are overlooked (such as social, environmental, or administrative burdens, cf. Radaelli and De Francesco, 2007; Kovač, 2017). Several respondents have explicitly reported that, in addition to political pressure, it is particularly a lack of indicators to evaluate PPPP progress that leads to such a result. We can conclude that approximately 20% of all problems detected are not resolved despite a clear social need being established. In other words: when the discrepancy between issue identification and corrective measures is one (the most frequent) to seven (the rarest), apparently the capacity is not high and overall governance is rather poor.

Often the problems above arise due to an improperly positioned existing unit (e.g., only as a ministerial department, not hierarchically high enough), but in 42% of cases there is no policy unit established at all and policies are designed through ad hoc groups only (see Table 9). According to the contemporary practices we have identified, in the majority of bodies that are responsible for their implementation, monitoring, and evaluation (e.g., from environmental protection, traffic, and digital infrastructures to industrial politics) the policymaking business functioning within relevant government bodies (ministries, directorates, agencies, etc.) is poorly developed or does not

even exist in the form of an independent specialized analysis organizational unit. Therefore, almost every ministry faces difficulties, on the one hand in the preparation of strategies, development programs and projects, objective evaluation of alternatives, and preparation for verified decision-making, and on the other hand with regular follow-up and evaluation of implementation results. These development activities that require a systematic and long-term directed approach are mostly handled by expert teams created ad hoc that are often unfamiliar with the actual circumstances. Sector-specific public policy programs are prepared by order of the currently ruling coalition, but no one is responsible for their (non)execution due to the constantly changing government and initiators of such ad hoc programs and projects, and no one ensures the continuity of long-term directed planning and implementation of PPPP.

Analysis of this has been conducted in the Slovenian framework for the first time. Hence, we believe we can put forward several data-based recommendations for future PPPP cycle improvements. The key ones are the following. First, there is a need to define responsibilities and accountability between political appointees and the most senior professional officials in public administration more transparently. Thus, clearer differentiation of political influence and administrative governance is possible, with a strengthened level of the latter and more limited daily politics.

Second, a focus on implementation of already existing metaregulation on PPPP design is required. Respective metaregulation has already been adopted in Slovenia, prescribing among other things inter-ministerial coordination, regulatory impact analysis, and public consultation proportional to the scope of individual PPPP, but an overview mechanism such as a gatekeeper, overall accountability, and capacities in ministries are missing. Third, metaregulation of PPPP design or key sectoral laws should be improved. We see possibilities in introducing obligatory ex-post analysis of any regulation and rules adopted in, say, three years, and comparing legislative goals to law implementation.

Fourth, it is abundantly clear that an overall PPPP design model should be developed, with indicators measuring potential inconsistencies within PPPP cycle stages—and, if they occur, to then fill the gap promptly. Such a model and metaregulation of the PPPP cycle also comparatively proves to be an efficient tool to limit overly political decisions and increase professionalism (cf. Radaelli and De Francesco, 2007). Fifth, we recommend forming step-by-step special policy units at the center of government for horizontal policies and directly under the ministers for sectoral policies. In addition, the support of these units is to be guided centrally with methodological and IT tools to carry out individual policy processes in a unified way yet with the ability to adjust the tools to the specifics of different policies, projects, or administrative fields.

Our research confirms that PPPP design is effective as far as it is carried throughout the entire cycle coherently. When certain steps are missing or

underestimated, the effects are not optimal or even counterproductive. When developing a holistic model of PPPP, all of these should be part of the overall puzzle as theoretical grounded by different governance doctrines (see Stewart and Ayres, 2001; Ostrom, 2011; Bevir, 2011). Moreover, various dimensions of PPPP design need to be taken into account, which can be grouped as related to strategic, institutional, regulative, methodological, financial, organizational, and information systems. Such a model needs to be systemic but still allow flexible application, which is possible when individual indicators are designed.

6 Conclusion

The PPPP cycle is an integral process in its character, following basic theoretical definitions. As such, all of its stages and their interdependence should be taken into account primarily in policy-making at the strategic level, or in so-called institutional public governance. However, individual countries face different difficulties when addressing increasingly complex contemporary society with its thorny issues to resolve, which is challenging in particular for (post)transitional and smaller societies. Particularly due to the complexity of the demanding environment, PPPP design needs to be seen as a systematic and coherent process in order to achieve good public governance principles and goals. As shown by the Slovenian example, a contrary approach leads to counterproductive effects, although many PPPP holders invest significant effort into individual stages.

Based on empirical research results, special attention in the future is required regarding the professionalism of PPPP design, among other things to mitigate what is currently practice that depends too much on the government of the day. Furthermore, ex-post evaluation should be an inevitable step in reviewing any policy or project after its adoption, regardless of its scope for specific administrative sectors or even horizontal policies. Such policies, including deregulation, e-government, administrative processes, local self-government, or civil service development, deserve a special position because their spillover affects public administration as a whole and, consequently, represents a stimulating or hindering factor in overall social progress. However, the limitations of our research are following. Although our study accounts various heterogeneous public policies, the generalization for the whole public policy process in Slovenia is limited. This is related with the use of a simple methodological approach to presents the relevance and validity of our depicted factors in shaping public policies. Nevertheless, the results obtained from our empirical analysis may be useful not only for researchers who are working on similar questions but also for practitioners in understanding the complexity of public policy development. Also, our analysis raises some additional research question, which should be addressed in future research. For example, whether our answers across PPPP sectors are applicable when

only looking at a certain public policy sector in depth. The distinction between internal and external policy makers presents an interesting research path, which can additionally elucidate the understanding of public policy design in Slovenia. Hence, further research is still warranted.

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POVZETEK

1.01 Izvirni znanstveni članek

Oblikovanje in izvrševanje javnih politik v Sloveniji

Oblikovanje in izvrševanje javnih politik je kompleksen proces, zato naj bi odločevalci spremljali vse faze tega cikla na posamičnem področju politik. Pri tem pa se odpira vprašanje celovite integracije različnih področij in korakov oblikovanja politik, kot so določanje ciljev, predhodna evalvacija, oblikovanje alternativ, odločanje, izvrševanje in naknadna evalvacija posameznih politik, tako sektorskih kot celo horizontalnih. Zato je pomembno preučevati in razumeti razloge, zakaj posamična država, kot je Slovenija, ne izkorišča vseh potencialnih vidikov izvajanja navedenih aktivnosti na sistematičen in medsebojno skladen način. Članek analizira slovenske prakse pri oblikovanju politik na temelju poglobljene empirične študije ključnih nosilcev javnih politik in odločevalcev. Nadalje avtorji opredelijo poglobljene dejavnike uspeha, ki pripomorejo k razvoju javnih politik, programov in projektov v Sloveniji. Rezultati kažejo, da predvsem manjka profesionalna odločevalska enota, ki bi v posameznih resorjih celovito spremljala proces, prav tako pa se pogosto ne izvaja ex-post evalvacija. Sklepno se zato ugotavlja potreba po sistematičnem pristopu k oblikovanju javnih politik, ki bi povezal različne aktivnosti oblasti, epistemološke skupnosti in javnosti v večnivojski model dobrega javnega upravljanja.

Ključne besede: javne politike, cikel, evalvacija, javna uprava, dobro upravljanje, Slovenija.

Creating Good Administration by Persuasion: A Case Study of the Recommendations of the Committee of Ministers of the Council of Europe¹

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ABSTRACT

This contextual paper tackles a rather under-researched topic of Council of Europe's possible impact on national administrative law. It seeks to examine how one of its instruments – Recommendations of the Committee of Ministers of the Council of Europe – can influence national standards of administrative law and provide a systematic assessment of the diverse functions and manifestations such instruments might have in a national legal order. For these purposes, the constitutional basis of these recommendations and their main features are examined followed by a subsequent analysis of the perceived importance and various functions and implications they might have in the chosen national legal system. This paper concludes that the scope of the functions and implications these instruments are capable of having to national administrative law is wide, yet it is not without limitations.

Key words: Council of Europe, European administrative law, recommendations of the Committee of Ministers of the Council of Europe, pan-European principle of good administration, European Administrative Space

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1 Introduction

Good administration seems to be in fashion and yet mostly it is analysed only in the context of the European Union (henceforth – EU). This framework is usually considered to be the ‘home territory’ of this concept due to a wealth of work done by the European Ombudsman in promoting it along with its inclusion into the Charter of Fundamental Rights of the EU (henceforth – Charter) that eventually became legally binding. Especially since then, the discussions on good administration within the EU acquired new vigour and, among other things, led to the creation of a network of legal scholars from different EU Member States – the Research Network on EU Administrative Law (ReNEUAL) that published ‘ReNEUAL Model Rules on EU Administrative Procedure’ in 2014.² Furthermore, it is oftentimes woven into the wider discourse of ‘European Administrative Space’. Although no widespread understanding about its meaning exists (Trondal & Guy Peters, 2015, p. 79), it can broadly be said to denote the coordinated implementation of EU law, as well as Europeanization of national administrative law (Hofmann, 2008, p. 662). This analytical construct was initially conceived to serve as a model for countries willing to reform their public administration and join the EU by SIGMA (Support for Improvement in Governance and Management) – a joint initiative undertaken by the Organisation for Economic Co-operation and Development (OECD) and the EU in 1992. The concept of good administration that relates to the standards and procedural requirements aiming at the protection of citizens’ rights before administrative bodies as well as the judicial control of public administration formed its backbone (Koprić & Musa & Lalić Novak, 2011).

However, whilst focusing on the concept of good administration within the EU, the legal scholarship tends to somewhat overlook another legal framework in which this legal notion has been developed, i.e. Council of Europe’s (henceforth – CoE) law. Strikingly, the existing literature on European administrative law merely (if at all) mentions the work that has been done by the CoE on this matter.³ Such a gap in existing research is surprising because not only the CoE has been actively engaged in administrative matters even since the 1970s and has managed to promulgate a “package of good administration” (Wakefield,

2 An updated English version has been published on ReNEUAL’s website (<http://www.reneual.eu/index.php/projects-and-publications/reneual-1-0>). This version of 2015 is the basis for the English print version of the Model Rules – including linguistically improved introductions and explanations. The English print version has been published containing an additional comparative chapter (‘Administrative Procedure Acts: History, Features and Reception’) in 2017, see Craig & Hofmann & Schneider & Ziller, 2017. More information about the work of the Research Network on EU Administrative Law (ReNEUAL) and its Model Rules on EU Administrative Procedure, can be accessed at: <http://www.reneual.eu/>.

3 For example, no reference to the notion of good administration developed within the CoE – not even with respect to the general principles of European Union law and the right to good administration – can be found in the following textbooks concerning European or EU Administrative Law: Chiti, 2011, Craig, 2012, von Danwitz, 2008, Harlow & Leino & della Cananea, 2017, Hofmann & Rowe & Türk, 2011, Jand & de Lange & Prechal & Widdershoven, 2015, Terhechte, 2011. However, since its 2nd edition, the textbook edited by Auby & Dutheil de la Rochère, 2014, contains an article by U. Stelkens entitled “Vers la reconnaissance de principe généraux paneuropéens du droit administratif dans l’Europe des 47?”, 713–740. A specific chapter on ‘administrative law’ is also missing, in Schmahl & Breuer, 2017.

2007, p. 63) reflecting the common European heritage on the matter, but also it currently has 47 Member States, including all former Eastern bloc countries (excluding Belarus, but including Russia),⁴ with the population totalling more than 800 million people. Hence, its territorial scope is “truly pan-European” (Keller & Stone Sweet, 2008, p. 5).

This limited attention given to administrative law issues stemming from the CoE might be attributed to several factors. First, the legal narrative in European administrative law is clearly shaped by the countries with long-established democratic traditions belonging to the European Union (henceforth – EU).⁵ Accordingly, their academic resources firstly go into exploring the field, which is closer and better (or rather more visibly) incorporated into their respective legal systems and, hence, their legal consciousness. Furthermore, EU law, with the possible exception of human rights issues,⁶ is perceived (although sometimes mistakenly)⁷ as of having a higher degree of legal bindingness and legal authority in administrative matters.⁸ Whereas most of the CoE legal acts, especially the recommendations of the Committee of Ministers of the CoE, are seen as more informal, soft-law instruments, whose non-compliance entails lower costs for the Member States.

However, such a stance is not accurate because even the European Court of Human Rights (henceforth – ECtHR) in its landmark *Demir and Baykara* case⁹ made clear that it can take these recommendations (among other things) into consideration, when interpreting the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – ECHR, Convention). The CoE, for its part, also published the handbook “The administration and you” in 1997 wherein the principles of European administrative law were systemized including all (relevant) recommendations adopted in the field of administrative law. Furthermore, the reluctance to

4 Due to the Crimean crisis the Parliamentary Assembly of the CoE has suspended Russia's voting rights, see Resolution 1990 [2014] 10 April 2014; prolonged by Resolution 2034 [2015] 28 January 2015.

5 For example, Lithuanian law is usually compared with other legal systems of the ‘usual suspects’, like Germany's or France's, that are perceived to be more influential, but is less often analyzed in juxtaposition to other countries that went through transformational administrative justice reforms. However, now Lithuania is involved in transformational projects itself, like strengthening administrative capacities in Ukraine, Egypt, etc. (see more in Paužaitė-Kulvinskienė, J. The principle of effective legal protection in administrative law in Lithuania, in: Szente & Lachmayer (Eds), 2017, pp. 190 et seq.; Paužaitė-Kulvinskienė, 2000, pp. 35–54; Ramanauskaitė, 2004, pp. 45–53).

6 As demonstrated by Article 6 (3) of the Treaty on European Union, which only recognizes European Convention for the Protection of Human Rights and Fundamental Freedoms as a part of EU law.

7 Needless to say, ‘hard law’ can be adopted only in those fields where the competence to the Union is given on a particular matter (Art. 5 (1) of the Treaty of the Treaty on European Union). Article 51 of the Charter provides a further limitation for the ‘EU imperatives’ to be passed down on the Member States in any domain.

8 This is presumably attributable to the doctrines of primacy, direct effect and direct applicability of EU law, which (although not without limitations) seem to have left an imprint on the minds of EU lawyers.

9 See *Demir and Baykara v Turkey* (34503/97) November 12, 2008 ECtHR (GC) at [128]. This legal interpretation technique is sometimes called ‘global interpretation’ (Cannizzaro, 2011, p. 522) and was also confirmed in the recent case law of the ECtHR, see *Magyar Helsinki Bizottság v Hungary* (18030/11) November 8, 2016 ECtHR (GC).

deal with soft-law instruments results in missing out on the added value they can provide. Assumingly, in some respects, the recommendations of the CoE might be much more comprehensive and have wider implications to the shaping of administrative structures of the European countries. This statement rests on the premise that while EU law deals with the questions relevant for countries which already have 'a decent track record of the rule-of-law',¹⁰ the scope of the CoE law is much broader and its acts also reflect the issues of countries, which needed to create their administrative law anew.

This contextual paper seeks to examine how such recommendations might contribute to fostering the notion of good administration and provide a systematic assessment of the diverse functions and manifestations they might have. It builds up on a theoretical framework developed for the previously mentioned research project entitled 'The Development of Pan-European General Principles of Good Administration by the Council of Europe and their impact on the administrative law of its Member States' and tries to test some of its statements by making a case study of Recommendations of the Committee of Ministers of the CoE 'in action'. Thus, for the purposes of this paper, first, some general information on the constitutional basis of these recommendations and their main features will be given.¹¹ In addition, the recommendations which are of relevance to administrative law and stand at the core of the analysis of this paper will be shortlisted. Finally, the perceived importance and various functions, manifestations and implications of such recommendations will be examined by contextualising them, i.e. by analysing their use and impact in Lithuanian administrative law to which the author of this paper is familiar. Thus, the potential of the CoE's recommendations and their possible contribution to creating good administration by persuasion¹² shall be uncovered more in-depth. This in turn should attest the overall capacity of CoE's acts to influence national standards of good administration and the importance to keep the discussion on their wider impact going.

¹⁰ As evident from the rule of law being one of the pillars of the Copenhagen criteria, which any country willing to join the Union needs to meet. However, recent legal developments in some Central and Eastern European States shows that this presumption, as any other, is rebuttable.

¹¹ More general information on the legal nature and other theoretical aspects of these recommendations, as well as on other legal sources and their interaction can be found in Stelkens & Andrijauskaitė, 2017, pp. 34 et seq.

¹² And yet it might be argued that the use of the word 'persuasion' in this context is too humble. According to Article 3 SCoE, every Member State, among other things, must collaborate sincerely and effectively in the realization of the aim of the CoE. The duty to collaborate effectively might be perceived as the duty to follow the recommendations, which are deemed to be essential for achieving the goals of the CoE by its political bodies. Article 8 SCoE, for its part, provides for the possibility of imposing sanctions on the Member States that seriously violate Article 3 SCoE. It somewhat echoes the principle of loyalty in EU law, which allows to extend the application of fundamental freedoms to matters that go beyond what is covered in the constitutional law of the EU in order to achieve the crucial goals of the EU.

2 The Constitutional Basis of the Recommendations of the Committee of Ministers of the CoE and their Main Features

The constitutional foundations underpinning the CoE are laid down in its Statute (henceforth – SCoE). Among other things, Article 15 of the SCoE enshrines the instruments of the CoE essential for performing its tasks. Recommendations of the Committee of Ministers to the governments of its members are among such instruments. They have been formally adopted as 'Resolutions' until 1979 and thereafter as 'Recommendations'.¹³ In principle, these recommendations are not binding on the Member States. However, Member States have to report on their implementation to the Committee of Ministers. Moreover, CoE Member States might even formally express reservations with regard to recommendations, i.e. to employ an instrument that has been derived from international treaty law (Breuer, 2017, p. 807). Therefore, despite their non-binding character, recommendations are not entirely irrelevant to the Member States, especially because Article 15 (b) SCoE explicitly confers on the Committee of Ministers the right to request that the Governments of Member States inform it of the action taken by them with regard to such recommendations.

The recommendations vary in scope, but tend to have the same structure: a concise text of the resolution is usually followed by an annex, which, for its part, is explained by an explanatory memorandum.¹⁴ By means of a resolution, Member States are encouraged to take necessary measures in order to align their domestic law with the standards enshrined therein. Laying such standards down in an annex is supposed to facilitate this task for the Member States. Sometimes annexes of these recommendations are also accompanied by a preamble, which specifies their scope of application. Unfortunately, these recommendations have never been collected in a sort of 'Official Journal' of the CoE, instead circulating for years often only as (bad) copies of typewritten originals. Today, however, all recommendations and resolutions of the Committee of Ministers (typically) including the preparatory documents and explanatory memorandums can be found on its website.¹⁵ These recommendations differ from the "conclusions in the form

¹³ For a detailed discussion on recommendations see Alincal, 2012, pp. 84–103; Bartsch, H.J. The Acceptance of Recommendations and Conventions within the Council of Europe, in: *Le rôle de la volonté dans les actes juridiques – études à la mémoire du professeur Alfred Rieg*, 2000, pp. 91–99; Jung, H. Die Empfehlungen des Ministerkomitees des Europarates – zugleich ein Beitrag zur europäischen Rechtsquellenlehre, in: Bröhmer et al. (Eds), 2005, pp. 519–526; Palmieri, 2006, pp. 51–84; Polakiewicz, J. Alternatives to Treaty-Making and Law-Making by Treaty and Expert Bodies in the Council of Europe, in: Wolfrum & Röben (Eds.), 2005, pp. 245–290; Polakiewicz, 2012, pp. 167–195; Uerpmann-Witzack, R. Rechtsfortbildung durch Europaratsrecht, in: Breuer et al. (Eds) (2013), pp. 939–951; De Vel, G. & Markert, T. Importance and Weaknesses of the Council of Europe Conventions and of the Recommendations addressed by the Committee of Ministers to Member States, in: Haller et al. (Eds), 2000, pp. 345–353; Wittinger, 2005, pp. 202 et seq.

¹⁴ The explanatory memorandums of the recommendations can (often) be found as 'related' documents together with the recommendations on the website of the Committee of Ministers: <http://www.coe.int/en/web/cm/documents>. Those of the older recommendations on administrative law can also be found in Council of Europe (Ed.), 1997.

¹⁵ <http://www.coe.int/en/web/cm/documents>.

of recommendations, to the Committee of Ministers” of the Parliamentary Assembly of the CoE, which are foreseen in Article 22 of the SCoE.

As noted above, the CoE has been actively engaged in administrative matters since the 1970s. One of the first milestones in its work, was the adoption of Resolution (77) 31 on the protection of the individual in relation to acts of administrative authorities,¹⁶ which had been prepared by the Project Group on Administrative Law (henceforth – CJ-DA) and set out the basis for further cooperation among the Member States in the field of administrative matters. Its preamble echoed the idea that recommendations are capable of expressing the broad consensus on a concrete matter: *“in spite of the differences [...] there is a broad consensus concerning the fundamental principles which should guide the administrative procedures [...]”*. Thus, Resolution (77) 31 codified five of these principles: the right to be heard, access to information, assistance and representation, statement of reasons, and indication of remedies. These and further principles that are considered to be of primary importance for the protection of the individual against the administration are detailed in a manual published in 1997 by the CoE (Council of Europe (Ed.), 1997), intended to be of use to legislators, judges, ombudsmen, administrators, lawyers, and interested members of the public in all European States.

Since then, an array of other recommendations have been prepared by the CJ-DA and adopted by the Committee of Ministers. For the purposes of this paper, the following further recommendations are worthy of special attention:

- Recommendation No. R (80) 2 concerning the exercise of discretionary powers by administrative authorities;
- Recommendation No. R (81) 19 on access to information held by public authorities, which has been revised (but not replaced) by Recommendation Rec(2002) 2 on access to official documents;
- Recommendation No. R (84) 15 relating to public liability;
- Recommendation No R (85) 13 on the institution of the ombudsman;
- Recommendation No. R (87) 16 on administrative procedures affecting a large number of persons;
- Recommendation No. R (89) 8 on provisional court protection in administrative matters;
- Recommendation No. R (91) 10 on the communication to third parties of personal data held by public bodies;
- Recommendation No. R (91) 1 on administrative sanctions;
- Recommendation No. R (93) 7 on privatisation of public undertakings and activities;
- Recommendation No. R (97) 7 on local public services and the rights of their users;

¹⁶ For more details see Berchtold, K. Über die Rechtsharmonisierung des Verwaltungsrechts im Europarat, in: Hummer & Wagner (Eds.), 1988, pp. 404 et seq.; Classen, 2008, pp. 206 et seq.

- Recommendation No. R (2000) 6 on the status of public officials in Europe;
- Recommendation No. R (2000) 10 on codes of conduct for public officials;
- Recommendation Rec(2001) 9 on alternatives to litigation between administrative authorities and private parties;
- Recommendation Rec(2003) 16 on the execution of administrative and judicial decisions in the field of administrative law;
- Recommendation Rec(2004) 20 on judicial review of administrative acts;
- Recommendation CM/Rec(2007)7 on good administration.

3 The Perceived Importance of Recommendations of the Committee of Ministers of the CoE in Lithuanian Administrative Law

Before going into the concrete functions and implications the recommendations of the Committee of Ministers of the CoE may have, it is worthwhile to have a closer look on their general importance as perceived by the national legal actors. An analysis conducted with the aim of finding out such general attitude towards these recommendations,¹⁷ has revealed that the previously shortlisted recommendations in Lithuanian administrative law can inspire (tangible) legislative changes, as well as are held in high regard by administrative courts. *Travaux préparatoires* on both the Law on Public Administration (*Viešojo administravimo įstatymas*) and Law on the Proceedings of Administrative Cases (*Administracinių bylų teisenos įstatymas*) explicitly mention and discuss CoE recommendations, where they are relevant, including when a need arises to update legislation already in place.¹⁸ Apart from these (partially) codified sources of Lithuanian administrative law, CoE's recommendations can inspire building the legal framework in more specific areas of administrative law, such as state liability.¹⁹

Administrative courts, for their part, see Recommendations of the Committee of Ministers of the CoE as important sources of legal reasoning:

"<...> general principles enshrined in recommendations reflect the experience of democratic European states, as well as the results of the

¹⁷ Namely, a search in the case-law of administrative courts of Lithuania, as well as in the Register of Legal Acts (www.e-tar.lt) for the purposes of this article was performed by using the relevant keywords, such as the titles of the previously shortlisted Recommendations.

¹⁸ Such as the need to update legislation on interim measures in administrative procedure. See part 4.4 of this paper.

¹⁹ Above all, Recommendation No. R (84) 15 relating to public liability was taken into consideration whilst preparing Article 6.271 of the Civil Code of the Republic of Lithuania, which regulates liability to compensation for damage caused by unlawful actions of institutions of public authority (available in English at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495>). Even though legal provisions governing state liability are laid down in the Civil Code, administrative courts are entrusted with hearing cases on such matters in Lithuania.

Council of Europe's work in the field of administrative law. They constitute an important source of interpretation of legal norms <...>".²⁰

In addition, the Recommendations of the Committee of Ministers of the CoE are regarded as the sources of law and legal reasoning, which are contemporary:

"<...> the usefulness of other methods of control of administrative acts for improving the functioning of jurisdictions and for the effective protection of everyone's rights is declared in the Recommendation Rec(2004)20 of the Committee of Ministers to Member States on Judicial Review of Administrative Acts. This recommendation prescribes that natural and legal persons may be required to exhaust remedies provided by national law before having recourse to judicial review. Thus, it is obvious that the introduction of the requirement to make use of the out-of-court investigation of administrative disputes (in some cases being even compulsory), reflects the aspirations of contemporary administrative justice: the priority of protecting individual rights vis-à-vis a State's interests and effective legal protection of those rights <...>".²¹

The fact that the Recommendations of the Committee of Ministers of the CoE are given high legal authority is further attested by the fact that in none of the cases analysed their legal power was called into question. Administrative courts seem not to be getting involved into discussions, whether such recommendations are legally binding and simply apply them for various purposes where relevant (see the section below). The possible limitations stemming from their soft-law nature appear not to cause any concern for the litigants either, who proactively refer to relevant legal provisions of the recommendations in their pleadings. This is an understandable position to take bearing in mind that, as demonstrated below, recommendations in the analysed case law were mostly used either in order to support a statement by a court or to develop a conceptual framework meant to support a statement (von Bogdandy, 2017, p. 21). In none of the cases were they used to quash national provisions altogether, where the questioning of their legal nature might be relevant in order to sustain legal certainty.

4 The Added Value of the Recommendations of the Committee of Ministers of the CoE

After having briefly analysed the general importance of Recommendations of the Committee of Ministers of the CoE as perceived by Lithuanian lawgiver and the judiciary, we should turn to a variety of functions they perform when 'put into action' by the same legal actors. This can help to unlock the exact effects and the overall potential CoE's instruments may have to offer to

²⁰ Supreme Administrative Court of Lithuania, Decision of 30 September, 2005 – Case No. A-05-665-05.

²¹ Supreme Administrative Court of Lithuania, Decision of 8 June, 2012 – Case No. A⁵²⁰–2320/2012.

administrative law, especially in cases where relevant national instruments are missing or (for some reason) seem to be inefficient.

4.1 Recommendations as Legal Sources used for Legitimising (especially for 'progressive' or 'controversial' judgments)

The first function that the Recommendations of the Committee of Ministers of the CoE can serve to national administrative law is that of giving more legal authority to the decisions or judgments by administrative courts that might be seen as too 'progressive' or 'controversial' by the public. Attributing (at least partially) legal arguments for 'controversial' decisions to somewhat distant, supranational bodies primarily preoccupied with interpreting fundamental rights in a dynamic and progressive way, taking into account of recent developments in society (Gerards, J. *Judicial Deliberations in the European Court of Human Rights*, in: Huls, & Adams & Bomhoff (Eds), 2008, pp. 407–436), makes such judgments seem more legitimate and, thus, more acceptable to the public at large. The more 'controversial' such a judgment is, the more sources of legal argumentation are usually used all at once in order to legitimise it in the eyes of the public, even though (pragmatically seen) the principles stemming exclusively from the (national) Constitution or other 'conventional' sources of national law suffice.

This approach was used in a case concerning the legality of a permit to organise Baltic Pride 2010 – an annual LGBT pride parade rotating in turn between the capitals of the Baltic States – granted by Vilnius city municipality administration.²² In this case, one politician and the Attorney General of Lithuania have asked an administrative court to grant provisional protection – to stay an administrative decision allowing the parade. Such claim was made several days before Baltic Pride was scheduled to take place and it was evident that the application of interim measures (if deemed necessary by an administrative court) would prevent it from happening. The applicants brought forward "the possibility of endangering the public safety" and "undermining traditional values supported by the public at large" as main arguments in support of their claim.

Supreme Administrative Court of Lithuania (henceforth – the Court) did not rule in support of such arguments and dismissed the application for interim relief. For justifying its decision, the Court, among other things, relied on the Recommendations of the Committee of Ministers of the CoE in (quite) a condensed manner: firstly, the Recommendation No. R (89) 8 on provisional court protection in administrative matters and the Recommendation Rec(2003) 16 on the execution of administrative and judicial decisions in the field of administrative law were used to explicate the nature and purpose of interim relief in administrative proceedings. Then, together with Article 11 of the Convention, which grants the right to free assembly and relevant case-law²³ of the ECtHR on this Article, more 'topical' Recommendation was

²² See Supreme Administrative Court of Lithuania, Decision of 7 May, 2010 – Case No. AS⁸²²-339/2010.

²³ See *Bączkowski and Others v Poland* (1543/06) May 3, 2007 ECtHR.

used, namely – Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity. Whilst weighing up various conflicting interests at stake, the Court took into consideration relevant provisions of this Recommendation (§ 14, 15 and 16 of its Annex). Especially, the provision recommending Member States to take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order (which was exactly the case in the current proceedings) has played a role in the Court's argumentation. Drawing on these provisions, the Court declared that granting interim measures in this case would be disproportionate and the balance between competing interests would not be maintained.

Besides exemplifying how reliance on provisions stemming from the CoE can legitimise²⁴ upholding of 'controversial' decisions and make them look less arbitrary, the said case demonstrates that (just like the ECtHR in the previously mentioned *Demir and Baykara* formula) the national courts are prone to make use of the provisions of Recommendations of the CoE for interpreting Convention's rights and concretizing their normative content. In the said case, Article 11 of the Convention was explicated with the help of legal provisions of relevant Recommendations of the Committee of Ministers of the CoE and interpreted in a way that allowed the Court to reach a 'Convention-friendly' decision.

The same '*Demir and Baykara*' approach was used in cases regarding public liability claims. At first glance the use of CoE's recommendations, namely – Recommendation No. R (84) 15 relating to public liability – seems superfluous in such cases because public liability is quite comprehensively regulated in the Civil Code of Lithuania. However, a closer look reveals that, as already mentioned, exactly this recommendation gave impetus to the adoption of national rules on public liability claims and, thus, according to the Court, shall be "taken into consideration in order to *better understand* the provisions of the Civil Code on this matter".²⁵ This is, hence, a telling example as of how supranational law can serve a double function: first, influence the adoption of national rules and, secondly, be used for elucidating their content.

4.2 Recommendations as Tools to Explain Vague or Non-Existing Legal Notions

Apart from helping the judiciary to pass judgments on controversial topics by diversifying available legal sources and thus making it more legitimate for the public at large, the Recommendations of the Committee of Ministers of the

²⁴ Needless to say, legitimising function does not work for public members holding radical (populist) beliefs. For them, such decisions are another piece of evidence that proves the perceived existence of the 'Dictate of Brussels' – a term used to denote the loss of national sovereignty and supranational legislation being 'the mother of all evils'.

²⁵ See, e.g., Supreme Administrative Court of Lithuania, Decision of 23 March, 2013 – Case No. A-642-858/2015.

CoE can also contribute to the introduction of 'new' or help to explain vague legal notions to a particular legal community. This, in turn, helps to broaden 'epistemic horizons' of the judiciary and solve administrative disputes in a more conceptual way.

The clearest example thereof is a case in which the notion of suspensive effect of administrative act enshrined in the CoE instruments was introduced to Lithuanian legal system. It was firstly done in the case which – yet again – involved the question of applying provisional protection.²⁶ The Court was asked to issue an interim order – a suspension of the execution of administrative fine imposed on an applicant for infringing competition law. The Law on Competition of the Republic of Lithuania, among other things, provided that the filing of an appeal does not stop an execution of administrative acts adopted as a result for the violation of this Law, provided that the court has not decided differently. The Court compared this national rule to the provisions found in the Recommendation No. R (89) 8 on provisional court protection in administrative matters and in its Explanatory Memorandum: according to this Recommendation, an administrative act is as a rule immediately enforceable, except for the cases where the law grants suspensive effect to such acts until a particular administrative dispute is resolved by the court. The Court concluded that the national legal framework at hand was compatible with the regulation set forth in the CoE's law and used the notion of suspensive effect (clearly articulated in the Recommendation No. R (89) 8) to build up its further legal argumentation: the suspensive effect [an administrative act is capable of having] must be explicitly foreseen in the law; if that is not the case, then the general rule applies and an appeal of an administrative act to an administrative court is not a valid reason per se to withhold its execution. Thus, the decisive point for the Court in this dispute was [to check] whether there are enough factual circumstances justifying the granting of provisional protection and, thus, deviation from the general rule that an appeal to a court does not entail suspensive effect on the execution of an administrative act.

This case is a clear example of how this (quite theoretical) notion infused into national law through CoE's instruments and helped to solve an administrative dispute in a more conceptual way. It seems that this notion was previously relatively unknown or at least not well articulated in Lithuanian administrative law, however, it managed to take root ever since²⁷ as attested by subsequent cases elaborating on the notion of suspensive effect an administrative act is capable of having further.²⁸ As in the previous example, the Recommendations of the Committee of Ministers of the CoE once again found use in a case which

²⁶ See Supreme Administrative Court of Lithuania, Decision of 21 February, 2013 – Case No. AS⁶⁰²-223/2013.

²⁷ Lithuanian law in general seems to be quite receptive of legal notions that are not necessarily codified. A telling example thereof is the case of the protection of legitimate expectations. Lithuanian courts 'embraced' this (at least for the major European legal systems) classical doctrine as its own without any scholarly discussions, when the Constitutional Court derived it from the constitutional principle of the rule of law in 2001 (See more in Piličiauskas & Andrijauskaitė, 2014, p. 326).

²⁸ See, e.g., Supreme Administrative Court of Lithuania, Decision of 3 September, 2014 – Case No. AS²⁶¹-670/2014, Decision of 22 October, 2014 – Case No. AS²⁶¹-1048/2014.

had significant wider public interest. Namely because huge administrative fines were imposed on three biggest banks operating in Lithuania for their anticompetitive behaviour in the analysed case.²⁹ Assumingly, as well as in the previously described 'Baltic Pride case' – the judges in this case also felt additional pressure to make legal argumentation more comprehensive and turned to supranational legal acts in order to solve a particular case conceptually rather than *ad hoc*.

4.3 Recommendations as Legal Sources Helping to Solve a Dispute *faute de mieux*

Another function Recommendations of the Committee of Ministers of the CoE are capable of performing is the so-called *faute de mieux* function, i.e. when the application of supranational legal provisions in a legal dispute occurs whilst lacking a better alternative. Such function seems to find its use when domestic legal provisions leave a wide margin of appreciation for the court and/or the administration or, especially, when there are no legal provisions on a particular matter. The court, for its part, cannot refuse to solve a dispute due to the dearth of applicable legal norms. Otherwise, the denial of justice would be inevitable, which is incompatible with the very essence of the rule of law. In many countries, the Constitution and the rule of law imperative and the principles and rights derived therefrom, thus, serve as the solution to this problem.³⁰ However, deriving various rights and principles from the national legal sources is based on nothing more than assumption that a particular right or principle in fact exists there.

The argument for using *faute de mieux* approach in order to solve administrative disputes can be deduced from Article 4 (7) of the Law on the Proceedings of Administrative Cases of Lithuania, which states that in the silence of law a court should solve a dispute at hand by using legal analogy (i.e. provisions that regulate similar legal relations) or be guided by "fundamentals and the meaning of laws, as well as the principles of equity and reasonableness". Especially, the latter open-ended clause can be seen as justifying the use of *faute de mieux* approach. The case law has also added that "in *vacatio legis* situations, courts shall take into consideration "implicit [legal regulation], which is a corollary to explicit legal provisions".³¹ Bearing that in mind, it can be stated that the pan-European rules set forth in CoE's Recommendations, which codify minimal common standards European nation agree upon in

29 More information available at: <https://kt.gov.lt/en/news/lithuanian-competition-council-imposes-fines-on-security-services-provider-and-three-banks-for-restricting-competition-in-cash-handling-and-cash-in-transit-services-2>.

30 This is, e.g., the case in Germany (Stelkens, 2004, pp. 151 et seq.), as well as in Lithuania. An idea that 'the constitutional principle of a state under the rule of law is especially capacious; it comprises a range of various interrelated imperatives' formulated by the Constitutional Court of Lithuania – is oftentimes used as a sort of 'methodological justification' for deriving various legal requirements explicitly not found in the law applicable to a particular conflict.

31 See Supreme Administrative Court of Lithuania, Decision of 27 February, 2017 – Case No. eA-2413-662/2017; Decision of 28 February, 2017 – Case No. A-2445-624/2017; Decision of 8 March, 2017 – Case No. A-2823-492/2017; Decision of 19 April, 2017 – Case No. eA-3294-624/2017.

administrative matters, can be employed to disclose that missing, and yet required normative content in order to solve an administrative dispute.

Such *faute de mieux* notion was employed in a case in which the Court was faced with the question of whether domestic migration authorities had acted lawfully in withdrawing subsidiary protection given to an asylum seeker without providing him with a possibility to be heard.³² The right to be heard in a procedure for subsidiary protection was not enshrined in national law. Thus, the Court had to turn to general principles and supranational sources of law in order to resolve the case. Together with deriving the right to be heard before withdrawing subsidiary protection from domestic constitutional law (namely Article 5 (3) of the Lithuanian Constitution providing that "State institutions shall serve the people") and the Charter, the court singled out and made use of the Recommendation CM/Rec(2007)7 on good administration as a relevant source of legal knowledge. Namely, the Court, among other things, drew its attention to Article 14 of the Recommendation CM/Rec(2007)7, which stipulates that an opportunity to express views must be given to private persons before issuing any measure which may adversely affect their rights. Hence, the national migration authorities were also obliged to furnish an asylum seeker at issue with a possibility to be heard before withdrawing subsidiary protection regardless of the fact that the national law did not explicitly grant such right.

Another telling example of using *faute de mieux* approach can be found in a case in which the Court had to decide whether the Insurance Commission (the regulator of Lithuania's insurance companies) had the right to publish information on imposing administrative sanctions on the contravening insurance companies on its website. In other words, the Insurance Commission was putting individual administrative acts (by which companies found to be infringing laws governing insurance were penalized) online. In order to resolve this dispute, the Court directly relied on the first principle of the Recommendation No. R (91) 1 on administrative sanctions, which states that "the applicable administrative sanctions and *the circumstances in which they may be imposed* shall be laid down by law". Taking into consideration that neither Lithuanian Law on Insurance, nor other relevant domestic laws had furnished the Insurance Commission with a right to make decisions on administrative sanctions against contravening insurers public, the Court compared such practise to "the introduction of quasi administrative sanctions" and, hence, unlawful.³³

The latter legal case demonstrates how a single provision can help to solve an entire administrative dispute in a real *faute de mieux* situation – where national norms, as well as even EU law, which is oftentimes used as a 'lifebuoy'

³² See Supreme Administrative Court of Lithuania, Decision of 8 December, 2010 – Case No. A756-686/2010. Short presentation of the case in English available at: <http://fra.europa.eu/en/caselaw-reference/lithuania-supreme-administrative-court-lithuania-case-no-a756-6862010>.

³³ See Supreme Administrative Court of Lithuania – Decision of 27 September, 2005 – Case No. A¹⁵-626/2005.

in similar situations, despite its (sometimes) formal lack of bindingness on a particular dispute, are silent.

4.4 Recommendations as Driving Forces for Change

An array of Recommendations of the Committee of Ministers of the CoE can also catalyze changes in the national legal framework, i.e. they can have a transformational effect. In Lithuania, a 'silent revolution' seems to have happened in regard to the regulation on provisional protection in administrative procedural law, whose causes can be traced back to the discrepancy between national provisions and the regulation enshrined in Recommendation No. R (89) 8 on provisional court protection in administrative matters.

Previously, the case-law on the subject was quite unequivocal and strictly followed the letter of the [national] law: an administrative court could only grant provisional protection if "[not granting such protection] would make the execution of the final decision of the court impossible or hardly possible, i.e. the restoration of the *status quo ante* would become impossible or hardly possible".³⁴ Whereas the consideration of *prima facie* arguments against the validity of administrative act was clearly rejected in the case-law,³⁵ even though administrative courts were perfectly aware that it is prescribed by the Principle II of Recommendation No. R (89) 8 and even quoted this provision in their decisions without following it.

This trend started to change since the year 2013, when administrative courts began to rely on the said provision of Recommendation No. R (89) and actually examine whether there are *prima facie* arguments against the validity of contested administrative act that also militate in favour of granting provisional protection. However, these *prima facie* arguments were always examined among other things, i.e. together with other applicable criteria *de lege lata*. No obvious motivation why such a change took place can be extracted from the case-law, but notably it originated in a series of legal cases, which were examined by the same reporting judge.³⁶ Assumingly, such inclination to resolve the questions on applying interim measures in the spirit of Recommendation No. R (89) somewhat influenced other judges to follow the lead set by that reporting judge.³⁷ Finally, this judicial volte-face morphed into legislative changes, i.e. into an amendment to the relevant provision of Lithuanian Law on the Proceedings of Administrative Cases, which currently seems to replicate the wording of Principle II of Recommendation No. R (89) 8: "<...> provisional protection can be granted, if not doing so would cause

34 Articles of 71 (1) and 92 of Lithuanian Law on the Proceedings of Administrative Cases (wording of the Law applicable until 1st of July, 2016).

35 See Supreme Administrative Court of Lithuania – Decision of 20 September, 2010 – Case No. AS⁸⁵⁸–602/2010; Decision of 24 September, 2010 – Case No. AS⁸⁵⁸–620/2010; Decision of 29 October, 2010 – Case No. AS⁸⁵⁸–670/2010; Decision of 15 April, 2011 – Case No. AS¹⁴⁶–297/2011 and others.

36 See Supreme Administrative Court of Lithuania – Decision of 26 February, 2014 – Case No. AS⁶⁰²–161/2014; Decision of 20 August, 2014 – AS⁶⁰²–573/2014; Decision of 23 September, 2014 – Case No. AS⁶⁰²–965/2014.

37 See Supreme Administrative Court of Lithuania – Decision of 3 September, 2014 – Case No. AS²⁶¹–670/2014; Decision of 22 October, 2014 – Case No. AS²⁶¹–1048/2014.

severe damage which could not be made good or could only be made good with difficulty and if there is a *prima facie* case against the validity of the act”.³⁸ Thus, instead of linking the granting of court’s provisional protection to “the execution of the final decision of the court [made] impossible or hardly possible” as previously, the national legislator introduced “irreparable harm and *prima facie* arguments against the validity of administrative act” as decisive criteria for issuing interim measures. Finally, an assumption that influence stemming from the CoE has caused a ‘silent [procedural] revolution’ is further attested by the *travaux préparatoires* on the amendments of this provision. They, for their part, explicitly mention the need to bring Lithuanian administrative procedural law in line with Recommendation No. R (89) as one of the reasons for such a change in the legal framework.

However, this example also shows that while administrative courts are susceptible to CoE’s regulation whilst solving ‘controversial’ or other substantive questions of administrative law, they are much more reserved when it comes to procedural law. In procedural law, the Lithuanian judiciary tends to ‘play it safe’ and stick to the letter of the national law. The precise wordings of relevant procedural provisions can thus be ‘straitjackets’, which prevent innovative concepts from flowing into the national law effectively. This tendency might be explicated by deep-seated perception of administrative procedure being of formal nature and remaining within the bounds of national law.³⁹

5 Conclusion

This contextual paper has sought to delve into the relatively under-researched area of European administrative law, i.e. CoE’s work in administrative matters and its impact on the national legal systems of its Member States, by making a case study of the use and various functions of Recommendations of the Committee of Ministers of the CoE in the chosen national order. The conducted analysis thereof has revealed that in this chosen legal order – Lithuanian national law – the said instruments of the CoE can not only inspire the adoption or changes of national legal provisions, but are also held in high regard by the judiciary. For administrative courts, the CoE’s recommendations can be an important source of legal knowledge capable of reflecting the aspirations of contemporary administrative justice. Their ‘soft-law nature’ is not perceived as an obstacle to this end. Apart from this general importance of the recommendations recognized by national legal actors, a case study showed that Recommendations of the Committee of Ministers of the CoE are also capable of serving such (more specific) functions: (i) to give more legal authority to decisions or judgments, especially when an administrative dispute is perceived as ‘controversial’ or of high interest by the public; (ii) to help interpret, concretize and understand various Convention norms better, thus allowing the national judiciary not to fall into contradiction with the

³⁸ Article 70 (1) of Lithuanian Law on the Proceedings of Administrative Cases (wording of the Law applicable from 1st of July, 2016).

³⁹ In a similar way as Member States cling to their national procedural autonomy in EU Law.

duties enshrined therein; (iii) to introduce 'new' or help to understand vague legal notions and be instrumental for administrative courts, which are willing to solve administrative disputes in a more conceptual way; (iv) to solve an administrative dispute *faute de mieux*, where national norms on a particular matter are non-existent; (v) to push for reforms where the national legislation is outdated or normatively limited.

It transpired that the scope of functions and implications the Recommendations of the Committee of Ministers of the CoE can have to national administrative law is wide, yet not without limitations. Whereas in 'controversial' administrative matters they are seen as adding up 'legal weight' to solving a particular dispute and thus are easily relied on, in certain domains, like administrative procedural law, their acceptance appears to be protracted. Thus, it can be said that the good administration by persuasion, i.e. triggered by soft-law instruments of the CoE, is feasible, but only to the extent national legal actors are willing to make it happen. It also goes without saying, that the effects these recommendations can bring are in no way exhaustive and remain to be uncovered by further research. Among other things, a comparative research examining how Recommendations of the Committee of Ministers of the CoE permeate 'younger' and 'older' European legal systems and whether there are any major differences in reception of these acts between them would be worthwhile.

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POVZETEK

1.01 Izvirni znanstveni članek

Ustvarjanje dobre uprave s prepričevanjem: Študija primera priporočil Odbora ministrov Sveta Evrope

Ta članek obravnava manj raziskovano področje upravnega prava, ki izhaja iz Sveta Evrope (CoE), in si prizadeva ugotoviti, ali in kako eden izmed njegovih instrumentov – Priporočila Odbora ministrov Sveta Evrope – vpliva na nacionalne standarde v izbranem pravnem sistemu. V te namene je bila sprva predstavljena ustavna podlaga za ta priporočila in njihove glavne značilnosti. Poleg tega so bila izbrana tista priporočila, ki so pomembnejša za upravno pravo in ki so v središču analize tega dokumenta. Na koncu je bila preučena zaznana pomembnost raznih funkcij, manifestacij in posledic teh priporočil tako, da so bila le-ta postavljena v kontekst, torej da sta bila analizirana njihova uporaba in vpliv na litovsko upravno pravo, s katerim je seznanjen tudi avtor tega dokumenta. Tako se bolj poglobljeno odkrivata potencial priporočil Sveta Evrope in njihov morebitni prispevek k ustvarjanju dobrega upravljanja s prepričevanjem. To prav tako potrjuje splošno zmožnost aktov Sveta Evrope, da vplivajo na nacionalne standarde dobre uprave in pomembnost ohranjanja ter nadaljevanja razprave o njihovem širšem pomenu.

Analiza, opravljena v članku, je razkrila, da v izbranem pravnem redu – litovskem nacionalnem pravu – omenjeni instrumenti Sveta Evrope lahko vzbudijo sprejetje sprememb nacionalnih pravnih predpisov, prav tako jih skrbno upošteva tudi sodstvo. Za upravna sodišča so lahko priporočila Sveta Evrope pomemben vir pravnega znanja, ki zmore odražati težnje sodobnega upravnega sodstva. Za ta namen njihova »mehka pravna narava« ne predstavlja ovire. Poleg tega splošnega pomena priporočil, ki ga prepoznajo nacionalni pravni akterji, je študija primera pokazala tudi, da imajo Priporočila Odbora ministrov Sveta Evrope lahko še naslednje (bolj specifične) funkcije: (i) da sklepom ali sodbam dajo večjo pravno moč, še posebej, če upravni spor velja za »kontroverznega« ali ima velik javni interes; (ii) kot pomoč pri boljši razlagi, konkretiziranju in razumevanju raznih norm Evropske konvencije o človekovih pravicah, s čimer se lahko nacionalno sodstvo izogne morebitnim nasprotjem z dolžnostmi, ki jih zajema konvencija; (iii) da vpelje »nove« pravne pojme ali pomaga pri razumevanju nejasnih in je v pomoč upravnim sodiščem, ki so pripravljena reševati upravne spore na bolj konceptualen način; (iv) da reši upravne spore *faute de mieux*, torej da v situacijah, ko nacionalne norme v določenih primerih ne obstajajo, sodniku prepusti široko diskrecijsko pravico; (v) da spodbuja reforme v primerih, ko je nacionalna zakonodaja zastarela ali normativno omejena.

Pokazalo se je, da so obseg in posledice Priporočil Odbora ministrov Sveta Evrope na nacionalno pravo lahko obsežni, vendar niso brez omejitev. Medtem ko so v »kontroverznih« upravnih zadevah obravnavana, kot da dodajo »pravno težo« reševanju določenega spora in se je nanje lahko zanašati, pa se na določenih področjih, kot je na primer upravno procesno pravo, zdi, da je

njihovo sprejetje dolgotrajnejše. Tako lahko rečemo, da je dobro upravljanje s prepričevanjem – ki ga sprožijo instrumenti mehkega prava Sveta Evrope – izvedljivo, toda le, dokler so nacionalni pravni akterji pri tem pripravljeni sodelovati. Jasno je, da učinki, ki jih lahko prinesejo ta priporočila, vsekakor niso izčrpani in da so potrebne nadaljnje raziskave. Med drugim bi bilo vredno izvesti primerjalno raziskavo, ki bi preučila, kako Priporočila Odbora ministrov Sveta Evrope prežemajo »mlajše« in »starejše« evropske pravne sisteme in ali med njimi obstajajo večje razlike v sprejetju teh aktov.

Ključne besede: Svet Evrope, evropsko upravno pravo, priporočila Odbora ministrov Sveta Evrope, vseevropska načela dobrega upravljanja, evropski upravni prostor.

Liability and Compensation for Damages in Case of Violation of the Principles of Accountability and Good Governance¹

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ABSTRACT:

Accountability is one of the fundamental principles of good governance, defined in various international documents. It is a broad term, which can include different levels of public administration performance, from organisation, relevant regulation, internal and external supervision, transparency to tort liability, etc. The paper focuses on procedural aspects, i.e. decision-making in administrative matters. The latter is usually regulated by an administrative procedure act, which can include among fundamental principles also the principle of accountability. However, other procedural guarantees, e.g. lawfulness, equality, impartiality, proportionality, legal certainty, taking action within a reasonable time, contribute to responsible decision-making as well. In case they are infringed, the state should recognise accountability and have in place an efficient control system providing parties with effective (legal) remedies (e.g. possibility to appeal to the line ministry; administrative inspection; judicial control; constitutional complaint, compensation, etc.). Yet, not every non-compliance (irregularity) leads to (tort) liability. Administrative authorities in fact enjoy a high level of independence. The paper provides an international overview of accountability and analyses the liability of the state as deriving from the Slovene domestic law and the levels of accountability when the efficiency of administrative procedures is under question. The methods used include normative analysis and analysis of the relevant case law.

Key words: accountability, administrative procedure, compensation, public official, Slovenia, good administration.

JEL: K4

¹ This article is a revised version of the paper entitled 'Accountability of public officials as a key element of good governance - case of Slovenia', presented at the NISPAcee Conference, Zagreb, May 19-21, 2016. The NISPAcee contributions are not publicly available.

1 Introduction

Administrative law is part of public law and, as such, left to the states' sovereignty when it comes to its regulation. However, with the EU accession and the enforcement of the *acquis communautaire*, there is a need to define certain principles and rules on the EU level, creating a common European Administrative Space (EAS) and contributing to a certain level of convergence. Namely, in accordance with the minimum standards of effectiveness to prevent discrimination in practice, the parties should have access to public administration services regardless in which Member State they require certain rights (cf. Kerševan, 2004). The core principles of European administrative law can be systemised in the following groups: 1) reliability and predictability, 2) openness and transparency, 3) accountability, and 4) efficiency (SIGMA, 1999, p. 8). These four groups comprise numerous administrative law principles, either of procedural or substantive nature, such as lawfulness, equality, proportionality, objectivity and impartiality, protection of legitimate trust, right to be heard, representation and assistance, time limits, the duty to give reasons for decision-making, etc. (see Table 1; more on principles cf. also Sever et al., 2014). Their violation can lead to a case of accountability. However, not every violation leads to (tort) liability, but it certainly gives grounds to apply legal remedies (see Table 1).

The paper deals with the following research questions: firstly, the concept of accountability in the supranational context, with special focus on administrative procedural requirements as deriving from the concept of good governance; secondly, the incorporation of supranational requirements, i.e. the 2017 SIGMA Accountability Principles of Public Administration, within the Slovene regulation and Public Administration Strategy 2015-2020; and thirdly, the requirement to conduct procedures within a reasonable time as one of the preconditions for an effective and responsible public administration (case of Slovenia). In this respect, the aim of the paper is to analyse the requirements and principles of accountability within the supranational framework and in the case of Slovenia. The paper addresses accountability as part of good governance and studies its relevance for the lawfulness of administrative procedures, especially in terms of timely decision-making and available redress in case of infringement (state liability for damages leading to duty of damage compensation). The goal of the paper is to provide an analysis of the Slovene regulation, with special focus on the responsibility of public officials to conduct administrative procedures effectively without undue delay. The main methods used include normative analysis and analysis of the relevant case law.

The paper first outlines the existing supranational documents in terms of their "interpretation" of the accountability concept. In the second chapter, the Slovene Public Administration Strategy 2015-2020, focusing on administrative procedures, is examined in relation to the SIGMA 2017 accountability principles. Moreover, the right to compensation for damage caused through unlawful actions by authorities is analysed. The last chapter is dedicated to conducting procedures within a reasonable time as one of the preconditions for an effective and responsible public administration.

Table 1. Administrative law principles

| Principles | |
|--|--|
| <i>Substantive law principles:</i> | <i>Procedural law principles:</i> |
| Lawfulness, equality before the law, conformity to statutory aim, proportionality, objectivity and impartiality, protection of legitimate trust and vested rights, openness. | Access to public services, right to be heard, representation and assistance, time limits, notification, statement of reasons and indication of remedies, execution of administrative acts. |
| If violation by administrative authorities | |
| Possible legal remedies: appeal, extraordinary legal remedies, judicial review | |
| Possible accountability → reparation | |

Source: based on Administration and You, Council of Europe, 1996

Accountability is a broad concept, emphasised in the public sector through various international documents (for its inclusion in different international documents, see Table 2) giving several (obligatory) recommendations to national authorities. However, the actual content of the term “accountability” seems to vary. Sometimes, the term is used separately, but usually there is also a connection to transparency and openness (see Table 2). Accountability can in general mean one institution being accountable to another (internal control) as well as being liable for wrongdoing or omission in relation to the parties (external dimension) (Venice Commission, 2011, p. 11; cf. SIGMA, 1999, pp. 12–13). As mentioned above, it is one of the main principles of European administrative law. Thus, in case of misconduct of the administration, the latter should compensate the victims of such action (Woehrling, 2006, p. 9). Therefore, clear rules on the expected and allowed behaviour of the public administration (PA) when deciding on the parties’ rights and obligations are a precondition of accountability. Most countries define the vast majority of administrative law principles and rules by an administrative procedure act (APA) (see for example Germany (1976), Austria (1991), Netherlands (1994), Estonia (2002), Finland (2003), Czech Republic (2004), France (2015), etc.; cf. Sever et al., 2014). Since administrative procedure is the main business process of public administration, the principle of accountability is also among the general principles of administrative activity to be included in the APA following the instructions on APA regulation (see Cardona, 2005, p. 6). Finally, in order to make public administration accountable, effective supervision is needed. One form of control are the legal remedies defined by the APA, which can be enforced either *ex officio* or on party’s request. Moreover, there is also

the possibility of judicial review and of submitting a request for supervision to competent inspectorates, ombudsmen, etc. (cf. SIGMA, 1999, pp. 12–13).

Table 2. *Accountability in the (supra)national context*

| Act (year) | Content | Consequence |
|---|---|--|
| SIGMA Principles of Public Administration (2017) | Accountability as part of overall framework in PA (reform) requires liability and transparency of state administration bodies and is elaborated further in 5 subprinciples (for details see Table 3 in chapter 2) (Recommendation to national level'). | Redress and/or adequate compensation. |
| Stocktaking on the Notions of "Good Governance" and "Good Administration", Venice Commission (2011) | Accountability as part of good governance concept (GG). GG encompasses <i>good administration</i> and includes also the following elements: <i>Transparency, responsiveness to people's needs, efficiency, effectiveness, openness, participation, predictability, rule of law, coherence, equity, ethical behaviour, combating corruption, termination of proceedings within a reasonable time, protection of human rights, simplification of procedures.</i> Overview of principles based on analysis of national and supra-national documents. | / |
| EU Charter of Fundamental Rights (2010) | Right to compensation for any damage caused by EU institutions/servants in accordance with the general principles common to Member States law (supra- and national level, when implementing EU law). | Possible compensation. |
| Council of Europe Recommendation CM/Rec(2007)7 on good administration | Unlawful administrative decision or negligence on the part of administration or its officials calls for compensation (recommendation to national level, to member states). | Compensation: party should seek to resolve dispute with the concerned authorities before bringing action for compensation to the courts. |
| EU White Paper on European Governance (2001) | Accountability: clearer roles in legislative and executive processes; EU institutions & member states taking the responsibility to perform duties (both levels, national and supra-national). Besides accountability, also other GG principles: openness, participation, effectiveness and coherence – altogether underpin democracy and the rule of law in member states, applicability to all levels of government (global, European, national, regional and local). | / |
| Council of Europe Recommendation No. R (84) 15 on Public liability | Public liability for damage caused by action or omission to act by public authority** (national level). | Reparation (i.e. compensation or other appropriate means). |

* Overall, the extent to which candidate countries apply these principles in practice indicates whether their national public administration is capable to implement the *acquis* effectively (see The Principles of Public Administration, 2017, p. 7).

** See Appendix to Recommendation No. R (84) 15, Scope and Definitions: "The term „public authority" means: a. any entity of public law of any kind or at any level (including state; region; province; municipality; independent public entity); and b. any private person, when exercising prerogatives of official authority."

Source: documents as deriving from Table 2

Furthermore, accountability is one of the key requirements of the notion of good governance (see Table 2). Organisations are accountable to the subjects who will be affected by their decisions or actions. The World Bank first used the concept of good governance in the 1990s, being inspired by economic considerations in terms of quality of the countries' government systems and the ability to pursue sustainable economic and social development (Venice Commission, 2011, p. 3)². Since this view disregarded some aspects of democracy, the concept was later on adapted and developed by other international institutions. According to the findings of the Venice Commission (2011, p. 4), the concept of good governance is a rather non-legal concept since it is not part of the legal orders of the Council of Europe member states. A part of good governance is also the principle of (the right to) good administration (GA), which includes several procedural rights enshrined in international documents and national legal orders (Venice Commission, 2011, p. 4; cf. Table 2). Good administration also refers to some of the rights deriving from Article 6 of the European Convention on Human Rights (ECHR), which is of utmost importance as regards conducting procedures within a reasonable time, a precondition of effective and consequently responsible public administration.³ The concept of GA includes principles such as impartiality, fairness, termination of proceedings within a reasonable time, legal certainty, proportionality, non-discrimination, right to be heard, effectiveness and efficiency (cf. Table 2), which all contribute to a responsible PA.

According to a recent document by SIGMA (The Principles of Public Administration, 2017), accountability requires lawful performance by state administration bodies in different fields. Firstly, in terms of rational organisation, it is necessary to pursue adequate policies and regulations and provide for proper internal, political, judicial, social and independent accountability (SIGMA, 2017, p. 55). Secondly, besides liability for wrongdoing and guarantee of redress (and/or adequate compensation), accountability also encompasses the right of access to public information (openness and transparency) and an effective mechanism to protect the individual's right to good administration and the public interest. Finally, fair treatment by means of internal administrative appeals and judicial review should be ensured (SIGMA, 2017, p. 55).

2 Accountability of Public Officials in Slovenia

Although the principles of public administration as set by SIGMA in 2017 are primarily meant for the candidate countries or potential candidates within the EU enlargement process, these principles in general present standards of good public administration within the EAS. Moreover, they provide a valuable framework with defined methodology and indicators to assess the state of affairs and the needs for improvement of the existing administrative systems in the EU Member States (Virant, 2015, p. 1). The paper mostly focuses on accountability principles within administrative procedures (see Table 3).

² Cf. also Vanebo and Andersen (2014) on principles of new public management, pp. 9–20.

³ On efficiency and accountability, see SIGMA 1999, p. 13.

Table 3. Accountability principles in the European Administrative Space as set by SIGMA in 2017 and in Slovenia

| SIGMA 2017 – Accountability Principles & Requirements | Slovenia – with a focus on administrative procedures |
|--|--|
| Principle 1: <i>The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.</i> | In terms of scope, the merging of certain ministries/fields should be reconsidered. Accountability is provided by different mechanisms: <ul style="list-style-type: none"> – political: e.g. parliamentary questions; parliamentary scrutiny; – internal: second-instance administrative appeal (to line ministry); – judicial review; – constitutional complaint; – possibility to address administrative inspection, ombudsman. |
| Principle 2: <i>The right to access public information is enacted in legislation and consistently applied in practice.</i> | Adequate Public Information Access Act, which functions in practice: access to public information and appeal to Information Commissioner. Due to corruption problems* certain improvements are envisaged by PA Strategy for 2015-2020: higher level of citizens' participation in rulemaking; better connection of different databases; upgrading the systems of control over transactions in public sector, etc. |
| Principle 3: <i>Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.</i> | Mostly by implementing APA principles and rules. See Principle 1 above. |
| Principle 4: <i>Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.</i> | Yes. See Principles 3 and 1 above. |
| Principle 5: <i>Public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.</i> | Recognition of state liability already at the constitutional level. However, not so many cases in practice. |

* E.g. on corruption analysis in Slovene administration see Pečarič, Benčina and Kozjek, 2017.

Source: SIGMA Principles of Public Administration (2017) and the Slovene Public Administration Strategy 2015-2020

As we can see in Table 3, SIGMA interconnects different elements of PA in terms of accountability principles, from organisation, proper policymaking and regulation to internal and external supervision, liability and redress, access to information, transparency, fair treatment in procedures, etc. Overall, Slovenia fulfils these requirements (see Table 3). However, the new PA Strategy envisages certain improvements for 2015-2020, such as merging of certain services and offices, a one-stop shop for the users, centralisation of management and more transparent implementation of public procurement, modernisation of administrative and inspection procedures, open and transparent operation with zero tolerance to integrity violation in the public sector, etc. (For details see Public Administration Strategy 2015-2020).

For the purpose of this paper, we focus on the conduct of administrative procedures and, in this respect, the liability of the state. Of course, there are also other relevant situations in terms of state liability, such as issuance or execution of general acts and performing real substantive acts. Furthermore, besides tort liability, there are other kinds of liability, such as criminal and misdemeanour liability, and liabilities related to work, e.g. disciplinary liability, liability for work results, violation of the work code, etc. (Virant, 2010, pp. 62–63; cf. Sever, 2015, pp. 129–130).

The tort liability of the state has its origins in Article 26 of the Slovene Constitution (Official Gazette of RS, No. 33/91-I and amendments). According thereto, everyone is entitled to compensation for damage caused by unlawful action in connection with the performance of any function or other activity by a state authority, local authority, or bearer of public authority (see Table 4). Such unlawful action can be carried out by either a person or a body performing a certain function or the “administrative machinery” (see Constitutional Court Decision No. Up-695/11-15, 10 January 2013). The constitutional provisions do not explicitly define guilt. According to the Constitutional Court, Article 26 covers all different kinds of unlawful actions of the state and has the nature of *lex generalis*. The compensation deriving from Article 26 of the Constitution is classic compensation for either pecuniary or non-pecuniary damage and the general rules of torts law set by the Code of Obligations (CO, Official Gazette of RS, No. 83/01 and amendments) apply. For the establishment of tort liability of the competent authorities, the following procedural preconditions need to be fulfilled: unlawful action by a person or body causing damage (actual and loss of profit) and a causal link between the unlawful action and the damage caused. As regards guilt, theory offers different views, advocating either an objective (see for example Pirnat, 2005, p. 27: only when manifestly and clearly unlawful) or a subjective approach (e.g. Bukovec, 2005, pp. 43–48: requiring guilt, i.e. the state is not liable when proved that the public official acted with the diligence of an expert).

Table 4. *Right to compensation for damages under Article 26 of the Slovene Constitution*

| Article 26 of the Slovene Constitution | |
|--|--|
| WHO has the right to compensation? | Anyone (natural persons, legal persons, group of citizens). |
| WHEN? | Damage because of unlawful action in connection with the performance of any function or other activity by state authority, local authority, or bearer of public authority. |
| WHO is liable? | Person or body performing function or activity. |
| GUILT? | Not explicitly stated. |

Source: Slovene Constitution

In our opinion, when conducting administrative procedures, the liability of the state as deriving from Article 26 should be reconsidered as objective liability, taking into account also subjective elements, i.e. due diligence standards. In general, unlawful action is determined based on non-compliance with the law. However, not every non-compliance (irregularity) leads to tort liability. Administrative authorities in fact enjoy a high level of independence (see Article 2 of the State Administration Act⁴ and Articles 12 and 6 § 2 of the APA). Two officials are usually involved in an administrative procedure. One is responsible to conduct the procedure. He or she needs to have an adequate level of education and must have passed the state examination in administrative procedure. This official signs the final decision on the left side. The official responsible for decision-making signs the administrative decision on the right side. He or she is usually the Head of the competent body and does not need to have passed the state examination in administrative procedure. The Head can authorise for decision-making also some other official employed by the same body. Such authorisation may include the authorisation to conduct the administrative procedure or to perform only certain activities. An inspector, for example, is authorised by law to decide in administrative matters (see Article 28 of the APA). Nevertheless, they are all obliged to respect the fundamental administrative law principles of legality, independence and substantive truth, as defined by the APA. Consequently, giving instructions on how to decide in a particular matter is prohibited (general instructions concerning the interpretation of law, work, etc. are excluded from such prohibition). If a public official finds an instruction unclear or the execution thereof could lead to unlawful action or damage, he or she can request a written instruction. Moreover, he or she can reject execution if such action would lead to unlawful action. If it would lead to a criminal offence, he or she is obliged to reject execution (see Article 94 of the Civil Servants Act) (see Sever, 2015, p. 128).

The assessment of unlawfulness is based on the nature of performance, for example, if a body, when performing its functions, fails to apply due diligence to such an extent that its action becomes unlawful. However, performance is not unlawful only because a second-instance body changed, annulled or abrogated a first-instance administrative decision (e.g. due to wrongfully assessed facts of the case). On the contrary, it has to be manifestly and clearly unlawful (e.g. arbitrary non-application of certain rules; manifested violation of clear rules) (Sever, 2015, pp. 122–123). Also arbitrariness in performing discretionary powers can be unlawful (Bukovec, 2005, p. 47), or prejudicing the rights without a legal basis. In such case, the inconsistency between sectoral legislation and the circumstances of the case has to be obvious and not negligible. Furthermore, each deviation from case law or practice does not mean tort liability of the state (Sever, 2015, pp. 123–124). Namely, a judge or other public official can consciously deviate from case law or practice when legally determining their decision. However, if such deviation is a consequence

4 Official Gazette of RS, No. 52/02 and amendments.

of insufficient legal knowledge and leads to a decision that otherwise no reasonable public official would issue, then he or she could be held liable (Bukovec, 2004, p. 1194; Bukovec, 2005, p. 48).

Finally, a public official may be held liable for the damage he or she deliberately or out of serious negligence caused to the employer at work or in connection therewith. Likewise, the employer is accountable for the damage that the public official caused to a third person at work or in connection therewith. The employer can request a recourse from the employee when the damage to the third person was caused deliberately or out of serious negligence (see Articles 135–139 of the Civil Servants Act, Official Gazette of RS, No. 56/02 and amendments). In case of deliberately caused damage, the third person can request restitution of damage directly from the public official. In this respect, the provisions of the Civil Servants Act implement the constitutional provisions. Similarly, also the Inspection Act (Official Gazette, No. 56/02 and amendments) defines tort liability of the state or a self-governing local community for unlawful act or omission by an inspector (see Article 37). The Act itself focuses only on pecuniary damage that can occur during the inspection. Similarly, the state or a self-governing local community can request a recourse from the employee when the damage to the third person was caused deliberately or out of negligence. However, the third person can request restitution of damage directly from the inspector only in case damage was caused due to a criminal offence. However, if the public official causes a disciplinary violation or damage as a result of executing a written instruction or order given by his or her superior, he or she is free of tort and disciplinary liability. In this case, the superior is held liable (see Articles 94 and 138 of Civil Servants Act).

Namely, the authorities are responsible to conduct certain tasks. In case these tasks are performed improperly or unlawfully, they can be held accountable. In this respect, it can be presumed that responsibility is a precondition of accountability. Law defines both. It sets a legal framework for responsibility, i.e. who is competent to perform which (administrative) activities, in what time, by applying which means, etc. In case of infringements, law provides legal structures of accountability. In this respect, the steering function of law is important, determining competences, organisation and procedure (e.g. administrative organisational law, administrative procedural law etc.) (cf. Schuppert, 2007, p. 42). By setting up the accountability principles, the state defines the framework (structure provided by law). Such framework is not yet a guarantee that the tasks will be performed in a certain way in the end, but it nevertheless enables control of the performed tasks (cf. Schuppert, 2007, pp. 43–44).

3 Effective and Responsible Public Administration Conducting Procedures within a Reasonable Time

In accordance with the principle of economy (Article 14 of APA), administrative procedures need to be conducted rapidly, within a reasonable time, and with

minimum costs. In case of delays, the party has the right to file an appeal on grounds of administrative silence (see Article 222 of the APA). When there is a double administrative silence (also at the second instance) and despite the party's urgency no response is given, the party can file action on grounds of administrative silence to the specialised Administrative Court (see Article 28 of the Administrative Dispute Act, Official Gazette of RS, No. 105/06 and amendments). According to the ECtHR case law, these legal remedies are efficient and the parties need to exhaust them (see ECtHR Partial Decision *Sirc v. Slovenia*, No. 44580/98, 8 April 2008; cf. ECtHR Decision *Štajcar v. Croatia*, 46279/99, 20 January 2000). In case of passivity, a part of the occurred damage can be attributed to the party itself. Namely, failure to observe the time limits is definitely an aspect of irregularity and maladministration, but it does not necessarily mean unlawfulness (Sever, 2015, p. 135).

Moreover, the obligation of timely decision-making applies to all stages and branches of power, i.e. besides the first- and second-instance administrative procedures also court procedures. Such obligation derives from the Slovene Constitution (see Articles 23 and Articles 120 in connection with Article 22) as well as from Article 6 of the ECHR, which since 1994 has been binding also for Slovenia. Furthermore, Article 13 of the ECHR requires effective legal remedies already at the national level in case of violations of Article 6, e.g. unreasonably long procedures. Legal remedies can be either preventive or compensatory for already occurred violations, or the domestic legal system can introduce a combination of both. Only after the exhaustion of domestic legal remedies the parties can file an application to the European Court of Human Rights (ECtHR) (see Article 35 of the ECHR). However, the right to compensation, as deriving from Article 26 of the Slovene Constitution, cannot be equated with the request for effective legal remedy or compensation as specified by the ECHR (Sever, 2015, p. 131).

In such regard, the ECtHR noted a systemic problem in Slovenia due to inadequate legislation and inefficiency of justice administration that led to unreasonably long procedures (see quasi-pilot judgment in the *Lukenda* case, No. 23032/02, 6 October 2005). Consequently, in order to improve the system's efficiency, the state adopted a new law, i.e. the Protection of Right to Trial without Undue Delay Act (UDA, Official Gazette, No. 49/06 and amendments). This new law recognises procedural and substantive protection of the right to timely decision-making (see Articles 1 and 2 of UDA; Sever, 2015, pp. 131–132). It enacts the legal remedies to speed up judicial procedures and compensation for occurred delays.

When deciding on their application in case of unreasonably long procedures, the circumstances of the case are assessed using the same criteria as developed through ECtHR case law (see *Grzinčič v. Slovenia*, No. 26867/02, 3 May 2007, par. 97). That includes the circumstances of the individual case, especially its actual and legal complexity, the parties' action during procedure (in terms of fulfilling the procedural rights and obligations), the respect of the rules on legal order and the time limits to perform tasks at the court, the

nature and type of the matter and its meaning for the party (Article 4 of UDA). The UDA defines objective liability for pecuniary and non-pecuniary damage (Grzinčič v. Slovenia, No. 26867/02, 3 May 2007, par. 96). Therefore, for non-pecuniary damage, the establishment of violation of the right to a fair trial within a reasonable time – besides the established damages and the causal link – suffices. In terms of state liability for violation of the right to a fair trial within a reasonable time, the UDA is *lex specialis* (Urbančič, 2012, pp. II, VI; cf. Sever, 2015; Sever et al. 2016). Consequently, the general provisions of the CO apply only when the UDA does not regulate certain questions. However, when the parties allege pecuniary damage, the UDA refers to the application of CO provisions.

Overall, the Slovene regulation follows the ECtHR assumption of existence of non-pecuniary damage when there is a violation of the right to trial without undue delay. Domestic courts are obliged to respect this assumption (see Urbančič, 2012, p. VI, Order No. U-I-1/10-6, Up-1315/09-10, 20 January 2011). Of course, it is possible that in some cases, there is no damage or the latter is only minimal, therefore a violation of the right to a fair trial without undue delay does not always lead to non-pecuniary damage. In such case, the court needs to state that there was no damage or that it was only minimal (Urbančič, 2012, p. III). Finally, according to the ECtHR case law, action for damages as defined by the UDA is an efficient legal remedy even when it is the only legal remedy available because the violation of the right to trial without undue delay ended before the start of UDA application.⁵

In terms of conducting procedures within a reasonable time, we conclude that the authorities and the party itself share part of the necessary diligence, meaning that the authority should strive for lawfulness and speediness while the party should not extend the procedures with unnecessary, changing requests or negligence.

4 Conclusion

The problem with administrative legal principles is their dispersion among different acts, from the constitution to acts regulating administrative procedures, public administration organisation, performance of public officials, etc. The inconsistency of regulation can create a certain level of uncertainty and opacity among the parties and the officials. Accountability is (internationally) mostly mentioned in terms of the good governance concept. However, the term has different meanings and can include various fields of PA performance. The paper focused mainly on a responsible conduct of administrative procedures. In such regard, good administration is also an important part of good governance, since it is of legal nature and encompasses several procedural guarantees as deriving from the APA, such as lawfulness, equality, impartiality, proportionality, legal certainty, taking action within a reasonable time, transparency, etc. In this context, it can be

⁵ See ECtHR Decision Korenjak v. Slovenia no. 463/03, 15 May 2007, par. 60; ECtHR Decision Zajc et al. v. Slovenia, 13992/03, 33814/03, 37190/03, 3088/03, 38847/04, 6 May 2008, par. 43–45.

logically assumed that a breach of APA principles and rules can lead to a certain level of accountability. Mostly procedural mistakes are corrected by applying legal remedies in the administrative procedure itself or in judicial review. However, if mistakes are a result of deliberate wrongful action or negligence, the parties can also claim compensation. Finally, the state can sometimes also be objectively liable (e.g. non-functioning of judicial system, causing unreasonably long procedures). In our opinion, the principles of accountability are definitely a precondition of the democratic state, ensuring protection of private parties in their relation with the authorities, and should as such be recognised as fundamental principles in national legislation, e.g. a new APA as envisaged by the PA Strategy 2015-2020.

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POVZETEK

1.01 Izvirni znanstveni članek

Odgovornost in pravica do odškodnine v primeru kršitve načel odgovornosti in dobrega upravljanja

S pridružitvijo EU države članice postanejo del evropskega upravnega prostora, kjer veljajo določena skupna pravna načela, pomembna za delovanje javne uprave na nacionalni ravni. Kot temeljne prvine koncepta dobrega upravljanja, ki določajo standarde za delovanje javnih uslužbencev, lahko izpostavimo zlasti zanesljivost, predvidljivost, odgovornost in transparentnost (SIGMA, 1999). Govorimo o štirih skupinah temeljnih načel evropskega upravnega prava, ki vključujejo načela procesne ali materialnopravne narave (npr. načelo zakonitosti, zaslišanja stranke, odprtosti, spoštovanja rokov, enakosti pred zakonom ipd.).

Pričujoči članek se osredotoča zlasti na ožji, pravni koncept dobrega upravljanja, tj. pravico do dobre uprave, ki preko nabora posameznih pravic in obveznosti vključuje različna temeljna načela in procesna jamstva, ki morajo biti na voljo strankam postopkov. Značilno za evropski prostor je, da so temeljna upravna načela in postopkovna pravila v večini držav članic EU določena z zakonom, ki ureja upravni postopek. Slednji je temeljno orodje države pri oblikovanju in izvajanju javnih politik. Z njegovo pomočjo država rešuje konflikte med javnim in zasebnimi interesi, s poudarkom na omejevanju absolutne oblasti in spodbujanju **učinkovitosti** javnih politik. Prispevek obravnava odgovornost oblastnih organov in javnih uslužbencev, ki pa ni nujno regulirana kot načelo ali pravilo znotraj zakona, ki ureja upravni postopek, temveč lahko izvira že iz ustave ali druge sistemske zakonodaje. V luči tega prispevek analizira načela in pravila odgovornosti, kot izvirajo iz različnih mednarodnih dokumentov, pomembnih za evropski upravni prostor. To so na primer Načela javne uprave, izdana v okviru pobude SIGMA (EU; OECD, 2017); Pregled konceptov dobrega upravljanja in dobre uprave s strani Beneške komisije (Svet Evrope, 2011); Listina Evropske unije o temeljnih pravicah (EU, 2010); Priporočilo Odbora ministrov CM/Rec(2007)7 državam članicam o dobri upravi (Svet Evrope, 2007); Bela knjiga o evropskem upravljanju (Evropska komisija, 2001); Priporočilo Odbora ministrov R (84) 15 o javni odgovornosti (Svet Evrope, 1984). Članek umesti slovensko ureditev znotraj načel javne uprave, kot so zahtevana v evropskem upravnem prostoru tudi v luči Strategije razvoja javne uprave 2015–2020.

Z upravnoprocenega vidika k odgovornemu delovanju javne uprave prispevajo različna procesna jamstva, kot so zakonitost, enakost, neodvisnost, sorazmernost, pravna varnost ipd. V drugem delu prispevka je tako poudarek zlasti na analizi odgovornosti javnih uslužbencev, ko le-ti vodijo upravne postopke. Članek poudarja kot odgovorno ravnanje javnih uslužbencev tudi učinkovito upravno odločanje. To pomeni, da morajo biti upravni postopki

vodeni zakonito in odločitve sprejete v razumnih rokih. Za primere, ko pride do kršitve pravnih načel ali pravil, mora država prepoznati odgovornost in imeti na razpolago učinkovite nadzorne sisteme, ki nudijo strankam učinkovita (pravna) sredstva (kot so na primer pritožba na resorno ministrstvo, upravna inšpekcija, sodna kontrola, ustavna pritožba, pravica do odškodnine ipd.). V primeru zamud in neučinkovitih domačih pravnih sredstev lahko to med drugim pomeni tudi kršitev 6. in 13. člena Evropske konvencije o varstvu človekovih pravic, kar lahko pripelje do obsodbe države pred Evropskim sodiščem za človekove pravice in posledično plačila odškodnine oškodovanim strankam postopkov. Vsekakor pa velja poudariti, da vsaka kršitev načel ali pravil postopkov še ne pomeni protipravnosti in posledično odškodninske odgovornosti.

Ključne besede: odgovornost, upravni postopek, odškodnine, javni uslužbenec, Slovenija, dobro upravljanje.

Factors Contributing to the Successful Implementation of Management Innovations

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ABSTRACT

The concept of management innovation as distinctive type of non-technological innovations is still in the early days of conceptual formation and confirmation. This paper aims to investigate the concept of management innovations in public sector organizations with an emphasis on identifying the impact of organizational factors on the successful implementation of management innovations. The aim of implementation of new management concepts and methods is to increase efficiency and effectiveness of public services. A research was conducted on a sample of local self-government units in Croatia using empirical methods. The obtained results confirm the set conceptual determinants of the management innovation term, as manifested through the influence of selected organizational factors. Accordingly, absorptive capacity and top management support, with the combined effects of implementation climate and innovation-values fit, have been identified as key factors to achieving successful implementation of management innovations. On the other hand, availability of significant financial resources was not found to be a significant factor for the effective implementation of this type of innovation. Research results suggest theoretical and practical implications for strengthening the effectiveness of local self-government.

Key words: management innovation, non-technological innovation, innovation implementation, local self-government, effectiveness.

JEL: H83, H76

1 Introduction

Evaluating management innovations is a concept still in the early stages of development and is one that has still not received sufficient scholarly attention. Unlike technological innovation, which is concerned with changes in technology related to the organization's core business processes, management innovations break into social spheres and their focus is on people - managers. Management innovations can be defined as the process of creating and implementing new practices, processes, structures or techniques in management which may significantly deviate from existing practices and standards (Birkinshaw, Hamel, Mol, 2008). Management innovations defined as non-technological types of innovation break into social spheres of the organization, which means that this innovation is intangible, abstract and complex, and implies a long-term impact on organizational performance.

The authors became interested in conducting research on this type of innovation because it has been given insufficient scientific attention. This particularly applies to public sector. A common practice nowadays is that organizations, especially those in public sector that are more exposed to institutional pressure, tend to implement change and innovation that has already proven successful. A shortage of innovation, in other words, its slow dynamics across such organizations comes from structural inertia as a constraint on the organization's ability to change. In conclusion, therefore, it can be seen that the majority of public sector innovation has been copied and pasted from the outside. Innovation is adoption, assimilation and exploitation of a novelty to the benefit of the organization. This implies that innovation can be viewed as a process that takes place in several steps influenced by a number of different factors aimed at achieving a value-added target.

The existing studies in the field of management innovations mostly evaluate the influence of management innovations on organisational outcomes, not taking into account those factors that promote the creation and implementation of such innovations. It can therefore be concluded that most research on management innovations has focused on the effects of innovations while less focused on the process of innovation implementation itself. This paper develops and tests a conceptual model of factors that contribute to the successful implementation of management innovations in public sector organizations, ie. local self-government units in Croatia, enabling analysis of management innovations both from the viewpoint of the implementation process itself and the expected effects of innovations.

Like other countries, Croatian public administration system has been marked by recently commenced organizational and managerial reforms aimed at improving the effectiveness and efficiency of organizational processes and public activities. It is expected that such demands will affect the introduction and implementation of management innovations in the selected cities and municipalities. In addition, the research has been tailored to the context of

local self-government because of specificities of local government as the lowest level of public administration, which also makes their advantages, or, in other words, their fundamental function. This implies the ability of local self-government to provide local public goods in accordance with local preferences, and in a more cost-effective manner than the higher level of public administration. This leads to a more flexible and creative approach to providing public services, which requires innovative solutions and strategies to adequately respond to changes in the local environment, as opposed to services provided at the highest levels of public administration. In this context, the paper examines the impact of organizational factors that contribute to the successful implementation of management innovations and the effect of management innovations on improving the effectiveness of local self-government in Croatia.

2 Theoretical Background

Few researches have addressed the issue of management innovations. Previous work has mostly focused on technological innovations in the private sector (Orlikowski, 1993, Mehrrens, Cragg and Mills, 2001, Suchan, 2001, Klein, Conn and Sorra, 2001, Jones and Kochtanek, 2004, Letaifa and Perrien, 2007, Jensen and Aanestad, 2007, Bryson et al., 2008), while non-technological innovations are still poorly understood (Kennedy, Kelleher and Quigley, 2006, Braunscheidel et al., 2011). The issue of non-technological innovations has not been dealt with in depth (Lorsuwannarat, 2013, van der Voet, 2013, Weiner, Lewis, Linnan, 2009, Choi and Chang, 2009), especially in the field of public sector.

Lorsuwannarat (2013) came to the conclusion that knowledge management and collaborative network strategies are key factors to the successful implementation of management innovations. In his work, he focuses on discontinuity in the implementation of innovation in the public sector. It is generally accepted that it is a combination of management innovations and knowledge management practices that leads to a lower discontinuity rate drawing a parallel with organizations that do not use knowledge management. Collaborative networks can serve as a factor that may contribute to an increase in innovative activity. In other words, an organisation can use external sources of knowledge in creating and implementing innovations thereby reducing complexity in using an innovation, especially with regard to uncertain and conflicting inputs, processes and outputs.

Voet (2013) lists factors that contribute to the effective implementation of organizational changes in the public sector. He examines the role of transformational leadership in different approaches to change management process: planned and unplanned change process and the impact of bureaucratic structures on the implementation of organizational changes. In his survey carried out on a sample of public organizations in Denmark, the

author reached the conclusion that bureaucratic organizations can effectively implement organizational changes, both in planned and unplanned change processes. In a non-bureaucratic context, the significance of transformational leadership is not so pronounced in the planned change process as it is in the unplanned change process.

In their analysis, Weiner, Lewis and Linnan (2009) developed a theoretical framework of organizational determinants of effective implementation of complex health promotion programs at work. The model is based on theoretical and empirical evidence for implementation of complex innovations in production, education and healthcare and largely relies on the model developed by Klein et al. (2001). The authors underline the following factors that contribute to the effective implementation of management innovations: organizational readiness for change, implementation policies and practices, implementation climate and innovation-values fit. However, the model must be tested empirically to validate the significance of the afore mentioned variables for effective innovation implementation.

Choi and Chang (2009) explained innovation implementation on a sample of public agencies and ministries through organizational and institutional factors such as top management support, resource availability (financial, human and social, for example support for the best innovators, spread of innovations for social networks etc.), and learning support, including individual factors, in other words, collective innovation acceptance processes. A positive correlation between the institutional factors and effective innovation implementation has been demonstrated. However, the top management support factor has been proved to be the only predictor variable that can significantly affect innovation implementation effectiveness. This is in line with previous research conducted in the private sector suggesting that employees tend to get a positive attitude about innovation implementation when institutional elites or managers express their support for innovation and provide a clear vision and strategy for its implementation (Klein et al., 2001, Purvis et al., 2001, Russel, Hoag, 2004).

In defining determinants of innovation implementation effectiveness, Helfrich et al. (2007) relied on a model of innovation implementation effectiveness validated in the context of a private manufacturing setting (Klein et al., 2001). The authors proposed the following relationships among variables: effective innovation implementation is the function of top management support and financial resource adequacy, the impact of which is achieved through mediating effects of individual organizational implementation policies and practices, and the resulting implementation climate. Furthermore, the authors claim that additional variables such as leading innovations and innovation-values fit contribute to implementation climate. This theoretical framework has been empirically supported by a few national research centres.

Klein et al. (2001) developed a model that was the first to integrate the known innovation implementation factors into general factors that could be applied to all types of innovation, and that was tested through procedures of quantitative empirical research, unlike previous predominantly qualitative case-study approach. Most previous evidence measured implementation of specific type of innovation, such as process innovation or product innovation, and outlined several factors of their successful implementation. It was mostly about integrative models grounded on case-based research. The model built by Klein et al. was distinguished from other models by the fact that it was designed to integrate the theory of innovation implementation by defining general factors that could contribute to the successful innovation implementation in most organizations, which had been defined and tested empirically in previous research as individual factors.

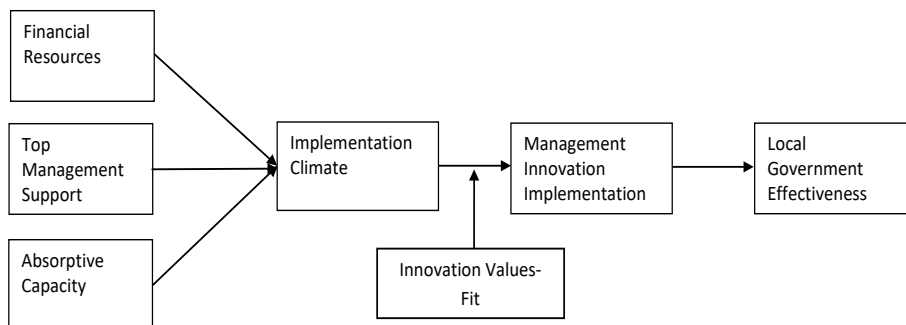
The model was tested in a manufacturing setting on a sample of enterprises that had implemented manufacturing resource planning method. By verifying the model in the private sector, the authors were able to validate the appropriateness of the factors and the whole model (Sawang, 2008, Holahan et al., 2004, Pullig et al. 2002). Few researches have addressed the issue of application of the model in the public sector (Weiner, Lewis, 2009, Helfrich et al., 2007). The factors represent organizational features that together contribute to increase the likelihood of success in innovation implementation: top management support, financial resource adequacy, implementation policies and practices, and a strong and positive implementation climate. This paper adapts the model (Klein et al., 2001) to assess management innovation implementation in the public sector. Unlike original research that addressed process innovation, this paper explores management innovations as a set of innovations that share common features.

2.1 Factors Contributing to the Successful Implementation of Management Innovations to Improve the Effectiveness of Local Self-government

Management innovations are new management practices, processes, techniques or structures that require a considerable number of interdependencies among organizational units and members. Unlike other types of innovation, management innovations involve comprehensive changes in practices, processes or structures within an organization and affect the way management works and how people work with each other. This implies the key role of social aspects of management innovations through organizational culture, employees' attitudes and subjective norms, and hierarchy of authority. Likewise, the intangible nature of management innovations makes it difficult to measure their effects and evaluate how an organisation perceives efficiencies gained by an innovation. This implies a comprehensive and complex type of innovation, which involves systematic application and coordination of many organizational members.

This paper uses the proposed conceptual model to investigate management innovation implementation considering factors that can influence successful implementation of this type of innovation such as: financial resource adequacy, top management support, absorptive capacity, implementation climate and innovation-values fit. Unlike the original model, the paper introduces additional variables such as absorptive capacity and innovation-values fit to emphasize the nature of management innovations and their impact on organizational culture and interpersonal relationships, the importance of learning process, linking and collaboration to assimilate management innovations into local self-government. Scheme 1 shows the conceptual model of factors that contribute to the effective implementation of management innovations.

Scheme 1. *Conceptual model of factors contributing to the effective implementation of management innovations*



In their model of efficient implementation, Klein et al. (2001) assumed a positive correlation between financial resources and innovation implementation efficiency. Unlike technological innovations, which usually require special research and development, expertise and significant financial resources, management innovations defined as non-technological types of innovation do not generally involve expertise and infrastructure. This implies that creating and implementing management innovations does not necessarily demand large financial resources (Birkinshaw, Hamel, Mol, 2008). Certainly, more financial resources are likely to facilitate access to adequate education. A positive correlation between financial resources and implementation climate has therefore been assumed, but their effect on top management support and absorptive capacity is expected to be less pronounced. Thus, the following hypothesis is proposed:

H1: Financial Resources have a positive impact on an organisation's climate for implementation of management innovations.

Klein et al. (2001) defined the implementation climate construct based on previous conceptual and empirical evidence on implementation climate. Implementation climate implies a high degree of within-organization agreement in climate perceptions. In other words, the extent to which organizational policies and practices encourage and support innovation

implementation. Depending on how new management methods and practices are assimilated into the existing organizational context, so the importance of innovation implemented by the organisation will be perceived. Damanpour and Schneider (2006) relied on the existing review of the literature on the topic of strategic leadership and found out that top management can contribute to organizational performance by shaping organizational culture, influencing organizational climate, and building capacity for change and innovation. Accordingly, the following hypothesis is proposed to examine the relationship between top management support and implementation climate in local self-government:

H2: Top management support has a positive impact on an organisation's climate for implementation of management innovations.

Cohen and Levinthal (1989) described absorptive capacity as the ability to identify, assimilate and exploit knowledge of the environment or organizational learning or absorptive capacity. Since innovation is no longer seen as a purely technical process, but as a knowledge intensive activity, which requires managerial and technical abilities, as well as external linking for cooperation, networking and information acquiring (Koch, Strotmann, 2008), the absorptive capacity concept has been predominantly used in innovation research. A number of studies have addressed the effect of absorptive capacity both in development of technological innovations (Tsai, 2001, Stock et al., 2001) and non-technological innovations, such as business model innovation (Gebauer et al., 2011). Absorptive capacity enables organizations to adapt their own organizational processes to incorporate new ideas and knowledge into existing structures and processes. Likewise, the newly acquired knowledge must be integrated with existing organizational features.

This paper discusses absorptive capacity as organizational capacity for adaptation, introduction and implementation of innovations. In a major advance in 2011, Kostopoulos et al. (2011) showed that those organisations which cooperate with various external stakeholders tend to increase their knowledge base and improve ability to assimilate and exploit the so acquired knowledge. This is very important for public sector organizations, and especially for local self-government. In the public sector, the key source of information and knowledge is the constant interactivity with stakeholders. So as technological innovations are primarily developed within the boundaries of an organization, so management innovations emerge or become adopted through interaction with the environment (Birkinshaw, Mol, 2006). This is particularly important for public sector organizations, where innovation processes imply adopting existing, proven management methods and practices as opposed to exploratory innovations. Thus, it seems appropriate to explore the absorptive capacity construct in the context of implementation of management innovations through its effects on implementation climate. Accordingly, the following hypothesis is proposed to examine the relationship between absorptive capacity and implementation climate:

H3: Absorptive capacity has a positive impact on an organisation's climate for implementation of management innovations.

Klein et al. (2001) claimed a positive correlation between implementation climate and efficient implementation for process innovation. Relationships between management innovations and implementation climate have not been dealt with in depth. Current solutions regarding relationships between management innovations and implementation climate appear to be grounded on existing evidence on implementation of other types of innovation. Apart from Klein et al. (2001), also Sawang (2008) claims that there is a positive relationship between the two constructs. She described innovation implementation as a collective construct composed of production, process and management innovations. In their work, Klein and Sorra (1996) argued that efficient implementation was a function of an organization's climate for the implementation of a given innovation and collective perceptions on how proposed values fitted with the existing organisational values. As the relationship between implementation climate and management innovation implementation can be viewed as a function of organisational members' perceptions of the fit of the innovations to their values, this paper suggests a moderating effect of the innovation-values fit construct on the relationship between implementation climate and management innovation implementation, or, in other words, the moderator increases or decreases the strength of correlation between the two variables. Accordingly, the following hypotheses are proposed:

H4: Implementation climate has a positive impact on management innovation implementation.

H5: Innovation-values fit has a moderating effect on the relationship between implementation climate and management innovation implementation.

Management innovations defined as non-technological types of innovation bring changes of intangible nature that depend on the context of the implementation effort. For these reasons, it can be difficult to empirically test the effects of implementing management innovations on organizational performance. In general, it can be concluded that establishing a strong empirical link between innovation and performance is difficult due to some methodological defects such as construct measurement as well as technological and market circumstances, which makes the impact of innovation unpredictable (Tidd, 2001). In the literature there are many examples of the importance of management innovations for organizational performance. However, further empirical assessment of this issue is necessary. This is particularly true of empirical testing in public sector organizations. A recent review of the literature on this topic found that management innovations have a positive impact on dynamic abilities (Gebauer, 2011), productivity growth (Mol, Birkinshaw, 2009) and organizational performance (Černe, 2013, Camisón, Villar-López, 2012, Walker et al., 2011, Gunday et al., 2011, Sapprasert,

2008, Yeh-Yun Lin, Yi-Ching Chen, 2007, Gera, Gu, 2004). Hard performance measures typically used to measure outcomes of management innovations are profitability, productivity, growth and sustainable, competitive advantage (Volberda et al., 2013). Also, management innovations can contribute to satisfying soft goals (Birkinshaw et al., 2008) such as reducing employee turnover (Hamel, 2011, Kossek, 1987), improving customer satisfaction (Linderman et al., 2004) as well as motivating and improving satisfaction of other stakeholders such as employees (Mele, Colurcio, 2006).

It has not yet been established the extent to which management innovations affect performance in public organizations. Walker et al. (2011) highlighted the impact of management innovations on organizational performance in local self-government in the UK. The first indicator of performance was the core services performance score from the Comprehensive Performance Assessment conducted by the Audit Commission. The study confirmed the existence of an indirect, positive influence of management innovations on organizational performance through performance management systems: output quantity and quality, efficiency, customer equity and customer satisfaction. On the other hand, it showed negative direct effect. The authors suggested that the negative effect could have been explained by a lack of studies conducted within a one year time frame. The study did not go deeper into exploring factors that contribute to efficient innovation implementation and the characteristics of the process of creating and implementing innovations. Accordingly, the following hypothesis is proposed:

H6: Management innovation implementation has a positive effect on local self-government performance.

3 Methodology

Hierarchical regression was used to prove Hypotheses H1, H2, H3, H4 and H5. All analyses involved the influence of the size of local self-government unit as a control variable, given the previous evidence that also included this control variable, to consider alternative explanations. Logistic regression will be used to test Hypothesis H6. Logistic regression is suitable for use when a dependent variable is expressed as binary or when it is a categorical variable, which can be either ordinal or nominal, that is, structured or unstructured.

Hierarchical regression is often used when data is organized in a hierarchical structure to determine and emphasize the contribution of an individual variable or set of variables to the model. In this way, direct comparison of distinct predictive strength values is enabled (Vaccaro et al., 2012, Rodwell, Noblet, Allisey, 2011, Vigoda-Gadot, Meiri, 2008, Noblet, Rodwell, McWilliams, 2006). For example, Vaccaro et al. (2012) in their paper on management innovation and leadership also use hierarchical regression to evaluate the influence of an individual variable and of set of variables in transformational and transactional leadership, as well as the role of control and moderating variables in realizing

management innovations. In their study on demand-control-support model in the work environment of public sector organizations, Rodwell et al. (2011) also use hierarchical regression to determine the contribution of specific predictors of occupational strain. In addition to hierarchical regression, this paper used logistic regression to test the last hypothesis (H6). Logistic regression is suitable for use when the dependent variable is expressed as a binary or categorical variable. In the conducted survey, effectiveness of local self-government units is expressed in three measures, one of which is numerical (budget value / employee expenses) and the other two categorical. For this reason and to achieve greater precision, logistic regression was used in assessing significance of regression coefficients of the impact of implementation of management innovations on the effectiveness of local self-government units.

3.1 Sample

An empirical survey was conducted among Croatia's local self-government units during 2014. There is currently a total of 128 cities and 428 municipalities in Croatia, making up a total of 556 local self-government units. The main criterion in selecting sampling units was the required minimum population of 3000, making up a total of 282 local self-government units. One of the aims of criterion referencing was to explore management innovations in a comprehensive manner, considering that large-sized local self-government units are assumed to implement management innovations at higher levels. Questionnaires were sent via electronic mail and received a 25% response rate, making up a total of 71 local self-government units. The questionnaire was intended for top management. The questionnaire was sent to officials heading administrative departments or similar organizational departments as they are best-acquainted with the subject matter cited in the questionnaire. It mostly involved Head of Department of Local Self-Government and Administration, depending on the specific organization of the local self-government unit. They were also contacted by telephone to be additionally informed about the survey and to obtain a confirmation of their participation. However, since this does not ensure that top management really participated in the survey, during analysing and interpreting data the mentioned limitation has to be taken into account. Since the main subject of this research is innovations which are generally positively connoted, the phenomenon of social desirability can be expected to occur. It is possible that the target respondents in the survey tended to present a favourable image of their local government unit or themselves in order to conform to socially acceptable values and gain social approval. In order to reduce the risk of socially desirable responses, we conducted an online administered survey questionnaire. The Internet survey mode has been shown to reduce social desirability response bias due to self-administration (Holbrook/Krosnick 2010). Moreover, questions were specific and presented in a neutral fashion, based on facts and leaving little room for

broader thinking and expression of attitudes. Therefore, the authors believe that this has reduced the number of social desirable responses.

Besides collecting data through questionnaire, data was collected from official financial statements to reduce survey bias. The study was based on a 1-factor solution to avoid common method bias. The extracted factor attained a specific value of 18,925 and the total explained variance contribution rate has reached 37.107%. The explained variance lower than 50% means common method bias was not present.

3.2 Measurement of Variables

The characteristics of management innovations have not been dealt with in depth, especially in the field of local self-government. To establish latent relationships among measured items a factor analysis was used with mainly original variable importance measures. Cronbach's alpha measure was used to assess the reliability. The results confirmed internal consistency and construct validity of measured variables.

3.2.1 Financial Resources

The share of own-source revenues in the total budget as an indicator of local financial autonomy may be viewed as an approximate measure of the adequacy of local financial resources to support innovation activities. In Croatia, own-source revenues account for no more than 5% of the total budget revenues. Most of own-source revenues are used for regulatory purposes only, which is basically considered a disadvantage in the design of fiscal autonomy. In other words, it may be difficult to find an appropriate indicator of the adequacy of financial resources for these purposes. An additional problem is that it may prove difficult to find comparable data on types of revenue in financial statements or budget statements. These were the reasons for choosing budget value as being an approximate measure of financial strength, and then as an implicit measure of local strengths in supporting innovation implementation activities. The budget value refers to 2012.

3.2.2 Top Management Support

The top management support construct involved three assertions evaluated by the Likert scale. Table 1 is a list of assertions related to top management support to which respondents agreed or disagreed on a five-point scale (from 1 = I totally disagree to 5 = I completely agree). A rate of agreement with each assertion was obtained (mean value and standard deviation).

Table 1. *List of assertions related to top management support with descriptive statistics*

| Assertions | Mean value | Standard deviation |
|--|------------|--------------------|
| Mayor and Department Heads set examples for others, and encourage creative approaches in solving problems and carrying out services. | 3.69 | 1.01 |
| Mayor and Department Heads set examples for others, and encourage proactive approach on how to innovate organization of work. | 3.59 | 1.10 |
| Your unit of local self-government has adopted measures for rewarding innovative approaches to organizing work, solving problems, and generally proposing new projects and programs. | 2.32 | 1.20 |

Innovation support commitment by top management is reflected primarily in Mayor/Department Heads' desire to set examples for others and encourage creative approaches in solving problems. A 1-factor solution analysis was used to make an evaluative assertion analysis of the top management support construct. The extracted factor attained a specific value of 2.257 (KMO = 0.566, Bartlett = 128.392, $p < 0.001$) and the total explained variance contribution rate has reached 75.240%. Cronbach's alpha estimate of reliability showed a coefficient of 0.822.

3.2.3 Absorptive Capacity

Table 2 is a list of assertions related to absorptive capacity. A rate of agreement with each assertion was obtained (mean value and standard deviation).

Table 2. *List of assertions related to absorptive capacity with descriptive statistics*

| Assertions | Mean value | Standard deviation |
|---|------------|--------------------|
| Budget includes funds for professional development training and education (various seminars, courses, professional journal subscriptions). | 1.98 | 0.12 |
| Meetings with stakeholders from the environment such as entrepreneurs, associations, citizens or investors (Local Action Groups) are organised on a regular basis. | 3.88 | 1.06 |
| Your unit of local self-government consults and shares experience about best practices in solving specific issues with other units of local self-government. | 3.70 | 1.02 |
| Your unit of local self-government works in partnership and creates networks with other units of local self-government, counties, economic entities or local and foreign institutions aimed at creating and implementing development programs and projects as part of the strategy. | 3.25 | 1.07 |
| Regular scheduled meetings between Mayor and Department Heads are held as part of the routine at work, for example on a weekly basis. | 3.68 | 1.52 |

| Assertions | Mean value | Standard deviation |
|---|------------|--------------------|
| A continuous information system within the organization has been established on new legal regulations, external information of interest and similar information (intranet). | 3.35 | 1.29 |
| Educational workshops and training for introduction and implementation of changes and innovations involving the organization are organised regularly. | 2.88 | 1.19 |
| Departments share knowledge and experience at meetings or in some other commonly agreed manner. | 3.56 | 1.17 |
| Employees apply new acquired knowledge (from legal regulation, seminars, courses etc.) in their work. | 3.98 | 0.81 |
| Employees often suggest improvements, present ideas for innovative programs and projects. | 3.28 | 1.01 |

The surveyed cities and municipalities have been largely building absorptive capacity, described as the ability to identify, assimilate and exploit knowledge of the environment - or organizational learning capability, by holding regular meetings with stakeholders such as entrepreneurs, associations, citizens or investors (Local Action Groups), consulting and sharing experience with other units of local self-government about best practices in solving specific issues and providing opportunities to employees to be able to apply the knowledge acquired from legal regulation, seminars, courses, etc. A 1-factor analysis was used to make an evaluative assertion analysis of the absorptive capacity construct. The extracted factor attained a specific value of 4.890 (KMO = 0.823, Bartlett = 311.794, $p < 0.001$) and the total explained variance contribution rate has reached 54.332%. Cronbach's alpha estimate of reliability showed a coefficient of 0.890.

3.2.4 Implementation Climate

The implementation climate construct involved six assertions, tailored to the organizational context of a local self-government unit corresponding to feedback from top managers. Researchers who addressed the issue of implementation climate suggested that assertions designed to measure the implementation climate construct should be descriptive rather than evaluative. This means that an opinion should be given as to whether relative objective and neutral descriptions of the working environment are correct or incorrect (Weiner et al., 2011). Table 3 is a list of assertions related to implementation climate. A rate of agreement with each assertion was obtained (mean value and standard deviation).

Table 3. *List of assertions related to implementation climate with descriptive statistics*

| Assertions | Mean value | Standard deviation |
|---|------------|--------------------|
| Employees receive educational support when work organization is changed. | 3.33 | 1.18 |
| Employees receive recognition for successful application of new methods of work. | 2.78 | 1.08 |
| Management receives recognition for successful application of new methods of work. | 2.52 | 1.10 |
| Employees are regularly informed at meetings about innovative approaches and methods of work. | 3.04 | 1.19 |
| Management's point of view is that it is very important to encourage employees to further educate themselves regarding new work methods enabling them to apply innovative approaches in their work. | 3.19 | 1.21 |
| Management staff and their close assistants use words such as <i>change, innovation, importance of innovative approaches in organization or teamwork</i> . | 3.24 | 1.27 |

Implementation of new management methods and practices in local self-government has been mostly perceived as an effort to support and give organisational members opportunities to accept and apply new methods of work. The extracted factor attained a specific value of 3.972 (KMO = 0.826, Bartlett = 238.439, $p < 0.001$) and the total explained variance contribution rate has reached 66.200%. Cronbach's alpha estimate of reliability showed a coefficient of 0.893.

3.2.5 Innovation-Values Fit

The following assertions have been defined based on the theoretical construct and previous empirical evidence to examine the alignment between values created through management innovations and the organisation's values. Table 4 is a list of assertions related to innovation-values fit. A rate of agreement with each assertion was obtained (mean value and standard deviation).

Table 4. *List of assertions related to innovation-values fit with descriptive statistics*

| Assertions | Mean value | Standard deviation |
|---|------------|--------------------|
| I believe that implementation of innovative approaches and methods in organization and management such as teamwork, project management, quality management etc. is important in achieving goals and strategic objectives. | 4.31 | 0.76 |
| I believe that implementation of innovative approaches and methods in organization and management in our unit of local self-government can significantly contribute to improving its cost efficiency. | 4.30 | 0.78 |

| Assertions | Mean value | Standard deviation |
|---|------------|--------------------|
| I believe that implementation of innovative approaches and methods in organization and management in our unit of local self-government can ultimately result in higher quality of our services, and increase user satisfaction. | 4.29 | 0.70 |
| I believe that systematic implementation of innovative approaches and methods in organization and management in our unit of local self-government can significantly contribute to my further professional development. | 4.38 | 0.79 |

Alignment between values created through management innovations and the organisation's values has been mostly perceived as systematic implementation of management innovations that can significantly contribute to further professional development of organisational members. The extracted factor attained a specific value of 3.384 (KMO = 0.814, Bartlett = 251.164, $p < 0.001$) and the total explained variance contribution rate has reached 84.603%. Cronbach's alpha estimate of reliability showed a coefficient of 0.937.

3.2.6 Implementation of Management Innovations

Previous work has been limited to tangible innovation such as technological. The field of measuring management innovations and their effects is a methodologically challenging area due to complexity and diversity of management innovations. The concept of management innovations is still poorly understood and there is insufficient empirical evidence to validate the concept. Studies conducted on the issue of measurement of management innovations have provided a few empirical measures for construct measurement (Černe, 2013, Vaccaro et al., 2012, Gunday et al., 2011, Mol, Birkinshaw, 2009, Walker et al., 2011, Walker, 2006).

The following assertions have been defined based on the theoretical background and previous empirical evidence on measurement of management innovation tailored to the context of local self-government in Croatia. Before drafting the final questionnaire, the final assertion statements were composed in such a way as to incorporate suggestions from local self-government staff holding managerial positions. Table 5 is a list of assertions related to implementation of management innovations to which respondents agreed or disagreed on a five-point Likert scale to assess management innovation implementation in the respondent's local self-government unit (1 = Not implemented, 2 = Implemented in a few segments, 3 = Partly implemented, 4 = Almost fully implemented and 5 = Fully implemented). The survey period was 5 years. A rate of agreement with each assertion was obtained (mean value and standard deviation).

Table 5. *List of assertions related to implementation of management innovations with descriptive statistics*

| Assertions | Mean value | Standard deviation |
|---|------------|--------------------|
| Decentralization and similar changes in organizational structure (elimination of a department, establishing a new department, merging segments, or departments). | 2.42 | 1.17 |
| Changes in the organization of the city or municipality administration (changing the name of an administrative department, or service, appointing new department managers, increasing the number of departments). | 2.58 | 1.31 |
| Establishing project teams when necessary. | 2.83 | 1.29 |
| Delegation of decision-making authority. | 2.73 | 1.18 |
| A new system for measuring and evaluating employee performance has been implemented. | 2.28 | 1.11 |
| A new system for measuring and evaluating management performance has been implemented. | 2.00 | 1.04 |
| A new employee reward system has been implemented. | 2.10 | 1.26 |
| A new management reward system has been implemented. | 1.89 | 1.12 |
| Criteria for management progress have been established. | 1.87 | 1.04 |
| Criteria for employee progress have been established. | 2.06 | 1.08 |
| A job rotation technique has been practiced to rotate employee assigned jobs throughout their employment aimed at employee development and progress. | 1.93 | 1.13 |
| An ISO quality management system has been implemented. | 1.72 | 1.12 |
| A project management system has been implemented. | 2.56 | 1.20 |
| Your unit of local self-government consults and shares experience with other local self-government units both in the country and abroad to establish best practices in solving problems on a regular basis. | 2.94 | 1.19 |
| An employee training and development system has been implemented. | 2.45 | 1.19 |

The surveyed local self-government units identified the following management innovations that have contributed to high levels of implementation: 'Regularly consulting and sharing experience with other local self-government units both in the country and abroad to establish best practices in solving problems' (2.94), 'Establishing project teams when necessary' (2.83) and 'Delegation of decision-making authority' (2.73). Management innovations that have contributed to the lowest level of implementation were identified as follows: 'ISO quality management system implementation' (1.72), 'Establishing criteria for management progress' (1.87) and 'Management reward system implementation' (1.89). The extracted factor attained a specific value of 6.927 (KMO = 0.839, Bartlett = 603.329, $p < 0.001$) and the total explained variance contribution rate has reached 46.18%. Cronbach's alpha estimate of reliability showed a coefficient of 0.91. It can be concluded that the reliability of this scale is very good.

3.2.7 Effectiveness of Local Self-Government

The effectiveness of local self-government refers to how a process of innovation implementation can produce desired effects, or, in other words, how the purpose of innovation is achieved. The paper examines effectiveness of local self-government in three measures:

1. ***Realized Budget to Employee Expenses Ratio.*** Data refer to the year 2013. Due to the high complexity of measuring public administration outputs, in this case local self-government, which is characterized by heterogeneous services and activities, making selection of adequate comparative outputs referring to different cities and municipalities challenging, monetary value of realized budget was chosen as output measure. Budget means realized revenues respectively expenses divided by programs, activities or projects. Budget was therefore chosen as a comparative output measure to indicate variability of output among local self-government units. This is also in accordance with the OECD Guidelines considering the high complexity in output measurement in the service sectors (State of the NSW Public Sector Report (2012);
2. ***EU Funds Absorption Rate.*** Absorption rate of the EU funds indicates planning and managing ability aimed at achieving goals. In their work on cost efficiency of local self-government in Poland, Karbownik and Kula (2009) argued that the EU funds absorption rate could be viewed as a significant factor of efficiency. It can be concluded that the human factor is a key variable in explaining the absorption of EU funds and, consequently, it is implied that the implementation of management innovations, which is also determined by human factors, can have a positive impact on the absorption of EU funds. EU funds absorption rates obtained from available financial statements of local self-government units have been described as categorical variables, where 5 means that a local self-government unit absorbed EU funds in 2013 and 2012, 3 indicates that a local self-government unit absorbed EU funds in 2013 or in 2012, whereas 1 reveals that a local self-government unit did not absorb any EU funds neither in 2013 nor in 2012;
3. ***User Satisfaction on Local Self-Government Services.*** Or, satisfaction of entrepreneurs with services provided by local self-government. Entrepreneurship development is an important part of local self-government strategies today. Entrepreneurs are thus an essential part of the business and it is important to respond adequately to their requirements. Based on previous evidence on user satisfaction, total satisfaction of entrepreneurs with local self-government services was measured by the following assertion (Danaher, Mattsson, 1994, Yukseland, Rimmington, 1998, Leisen, Vance, 2001, Theodorakis et al., 2001): Overall, how satisfied are you with the provision of services by your local self-government? The entrepreneurs evaluated their own

satisfaction by the Likert scale from 1 - Not at all satisfied to 5 - Very satisfied.

Since the effectiveness of local self-government has been expressed in three measures, one of which is numerical (*Realized Budget to Employee Expenses Ratio*) and the other two are categorical type, the average of all three measures was calculated for the sake of data consistency, and then divided into five categories: 1-low effectiveness, 2-acceptable effectiveness, 3-good effectiveness, 4-very good effectiveness, 5-high effectiveness), and as a result an ordinal or structured variable was obtained.

3.3 Analysis and Results

Below are the results of hypothesis testing procedures:

- H1: Financial Resources have a positive impact on an organisation's climate for implementation of management innovations.
- H2: Top Management Support has a positive impact on an organisation's climate for implementation of management innovations.
- H3: Absorptive Capacity has a positive impact on an organisation's climate for implementation of management innovations.

Table 6 shows the results of regression analysis with implementation climate as a dependent variable. In a hierarchical model, independent variables are entered cumulatively according to a specific, pre-determined hierarchy. Accordingly, three models or steps have been specified. Model 1 includes only the control variable, whereas Model 2 includes variables relating to financial resources and top management support. Model 3 refers to absorptive capacity. Absorptive capacity as a variable constitutes a separate step because it has been assumed that variables relating to financial resources and top management support are in a causal relationship with absorptive capacity. Likewise, the model created by Klein et al. (2001) described a causal relationship between variables relating to financial resources and top management support and the variables relating to implementation policy and practice. In our case, absorptive capacity covers variables relating to implementation policy and practice.

Table 6. Results of regression analysis: Effects of financial resources, top management support and absorptive capacity on implementation climate

| Predictors | Implementation climate | | |
|--|-------------------------|-------------------------|-------------------------|
| | Model 1 Std. β | Model 2 Std. β | Model 3 Std. β |
| <i>Step 1: Control variable</i> Size of local self-government unit | -0.035 | 0.002 | 0.075 |
| <i>Step 2: Predictors</i> Financial resources Top management support | | 0.121 0.828* | -0.032 0.442* |
| <i>Step 3: Predictor</i> Absorptive capacity | | | 0.489* |
| R ² | 0.001 | 0.67 | 0.76 |
| ΔR^2 | 0.001 | 0.67 | 0.09 |
| F | 0.065 | 35.25* | 39.85* |
| ΔF | 0.065 | 52.79 | 18.36 |

* $p < 0.001$

The results of the analysis show that the control variable of the size of local self-government unit does not make a significant contribution to the model. Newly introduced variables relating to financial resources and top management support accounted for an additional 67% of the variance of the implementation climate variable resulting in a significant R^2 change ($F = 35.25$, $p < 0.001$). However, financial resources do not seem to have a significant impact on implementation climate, while top management support appears to have a significant positive impact ($\beta = 0.828$, $p < 0.001$) on implementation climate. Hypothesis H1 has not been confirmed. On the other hand, Hypothesis H2 implying that top management support has a positive impact on implementation climate has been proven. Newly introduced variables relating to absorptive capacity accounted for an additional 9% of the variance, which means that this variable has made a significant contribution to the model ($F = 39.85$, $p < 0.001$).

Below are the results of hypothesis testing procedures:

H4: Implementation climate has a positive impact on management innovation implementation.

H5: Innovation-values fit has a moderating effect on the relationship between implementation climate and management innovation implementation.

Table 7 shows the results of regression analysis with management innovation implementation as a dependent variable. Four models or steps have been defined. Model 1 includes only the control variable, whereas Model 2 introduced a predictor variable of implementation climate. Model 3 involves a moderator variable of innovation-values fit, whereas Model 4 indicates interaction effect of the two variables.

Table 7. *Results of regression analysis: Effects of implementation climate on management innovation implementation and a moderator impact of innovation-values fit*

| Predictors | Management innovation implementation | | | |
|---|--------------------------------------|-------------------------|-------------------------|-------------------------|
| | Model 1 Std. β | Model 2 Std. β | Model 3 Std. β | Model 4 Std. β |
| <i>Step 1: Control variable</i> Size of local self-government unit | 0.071 | 0.101 | 0.102 | 0.095 |
| <i>Step 2: Predictor</i> Implementation climate | | 0.855** | 0.861** | 0.828** |
| <i>Step 3: Moderator variable</i> Innovation-values fit | | | -0.026 | 0.071 |
| <i>Step 4: Interaction effect</i> Implementation climate * Innovation-values fit | | | | 0.191* |
| R ² | 0.005 | 0.735 | 0.736 | 0.763 |
| ΔR^2 | 0.005 | 0.730 | 0.001 | 0.028 |
| F | 0.228 | 60.985** | 39.860** | 33.849** |
| ΔF | 0.228 | 121.133 | 0.101 | 4.918 |

* $p < 0.05$, ** $p < 0.001$

The control variable (size of local self-government unit) does not make a significant contribution to explaining the variance of the variable relating to management innovation implementation. Hypothesis H4 implying that implementation climate has a positive impact on management innovation implementation has been confirmed ($\beta = 0.855$, $p < 0.001$). Besides this direct impact, there is also the moderating effect, which means that the variable of innovation-values fit (alignment between values created through management innovations and the organisation's values) moderates or, in other words enhances or weakens positive impact of implementation climate on management innovation implementation (H5). The moderating effect is tested by constructing a special new variable of the product of predictor and moderator, which is the carrier of eventual interaction, and is included in the regression equation as the last predictor variable. A significant change in the percentage of contribution to the explanation of the variance of the criterion after the inclusion of the last variable reveals the significance of the interaction. This means that the examined variable tends to moderate the relationship between the predictor and the criterion. The results suggest that the newly introduced variable of interaction accounted for an additional 2.8% of the variance, which does not make a notable change, but the effect is statistically significant ($\beta = 0.191$, $p < 0.05$, $F = 33.85$, $p < 0.001$). It can be concluded that this relationship is modestly moderating and that in this sense the impact of implementation climate on management innovation implementation will increase, which proves Hypothesis H5.

Below are the results of hypothesis testing procedures:

H6: Management innovation implementation has a positive effect on local self-government performance.

Tables 8 and 9 show the results of the global test with the hypothesis that all coefficients in the model are equal to 0, but this assumption is rejected ($p < 0.0001$), which means that at least one independent variable in the model tends to affect and describe the variable of effectiveness of local self-government.

Table 8. *Results of the global test*

| Model Fit Statistics | | |
|----------------------|----------------|--------------------------|
| Criterion | Intercept Only | Intercept and Covariates |
| AIC | 201.316 | 175.967 |
| SC | 210.367 | 189.543 |
| -2 Log L | 193.316 | 163.967 |

Table 9. *Results of the global test*

| Testing Global Null Hypothesis: BETA=0 | | | |
|--|------------|----|------------|
| Test | Chi-Square | DF | Pr > ChiSq |
| Likelihood Ratio | 29.3498 | 2 | <.0001 |
| Score | 21.0199 | 2 | <.0001 |
| Wald | 24.8153 | 2 | <.0001 |

This is further confirmed by maximum likelihood estimation, the results of which are given in the table below (Table 10).

Table 10. *Analysis of Maximum Likelihood Estimates*

| Analysis of Maximum Likelihood Estimates | | | | | | |
|--|---|----|----------|----------------|-----------------|------------|
| Parameter | | DF | Estimate | Standard Error | Wald Chi-Square | Pr > ChiSq |
| Intercept | 5 | 1 | -6.7983 | 1.0777 | 39.792 | <.0001 |
| Intercept | 4 | 1 | -4.7917 | 0.8228 | 33.9141 | <.0001 |
| Intercept | 3 | 1 | -2.588 | 0.6625 | 15.259 | <.0001 |
| Intercept | 2 | 1 | 0.4117 | 0.7595 | 0.2938 | 0.5878 |
| Management innovation implementation | | 1 | 1.5079 | 0.3035 | 24.6866 | <.0001 |
| Size of local self-government unit | | 1 | -0.00217 | 0.00331 | 0.4309 | 0.5115 |

Table 10 indicates that the management innovation implementation coefficient makes a significant contribution to the model ($p < 0.0001$),

whereas the size of local self-government unit as the control variable does not produce a statistically significant effect ($p = 0.5115$) on the effectiveness of local self-government. Table 11 describes the impact of management innovation implementation on effectiveness.

Table 11. *Odds Ratio Estimates*

| Odds Ratio Estimates | | | |
|--------------------------------------|----------------|----------------------------|-------|
| Effect | Point Estimate | 95% Wald Confidence Limits | |
| Management innovation implementation | 4.552 | 2.504 | 8.273 |
| Size of local self-government unit | 0.998 | 0.991 | 1.004 |

The odds ratio for the management innovation implementation variable is 4.552. It can be said that with every increase in the management innovation implementation variable for a single rating, the odds ratio that the effectiveness of local self-government will reach a higher category increases by 4.552 times. So, the higher the level of implementation of management innovations (better rating), the greater the effectiveness.

4 Discussion

The hypotheses proposed in the paper have been in most part proven, which makes a strong point of the importance and need for a more intensive research into these types of innovation. Hypothesis H1, which implied that financial resources could have a positive impact on implementation climate, was the only one that has not been confirmed. In other words, financial resources as a variable proved to be insignificant. In a similar way, Sawang (2008) in its research on implementing several types of innovation simultaneously also confirms that the financial resource adequacy variable tends to have an insignificant influence on implementation policies and practices, assumed by the authors of this work to be incorporated in the absorptive capacity variable. When the hypothesis was formed, it was assumed that the impact of financial resources on implementation climate would be less pronounced - as proven. The above suggests that financial resources do not make a significant contribution to implementing a successful management innovation process. The results can be interpreted as being consistent with existing theoretical constructs in the field of management innovations, defined as non-technological types of innovation, which do not require significant financial resources in development and implementation. This is particularly true in a public sector environment, which involve organizations that tend to implement innovations, which are mostly incremental in nature. In other words, this survey does not involve radical innovations (where radical innovation means significant financial

resources), but focuses on innovations that are produced to help upgrade the existing practices and methods.

Likewise, testing the hypothesis of positive impact of top management support (H2) and absorptive capacity (H3) on an organisation's climate for implementation of management innovations, emphasised the significance of intangible organizational factors, such as cooperation and exchange of knowledge and experience among local self-government units and other stakeholders in the environment to create positive perception of the importance of introducing new management methods and concepts. This suggests that top management support and absorptive capacity are very important measures in reaching a higher level of implementation of management innovations. The results have revealed the importance of collaboration and knowledge sharing in organizations that tend to implement management innovations. Levinson and Asahi's study (1995) also supports the assertion that cooperation and exchange of knowledge and experience among local self-government units and inter-organizational learning activity have become a vital factor in contributing to improve knowledge acquisition or absorptive capacity. In his work, Černe (2013) also confirms the assertion where he assumed and proved that knowledge exchange can have a positive influence in anticipation of future management innovations. The described activities also proved to be successful in Croatian local self-government practice in a case study conducted by Grčić Fabić and Mičetić Fabić (2013), where the cities selected based on the degree of successful innovation implementation were those who had developed processes of partnership, networking and cooperation and exchange of experience with other units of local self-government. This supports the idea that management innovations are developed or adopted primarily through interaction with the environment (Birkinshaw, Mol, 2006). Factors of top management support and absorptive capacity as the ability to acquire, assimilate, and apply knowledge are much more important than disposing of great amount of financial resources for successful implementation of management innovations.

Our results have revealed that implementation climate can have a positive impact on management innovation implementation. Evaluation of results derived from H4 and H5 test certified the assumption that implementing a successful management innovation process appears to be strongly influenced by organizational members' perceptions of the importance of implementing innovation in the organization (H4) and the alignment between values created through management innovations and their own values, or vision of their own development within the organization (H5). Accordingly, it can be concluded that social spheres of the organisation are very important for management innovation implementation, as proposed in existing management innovation constructs. Acting through those segments can influence to implementing a successful management innovation process. As previous studies have not investigated the direct correlation between implementation climate and

management innovations, evidences to support the assertion that there is a positive correlation between the two variables can be found in studies on implementation of process innovation (Holahan et al., 2004, Klein et al., 2001) and innovation that would seem to be a collective construct that involves broader range of types of innovation, including management innovation (Sawang, 2008).

Evaluation of results derived from H6 test asserted a positive impact of implementing new management concepts and methods on improving the effectiveness of local self-government. Researches undertaken in the private sector also confirmed the assertion (Černe, 2013, Volberda et al., 2013, Camisón, Villar-López, 2012, Walker et al., 2011, Gunday et al., 2011, Sappasert, 2008, Yeh-Yun Lin, Yi-Ching Chen, 2007, Gera, Gu, 2004, Linderman et al., 2004). Within the public sector, the research carried out by Walker et al. (2011) should be emphasized. They were able to prove that there are indirect, positive effects of management innovation on organizational performance.

By implementing a successful management innovation process, units of local self-government will be able to achieve higher user satisfaction with the services they provide, higher EU funds absorption rates and higher budget value per monetary unit of investment in employees. Likewise, it is important to point out that management innovations break into social spheres of the organization. This means that intangible organizational factors appear to be more important in the implementation of management innovations than those having tangible outcomes such as financial resources.

5 Conclusion

The proposed hypotheses have been successfully confirmed for the most part by testing the proposed conceptual model of factors contributing to the implementation of management innovations, emphasizing the importance and need for more intensive research of this type of innovation. The hypothesis H1 was the only one rejected, where the financial resource adequacy variable proved insignificant. Also, the paper enabled to consider those factors that contribute to the successful implementation of management innovations, ultimately leading to more effective local self-government units. The empirical research on management innovation has been extended to include the public sector, considering that only few studies have, to date, focused on this type of innovation in the public sector.

The challenge of implementing management innovations is more relevant than ever. Developing this type of innovation is becoming increasingly important particularly in the public sector which is facing intensifying pressures for increased effectiveness, or cost rationalization and high quality public services. Functional decentralization or the transfer of authority and responsibility from the centre to lower levels of administration tends to intensify the pressures even more, and thus the need for implementing

management innovations. Local government managers need to be aware that implementing a successful management innovation process does not require investing great amount of financial resources, unlike process innovations, for example. There is no need for special expertise and infrastructure (as is the case with technological innovations, which often requires the establishment of a R&D department, expert knowledge and significant financial resources). Factors of top management support and absorptive capacity as the ability to acquire, assimilate, and apply knowledge are much more important than disposing of great amount of financial resources for successful implementation of management innovations.

In accordance with the foregoing, public sector managers, in addition to providing support for implementation of new methods and conceptions of governance by adopting effective measures for rewarding new approaches to work organization, problem solving, and generally a proactive approach to proposing new projects and methods - must foster cooperation and sharing experience with other units of local self-government, work in partnership and create networks to improve the effectiveness of the local self-government unit they manage.

This study has some limitations which have to be pointed out, and can be used as a guideline for future research. Ideally, the study should be extended to include other countries as well to cover distinct types of environment, thus including those variables that consider the context within which the management innovations are being implemented. Also, as a guideline for future research, it is desirable to test the model on private sector organizations as well, thus enabling comparisons between private and public sector to identify similarities and differences.

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POVZETEK

1.01 Izvirni znanstveni članek

Dejavniki, ki vplivajo na uspešno izvajanje managerskih inovacij

Pojem inovacij v upravljanju kot posebna vrsta netehnoloških inovacij je še vedno na začetku pojmovnega oblikovanja in potrditve. V nasprotju s tehnološkimi inovacijami, ki zadevajo spremembe v tehnologiji, povezane z osnovno dejavnostjo organizacij, inovacije v upravljanju pomenijo preboj na socialna področja, poudarek pa je na ljudeh – vodjih. Inovacije v upravljanju lahko opredelimo kot postopek ustvarjanja in izvajanja novih praks, postopkov, struktur ali tehnik v upravljanju, ki lahko bistveno odstopajo od obstoječih praks in standardov. Obstoječe študije na področju inovacij v upravljanju večinoma ocenjujejo vpliv inovacij v upravljanju na organizacijske rezultate, ne upoštevajo pa tistih dejavnikov, ki spodbujajo oblikovanje in izvajanje teh inovacij. Ta dokument si zastavlja raziskati pojem inovacij v upravljanju v organizacijah javnega sektorja s poudarkom na opredeljevanju vpliva organizacijskih dejavnikov na uspešno izvajanje inovacij v upravljanju, zlasti v organizacijah javnega sektorja ali lokalnih samoupravnih enotah na Hrvaškem, kar bo omogočilo analizo inovacij v upravljanju tako z vidika samega postopka izvajanja kot tudi z vidika pričakovanih učinkov inovacij.

Predhodne študije so se večinoma osredotočale na vpliv inovacij v upravljanju na organizacijsko učinkovitost v zasebnem sektorju, medtem ko je le malo raziskav obravnavalo javni sektor. Zato je javni sektor zanimivo področje za raziskavo vpliva izvajanja inovacij v upravljanju. Poleg tega je bila raziskava prilagojena kontekstu lokalne samouprave zaradi posebnosti lokalne uprave kot najnižje ravni javne uprave, kar je v njeno korist ali, z drugimi besedami, njena temeljna naloga. To nakazuje na zmožnost lokalne samouprave, da zagotavlja lokalne javne dobrine v skladu z lokalnimi preferencami na bolj stroškovno učinkovit način kot višje ravni javne uprave. To vodi do bolj fleksibilnega in kreativnega pristopa do opravljanja javnih storitev, ki zahteva inovativne rešitve in strategije za ustrezno odzivanje na spremembe v lokalnem okolju v nasprotju s storitvami, ki jih opravljajo najvišje ravni javne uprave. Izvajanje novih upravljalnih metod in praks je bilo razumljeno kot prizadevanje za izboljšanje učinkovitosti in uspešnosti pri opravljanju javnih storitev.

Predlagane hipoteze so bile večinoma uspešno potrjene s testiranjem predlaganih pojmovnih modelov dejavnikov, ki prispevajo k uspešnemu izvajanju inovacij v upravljanju, s poudarkom na pomembnosti in potrebi po intenzivnejših raziskavah teh tipov inovacij. Pridobljeni rezultati potrjujejo pojmovne determinante izraza inovacij v upravljanju, kot se prikaže pod vplivom izbranih organizacijskih dejavnikov, ki prispevajo k uspešnemu

izvajanju inovacij v upravljanju, in ki lahko pripelje do povečanja učinkovitosti lokalnih enot samoupravljanja. V skladu s tem so bile absorpcijske sposobnosti in podpora najvišjega vodstva skupaj s kombiniranimi učinki klime izvajanja in ustreznostjo inovacijskih vrednosti opredeljeni kot ključni dejavniki za doseganje uspešnega izvajanja inovacij v upravljanju. Po drugi strani pa ni bilo ugotovljeno, da bi bila dosegljivost obsežnih finančnih sredstev pomemben dejavnik za učinkovito izvajanje tega tipa inovacij. Z izvajanjem uspešnega postopka inovacij v upravljanju bodo lokalne enote samoupravljanja lahko dosegle večje zadovoljstvo uporabnikov s storitvami, ki jih nudijo, višjo stopnjo absorpcije evropskih sredstev in večjo proračunsko vrednost na denarno enoto naložb v zaposlene. Pri načrtovanju doseganja teh rezultatov je pomembno, da ne pozabimo, da inovacije v upravljanju pomenijo preboj na socialna področja organizacije. Z drugimi besedami so neopredmeteni organizacijski dejavniki pomembnejši za uspešno izvajanje inovacij v upravljanju kot opredmeteni dejavniki, kot je na primer ustreznost finančnih virov.

V tej študiji se pokažejo tudi nekatere omejitve, ki jih je treba izpostaviti in ki jih lahko uporabimo kot smernice za prihodnje raziskave. Glavna omejitev je bil geografski obseg študije. V idealnem primeru bi študijo razširili, da bi vključevala tudi druge države in pokrivala različne vrste okolja ter s tem vključevala tudi tiste spremenljivke, ki upoštevajo kontekst, znotraj katerega izvajamo inovacije v upravljanju. Prav tako bi bilo zaželeno, da bi študija vključevala tudi zasebni sektor ter s tem omogočila primerjavo med zasebnim in javnim sektorjem, s čimer bi lahko opredelili podobnosti in razlike med njima.

Ključne besede: managerske inovacije, netehnološke inovacije, izvajanje inovacij, lokalna samouprava, učinkovitost.

Neutrality and the Dutch Objection Procedure¹

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ABSTRACT

In the Netherlands, if someone disagrees with an administrative order, he is only allowed to seek redress with the administrative courts after he has lodged an objection with the administrative authority responsible for the order. The objection procedure entails that an administrative body reconsiders its own decision. In this contribution we study the preference of objectors concerning the organization of the procedure and to what extent their preference is related to the perceived (lack of) neutrality of the person who conducted their hearing. In particular we focus on the effects of the use of neutral 'outsiders' when conducting hearings. Based on the literature we assumed that the use of outsiders would benefit the experienced impartiality of the person(s) conducting the hearing. The results of two discussed studies however do not support this assumption. The formal status of the persons conducting the hearing is a poor predictor of the extent to which they are perceived as neutral by participants of the procedure.

Key words: neutrality, dispute resolution procedures, administrative pre-trial procedures, Dutch administrative law, procedural justice.

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1 Introduction

In the Netherlands, if someone disagrees with an administrative order, he is only allowed to seek redress with the administrative courts after he has lodged an objection with the administrative authority responsible for the order. The objection procedure entails that an administrative body reconsiders its own decision at the request of an interested party. The administrative body can

¹ This article is a revised version of the paper entitled 'Neutrality and the Dutch Objection Procedure, presented at the EGPA Conference, Milano, 30 August-1 September, 2017. The EGPA contributions are not publicly available.

choose to keep the decision the way it was or to change or withdraw the disputed decision and, if necessary, take a new one replacing it (Langbroek, Remac and Willemsen, 2014, p. 113–151).

On 29 January 2009, the Dutch newspaper *Trouw* opened with an article with the headline 'Objecting to municipal decisions pointless'.² The following quote is from the same article:³

Just after the mayor of Alkmaar, a municipality north of Amsterdam with 100.000 inhabitants, decided to close most of the windows in the red light (prostitution) area, a 'window operator' decided to object to the decision. Together with his lawyer, he filled an objection. The public hearing that followed was chaired by the mayor himself, while two of his officials also served as commissioner. "Because that is common in Alkmaar," the mayor said.

The objectors' lawyer speaks of an "extremely strange situation". Filling a successful objection against a municipality's decision becomes "very difficult" because nobody can guarantee that the review of the decision is done in a sufficiently independent and objective manner.

According to Professor of Public Administration Michiel de Vries of the Radboud University Nijmegen, "the way Alkmaar does things is absolutely undesirable. Even the slightest appearance of a conflict of interests must be avoided. You cannot decide on an objection against your own decision." Professor Hans Engels calls the Alkmaar model "strange and unbelievable. The municipality must look for the most qualified members to man such a committee. A commission must be independent, so that the citizen knows that his objection is being taken seriously. A hearing can therefore not be chaired by the same person who took the contested decision."

The municipality, through the Mayor's Legal Adviser, states that Alkmaar does not have an independent objection committee. According to the legal advisor, it is "not strange at all that the mayor reviews his own decisions: the very point of the objection procedure is that the decision is reviewed by the administrative body responsible for it and that is the mayor in this case."

This quote shows that what individuals knowledgeable about Dutch administrative law find self-evident, is seen as a highly curious phenomenon by persons who are (somewhat) less well informed about administrative law. How can an objector trust that his objection is considered in a serious and unbiased manner, if the review is done by the very administrative body that made the challenged decision?

Even though it is in practice not very common that the administrative body itself conducts the hearings of objectors, the 'core' of the objection-procedure in the Dutch General Administrative Law Act (GALA) is that, exactly as the Alkmaar mayor's legal advisor stated, administrative authorities review their own decisions. Administrative bodies are free to establish an independent advisory committee, but they can also choose to conduct the hearings

² <https://www.trouw.nl/home/bezwaar-maken-tegen-gemeentebesluit-zinloos~a75d557e/>.

³ To reduce the length of the quote, minor changes to the text have been made.

themselves or to let one or more officials who work under their responsibility conduct the hearings (Wever, 2016).

The percentage of administrative authorities in the Netherlands that make use of an independent committee has been declining steadily over the past few years (Wever, 2016). One of the reasons for this trend is the rise of the 'informal proactive approach model' (De Graaf and Marseille, 2012, p. 126–143). This model entails that administrative authorities try to contact objectors as soon as possible after an objection is filed, to see whether agreement about the settlement of the dispute can be reached.⁴ It is thought that an independent committee is less capable to perform this task than one or two skilled civil servants are, because these officials can more easily explore the possibilities for finding a solution to the problem that led to the objection (Allewijn, 2015, and Herweijer and Lunsing, 2011). However, not all administrative authorities are getting rid of their independent objection committee. While some administrative authorities switched from an objection procedure with a prominent role for independent outsiders, to an objection procedure which is dominated by officials, other administrative authorities are in fact considering the exact opposite, meaning they are thinking about establishing an external objection committee (Marseille, 2016, p. 79–94).

One of the questions this contradictory development raises is how important the objectors themselves find the way in which the hearing is organized. Do they have a preference for a certain type of procedure and if so, how can this preference be explained? This question is not only relevant for the Dutch objection procedure, but for any country with administrative pre-trial and complaint procedures. Two studies carried out in 2016, one with the municipality of Groningen, the other with the municipality of Tilburg (conducted by the authors themselves), shine a light on this question (Meijer and Latenstein van Voorst, 2017; Marseille, De Waard and Wever, 2017). Before discussing the findings of these studies (in paragraphs 4 and 5) we briefly outline the legislator's ideas about the importance of neutrality (paragraph 2), and discuss relevant literature about the relationship between the way in which the objection procedure is organized and how it is appreciated by objectors, especially concerning neutrality and objectivity (paragraph 3). We end with a brief conclusion (paragraph 6).

2 The Objection Procedure: Neutrality Guaranteed?

The objection procedure in the Netherlands entails that an administrative body reconsiders its own decision. However, the procedure that results in the decision upon the objection can be 'outsourced'. The options available to the administrative authority are outlined in articles 7:5 and 7:13 of the General Administrative Law Act (GALA). It is stated there that the administrative

⁴ See for more about this model: Ministerie van Binnenlandse zaken en Koninkrijksrelaties, Professioneel behandelen van bezwaarschriften, http://prettigcontactmetdeoverheid.nl/sites/default/files/documenten/Handleiding%20Professioneel%20behandelen%20van%20bezwaarschriften_0.pdf Handreiking.

authority can conduct the hearing of the objector itself,⁵ that it can enable one or more independent outsiders to conduct the hearing, or that it can task one or more of its officials to conduct the hearing. In the case that a single official conduct the hearing, this official may not have been involved in the preparation of the contested decision. And, if the hearing is conducted by two or more officials, the majority of those officials, including the person who is in charge of the hearing, may not have been involved in the preparation of the contested decision.

The issue of neutrality in (administrative) dispute resolution procedures is not unique to the Netherlands. For instance, both France and Germany have somewhat similar pre-trial procedures where neutrality is also a potential issue. For example, France has a procedure called *recours administrative préalable*. Just like in the Dutch objection procedure, the French procedure entails that the objection is addressed to the administrative authority responsible for the contested decision. In France there are no general rules as to the organization of the procedure. If the administrative authority finds it necessary or if the law requires it to do so, objectors are given the opportunity to be heard prior to making a decision. Concerning the issue of neutrality, it is interesting to note that French law prescribes the use of independent commissions in some cases, while in other types of cases administrative authorities are allowed to handle objections by themselves (Langbroek, Buijze and Remac, 2012, p. 54).

Germany has the so-called *Widerspruch* procedure. Just like the French and Dutch objection procedures, objections are handled by the administrative authority that was responsible for the disputed decision. Section 28 *VwVfG* specifies the cases in which objectors are to be given the right to be heard before a decision is reached. In the *Widerspruch* procedure, the issue of neutrality is most visible in the way the decisionmaking is organized. If the administrative authority agrees with the objector that the initial decision is wrong, the administrative authority can withdraw or change the disputed decision itself. However, if it does not agree with the objector and wants to maintain its initial decision, the administrative authority must send the objection to a *Widerspruchbehörde*, in most cases a superior administrative authority, which then decides upon the objection. When a hearing takes place (section 71 *VwGO*), the neutrality is guaranteed because not the administrative authority that took the decision conducts the hearing, but the superior administrative authority (Hufen, 2011, p. 107).

The parliamentary history of the Dutch GALA shows that the rules that govern the hearings by officials and the possibility of establishing an external objection committee were meant to contribute to the objective reassessment of contested decisions. However, paradoxically, it is also stated that the legislator would prefer it if the hearing would be conducted by the administrative authority itself. Only because it would impossible for administrative authorities that deal with a large number of objections to

⁵ Article 7:5-1 GALA states that if the administrative authority consists of multiple persons, one of its members can conduct the hearings.

conduct the hearings themselves, does the GALA offer the opportunity to enlist the help of others. It is stated in the explanatory memorandum that it is "desirable that those involved in the preparation of the contested decision do not determine the course of hearing" but also that they "of course may be present, which will often also benefit the exchange of views at the hearing" (Daalder and De Groot, 1993, p. 340). In what capacity the administrative authority should be present, the explanatory memorandum does not state, but given the text of article 7:5 GALA this could be in the role of 'defendant' (to explain the position of the administrative authority), but also as a member of the hearing committee.

Neither in the explanatory memorandum to article 7:5 GALA, nor in the explanatory memorandum to article 7:13 GALA, much is said about the importance of objectiveness and independence when handling objections. But the legislator does implicitly pay attention to this. This is shown by the fact that the officials responsible for the contested decision can only have a limited role at hearings, and in the fact that the GALA provides for the possibility to establish an independent hearing and advisory committee. However, the considerations in the explanatory memorandum about the way hearings are to be conducted are mainly focused on the question what type of procedure offers the best opportunities for finding agreement between the objector and administrative authority. Objectiveness and independence receive far less attention in that respect. The legislator apparently assumes that neutrality does not require the use of outsiders, but can also be guaranteed when the administrative authority chooses to make use of its own officials.

3 Literature: How Important is Neutrality?

Why do we care about neutrality? The function of procedures of decision-making and dispute resolution is that the objectives pursued by substantive law are achieved as much as possible. British scholar Galligan (1997) states:

'Without procedures, law and legal institutions would fail in their purposes. And since law is both necessary and desirable in achieving social goals, procedures are also necessary and must be seen as equal partners in that enterprise. For whatever the context, whether the judicial trial, the administrative decision, or any other form of legal process, procedures are necessary to ensure that the issue is channeled to its right conclusion.'

In Galligan's view, the purpose of procedures is to ensure that a correct outcome is achieved in any given case. Galligan sees neutrality an important aspect of good procedures, because neutrality is necessary to ensure that the right outcomes are reached and thus that people are treated fairly. Though not all perspectives share this instrumental view on procedures, most theoretical perspectives view the neutrality of the officials involved in the procedure as one of the vital characteristics of good procedures. . Another notable author, Bayles, considers neutrality as one of five principles of good dispute resolution procedures from the perspective of rational outsiders, together

with the right to be heard, the right to appeal, equal application of procedural rules and outcomes in accordance with the law (Bayles, 1990).

One of the most influential perspectives on good procedures of the last decades – at least in the Netherlands – has been the body of literature on procedural justice. Procedural justice is, as the name implies, concerned with the factors that cause people to view dispute resolution procedures (and rules) as just. According to this perspective neutrality is one of the core explanatory factors of why people view procedures as just, together with other criteria such as the lack of bias, honesty, an effort to be fair, politeness, and respect for rights (Tyler, 1990). In this view, procedures that are viewed as fair lead to outcomes being viewed as fair, and more often accepted as correct by parties.

By contrast, in the Dutch literature about the objection procedure the subject of neutrality receives relatively little attention. The question of whether or not it would be preferable to have hearings conducted by an external committee is frequently discussed, but the arguments for and against the involvement of independent outsiders revolve mostly around the problem solving capacity of the objection procedure, and hardly ever on the importance of neutrality.

A first example of this focus on problem solving is provided by an extensive study of the objection procedure by Breeuwsma et al. This study was conducted more than 35 years ago, even before the introduction of the GALA. The researchers prefer it when administrative authorities establish an external committee, but not because of the independent position of such a commission. They prefer this because the inclusion of outsiders in the objection procedure would provide the best opportunities for the full reconsideration of the contested decision, and would furthermore be conducive to the uniformity, efficiency, filtering and problem solving ability of the objection procedure (Breeuwsma, 1984, p. 347).

The formal GALA-evaluations that were held in the first decade after the law was introduced also do not place the objective and neutral appraisal of objections at the center of attention (Polak, 1996, p. 43–44). In the 'Report of the Committee on Evaluation of General Law of Administrative Law' (known as the Polak Commission report) from 1996 it is recommended to, where possible, create a personal separation between the people tasked with handling objections and the persons involved in the initial decision making process to promote an unbiased review. However, the Polak-committee does not favor or oppose the involvement of outsiders in the objection procedure.⁶

In the response of the Dutch government following the first evaluation of the GALA, it is mentioned that the use of an external committee is only favored when significant interest are at stake or when complex legal issues are to be considered. The independent position of an external committee is not mentioned as an argument in favor of using one in those cases.

⁶ *Parliamentary Papers II*, 1997/98, 25 600 VI, nr. 46, p. 28.

In the context of the second evaluation of the GALA, Aalders et al. (2001) cite various requirements that the persons that are involved with the hearings of objectors should (preferably) meet. None of them should for instance have been involved in the preparation of the contested decision, they should be sufficiently unfounded with regard to the contested decision and have a certain distance to the administrative authority, and they should be capable to review both the legality and effectiveness of the disputed order. However, the researchers do not express a preference for dealing with objections using an external committee (Aalders et al., 2001, p. 122).

What do objectors want?

Examination of the Dutch literature on the factors that affect the perceived objectivity of the people who conduct objection hearings, shows that it is not easy to determine the importance objectors attach to the way hearings are organized. For instance, Van Montfort & Tromp (2000) compared the satisfaction of objectors who had faced an external committee with the satisfaction of objectors who were heard by civil servants (Van Montfort and Tromp, 2000, p. 344). They expected that objectors would be more satisfied with a procedure where an external element was more strongly represented, as is the case when an external committee conducts the hearing. However, they did not find any correlation between the composition of the hearing committee and the satisfaction of the objectors. It was striking that objectors often thought that they had been heard by an internal objections committee (e.g. civil servants) while in fact they were heard by an external objection committee. The authors state that this may provide an explanation for the lack of a difference in appreciation (Van Montfort and Tromp, 2000, p. 355).

De Waard et al. (2011) encountered the same confusion among objectors. Their research also shows that many objectors have the wrong idea about who conducted their hearing. For example, objectors at the Social Insurance Bank thought that they had been heard by an independent committee, while hearings there are always conducted by civil servants (De Waard et al., 2011, p. 76).

The research by De Waard et al. does not provide an answer to the question whether or not the fact that a hearing is conducted by an external committee influences objectors' appreciation of the hearing. However, the study does show that objectors find the neutrality of the people who conduct the hearing very important. And, it also shows that their judgment about the neutrality of the people who conducted the hearing is quite negative: 60% of the respondents doubted the neutrality of the people who conducted their hearing (De Waard, 2011, p. 73).

The objectors' judgement of the neutrality impacted their general appreciation of the objection procedure more than for instance the perceived reliability of the persons conducting the hearing, or whether or not they thought that they had been able to sufficiently present their point of view (De Waard e.a., 2011, p. 96). This could be a reason to assume that objectors who were heard by an

independent committee are more satisfied with the proceedings in general than objectors who had been heard by officials. However, the study does not show any significant differences between the two categories of objectors (De Waard et al., 2011, p. 123, and Marseille, 2016, p. 91).

All in all, Dutch studies into the functioning of the objection procedure did not result in a clear preference for the use of an external committee. The results of research into the assessment of objectors of the objection procedure are paradoxical: objectors strongly emphasize the value of neutrality, but at the same time they are rarely aware of the 'status' of the people who conducted their hearing.

In the following two paragraphs we discuss recent research which provides insight into the state of objection treatment in general and into the (relative) importance of the perceived neutrality and objectiveness objection treatment in particular. We start by discussing the results of a very recent study in Tilburg in which both authors were involved.

4 Tilburg

4.1 Introduction

In Tilburg, a municipality with more than 200.000 inhabitants in the south of the Netherlands, objections can fall into two categories: 'social' (concerning social security legislation and policy) and 'other' (all other subjects, for instance building permits, subsidies, administrative fines, etc.). With objections in the first category, a very limited role is played by independent outsiders. The hearings themselves are conducted by a single civil servant. At the hearing, the administrative authority is not represented in the role of 'defendant'. After the hearing the civil servant writes an advice to the administrative authority as to the decision he or she thinks should be made. In some cases this advice is reviewed by a panel that consists of three outsiders.⁷

In the procedure concerning the 'other' category of objections no outsiders are involved at all.⁸ Objectors are heard by a three-person committee of which all three members work for the municipality. Two members (the chairman and the secretary) work at the Legal Affairs Department, the third member works at the department where the contested decision was prepared. At the hearing, the administrative authority is not represented in the role of 'defendant'. After the hearing is conducted the committee writes an opinion about which decision the administrative authority should adopt.

⁷ After the hearing the civil servants draft a concept decision upon the objections. These concepts are then discussed by an advisory committee manned by three independent outsiders. The committee decides – based on all available information – if the concept needs to be changed or not before it is presented to the Mayor and Municipal Executive order. The committee usually discusses about 20 to 25 cases per meeting. The meeting itself usually takes half a day.

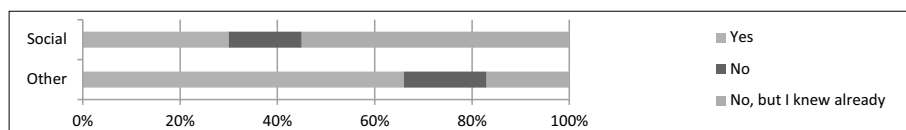
⁸ The 'other' cases are all cases which do not concern the social matters.

In response to questions in the city council about the (lack of) independence in the objection procedure, the Mayor and Municipal Executive ordered a study into the objection procedure in the second half of 2016. In the course of the study the researchers witnessed over 100 hearings and interviewed objectors, their agents, the civil servants involved in the objection procedure, councilors and the Mayor. The perceived neutrality of the people that conduct the hearings was an important element of the study, although it was impossible to compare 'internal' and 'external' proceedings, simply due to the fact that Tilburg has not established an external advisory committee.

4.2 Findings: the Hearing

It is common practice that the person who conducts or chairs the hearing tells objectors what his position – and those of his fellow committee members – is. In Tilburg it is important that parties know that they are not being heard by independent outsiders but by officials of the municipality. To what extent is this made sufficiently clear, according to objectors? This is shown in Figure 1.

Figure 1. *Did the person conducting the hearing tell you that he works for the municipality?*⁹



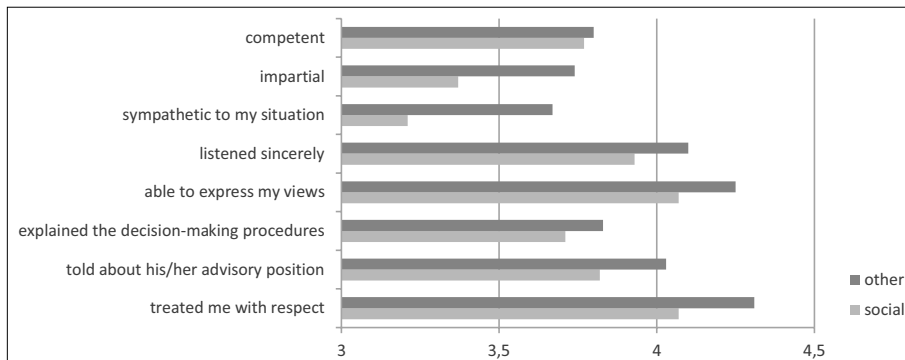
The figure shows that objectors are not always told what the status of the people who conduct the hearings is. However, a large majority of objectors who say they have not been told this, do state that they were aware of the status of the people conducting the hearings. The difference between 'social' and 'other' cases is remarkable, but also understandable. In a situation where the hearing is conducted by three people, it is more natural to start the hearing with an introduction of the participants compared to the situation where the hearing is conducted by a single civil servant.

4.3 Objectors About the Procedure

How satisfied are the objectors with the way the hearings are conducted in Tilburg? Figure 2 shows this for eight aspects of the hearing. In figure 2 we compare our findings between 'social' and 'other' objections.

⁹ All graphs presented in this paragraphs are original renditions of our raw data. The category 'I don't remember' has been left out (18% of the respondents).

Figure 2. *Satisfaction with the hearing*



The figure shows the reaction of objectors to eight statements. The respondents were able to choose between five answers, ranging from 'disagree completely' (1) to 'totally agree' (5). To accentuate the differences between the scores, only the range between the lowest and highest rated values has been shown here (from 3 to 5).

When we look at the results it is striking, first of all, that none of the average ratings are below the value of 3. A second result worth mentioning is that objectors in the 'other' category are more satisfied than objectors in the 'social' category. This is true for all 8 statements, although the difference between the two categories of objectors is only statistically significant for two of the propositions: "the person conducting the hearing was sympathetic to my situation" and the second being: "The person conducting the hearing was impartial." Both of these statements were also rated lower than the other aspects of the hearing.

When we look at how the objectors assessed the impartiality of the officials that conducted the hearing, we see that although this aspect is not rated particularly highly, the rating also does not differ significantly from the other examined aspects. It is however remarkable that the score on 'impartiality' in social affairs is lower than is the case in objections in the 'other' category. We shall discuss this result in more detail later on in this contribution.

Based on the answers to the eight statements we were able to measure the procedural justice experienced by objectors. Objectors in 'other' cases scored – on a scale of 1 to 5 – a 4.00 on experienced procedural justice, objectors in social affairs a 3.82. The difference between both categories of objectors is not significant.

We also asked objectors what they thought was the most positive and the most negative aspect of the hearing. Positive comments were made about the atmosphere ("the civil servant was sympathetic to my situation and we had a calm conversation") and the possibility to voice their opinions ("they listened well"). Negative comments were made about the more substantive aspects of the dispute ("they did not look at other possible options"), and a

perceived lack of respect ("it bothered me that we did not shake hands after the hearing was over") and uncertainty about the procedure following the hearing.

The fact that the hearing was conducted by officials of the municipality and not by independent outsiders was not mentioned by any of the respondents as a negative (or positive) aspect. It is therefore not apparent that objectors experienced a lack of independence or neutrality on the part of the officials that conducted the hearing.

However, the fact that one of the members of the objection committee was an official from the department where the contested decision was prepared did attract a great deal of criticism ("the official responsible for the decision should not be a part of the commission" and: "the fact that the an official from the department responsible for the contested decision is a member of the committee suggests the risk of prejudice"). On this basis, it could be expected that the experienced impartiality in hearings in 'social' objections (where the official from the department responsible for the contested decision is not present) would be rated higher than the impartiality in the hearing in 'other' objections. However, as we have seen, it is the exactly the other way around.

We also asked respondents if they would have preferred it if their objection would have been handled using an external committee. Figures 3a and 3b show the responses to this question.

Figure 3a. *Preference (objectors 'other')*

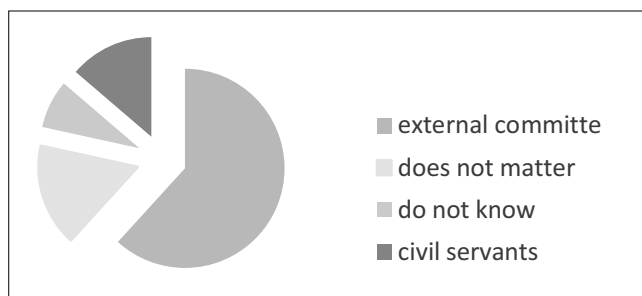
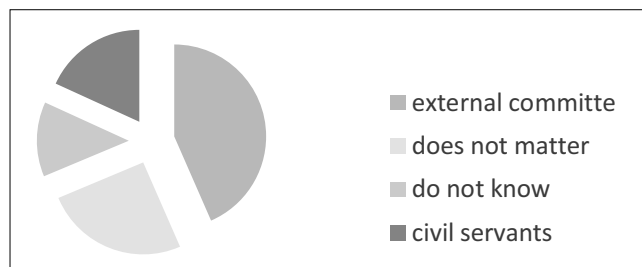


Figure 3b. *Preference (objectors 'social')*



Both figures show that a large majority of objectors would prefer the use of an external committee. The differences between the two categories of objections are striking. In the category 'other', objectors are much more pronounced in their views and have a stronger preference for an external committee than objectors in 'social' objections.

The objectors were also asked to explain their preference. Proponents of an external objection committee in the 'other' category preferred such a committee because they believe this would lead to a more independent, impartial, and objective review of the contested decision.¹⁰ But it also appears that the objector's preference for an external committee is not unconditional. There are also objectors who note that despite their preference for an external committee, they are satisfied with the way their objection was handled by the civil servant(s) ("the chairman of the committee seemed impartial, I did not have any negative experiences this time"). Other objectors are only in favor of the establishment of an external committee if certain other standards are also maintained ("the committee must consist of experts", and "independence seems better, but such an external commission may be less well-informed than civil servants"). It was also mentioned that the distinction between an external committee and the current procedure in which the hearing is conducted by civil servants, is not as absolute as it may appear ("an external committee does not always mean that there are no conflicts of interest").

Objectors in 'social' cases who preferred an external advisory committee, also felt that the use of an external committee would increase the chances of a neutral, impartial, objective review of the contested order.¹¹ It is remarkable that expertise is also mentioned as an argument in favor of hearings by an external committee ("someone specializing in court proceedings could be better" and "they are more able to look at the person"). The preference of objectors in 'social' cases is also nuanced ("I would prefer an outsider, but outsiders can also be partial") or dependent on additional qualifications ("the outsider must be an expert: and knowledgeable about the law, for instance someone who has worked with the government or as a social lawyer").

There are also objectors who oppose the adoption of an external committee. When asked about their preference almost all of them mention the insider knowledge of civil servants as the main reason ("he made the decision, so he knows the facts", "he is familiar with the way things work in Tilburg", "he knows the ins and outs of the case and the way things work").

Which factors influenced the preference of objectors for an external or internal hearing? We take a look at the connection between respondents' preference and their experienced procedural justice.¹² It appears that the group of objectors who preferred it if the hearings are conducted by an external committee had experienced lower levels of procedural justice

¹⁰ 18 out of the 23 answers to the open questions mentioned these arguments.

¹¹ 13 out of 20 answers.

¹² We compared objectors who preferred an external committee to those who preferred civil servants, those who didn't care and those who didn't know.

compared to the group of objectors that preferred it if the hearings are conducted by civil servants. The difference is statistically significant.

If we make a distinction between objectors in 'other' and 'social' cases, we see that objectors in the 'social' category that experienced lower levels of procedural justice tend to prefer an external procedure.¹³ For objectors in the 'other' category, such a correlation was not found.

This suggests that the preference of objectors in the 'social' category was primarily influenced by their own experience and satisfaction. On the other hand, objectors in 'other' cases seem to base their preference less on their own experience and satisfaction and more on their opinions about the way the objection procedure should be organized in general.

4.4 Legal Representatives About the Procedure

At almost half of the attended hearings the objector was assisted by a (professional) legal representative such as a lawyer or legal advisor. We spoke with 29 of them.¹⁴ With six lawyers we discussed their views more fully. Lawyers who mainly deal with environmental issues have a strong preference for an independent committee or, at the very least, for a committee with an independent chairman. One such lawyer stated:

"I cannot explain to my clients that there is no independent advisory committee. They do not understand that officials of the municipality advise the municipality. They are also often annoyed by the fact that the very official that upheld the initial decision in the objection procedure, is also the representative of the municipality in the procedure with the administrative courts."

Their main concern with the way the objection procedure is organized in Tilburg, is that a civil servant from the department that prepared the decision official – often the same person who was de facto responsible for the primary decision – is also a member of the hearing committee. This gives objectors the impression that they are being heard by persons who are prejudiced. In addition, they think that the members of the committee have already discussed and determined their position before the hearing has even taken place. Furthermore, they find the contribution of the department official to the discussion unclear, because more often than not that official does not actually say anything during the hearing.

The lawyers with whom we spoke about 'social' cases did not have the impression that the officials who conduct the hearings are prejudiced. They are however critical of the way the civil servants perform their task. A lawyer compares Tilburg and the UWV (EIA, Employee Insurance Agency), an autonomous administrative agency which handles objections in a very similar manner, namely by letting a single civil servant conduct the hearing):

¹³ Objectors who expected an outcome in their favor preferred civil servants slightly more often. However, the difference is not statistically significant.

¹⁴ In 'social' cases: 21 out of 43 hearings we witnessed; in 'other' cases: 31 out of 71 hearings we witnessed.

"The people conducting the hearings in Tilburg are always very passive. Sometimes you can tell that they do not know the enough about the case. So then the hearing becomes a formality. That's hardly ever the case with the UWV."

This lawyer notes that she hears more complaints about the impartiality of the civil servants conducting the hearing at the municipality of Tilburg than about UWV even though their objection procedures are organized in the same way. She attributes that to the difference in quality between those two government agencies. She says:

"You do not necessarily have to have an independent commission to make sure people feel adequately heard. You need to know the case properly, ask relevant questions, think about the case, and ask yourself: can we handle this matter differently? That is much more important than whether there's officially an external committee or not."

4.5 Conclusion

Do objectors to decisions of the municipality of Tilburg prefer a more internal or external objection procedure and if so, what determines their preference? An interesting finding of the study is that when objectors are asked about their preference, a large majority claim to prefer an external committee. Objectors expect that the involvement of outsiders will provide better chances for a more neutral, impartial and objective review of the contested decision.

However, their preference is hardly supported by their assessment of various aspects of the hearing that they actually experienced. Objectors are not significantly more (dis)satisfied with the impartiality of civil servants conducting the hearing than about other aspects of the hearing. And, even when they are asked about the aspect of the procedure they are most critical, they hardly ever mentioned the fact that the hearings are conducted by officials who work for the municipality. The only aspect of the way the procedure is organized in Tilburg that caused much criticism, was the role of the official who was directly involved in the preparation of the disputed decision. Furthermore, the study provides support for the assumption that a preference for internal or external hearing is related to the perceived quality of objection procedure. When objectors are less satisfied with the quality of internal objection treatment, they are more likely to prefer the alternative.

5 Groningen

In Groningen, a municipality with more than 200.000 inhabitants in the north of the Netherlands, objections can fall into two categories: 'social' and 'spatial'. Social cases concern matters like social security, while spatial cases concern the physical environment (building permits and the like).

Groningen uses both an external objection advisory committee and civil servants to handle objections (Meijer and Latenstein van Voorst, 2017, p. 36). The external objection committee consists of three members. Two of them, including the chairman, are not employed by the municipality. The

third member, the secretary, is a legal advisor at the 'Shared Service Center Legal' of the municipality. In the social domain, the external committee is only used in youth, fraud and enforcement cases, as well as other matters if they are particularly complex. This means that in 'social' cases about 80% of all objections the hearings are conducted by civil servants.

With 'spatial' objections, cases are assigned to the external committee if they have a significant 'public or administrative risk profile'. This is deemed the case when three or more interested parties have filled an objection against a particular decision. In spatial cases only about 20% of the objectors are heard by civil servants (Meijer and Latenstein van Voorst, 2017, p. 14). If that is the case, the hearings are conducted by two officials, one of whom is in charge of the hearing and the other fulfills the role of secretary.

A notable difference between the way hearings are conducted in 'social' and 'spatial' cases, concerns the presence of a representative of the department which was responsible for the disputed decision. In 'spatial' cases a representative of the department responsible for the decision is invited to the hearing. With objections related to social cases, this is not the case. The reason for this is that the legal department feels it has more understanding of the content of decisions in the social domain than is the case with decisions in the 'spatial' domain (Meijer and Latenstein van Voorst, 2017, p. 14).

In 2016, a study into the satisfaction of objectors and their legal representatives with the objection procedure was conducted. Objectors were asked to participate in a web survey about their experiences (Meijer and Latenstein van Voorst, 2017, p. 8-9). A total of 192 objectors were approached, 92 of whom were heard by civil servants and 100 by the external committee. 55 objectors completed the survey, 31 of which were heard by civil servants and 24 by an external committee (Meijer and Latenstein van Voorst, 2017, p. 48). With some of the respondents the researchers spoke more in detail about their experiences. They were asked to elaborate on the answers they gave in the web-survey and about their views on the objection procedure in general. In addition, interviews with legal advisers and civil servants were conducted with a similar set-up.

The surveyed objectors were noticeably more negative about the objection procedure than their counterparts in Tilburg. They rate the objection procedure in Groningen a 4.4 out of 10. A quarter of the respondents even rated the procedure a 1 out of 10 (Meijer and Latenstein van Voorst, 2017, p. 51). When asked to explain their rating, respondents stated that they felt that the outcome of the procedure was already decided before the hearing even took place, that the municipality did not take into account the arguments that they had put forward and that the municipality did not review the contested decision fairly.

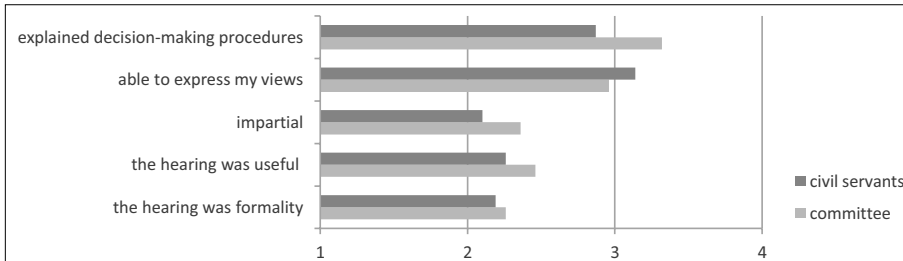
How can this poor evaluation be explained? We are particularly interested in the question if there is a correlation between the manner the objection was dealt with and the rating that was given by objectors. However, that does not

appear to be the case. Objectors that experienced the external committee were equally dissatisfied with the procedure as a whole as the objectors that were heard by civil servants. There is however a clear difference between objectors who had won the procedure and those who had lost. The first group rates the procedure with a 6.5, the second with a 3.3.¹⁵

When asked about their appreciation of the hearing they experienced, respondents were somewhat more positive. The hearing itself received a passing grade, although barely (objectors who were heard by civil servants rated the hearing a 5.8 out of 10; objectors who were heard by the external commission rated the hearing a 5.6).

When asked specifically about several aspects of the hearing they experienced a more nuanced image appears. Figure 4 shows the extent to which objectors agree with five statements about the hearing (Meijer and Latenstein van Voorst, 2017, p. 55-67).¹⁶

Figure 4. Satisfaction with the hearing



The figure shows, first of all, that the views of objectors who were heard by civil servants and those who were heard by an external committee did not differ to a great extent.¹⁷ In addition, it appears that there is a clear difference between the objectors' assessment of the factual course of events during the hearing (the first two statements) and their appreciation of the hearing (the last three statements).¹⁸ The responses to the first two statements are clearly more positive than those to the last three statements.

For our current purposes we are particularly interested the responses to the statement: 'The people conducting the hearing were impartial.' The responses of objectors heard by civil servants to that statement barely differed from those of objectors heard by an external committee. While it is true the rating of the latter group is slightly higher (while perhaps more fitting: slightly less low), the difference is not statistically significant and does not differ from the overall picture.

¹⁵ This concerns the group heard by civil servants. The difference is not significant ($p < .05$). The same goes for the group heard by the external committee.

¹⁶ 1 means: strongly disagree, 4 means: strongly agree.

¹⁷ The researchers do not say if the correlations are significant. However due to the small number of observations, we do not expect them to be.

¹⁸ The last statement was formulated differently, we recoded the answers accordingly.

In addition to the web survey the researchers also spoke with five legal counselors. They too are more positive about the hearing conducted by civil servants. However, the preference for hearings by civil servants is not related to an experienced lack of impartiality of the people conducting the hearings. Legal counselors like the atmosphere better and they find that more time per hearing is taken. They did not seem to have a fundamental preference for the use of outsiders. The way the person who conducts the hearing performs his tasks is more important. Most importantly, they mention that the hearing should never be just about passively listening to what the objector has to say.

What insight does the study of the objection procedure of Groningen provide us into the preference of objectors? The study shows that objectors in Groningen are in general rather negative about the objection procedure. The hearing itself gets only a slightly better grades. For the overall satisfaction of objectors it did not matter if the hearing was conducted by civil servants or by the external objection committee. The same goes for the experienced impartiality of person(s) conducting the hearing. The differences between the two categories of objectors were minor. A possible explanation for this finding could be that people base their judgement more on the performance of the person conducting the hearing than on their 'formal' status as outsider or insider.

6 Conclusion

In this contribution we discussed two empirical studies into the functioning of the Dutch GALA objection procedure of two large municipalities in the Netherlands. In particular, we were interested in the preference of objectors concerning the organization of the procedure and if, and how, their preference was related to the perceived (lack of) neutrality of the person who conducted their hearing.

Based on the literature we assumed that the use of outsiders would benefit the experienced impartiality of the person(s) conducting the hearing. The results of two discussed studies however do not support this assumption. Neither objectors in Tilburg nor those in Groningen perceived a lack of neutrality on the part of the civil servants conducting the hearings. The study in Groningen showed no significant differences between objectors who were heard by an external committee and those who were heard by civil servants working under the responsibility of the administrative authority that took the contested decision.

This does not take away from the fact that, when given a choice, most objectors would prefer the involvement of outsiders. The study focusing on Tilburg showed that even though most objectors did not experience a lack of neutrality, a large majority of them would prefer an external objection committee because they believe it would lead to a more independent, impartial and objective review of the contested decision. How can we explain this? Two possible explanations were found. The first explanation we found

was that the objectors, who experienced lower levels of procedural justice, were more likely to prefer the alternative (being: an external committee). The second explanation was that objectors felt that the use of outsiders would be more appropriate in general, considering the nature of the objection procedure itself.

The implications of our findings could be relevant for countries who have similarly organized administrative pre-trial procedures to the Dutch objection procedure. Specifically, that the use of outsiders does not automatically result in increased experienced impartiality. The status of the persons conducting the hearing is just one of the factors that influence objectors' assessment of the quality of the hearing. More important than their formal 'status', is the actual way the person conducting the hearing performs his or her task. The status of the person conducting the hearing does become more salient for objectors when they are less pleased with the way the civil servant performed during the hearing and – on a more principal note – if the administrative authority itself has a significant interest in a certain outcome of the objection procedure. Authorities would be advised to take these findings into account when designing pre-trial procedures.

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POVZETEK

1.01 Izvirni znanstveni članek

Nevtralnost in nizozemski postopek ugovora

Na Nizozemskem je tistemu, ki se ne strinja z upravnim nalogom, pritožba pri upravnem sodišču dovoljena le potem, ko je vložil ugovor pri upravnem organu, ki je odgovoren za nalog. Postopek ugovora pomeni, da upravni organ ponovno preuči svojo odločitev. V tem prispevku preučujemo naklonjenost vlagateljev ugovorov glede organizacije postopka in do katere mere je njihova naklonjenost povezana z zaznanim (pomanjkanjem) nevtralnosti oseb, ki je vodila zaslišanje. Še posebej se osredotočimo na učinke uporabe nevtralnih »zunanjih sodelavcev« med izvajanjem zaslišanj. Na podlagi literature smo domnevali, da bo uporaba zunanjih sodelavcev koristila zaznani nepristranskosti oseb(e), ki vodi zaslišanje. Toda rezultati dveh obravnavanih študij ne podpirajo te predpostavke. Uradni status oseb, ki vodijo zaslišanje, slabo napoveduje, v kolikšni meri jih bodo udeleženci postopka šteli za nevtralne.

Naš rezultat ni pokazal zaznavanja pomanjkanja nevtralnosti s strani javnih uslužbencev, ki so vodili zaslišanja. Študija v Groeningenu ni pokazala pomembnih razlik med vlagatelji ugovorov, ki jih je zaslišal zunanji odbor, in tistimi, ki so jih zaslišali javni uslužbenci, ki so delovali pod odgovornostjo upravnega organa, ki je sprejel sporno odločbo.

To ne zmanjšuje resničnosti dejstva, da bi večina vlagateljev ugovorov, če bi jim bila dana možnost, raje sodelovala z zunanjimi sodelavci. Študija, ki se je osredotočala na Tilburg, je pokazala, da bi kljub temu, da večina vlagateljev ugovorov ni občutila pomanjkanja nevtralnosti, velika večina raje sodelovala z zunanjim odborom za ugovore, saj verjamejo, da bi to pripeljalo do bolj nepristranskega in objektivnega pregleda izpodbijane odločbe. Kako naj to pojasnimo? Našli smo dve možni razlagi. Prva razlaga, ki smo jo našli, je, da so bili vlagatelji ugovorov, ki so izkusili nižjo stopnjo postopkovne pravice, bolj nagnjeni k alternativni možnosti (torej zunanjemu odboru). Druga razlaga je, da so vlagatelji ugovorov menili, da bi bila uporaba zunanjih sodelavcev na splošno bolj primerna glede na naravo samega postopka ugovora.

Posledice naših ugotovitev bi bile lahko pomembne za države, ki imajo podobno organizirane upravne predsodne postopke, kot je nizozemski postopek ugovora. Natančneje: uporaba zunanjih sodelavcev samodejno ne povzroči povečane izkušnje nepristranskosti. Status oseb, ki vodijo zaslišanja, je le eden od dejavnikov, ki vplivajo na oceno vlagateljev ugovorov glede kakovosti zaslišanja. Bolj kot njihov »uradni status« je pomemben dejanski način, na katerega oseba, ki vodi zaslišanje, opravi svojo nalogo. Status oseb, ki vodijo zaslišanja, postane pomembnejši za vlagatelje ugovorov, ko so le-ti

nezadovoljni z načinom, na katerega je javni uslužbenec vodil zaslišanje, in še pomembnejši, če ima sam upravni organ pomemben interes glede določenega izida postopka ugovora. Za organe je priporočljivo, da te ugotovitve upoštevajo pri načrtovanju predsodnih postopkov.

Ključne besede: nevtralnost, postopki za reševanje sporov, upravni predobravnavni postopki, nizozemsko upravno pravo, procesna pravičnost.

The Effects of Law Through Actions of Inspections¹

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ABSTRACT

Regulated phenomena in changing environments are difficult to manage. Their complexity is many times higher than can usually be embraced in the conventional ways public administrations prepare draft statutes, adjudicate and control other people. The same or even more stands for inspections as public bodies that directly see “regulations in action”, how asymmetries between regulation and implementation arise. Inspection is in the context of executive tasks despite its age a relatively new and poorly understood element of regulatory policies. This paper claims that regulation and enforcement are two sides of the same coin: only “regulation-enforcement” (feed-in) and “enforcement-regulation” (feedback) are the “eyes and ears” of effective regulation. Without the latter, when rules are realistic and adequate for a given context, no amount of enforcement will make unrealistic rules work. At the same time, without the properly administrated enforcement steps, focused on the risk-analysis, risk-management (risk-based strategic planning), monitoring and sufficient resources, no amount of otherwise good regulation will provide expected results.

Key words: control, public administration, inspections, implementation, regulation.

JEL: K42

*Les lois inutiles affaiblissent les lois nécessaires.
– Montesquieu²*

1 Introduction

At a time when public confidence in the functioning of public administration institutions becomes more and more fragile, when public confidence in the work of state institutions is very low (electoral participation included), each institution must rethink/contemplate its concept of action. This is all the

¹ This article is a revised version of the paper entitled ‘The Importance of Inspection for Achieving Public Goals’, presented at the EGPA Conference, Milano, 30 August-1 September, 2017, co-authored with Polonca Kovač. The EGPA contributions are not publicly available.

² The whole Montesquieu’s sentence is: ‘[a]s useless laws debilitate such as are necessary, so those that may be easily eluded, weaken the legislation. Every law ought to have its effect, and no one should be suffered to deviate from it by a particular exception’ (1989, p. 598)

truer for the supervisory, repressive institutions of the state among which are also inspection services. Inspection is in the context of executive tasks despite its age³ a relatively new and poorly understood element of regulatory policies; this can be inferred from the lack of literature and analysis on this topic (on the subject of inspections there is surprisingly little literature on their home field, i.e. administrative law, while e.g. also on Amazon.com or Google Books cannot be found not even one systematic work on this subject), although there are some, rare exceptions (Blanc, 2012; Jacobs & Cordova, 2005; Monk, 2012; OECD, 2013, 2014; Palast, Oppenheim, & MacGregor, 2003). Inspections are one of the basic administrative functions that control compliance with general rules. Qualitative, analytical, development-oriented and proactive inspection in the sense of understanding the authority, that is the highest when it is not even used (Arendt, 1972; Luhmann, 2013), it also has a wider task and objective; it must strive for preventive, advisory work, it must search for ways to connect performance with less burden on taxpayers. Among future challenges for countries will be the development and application of *enforcement* tools for the best possible outcomes with the highest compliance levels and minimum costs and burdens. Regulations as the formal tools of public power have been the subject of numerous debates (who can enact or change them, in what way, how, where and why, in what way they can be “good, better, smart, [really] responsive” etc.), but very seldom how they are *de facto* implemented, what enforcement tools are available, i.e. how information exchange takes place.⁴ This paper based on the latter sentence tries to point on circumstances which regulation should not disregard, and presents the inspection as an enforcement action in its wider context, because only a better understanding of the concepts of control (horizontal, between equal partners) and supervision (vertical, between unequal, vertically superior and/or subordinated members) can lead us to a better understanding of inspection’s work. In two parts there are four combinations, and the same could stand for regulation and implementation. A research question of this paper therefore is:

3 The growth and rapid industrialization led to political demands for the increased regulation and control of the urgent capitalist order also in antebellum America, where inspections i.e. the Steamboat Inspection Act of 1837 worked before the first regulatory agency (the Interstate Commerce Commission) was established in 1887 (Schiller, 2016).

4 One effective example of information exchange presents the UK’s *Regulatory Delivery* as the part of Department for Business, Energy & Industrial Strategy, that ‘brings together policy expertise and practical experience to ensure that regulation is effectively delivered in ways that reduce burdens on business, save public money and properly protect citizens and communities’. (Regulatory Delivery, 2017) Among the interesting coordinate enforcement action tools is the regulators’ development needs analysis (RDNA) as a self-assessment tool with technical knowledge sections specific to areas of regulation, and Primary Authority that enables businesses to obtain from authorities consistent advice on compliance with regulation, in a tailored and cost effective manner. Primary Authority advice is assured – the primary authority may direct against enforcement action if it is deemed to be inconsistent with the advice given – and this gives businesses the confidence to invest and grow. PA represents a new way of regulating, in which regulators work closely with businesses to ensure compliance while encouraging growth. Since PA began in 2009, the scheme has been extended to include more areas of regulation and to enable more businesses to participate. Businesses which are regulated by multiple local authorities are able to partner directly with a primary authority or are able to access the scheme via a coordinator such as a trade association (Department for Business, Energy & Industrial Strategy, 2017, p. 5).

Can regulation and implementation as two faces of Janus's coin be understood separately, or be regulated and implemented separately?

An answer will be given with the help of literature review, the OECD and EU practice, the basic notions of regulatory cycle and systems management; the first will be presented also in picturesque mode because we *a la* Aristotle (2016) believe the soul never thinks without an image. Results could be helpful for regulators and inspections to work more separately or more closely. As an answer is almost intuitively given to a reader a problem is obviously somewhere else. It definitely has something to do with implementation, which is also the focus point of this paper.

2 Circumstances which Regulation Should not Disregard

One of the most quoted propositions in Spinoza's *Ethics* is 'the order and connection of ideas is the same as the order and connection of things and *vice versa*' (Descartes, Spinoza, & Leibniz, 1974, p. 382). Thoughts and facts are indeed tightly connected; one without other can only be idealism or materialism. But how come this intuitive thought is so hard to apply in real occasions, in regulation? Countries e.g. many times enact, change or amend regulations *a la* Alice in Wonderland, who just wanted to go from one place "so long as I get somewhere". This behaviour is spotted when regulators do not connect ideas with facts and *vice versa*, when they are always on the move and always regulate something, but they basically do not know what they (will) cause, despite of the even knowable, legally determined goals. The basic frame in which goals are achieved in democratic countries is the division of power between the legislative and executive branch; this (common-sense) division also divides proclaimed goals and their factual achievement. Already for Goodnow administration was the function of executing the will of the state or the expression of the political will (Goodnow, 1900, 1905), formally in general rules determined in the notion of public interest. Although he made the difference between the expression (politics) and execution (administration) of the state will, he also knew 'the administrative system may, however, be so arranged as to make the actual practice quite contrary to the theory' (1900, p. 29). Duguit as one of the most vivid promoters of the country as public service, claimed 'a legal system is real only in the degree in which it creates rules satisfying the needs of men in a given society at a definite moment of time' (1921, p. 25). Despite this intuitive and rational division between the interests and the objective possibilities of their achievement (between theory and practice), and despite intuitive knowledge that goals can be effectively achieved only through the good implementation of (regulatory) goals, only regulation – as only one of the country's *ius imperii* instruments – has been mostly emphasised on the expense of rules' implementation.

Sometimes new terms/institutions are developed solely to embrace the non-effective practices (this can be confirmed from their names, e.g. *good*

administration, *good* governance, *responsive*, *better*, *smart* regulation), although the basic ideas stay the same: “if you want to accomplish your goals, you must have appropriate tools to do so”, and “if you want to determine your goals, you must have appropriate facts established with proper tools”. This obviously right and intuitive idea could be wrong, because it fits into Newton’s second law of motion,⁵ as a classic example of a one-way cause-effect thinking. It disregards the mental, internal processes of *living* organisms, which are able to control aspects of their external environments. Cziko describes this as *circular causality* in which causes are also effects and the latter are also causes: ‘perceptions do not control behaviour. Rather, individuals vary their behaviour as necessary to control their perceptions and thereby obtain desired outcomes and avoid unwanted ones’ (2000, p. 253). If one-way cause-effect relation was a long time the main prerogative, the theory of complex adaptive systems gives a fresh insight into living systems with a concept of *emergence*: ‘[a]n emergent property is a global behaviour or structure which appears through interactions of a collection of elements, with no global controller responsible for the behaviour or organization of these elements. The idea of emergence is that it is not reducible to the properties of the elements’ (Feltz, Crommelinck, & Goujon, 2006, p. 241). All is not only more than the sum of its parts, but what is or could be “all” cannot be known in advance; it emerges only through interaction. A very similar concept is the concept of synergy that means ‘behaviour of whole systems unpredicted by the behaviour of their parts taken separately’ (Fuller & Applewhite, 1997, p. 59).⁶

Although in regulation emphasis is put on goals and tools by which the former can be achieved, their *relations* are mostly forgotten: not only tools are chosen to achieve goals, but also the first constantly and in a new way *co-define* the second *during* their usage. What will “(re)emerge” from some regulations therefore crucially depends on the interaction of all (legal, factual, personal, organisational, financial, etc.) parts. A further characteristic of this emergent property is its ‘complex behaviour [that emerges] from simple rules. Those rules imply general regularities, but the working out of an individual case exhibits special regularities in addition’ (Gell-Mann, 2002, p. 313). How this could be relevant for regulation? The “emergent idea of regulation” is that if you want goals, focus on a system in which goals are achieved, i.e. focus on processes, their interactions, build the real-time feedback loops and establish transparency for all stakeholders and citizens. Despite all efforts, final goals can be more (known today – in the absence of the mentioned emergent idea of regulation – as unintended consequences) or less (our goal) different. On a

5 The acceleration of an object as produced by a net force is directly proportional to the magnitude of the net force, in the same direction as the net force, and inversely proportional to the mass of the object (Newton, 1947).

6 Emergence and synergy could not only explain why ‘rational, self-interested individuals will not act to achieve their common or group interests’ (Olson, 2002, p. 2), or the fact that ‘even if each individual of firm were rational, that would not ensure systemic stability’ (Stiglitz, 2009, p. 17).

general (regulatory) level *a system is needed in which information asymmetries are minimised* in a quick manner (this include also the moral hazard and human fallibility).

Breyer – as one of the first “ice-breakers” of the field of regulation – in 1982 claimed regulation cannot be described only in legal terms: ‘to generalize usefully about regulation, one must understand the substance of the regulatory program’ (S. Breyer, 1982, p. vii). He presented in *Regulation and Its Reform* a system of categorising regulation. Although he suggested case-by-case approach to regulatory reform, i.e. detailed examination of individual agencies (with sunset proposals and agency-by-agency review), and devoted to that area some (only three) pages (S. Breyer, 1982, pp. 365–368) it was not enough (not even in 2006⁷) to start the story of regulation *de facto* on both (determination and implementation) sides. Ex post evaluation is ‘vital to the successful implementation of...legislation’ (Gunningham, 2012, p. 120); there is much literature about the responsive (Ayres & Braithwaite, 1995), smart (Gunningham, Grabosky, & Sinclair, 1998), meta (Chiu, 2015) or risk-based regulation (Black, 2012), but there are rare works focused on the implementation level: Baldwin, Cave and Lodge propose to regulators a broad regulatory process with five core tasks (the DREAM framework): detecting, responding, enforcing, assessing and modifying (Baldwin, Cave, & Lodge, 2013, p. 227), while for Black regulators should practice really responsive regulation,⁸ but a common denominator of most is the regulator, not the implementer. In documents ex post evaluation is mentioned already in the origins of regulatory impact assessment⁹, but it was rarely *de facto* executed. For almost three decades, ex ante regulatory impact assessment was the “regulatory star”. The UK Better Regulation Task Force in 2003 among the five principles of good regulation included proportionality, accountability, consistency, transparency and targeting. Although only the latter (regulation should be focused on the problem, and minimise side effects) fulfils some parts of our emergent idea of regulation (enforcers should focus primarily on those whose activities give rise to the most serious risks, and regulations should be systematically reviewed to test whether they are still necessary and effective), it disregards that targeting depends crucially on data which have mostly implementers (street-level bureaucracy), not regulators. The OECD in 2006 noted ‘there is, as yet, little evidence of the systematic adoption of

7 Breyer with co-authors in 2006 issued a large work on administrative law, but on the subject of regulation the typical justifications for regulation and the classic regulatory tools are very briefly mentioned (S. G. Breyer, Stewart, Sunstein, & Vermeule, 2006, pp. 4–13).

8 To be “really responsive” regulators have to respond not merely to firms’ compliance responses, but also to their behaviour, attitudinal settings, to the broader institutional setting of the regulatory regime; to the different logics of regulatory tools and strategies; to the regime’s own performance; and finally, to changes in each of these elements (Baldwin & Black, 2007, p. 17).

9 In one of the first OECD’s documents on the subject of regulation, the OECD Report on Regulatory Reform (1997) ex post evaluation (review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively and ensure that regulations and regulatory processes are transparent, non-discriminatory and efficiently applied), was also mentioned, but on the national levels this was not enough for its serious application.

ex post assessments of the ex ante predictions about probable regulatory impacts made in RIA documents – that is, of “outcome testing” (OECD, 2006, p. 33), but in 2009 it already found a number of authorities using RIA methods to strengthen their evidence-based policy making in the area of corporate governance. It suggested that also in areas where ‘a need to act quickly [exists]...best practice indicates that there should at least be an ex post analysis to determine whether the emergency or hastily introduced measures were indeed effective and efficient’ (OECD, 2009, pp. 178–179).¹⁰ Despite efforts, ‘the processes of how regulations are designed and developed, how to improve them and make them “smarter”, have been given considerably more study than the regulatory delivery mechanisms of inspections and other enforcement tools’ (OECD, 2013, p. 4). Improving the design of regulation through regulatory impact analysis, stakeholder engagement and the removal of unnecessary burdens has prevailed ‘over regulatory enforcement in most OECD countries so far. Scarce attention has been paid to examining possibilities for improving the way regulations are implemented and enforced’ (OECD, 2014, p. 3).¹¹ Although countries gave in recent year a large attention to administrative burden reduction, the latter unfortunately does not (also due to data incompatibility) incorporate data which inspections has:

Though in theory it should be possible to use data from inspectorates themselves to estimate the burden [reduction] and its evolution, in practical terms this is usually impossible. Inspectorates tend to be reluctant to share this data but, even when they do, its structure is often inadequate to this purpose (difficult in most countries to calculate really how many different businesses were inspected, as distinct from how many visits took place), and its contents not detailed enough (e.g. on duration of visits) (Blanc, 2012, p. 49).

The OECD’s international standard cost model (SCM) that is also used in the EU and its member states does not include enforcement or inspection costs (European Commission, 2007; SCM network, 2016).¹² In December 2012, the European Commission upgraded its efforts in the field of Smart Regulation by launching the Regulatory Fitness and Performance Programme (European Commission, 2014), aimed at eliminating unnecessary regulatory burdens and ensuring that the body of EU legislation remains fit for purpose.

¹⁰ A connection between efficiency and effectiveness can be vividly expressed in Ackoff’s (1978) relation between doing the “right thing wrong” (effective inefficiency) or the “wrong thing right” (ineffective efficiency). The more efficient people/administrators are at the doing the wrong (ineffective) thing, the wronger they become.

¹¹ Based on this observation the OECD (2014) developed the eleven principles addressing the design of the policies, institutions and tools for promoting effective compliance and the process of reforming inspection services to achieve results. The way inspections are planned, their better targeting, communication with regulated subjects, preventing corruption and ethical behaviour could be based on ‘1. Evidence-based enforcement; 2. Selectivity; 3. Risk focus and proportionality; 4. Responsive regulation; 5. Long-term vision; 6. Co-ordination and consolidation; 7. Transparent governance; 8. Information integration; 9. Clear and fair process; 10. Compliance promotion; and 11. Professionalism.

¹² The SCM uses a formula to measure the administrative burdens (Cost per administrative activity [or per data requirement] = Price x Time x Quantity [population x frequency]). Administrative costs as defined by the SCM are only incurred where the inspection relates entirely to an information obligation. Inspections with a broader focus are not included (SCM network, 2016, p. 41).

Among horizontal actions the Commission enumerated beside the impact assessment, stakeholder consultation, measurement of regulatory costs and benefits and reporting requirements, also ex-post evaluation (as a clear sign that ex post evaluation is usually not taken into account in impact assessment) that verifies whether the expected results and impacts of EU regulation have been achieved (inspections are not mentioned). The High Level Group on Administrative Burdens (HLG) that was set up in 2007 to advise the Commission on the implementation of the Action Programme for Reducing Administrative Burdens in the European Union among five recommendations recommends 'that the Commission develops a common EU methodology to measure regulatory costs and benefits, makes the evaluation of all EU legislation compulsory on the basis of this common methodology to measure actual outcomes against original objectives before any proposal for revision or new legislation is made' (The High Level Group on Administrative Burdens, 2014, p. 53).

On the EU level, a serious step towards ex post evaluation was made with the Regulatory Scrutiny Board (RSB) that replaced in 2015 the Impact Assessment Board (IAB) of 2006.¹³ The IAB enforced quality standards for the impact assessments for Commission proposals, but the Juncker Commission¹⁴ wanted to achieve more in better regulation. It established the RSB in 2015 with reinforced independence and enhanced responsibilities to cover "fitness checks" and significant ex post evaluations of existing policies. The goal is to ensure that evaluations supporting Commission policy-making are of high quality. This helps make operational what is commonly referred to as the "evaluate first" principle. The RSB explained how the "evaluation first" principle works in practice:

The RSB looks only at fitness checks and the most important evaluations; the selection of the planned evaluations is based on the Commission's multi-annual evaluation planning. Evaluated services are obliged to write a Staff Working Document (SWD) that summarises the evaluation and its conclusions. The Board's opinion on evaluations focuses on the quality of the SWD. The few (seven) SWDs that the Board reviewed over the past year had limited critical analysis of such issues as coherence, relevance and EU value added. They also did not systematically draw clear conclusions for follow-up action and did not always exploit all the information that external evaluators had collected. By contrast, the analysis of efficiency and effectiveness was more complete. All evaluations should constitute an essential input to the corresponding impact assessment. The RSB sees evaluations together with the impact assessment and can include its assessment of their quality in the opinion it provides on the impact assessment. In the course of 2016, has seen and reviewed another

¹³ The European Commission already in 2010 stated that 'the Commission will target the whole policy cycle by attaching more importance to the evaluation of existing legislation and policies. The resulting evidence will be put at the heart of the design of new or revised regulation, alongside with impact assessments'. IP/10/1296, 8 October 2010. http://europa.eu/rapid/press-release_IP-10-1296_en.htm?locale=en

¹⁴ Decision of the President of the European Commission on the Establishment of an Independent Regulatory Scrutiny Board, Strasbourg, 19.5.2015 C(2015) 3263 final.

15 evaluations in this way. Overall, it appears that at least half of the impact assessments applied the “evaluation first” principle in 2016. The “evaluation first” principle increases transparency. Board review of the SWDs also provides an institutional safeguard against “cherry-picking”, i.e. selectively reporting evidence that supports a particular approach. The presence of such a safeguard serves to increase the credibility of evaluation practices (Regulatory Scrutiny Board, 2016, p. 17).

The RSB’s focus on evaluations done by services which implement regulations is very relevant (implementers have the largest amount of information that emerges at the very time of rule implementation), but on a long run, the “evaluation first” principle should become a part of the regulatory culture of each institution per se.

3 An Inspection as an Enforcement Action

Regulation and enforcement are two sides of the same coin; as for every two parts, also here we have four combinations: “regulation-regulation” is blind and ineffective, “enforcement-enforcement” (without rules) is deaf and illegal, while “regulation-enforcement” (feed-in) and “enforcement-regulation” (feedback) are the “eyes and ears” of effective regulation. Without effective regulation, when rules are realistic and adequate for a given context, no amount of enforcement will make unrealistic rules work. At the same time, without the properly administrated enforcement steps, focused on the risk-analysis, risk-management (risk-based strategic planning), monitoring and sufficient resources, no amount of otherwise good regulation will provide expected results. The effective and efficient regulation is constantly in regulators’ focuses, but both terms are also tightly connected with enforcement.¹⁵ In recent years grows a recognition that also ensuring effective compliance with rules and regulations is the important factor in creating a well-functioning society and trust in government (OECD, 2013, 2014). Enforcement represents the classic types of rules’ implementation (advice, warning, sanction) conducted by regulatory agencies and law-enforcement bodies (penalty, prosecution), as well as the other legal or even potential actions of agencies (proposals for legal changes, public notices, naming and shaming), of third parties (*actio popularis, qui tam*) or even of undefined populations (loss of confidence, demonstrations, media). Among enforcement tools that stand up front by the number of legal procedures, employees, competencies for a forced execution or repression with grave consequences for persons subjected to legal obligations, are inspections as ‘any type of visit or check conducted by authorised officials on products or business premises, activities, documents etc.’ (OECD, 2013, p. 3).

¹⁵ Due to the mentioned notions of emergence and synergy, enforcement could be even more important than regulation, because new emergent properties can be spotted only in this stage of regulatory cycle.

The operation of inspections is provided by public funds, so the public rightly expects funds are used in the rational and efficient manner. All this is true, but it is already a result which is determined by their approach. An activity of public institutions should be transparent, efficient and responsive to the public needs. This is even more true for the controlling and/or repressive institutions of the country. Despite the increasing focus or even quite continuous efforts to eliminate administrative burdens, the field of inspections continues to be the field with low-interest for it. There are numerous talks about the better transparency, efficiency, responsiveness and other unspecified concepts, but very seldom what they mean in practice and/or how they are put into practice. In connection with the achievement of public objectives, the public attention has been so far largely devoted to the "art of regulation", while techniques, i.e. the enforcement tools of the very same regulation, has remained somehow by the side. There is ample evidence that inspections are crucial for the determination how regulations are viewed from businesses and the economy. Based on the analysis of 25 respondent states about inspections Monk concludes that despite 'much good practice taking place there is still a high level of complexity, considerable inconsistency and a general gap in the way inspection authorities are governed and their performance of inspections implemented and assessed' (Monk, 2012, p. 4). To Blanc

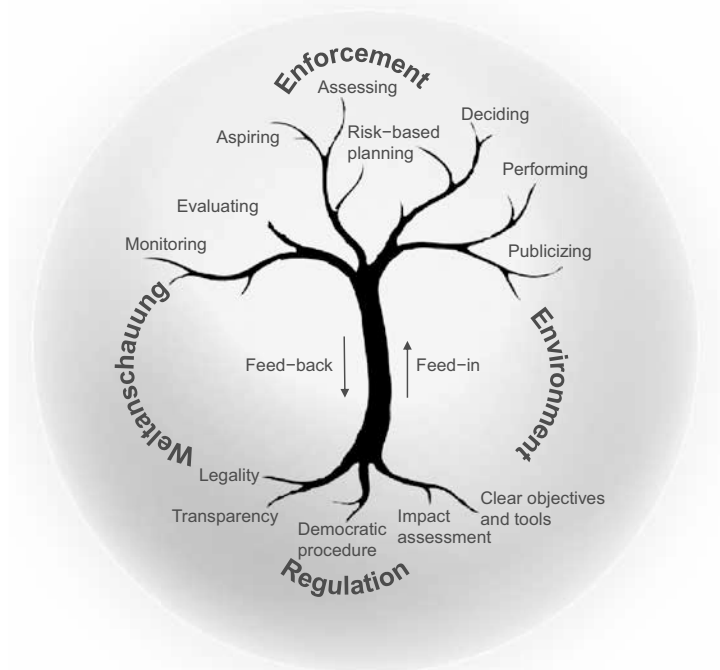
inspections and enforcement actions are generally the primary way through which businesses, "experience" regulations, and regulators; inadequate approaches in enforcement and inspections can mean that changes in regulations fail to deliver their full benefits, evolutions in inspections and regulatory delivery to make them more compliance-focused, more supportive and risk-based can all lead to real and significant improvements for economic actors, enforcement and inspections are as much about methods and culture as institutions, and as much about organizational mechanisms as legislation (Blanc, 2012, p. 7).

Each inspection should conduct its work by checking not only the compliance of operations with regulations but also the public opinion (also through application forms, anonymous tips, affairs) *vis-à-vis* individual activities (how they are performed, what kind of relationship is to and between the parties, etc.), what kind of attitude of a subject inspected has towards inspections and thereby (as well as by asking questions) analyse – based on the data and views of all participants – a situation of individual activities, present proposals for legislative changes and the like. Control through inspections should not be implemented just as simply control about an implementation of laws (which leads to technicism and bureaucratisation of those services), but it should monitor the application of the law particularly to protect the public interest in connection with the rights of individuals. The principles of proportionality, independence, and professionalism of the inspection should occur therefore at the very beginning, in the forefront of their work. Inspections are used on areas where a penalty for infringement is not fully automatic (where it can be determined directly from records, reports, etc.), and/or where a specific knowledge to detect violations is needed. Thus, in addition to the classic

legal bases understanding is needed about ways of practical implementation of regulation, how the interaction between the inspection and taxpayers is developed, how practices can be harmonised, and results measured and finally how a relevant field can be directed towards the desired goal. Notwithstanding that a system of external control must be present, there should be also established an internal system of control that not only monitors but also manages. This duality can be sometimes or somewhat overlooked, but it was always known; French know it in the adage: *juger l'administration, c'est encore une fois administrer*. As soon as a certain activity is regulated under the law, its implementation must be such that rules are not violated. A guarantee for this is primarily a public body/person that/who implements activities, and not a higher supervisory authority – even if the latter has a controlling function determined as one of its main tasks (inspection, a court of audit). A duty to control is never solely a function of control, but through it, an appropriate dose of control activities is also administrated.

Control processes are the generator of the executive, repressive apparatus; it is essential the methods, scope and resources are in the work of scheduled inspections, coordinated and controlled, and especially in a constant contact with the area where they are implemented. In the time of growing intertwining of fields, the complexity of the work, development of technologies etc., it is important the tactic of inspection is not just a matter of an individual inspection or even multiple inspections, but of all stakeholders, which may be affected by the work of the first. The inspection is only one element of control; the original inspection should be carried out already within a scope of individual activities. In addition to the repressive, the inspections can - by itself or in combination with repressive measures - also use educational approaches to provide a voluntary operation, which should be in accordance with regulations, i.e. when inspector "speaks softly, but with a long stick in his hand". The inspector is not only an officer, a scientist, and an artist but the combination of everything. We can get to the very core of inspections, not through a study of individual laws, but we need to know their practices. The mentioned arguments about the wider significance of (systematic) management can be carried out also by inspections along with their traditional repressive powers. This lead us towards a clear understanding of regulatory circle and the extraction of management criteria in the field of inspection. As regulation and enforcement are two sides of the same coin, their basic elements are a mirrored picture of both sides. Both sides are established and implemented in a given country's context, i.e. in its world-view (ger. *weltanschauung*) and different interest from its environment that affect their content:

Figure 1. Regulation and Enforcement Cycle (own construction)



The implementation of control depends on the types of implementation, while the latter are not only associated with the problem of the recruitment of suitable staff but also how public employees understand the environment in which they work, their personal characters or world views. A system of control also depends on the education, training and competence of supervisors, but before all these and other possible fields should be considered, there must be consideration of the ways of control, their types and methods, as these have a significant impact on final results. The research question from the introduction of this paper is answered negatively: regulation and implementation cannot be understood separately, nor cannot be regulated and implemented separately. Regulators and inspections should therefore work closer, but the problem is not a system *per se*, but *people* (officials, politicians) who do not (want to) understand that complex adaptive systems always develop in their own ways (they find their own equilibrium, they are self-adaptive) if not administrated by the people.

4 Conclusion

Because of the *ex ante* impossibility of knowable (emergent) effects, it is of crucial importance that all elements are detected as soon as possible. Only through the non-stop feedbacks, (re)organisations and (re)arrangements of elements, control can be constantly (re)acquired over new situations

that emerge during a change of different conditions or appear during an implementation of rules. The biggest challenge for countries is the formulation and application of strategies for the implementation of legal rules to ensure the best results with the highest possible level of compliance. The formulation-application-implementation trinity should be done while keeping regulatory costs and administrative burdens as low as possible. The activities of public institutions should be transparent, efficient and responsive to the needs in their areas. All this may be true, but it already represents a result that is conditioned by an appropriate way of getting things done. Each institution should conduct its work not only in compliance with the rules; activities should be done parallel with public opinion that the public has *vis-a-vis* various activities, including with the public body's self-evaluation.

Control should not be carried out as a mere control of the application of the law, but for the protection of the public interest and public gains concerning the rights of individuals. Only a detailed understanding of the concepts of control, supervision, and inspection can lead us to a better understanding of inspection's work, which should not be based solely on the repressive "command and control" (where power flows only one way in the form of instructions and commands,) but also on routing-benefits of adaptation, provided by a two-way communication. Information is acquired also by persons outside inspections, by the taxpayers, competitors, consumers and citizens; it can be obtained through implementing powers in the field (*ex post* after the occurrence of an accident, by corrective measures or *ex ante* in relation to the complaints, anonymous tips, from other national authorities and planned inspections), with a request to present documents from persons liable to act according with rules, or through a commitment to have records about an inspected activity. A function of control so therefore never only the function of control, but through it (with the "appropriate dose of control") also a relevant field is managed. Future research on this field could focus in systemic preparation of inspections' reports with the separate fields for communication with stakeholders and the public, for the control, preventive and repressive actions, risk assessment/management, and the last, but not least, for citizen participation and other democratic elements. We should not forget the best repressive institution is the one that never/very rarely uses its legal power to coerce its fellow-citizens. In Slovenia, e.g. decision-makers could begin with a new version of Inspection Council's draft report for future reports; it could be more valuable than to amend Inspection Act...

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POVZETEK

1.01 Izvirni znanstveni članek

Učinki predpisov zaradi dejavnosti inšpekcij

Regulirane dejavnosti je v spreminjajočih se okoljih težko upravljati. Njihova kompleksnost je navadno višja, kot se jo običajno razume v okviru javnih uprav, ki v večini primerov pripravljajo osnutke zakonov, odločajo v upravnih postopkih in izvajajo nadzor nad ljudmi in njihovimi dejavnostmi. Vse to, enako ali celo v večji meri velja za inšpekcije kot javne organe, ki neposredno vidijo "predpise v akciji" in ki so neposredne priče pojavi asimetrij med predpisi in njihovim izvajanjem. Inšpekcija je v kontekstu izvršilnih nalog kljub svoji starosti relativno nov in slabo razumljen element regulativnih politik. Članek temelji na ideji, da sta regulacija in njeno izvrševanje dve strani istega kovanca: le "regulacija-izvrševanje (vložki)" in "izvrševanje-regulacija" (povratne informacije) so "oči in ušesa" učinkovite regulacije. Brez slednje, ko so pravila realna in ustrezna za določen kontekst, nobena mera izvrševanja ne bo mogla sicer spremeniti nerealnih pravil v uspešna pravila. Istočasno pa brez usmerjenega izvrševanja v pravilnem zaporedju, ki je osredotočeno na analizo tveganj, obvladovanje tveganj (strateško načrtovanje na podlagi tveganj), spremljanja in zadostnih sredstev, nobena količina sicer dobro zasnovane regulacije ne bo prineslo pričakovanih rezultatov. Samo natančno razumevanje pojmov kontrole, nadzora in inšpekcije, lahko vodi k boljšemu razumevanju dela inšpekcijskega dela, ki ne sme temeljiti zgolj na represivnemu "ukazu in kontroli" (kjer moč teče enosmerno v obliki ukazov in navodil), ampak tudi na način prilagajanja, ki ga zagotavlja dvosmerna komunikacija. Funkcija nadzora torej ni nikoli le funkcija nadzora, temveč se prek njega (z "ustreznim odmerkom") tudi upravlja relevantno področje. Prihodnje raziskave na področju inšpekcij bi se lahko osredotočile na sistemsko pripravo poročil o inšpekcijskih pregledih z ločenimi odseki za poročanje o komuniciranju z zainteresiranimi deležniki in javnostjo, o nadzornih, preventivnih in represivnih ukrepih, za oceno/upravljanje s tveganji in ne nazadnje, ali predvsem za sodelovanje ljudstva pri upravljanju javnih zadev in na druge demokratične elemente. Ne gre pozabiti, da je najboljša represivna institucija tista, ki ob doseganju ciljev nikoli ali zelo redko uporablja legalno represijo moč za namen prisile lastnih sodržavljanov.

Ključne besede: nadzor, javna uprava, inšpekcije, izvajanje, regulacija.

Analysis of the Relationship of Professionals towards the Vertical Equity of the Slovenian Tax System and Its Comparison with Croatia, Bosnia and Herzegovina and the USA¹

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ABSTRACT

Vertical equity states that taxpayers whose positions are not the same should be treated differently while taking into consideration all the relevant characteristics. The main purpose of using the vertical equity principle is to require the redistribution of income in a way that reduces the income inequality of the society. The presented research aims to check the opinion of Slovenian tax system professionals on the principle of vertical equity. Slovenian results have been compared to a similar analysis carried out in Croatia, and partly with survey results from Bosnia and Herzegovina and the United States of America. The results show that the professional public agrees with the principle of vertical equity in the implementation of tax systems. All of the compared countries are similarly favourable towards vertical equity. However, this is also affected by the current tax arrangements of the individual countries.

Key words: vertical equity, tax system, equitable distribution, Slovenia.

JEL: H23, H30, E62

1 Introduction

The tax system needs to be designed in a way that will not distort economic effectiveness and at the same will ensure a high level of social justice. Progressive income taxation is a result of the practice used in the taxation of

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the economic strength of an individual, where people with a higher income pay a relatively larger amount of tax than people with a lower income. At the same time, people with a higher income participate more in the process of consumption, which is taxed with value added tax (VAT). In this case, the practice of taxing the economic strength of an individual means that people with a higher income pay a larger share of taxes (Ivanov, 2011, pp. 3–4). Tax principles include recommendations for legislators or tax authorities on how to form a tax system so that it will be financially substantial, economically encouraging, socially equitable and technically appropriate in terms of taxation (Pernek, 2001). In practice, this is a real challenge. According to tax principles, the tax system should be designed in a transparent and easy manner, while interfering with the economic decisions of the subjects in the market as little as possible. The establishment of the tax system is also connected to administrative expenses and losses, which are connected to tax evasion, so it is important to design the tax system in such a way that it minimises costs and evasions (Mirrlees, 2011). In addition to the already stated, the decision makers need to consider the goals of the tax policy as a part of the comprehensive policy. There are no tax principles with an absolute value. Modern tax principles differ from past ones in terms of content, despite sharing the same name. This can be particularly seen in the principle of equity, which was understood differently in different times and places. Taxation principles changed under the influence of various circumstances, i.e. economic, cultural and political (Mišetić, 2016).

The principle of equity is a problem that has not yet been solved and is even seen as unsolvable by economists and social philosophers since many books and dissertations have been written about it. It is hard to decide what is fair because everyone has a different view. The realisation of the principle of equity can be carried out by taxation according to the benefit principle or taxation according to the principle of economic viability (Kranjec, 2003). If we wanted to make all taxes fair and make every individual pay only as much for the public goods as used by that very individual, then each individual should only pay for public goods that he/she actually uses. However, in practice, this is hard to achieve, for it is impossible to measure individual needs in terms of public goods.

Two general principles of equity are important for our research (Kranjec, 2003), i.e. the principle of horizontal equity – individuals who are in the same position in terms of individual selected characteristics need to be treated the same way – and the principle of vertical equity – individuals who are in different positions in terms of individual selected characteristics need to be treated differently. The principle of vertical equity means that higher income equity needs to be ensured through the tax system. Therefore, this is a principle that requires the redistribution of income through the tax system.

In the framework of this research, the first extensive survey of tax professionals was carried out. It comprises 92 statements connected to the Slovenian tax system. This article analyses those questions, which show how professionals in Slovenia accept or confirm/reject certain concepts on a theoretical basis. The opinion of professionals is important from at least two aspects connected

to the formation of tax policy. Firstly, the formation of the tax system in a certain environment is strongly subject to the opinion of professionals, since measures that are generally not supported by society mostly do not end up being accepted. Secondly, the manner of redistribution of income via taxes and the amount of redistribution are subject to the relationship towards social inequality. The greater the aversion to inequality, the stronger the role of redistribution in the society and, consequently, the greater the implementation of the principle of vertical equity than the principle of equity of the tax system. This research thus tested 1) how the Slovenian professional public evaluates various theoretical concepts connected to vertical equity and 2) whether the Slovenian professional public prefers the principle more than professional public in other countries, where a similar analysis has been performed. The methods used in this research were interviewing, quantitative statistical analysis of the answers by the groups of professionals and comparative analysis with similar research abroad.

This article is structured in such a way that research from the field of vertical equity and the overview of the research, focused on interviews to check or evaluate tax systems, are introduced first, and followed by the presentation of the methodology. The results of the research are shown descriptively and with an analysis of the correlations with the question of fairness and interviewers' characteristics. Their answers have also been analysed from the perspective of evaluating the opinions of Slovenian professionals on various theoretical principles. The chosen statements were later compared to research in other countries. In the conclusion, general conclusions and potential future research in the field are presented.

2 The Principle of Vertical Equity in Research

As has been previously mentioned, the principle of vertical equity requires the redistribution effects of the tax system, with which a larger part of an income is taken from those with larger income and a smaller part from those with a smaller income. This means that the tax system needs to be progressive. Progressiveness can be achieved through the increase of the average tax rate in accordance with the tax base (Lambert, 2001). Some authors think that this principle can also be met if the net taxes increase in accordance with the pre-tax income (Duclos & Araar, 2006). Research, connected to vertical equity is mainly focused on the analysis of individual tax measures and their effects on the provision of this principle. Urban (2014) divides these research studies into two groups – those that try to determine the effects of individual measures by measuring income prior to and after taxation. On the other hand, there are research studies that focus on the cumulative effect of all instruments at once. The effect of an individual instrument is then evaluated on the basis of the decomposition of the effect of an individual instrument. Most research studies belong to this second group (e.g. Lambert, 1985; Lerman and Yitzhaki, 1985; Rao, 1969). The effect of measures on vertical equity alone was, for example, studied by Ervik (1998), Immervoll et al. (2006) and Zaidi (2009). Research in the field of vertical equity is therefore mostly focused on analysing effects of various changes and measures of tax policy. This group of research

studies also partly includes research studies that focus on measuring the effects of income redistribution but do not explicitly mention the principle of vertical equity. Research studies from this area are not the basis for our research study, so we are not going to present them in detail.

Research studies connected to the evaluation of opinions on the tax system are closer to our research questions. There is a lot of opinion research on the tax system (e.g. Behrens, 1973; Dornstein, 1987; Ashworth and Heyndels, 1997; Kirchler, 1999; Petersen et al., 2000; McGowan, 2000; Murphy, 2004; McCabe and Stream, 2006; Hammar et al., 2008; Campbell, 2009; Ventry, 2011; Hulse and Vines, 2012; Sanandaji and Wallace, 2014; Borrego et al., 2015). Research studies mostly focus on an individual tax or an individual group of taxes (e.g. taxation of work, companies, etc.), or they focus on the tax system as a whole and not on an individual tax or a group. The results of the majority of the research studies show that experts rarely reach the consensus on tax policy and that several factors influence their opinion. In the framework of our research study, we used a wide-ranging questionnaire on the tax system, intended for the evaluation of the entire tax system, though our analysis focuses on the principle of vertical equity. The questionnaire that we used follows the one that was used in the USA (Lim et al., 2013) and in Croatia (Šimović et al., 2014). The fairness of the tax system was also studied in an opinion research study by Dornstein (1987), who wanted to figure out how taxpayers see the fairness of the tax distribution. A similar research study was also carried out in Germany by Heinemann & Hennighausen (2010). Other research connected to the taxpayers' opinion and tax fairness is related to individual taxes or groups of taxes.

3 Methodology

As mentioned before, we prepared our questionnaire in accordance with the questionnaires used in the USA (NTA, 2013 and Lim et al., 2013) and Croatia (Šimović et al., 2013). The main purpose for using both questionnaires is the easier comparability of results with the stated countries. A similar questionnaire was also used in Bosnia and Herzegovina one year later (Lazović-Pita and Štambuk, 2015). The questionnaire includes 92 statements, which interviewees were able to assess using a Likert scale from 1 (completely disagree with the statement) to 5 (completely agree with the statement). In addition to these 92 statements, the questionnaire also includes a few demographic questions, i.e. on the age, level of education and area of work. For the analysis of the opinion on vertical equity, 33 statements were selected from the set of statements, which can be interpreted in the light of the principle of vertical equity. The questionnaire was intended for the professional public, i.e. tax advisors, academics in the field of taxation and employees of the state tax administration. The survey was conducted at the beginning of 2014. The responsiveness of the tax advisors was the lowest, i.e. 18%, and slightly better among the academics (22.6%). Altogether, 169 interviewees answered the questionnaire. The largest part of the structure consists of tax administration representatives (state sector), i.e. 60.2%, followed by tax advisors (32.5%) and academics (7.2%).

4 The Results

4.1 Analysis of Selected Statements of Slovenian Professionals in the Framework of Different Theoretical Concepts

As previously mentioned, 33 statements were taken from the whole. They can be included in the interpretation of vertical equity taking into account different theoretical concepts of fairness. Evaluations of the statements are directly compared to the Croatian research, because our aim is to indirectly check whether the development of individual tax systems, despite the same tradition of the tax system in the past, affects the opinion of the experts. We assume that the theoretical basis of the knowledge of the professionals is the same in both countries. The comparison of the median and the structure of the answers to an individual selected statement is shown. In the table, the statements where "social sensitivity" is expected to get lower grades (1 and 2) are shaded, while questions that are directly or indirectly in favour of vertical equity, where a higher level of agreement is expected (grades 4 and 5), are not shaded.

Table 1. *Distribution of Answers (in %), the Median and the Interquartile Range*

| The number of the statement and the statements | | Answer (%) | | | | | Median (IQR) |
|---|------------------|------------|----|----|----|----|--------------|
| | | 1 | 2 | 3 | 4 | 5 | |
| 1. Slovenia needs to impose a property tax. | SVN | 17 | 8 | 12 | 24 | 39 | 4 (2-5) |
| | CRO | 19 | 18 | 9 | 34 | 20 | 4 (2-4) |
| 3. Other types of property should also be taxed (e.g. movable goods, financial assets) so a synthetic wealth tax (net wealth) can be imposed. | SVN | 33 | 10 | 17 | 14 | 26 | 3 (1-5) |
| | CRO | 21 | 19 | 10 | 25 | 25 | 3.5 (2-4.75) |
| 10. Inheritance and gifts should be taxed. | SVN | 33 | 15 | 19 | 11 | 22 | 3 (1-4) |
| | CRO | 29 | 20 | 13 | 21 | 17 | 3 (1-4) |
| 11. Inheritance and gifts should be taxed at a proportional rate. | SVN | 28 | 11 | 19 | 16 | 25 | 3 (1-5) |
| | CRO ¹ | 31 | 14 | 11 | 24 | 18 | 3 (1-4) |
| 12. Real estate transfers should be taxed. | SVN | 7 | 7 | 9 | 25 | 51 | 5 (4-5) |
| | CRO | 8 | 6 | 9 | 38 | 38 | 4 (4-5) |
| 13. Property is a necessary additional indicator of economic (tax) capability alongside income. | SVN | 11 | 8 | 22 | 24 | 34 | 4 (3-5) |
| | CRO | 6 | 9 | 11 | 33 | 41 | 4 (3-5) |
| 14. The highest personal income tax rate needs to be reduced (recently set at 50%). | SVN | 25 | 13 | 16 | 15 | 31 | 3 (1.25-5) |
| | CRO ² | 24 | 22 | 12 | 18 | 24 | 3 (2-4) |
| 15. The lowest personal income tax rate needs to be reduced (now at 16%). | SVN | 31 | 13 | 13 | 15 | 28 | 3 (1-5) |
| | CRO ³ | 14 | 15 | 15 | 26 | 30 | 4 (2-5) |
| 16. Instead of multiple personal income tax rates, we should impose a universal tax rate and retain personal tax allowances. | SVN | 52 | 15 | 12 | 7 | 15 | 1 (1-3) |
| | CRO | 38 | 21 | 15 | 15 | 12 | 2 (1-4) |

| The number of the statement and the statements | | Answer (%) | | | | | Median (IQR) |
|---|------------------|------------|----|----|----|----|--------------|
| | | 1 | 2 | 3 | 4 | 5 | |
| 17. We should impose more personal income classes. | SVN | 25 | 10 | 18 | 19 | 27 | 3 (1-5) |
| | CRO | 21 | 18 | 17 | 24 | 20 | 3 (2-4) |
| 18. We should reduce the number of personal income classes. | SVN | 46 | 18 | 19 | 5 | 11 | 2 (1-3) |
| | CRO | 36 | 27 | 22 | 6 | 9 | 2 (1-3) |
| 19. We should reimpose tax reliefs connected to the expenditures of individuals on healthcare services. | SVN | 24 | 5 | 15 | 16 | 36 | 4 (1.5-5) |
| | CRO | 14 | 11 | 7 | 25 | 43 | 4 (2-5) |
| 20. We should reimpose tax reliefs connected to the expenditures of individuals on tackling the housing problem. | SVN | 16 | 5 | 10 | 19 | 49 | 4 (3-5) |
| | CRO | 14 | 13 | 8 | 25 | 40 | 4 (2-5) |
| 21. We should reimpose tax reliefs connected to the expenditures of individuals on life insurances. | SVN | 32 | 11 | 19 | 14 | 24 | 3 (1-4) |
| | CRO ⁴ | 16 | 14 | 13 | 21 | 35 | 4 (2-5) |
| 23. We should reimpose the relief for donations and replace the currently available allocation of personal income tax for this purpose. | SVN | 25 | 11 | 21 | 11 | 32 | 3 (1.75-5) |
| | CRO ⁵ | | | | | | |
| 25. All income should be taxed in the same manner (by rates or at a flat rate). | SVN | 42 | 11 | 16 | 14 | 17 | 2 (1-4) |
| | CRO ⁶ | 15 | 14 | 32 | 20 | 18 | 3 (2-4) |
| 26. Capital income should be taxed at a lower rate than other income. | SVN | 36 | 18 | 21 | 13 | 14 | 2 (1-4) |
| | CRO ⁷ | 32 | 25 | 19 | 14 | 10 | 2 (1-3) |
| 27. Dividends should be taxed at a lower rate than other income. | SVN | 33 | 21 | 18 | 11 | 17 | 2 (1-4) |
| | CRO ⁸ | 13 | 11 | 13 | 26 | 38 | 4 (3-5) |
| 42. There should only be one VAT rate. | SVN | 63 | 14 | 11 | 4 | 7 | 1 (1-2) |
| | CRO | 26 | 30 | 12 | 17 | 15 | 2 (1-4) |
| 43. There should be a zero VAT rate for selected goods and services. | SVN | 24 | 7 | 13 | 12 | 44 | 4 (2-5) |
| | CRO ⁹ | 11 | 10 | 14 | 30 | 35 | 4 (3-5) |
| 45. Some types of food should be taxed at a lower VAT rate. | SVN | 5 | 6 | 8 | 16 | 63 | 5 (4-5) |
| | CRO | 7 | 5 | 7 | 31 | 51 | 5 (4-5) |
| 47. We should increase the standard VAT rate. | SVN | 60 | 21 | 13 | 2 | 3 | 1 (1-2) |
| | CRO | 74 | 18 | 5 | 1 | 1 | 1 (1-2) |
| 48. A higher VAT rate is better than imposing a crisis tax. | SVN | 33 | 10 | 24 | 13 | 21 | 3 (1-4) |
| | CRO | 32 | 14 | 26 | 17 | 11 | 3 (1-4) |
| 49. Lower VAT rate should be used for all food items and not just for selected ones. | SVN | 16 | 13 | 23 | 18 | 30 | 3 (2-5) |
| | CRO | 14 | 16 | 17 | 28 | 25 | 4 (2-4.25) |
| 61. Luxury products should be taxed with excise duty/special tax. | SVN | 22 | 7 | 19 | 19 | 33 | 4 (2-5) |
| | CRO | 8 | 9 | 14 | 29 | 40 | 4 (3-5) |
| 62. Motor vehicles should be taxed with a special tax. | SVN | 39 | 16 | 23 | 13 | 7 | 2 (1-3) |
| | CRO | 12 | 17 | 21 | 33 | 18 | 4 (2-4) |
| 63. Aircrafts and vessels should be taxed with a special tax. | SVN | 21 | 8 | 22 | 22 | 25 | 3 (2-5) |
| | CRO | 7 | 10 | 22 | 33 | 28 | 4 (3-5) |

Analysis of the Relationship of Professionals towards the Vertical Equity of the Slovenian Tax System and Its Comparison with Croatia, Bosnia and Herzegovina and the USA

| The number of the statement and the statements | | Answer (%) | | | | | Median (IQR) |
|--|-------------------|------------|----|----|----|----|--------------|
| | | 1 | 2 | 3 | 4 | 5 | |
| 73. Financial transaction tax is an eligible special tax. | SVN | 14 | 7 | 31 | 18 | 28 | 3 (3-5) |
| | CRO ¹⁰ | 19 | 18 | 16 | 27 | 21 | 3 (2-4) |
| 74. Tax on the balance sheet of banks is an eligible special tax. | SVN | 10 | 4 | 34 | 18 | 34 | 4 (3-5) |
| | CRO ¹¹ | 10 | 9 | 17 | 33 | 30 | 4 (3-5) |
| 79. The tax burden should be transferred from profit and income to consumption at a larger rate. | SVN | 14 | 22 | 26 | 20 | 16 | 3 (2-4) |
| | CRO | 8 | 18 | 21 | 33 | 20 | 4 (2-4) |
| 84. Untaxed interests promote saving. | SVN | 11 | 9 | 19 | 31 | 29 | 4 (3-5) |
| | CRO ¹² | 26 | 19 | 15 | 18 | 21 | 3 (1-4) |
| 85. The non-taxation of capital income promotes investments and economic growth. | SVN | 10 | 14 | 26 | 27 | 23 | 4 (3-4) |
| | CRO ¹³ | 10 | 9 | 12 | 30 | 38 | 4 (3-5) |
| 91. The principle of equity should be given an advantage over the principle of effectiveness when creating tax policy. | SVN | 4 | 8 | 14 | 25 | 48 | 4 (3-5) |
| | CRO | 3 | 7 | 22 | 33 | 34 | 4 (3-5) |

¹ The statement in the Croatian survey is: Taxation of inheritance and gifts should be done progressively, taking into account the amount of the inherited/gifted assets, as well as closeness of relatives (as opposed to the current level, which is at 5%, excluding the closest relatives).

² In 2014 this was reduced from 45% to 40%.

³ In 2014 this was reduced from 15% to 12%.

⁴ This statement is listed under number 23 in the Croatian analysis. We should reimpose personal tax relief on the basis of complementary health insurance and private medical insurance premiums (additional personal exemption).

⁵ The Croatian survey does not include this statement.

⁶ This statement is listed under number 27 in the Croatian survey.

⁷ Capital income should be taxed lower than income from work. This statement is listed under number 28 in the Croatian survey.

⁸ Dividends should be taxed in the framework of personal income tax.

⁹ With our entry into the EU, we should have kept a zero VAT rate for selected goods and services.

¹⁰ Financial transaction tax should be imposed.

¹¹ A tax on the balance sheets of banks should be imposed.

¹² Interest on saving and securities should be taxed in the framework of personal income tax.

¹³ Financial capital interest should be taxed in the framework of personal income tax.

Source: Survey of professionals in the Slovenian tax system and the Croatian tax system (Blažić, Šimović and Štambuk, 2014)

From the comparative analysis of answers by Slovenian and Croatian professionals, we can establish that these answers do not differ significantly. Both Slovenian and Croatian professionals show a similar positive relationship towards vertical equity. In most of the cases, the unshaded questions have a median of 4 and the shaded a median of 2. Both Slovenian and Croatian professionals think that the principle of equity should be given an advantage over the principle of effectiveness when creating tax policy (median 4).

From the comparison, it can be concluded that despite differences in tax arrangement, these differences are not significant enough to create different evaluations of the selected statements between the two groups of experts. The biggest difference can be seen in the taxation of dividends and motor vehicles, which are the most differently taxed areas in the two countries.

If we want to analyse the answers in the light of theoretical contexts, it needs to be emphasised that in some aspects it is reasonable to analyse individual groups of questions. In the theory, there is a prevalent opinion that redistribution should take place exclusively through direct income taxes and social transfers (Mirrlees et al, 2011). Despite this relatively easy definition, this does not mean that redistribution through direct income tax is easy, since there are many questions on how and if income should be taxed progressively, whether all types of income should be treated the same, how we should consider the property (both saved and inherited) of an individual in this type of taxation, etc. If we analyse the assessments of selected statements in this light, we can quickly assume the following: Slovenian experts mostly agree with the progressive taxation of income, the equal taxation of capital and work, and the inclusion of property in the process of redistribution. Slovenian experts also take the view that a part of the redistribution needs to be transferred to consumer taxes. Furthermore, each aspect is presented in detail.

In Slovenia, the percentage of experts who agree with lowering tax rates is about the same as the percentage of experts who agree with retaining the highest tax rate. However, these experts are more favourable towards additional exemptions for those with lower income. From the results, we can also assume that the number of tax classes is sufficient. The analysis shows that progressiveness has a great deal of support. In the theoretical context, progressiveness is supported by various empirical research studies, since the progressive taxation of income is the traditional way of putting the principle of vertical equity into effect. Despite this, supporters warn that the right level of progressiveness is hard to achieve (Musgrave, 2005). Supporters of 'lower' progressiveness emphasise that, when defining the level of progressiveness, one must consider the fact that there is a trade-off between the redistribution of income and the incentive for work (Mirrlees et al., 2011; Auerbach and Hassett, 2014; Picketty, 2014). Other research studies also emphasise that the right level of progressiveness is hard to achieve and that an inappropriate combination of taxation and social transfers can lead to unwanted income inequality after taxation. According to some research studies, this is also present in Slovenia (Čok et al., 2013). In theory, an important aspect of the right level of progressiveness also depends on the aversion to income inequality. Considering the assessments of statements, connected to the taxation of income and property, as well as expenditure and luxury goods, we can assume that the aversion of experts to income inequality is relatively high and thus professionals in Slovenia support greater progressiveness.

Just like various theorists (e.g. Mirrlees et al., 2011; Auerbach and Kotlikoff, 1987; Auerbach and Hassett, 2014), Slovenian experts are inclined towards the equal treatment of all income sources, which includes capital income. This opinion is supported by the belief that the non-taxation of capital could lead to an unwanted transfer of tax burden from capital to work. This opinion opposes some other theoretical contexts, since other theorists (e.g. Atkinson and Stiglitz, 1976; Chamley, 1986) are in favour of a zero capital income tax rate. The modern trends of the dual taxation of capital income show that

the practice is increasingly inclined towards the lower taxation of capital, particularly due to easier capital flight to jurisdictions with lower taxation. In addition to tax competition, another reason for the lower taxation of capital income is the belief that lower taxation promotes savings and investments, however, it has to be stressed that this may lead to the redirection of payments towards capital income and not towards income from work, which could, again, lead up to unwanted redistributive effects.

The principle of vertical equity in the context of property taxation has the largest number of disparities in theory. The trends of property taxation have been more or less directed into the cancellation of such taxes in recent years. The same goes for inheritance and gift tax, which is classified as property tax. However, the financial crisis promoted the revival of property taxes. One of the intended anti-crisis measures on the EU level was the implementation or increase of property taxes (EC, 2013). On the other hand, supporters of property taxation are in favour of the implementation of a generic property tax. Thus, Piketty (2014) advocates this opinion in his theory that social inequality is to a large extent the result of a combination of unequal capital ownership, a high savings rate (which comes from capital income) and a high rate of substitution between capital and work, which enables the accumulation of capital. Property taxes therefore effectively tax the safe rate of yield on investments. On the other hand, critics of property taxation are of the opinion that the accumulation of capital needs to be prevented with the help of increased progressiveness (Auerbach and Hassett, also Piketty et al. (2014) in another research project). Given the assessment of the statements, Slovenian experts are increasingly inclined towards this theoretical context. Despite the fact that the majority supports the property tax, their inclination towards the property tax ends here. The opinion of the majority is that taxation using a synthetic property tax is irrelevant. The same goes for consideration of property in the process of redistribution and for the opinion on the use of special taxes for an individual type of property. This corresponds to the relationship towards inheritance and gift taxes, which are not seen as a special instrument in the process of redistribution. It is interesting, however, that the professionals support the use of luxury taxes. Considering the assessed statements on property taxation, we might assume that Slovenian experts are more in favour of implementing the principle of vertical equity through increased progressiveness in income taxation than through additional taxation of property resulting from the income. Consequently, they are also in favour of the equivalent taxation of all income.

The opinion of Slovenian experts on the implementation of the principle of vertical equity through consumption tax is highly favourable towards the theoretical context that advocates the existence of exemptions and reduced VAT rates due to the regressive effect of taxes on consumption. From the perspective of a life cycle of consumption and acquiring income, a multi-level taxation of consumption is a better solution from the viewpoint of the redistribution of the tax burden (see Auerbach and Kotlikoff, 1987; Altig et al., 2001, Mirrlees et al., 2011). The critics reject this thesis because

they think that the regressive effect and the consideration of a life cycle are focused too much on the available income (Bettendorf and Cnossen, 2014). In the taxation of consumption, it is far more important to consider expenses related to consumption, which are more stable from the viewpoint of a life cycle. Bettendorf and Cnossen (2014) proved on the basis of data for the Netherlands that those with a higher income have 1.8 times greater benefits from a lower tax rate than those who are poorer (in terms of EUR). On the other hand, the loss of profit in the budget is very high due to the reduced rate and does not outweigh the redistribution effect. Both reached the conclusion that redistribution is more reasonable through income taxes and the system of social transfers, not through consumption taxes, which is similar to the already stated theorists' opinions. Slovenian experts do not advocate this concept from this viewpoint, when it involves consumer taxes, although they advocate this concept when it involves property taxes.

4.2 The Influence of Education, Age and Sector of Employment on the Assessments of the Chosen Statements

Assessments from Slovenian experts were also evaluated with the help of the demographical characteristics of the interviewees. We were interested in whether age, level of education and sector of employment affect the assessment of an individual analysed statement. For this purpose, we used the Spearman's correlation test. Spearman's correlation test with age shows that age is an unimportant variable in this analysis, since the correlation was only present in four questions. The correlation was so low that it was insignificant. The higher the level of education, the less the interviewees were expected to be favourable towards vertical equity, since pay increases with the level of education. This leads to a reduced personal interest in the redistributive function of taxes. The results confirm that with as the level of education increases, people are slightly less favourable towards vertical equity, which is presented in a negative correlation. On the other hand, the sector of employment proved to be a more determinative factor. The correlation analysis is then controlled by the sector of employment. In Table 2, the results of Spearman's coefficient of correlation ranges are shown for the answers to all questions, where a correlation with education has been confirmed. In the last column, we additionally checked the links to the fields of work. These links are presented with the labels YES and NO. The label NO means that there is no statistically characteristic connection with education in any sector, whereas the label YES means that there is a statistically characteristic connection with education in at least one sector.

Table 2. *Spearman's Rank Correlation Coefficient for the Statements in Which Correlation with the Level of Education is Approved (with Significance by Sector)*

| Statement | r_s | Sig. by Sector |
|---|---------|----------------|
| 10. Inheritance and gifts should be taxed. | .297** | YES |
| 11. Inheritance and gifts should be taxed at a proportional rate. | .214** | NO |
| 12. Real estate transfers should be taxed. | .255** | YES |
| 14. The highest personal income tax rate needs to be reduced (recently set at 50%). | .169* | YES |
| 16. Instead of multiple personal income tax rates, we should impose a universal tax rate and retain personal tax allowances. | -.210** | YES |
| 19. We should reimpose tax reliefs connected to the expenditures of individuals on healthcare services. | -.245** | YES |
| 20. We should reimpose tax reliefs connected to the expenditures of individuals on tackling the housing problem. | -.211** | YES |
| 21. We should reimpose tax reliefs connected to the expenditures of individuals on life insurances. | -.187* | YES |
| 23. We should reimpose the relief for donations and replace the currently available allocation of personal income tax for this purpose. | -.214** | YES |
| 47. We should increase the standard VAT rate. | -.212** | YES |
| 49. Lower VAT rate should be used for all food items and not just for selected ones. | -.199* | NO |
| 62. Motor vehicles should be taxed with a special tax. | .163* | NO |

*The correlation is important at the 0.05 level (2-tailed).

** The correlation is important at the 0.01 level (2-tailed).

Source: Survey on the opinion of tax experts on the tax system, 2014

To check whether there are any differences in the evaluation of certain statements among the three main sectors of work (public sector, private sector and academic community), a nonparametric Kuskal-Wallis test was performed. For those variables where a significant difference has been confirmed, a comparison by sectors has been made with the help of a post hoc Dunn's test with Bonferroni's correlation, which has been used to check, whether the sample means (medians) statistically differ from each other (Table 3).

Table 3. *Median by Sectors, Kruskal–Wallis test and Bonferroni Test for Questions, where Differences between Sectors are Approved*

| Statement | Sector | | | K-W | |
|---|--------------------|--------------------|--------------------|------|-------|
| | PR | PU | A | H | p |
| 3. Other types of property should also be taxed (e.g. movable goods, financial assets) so a synthetic wealth tax (net wealth) can be imposed. | 1.50 ^a | 4.00 | 1.00 ^a | 19.8 | 0.000 |
| 14. The highest personal income tax rate needs to be reduced (recently set at 50%). | 4.50 ^b | 3.00 ^a | 4.00 ^{ab} | 16.5 | 0.000 |
| 17. We should impose more personal income classes. | 2.00 ^b | 4.00 ^a | 2.50 ^{ab} | 12.2 | 0.002 |
| 18. We should reduce the number of personal income classes. | 2.00 ^b | 1.00 ^a | 1.50 ^{ab} | 6.8 | 0.034 |
| 26. Capital income should be taxed at a lower rate than other income. | 3.00 ^a | 2.00 | 3.00 ^a | 24.9 | 0.000 |
| 27. Dividends should be taxed at a lower rate than other income. | 3.00 ^b | 2.00 ^a | 2.00 ^{ab} | 19.5 | 0.000 |
| 61. Luxury products should be taxed with excise duty/special tax. | 3.00 ^a | 4.00 | 1.00 ^a | 25.4 | 0.000 |
| 62. Motor vehicles should be taxed with a special tax. | 1.00 ^b | 3.00 ^a | 2.00 ^{ab} | 9.9 | 0.007 |
| 63. Aircrafts and vessels should be taxed with a special tax. | 2.00 | 4.00 ^a | 4.00 ^a | 25.9 | 0.000 |
| 85. The non-taxation of capital income promotes investments and economic growth. | 4.00 ^{bc} | 3.00 ^{ab} | 3.00 ^{ac} | 6.4 | 0.041 |
| 91. The principle of equity should be given an advantage over the principle of effectiveness when creating tax policy. | 5.00 ^b | 4.00 ^{ab} | 3.00 ^a | 6.7 | 0.034 |

PR – private sector, PU – public sector, A – academic community

Source: Survey on the opinion of tax experts on the tax system.

The results of the Kruskal–Wallis test show that there are statistically distinctive differences in the evaluation of over a third of the questions. From the table, it is evident that the answers by the private sector differ from those provided by the other two sectors, except for the question of the non-taxation of capital income. It is followed by the public sector and then by the academic community. The academic sector mostly appears in pairs, which is perhaps a consequence of the small number of interviewees from this sector. By analysing data by sectors, it has been pointed out that the academic sector is not exactly favourable towards redistribution and shows a smaller aversion towards inequality in society. For the majority of questions, where grades should have been higher, they used lower grades and vice versa. Our interpretation of this result needs to be cautious, particularly because the result could be a reflection of the small number of answers of this group of interviewees. It is interesting that the private sector seems more favourable towards equitable distribution, while it is expressed the most in the public sector. Therefore we can say that the public sector advocates the most for equitable distribution, which is also a reflection of the work and the mission of public employees. If we compare these results with those from the Croatian

analysis, we can discover that vertical equity is shown in all three Croatian sectors too. The difference is that the assessments of statements are more definite than the Slovenian ones. Even in Croatia, the academic sector is least favourable towards vertical equity, though their favourability towards the latter is still greater than with Slovenian academics (Blažić, Šimović and Štambuk, 2014).

A more in-depth analysis of the assessments of statements shows some other findings too. We can discover that the public sector agrees with the statement that other types of property should be taxed, as well as the so-called synthetic property tax. The private sector (median 1.5) and the academic community (median 1) oppose this. Both the academic and the private sector agreed that the highest personal income tax rate should be reduced, resulting from the better-paid work in comparison with the private sector. This is in line with some theoretical assumptions that reducing the highest marginal tax rates on income encourages employment and entrepreneurial risk on the part of the most educated workers, who, based on that and along with a lower tax rate, contribute more tax income than before. The view on the last question, that the principle of equity should be given an advantage over the principle of effectiveness when creating tax policy, is very interesting. The private (median 5) and the public sector (median 4) agree with this question, whereas the academic sector seems more neutral (median 3).

4.3 A Comparison of the Results with Similar Research Studies in the USA, Croatia and BiH

A comparative analysis was intended to be performed with the results of the USA and BiH surveys. They used a similar questionnaire. Unlike the Slovenian, Croatian and Bosnian questionnaires, the American questionnaire merely includes the experts' agreements and disagreements with the statement and not a scale (Lim et al., 2013). The results for Bosnia and Herzegovina are shown separately for the two federal units, i.e. for the Federation of Bosnia and Herzegovina (FB&H) and for Republika Srpska (RS) (Lazović-Pita and Štambuk, 2015). A comparison of all the selected statements among all the countries is shown in table 4.

Table 4. Comparison of Selected Questions in Selected Countries

| Statement | | Answer (%) | | |
|--|-------|---------------------------------|---------|-----|
| | | NO | Neutral | YES |
| 13. Property is a necessary additional indicator of economic (tax) capability alongside income. | SVN | 19 | 22 | 58 |
| | CRO | 15 | 11 | 74 |
| | FB&H | 8 | 10 | 82 |
| | RS | 6 | 13 | 81 |
| | USA | 40 | | 60 |
| 14. The highest rate of personal income tax needs to be reduced. | SVN | 38 | 16 | 46 |
| | CRO | 46 | 12 | 42 |
| | FB&H | They have a universal 10% rate. | | |
| | RS | | | |
| | USA | 80 | | 20 |
| 26. Capital income should be taxed at a lower rate than other income. | SVN | 54 | 21 | 27 |
| | CRO | 57 | 19 | 24 |
| | FB&H | 53 | 19 | 28 |
| | RS | 54 | 23 | 23 |
| | USA | 62 | | 38 |
| 27. Dividends should be taxed at a lower rate than other income. | SVN | 54 | 18 | 28 |
| | CRO* | 24 | 13 | 64 |
| | FB&H | 34 | 16 | 51 |
| | RS | 22 | 14 | 64 |
| | USA | 64 | | 36 |
| 79. The tax burden should be shifted from the profit and the income to consumption at a higher rate. | SVN | 36 | 26 | 36 |
| | CRO | 26 | 21 | 53 |
| | FB&H | 39 | 17 | 44 |
| | RS | 45 | 15 | 40 |
| | USA | 59 | | 41 |
| 84. Untaxed interests promote saving. | SVN | 20 | 19 | 60 |
| | CRO** | 45 | 15 | 39 |
| | FB&H | 20 | 12 | 68 |
| | RS | 11 | 10 | 79 |
| | USA | 37 | | 63 |
| 91. The principle of equity should be given an advantage over the principle of effectiveness when creating tax policy. | SVN | 12 | 14 | 73 |
| | CRO | 10 | 22 | 67 |
| | FB&H | 19 | 19 | 62 |
| | RS | 33 | 33 | 34 |
| | USA | 16 | | 84 |

SVN – Slovenia, CRO – Croatia, FB&H – Federation of Bosnia and Herzegovina, RS – Republika Srpska (an entity in BiH). * The Croatian analysis has a different statement: Dividends should be taxed in the framework of personal income tax. ** The Croatian analysis states: Interests and securities should be taxed in the framework of personal income tax.

Source: own source for Slovenia, Blažič, Šimović & Štambuk (2014) for Croatia, Lazović-Pita & Štambuk (2015) for Bosnia and Herzegovina, and Lim et al. (2013) for the USA.

It has been agreed in Slovenia, Croatia and Bosnia and Herzegovina that property is a necessary additional indicator of economic (tax) capability alongside income. The highest level of consent has been reached in FB&H and the lowest in Slovenia, where the assessment of statements that should support this viewpoint is low or neutral. 60% of interviewees from the USA think that property should be taxed. Many experts in Slovenia agree with lowering the highest rate of personal income tax, but not distinctly. In terms of comparison, it is logical, however, that in Slovenia this level is the highest among the countries in comparison. Not all the experts from the countries in comparison agree that capital income should be taxed at a lower rate than other income. Even in the USA, only 38% of experts supported this statement. Slovenian professionals do not agree that dividends should be taxed at a lower rate than other income, whereas the Bosnian experts support this. The latter is probably also the result of the fact that dividends are not taxed in their current regulation. The tax burden should be shifted from profit and income to consumption at a higher rate. Slovenian experts are neutral about this statement. Croatian experts, however, supported this statement with 53% a slightly lower support (44%) can be found in the FB&H, whereas in RS 45% of interviewees did not support this statement. Even the research in the USA included questions shifting the tax burden, which was not supported by the majority. Only 4% of interviewees supported the exclusion of capital income from taxation. Slightly more interviewees, but still in a minority (41%), supported the replacement of the current income tax with VAT. The results are logical in this case, since the USA tax system is already favourable for profit and income. Untaxed interests encourage savings, which was agreed in all the countries compared. The American experts supported the statement that savings taxes are reducing personal savings by 63%. 45% of the Croatian experts do not agree that interests and securities should be taxed in the framework of personal income tax.

In Slovenia, Croatia and FB&H, experts gave the principle of equity the advantage over the principle of effectiveness. The greatest support was given by the Slovenian experts. Professionals were divided in RS and did not support either equity or effectiveness. American professionals think that income distribution is a legitimate role of the country and needs to be more even. The comparison between the opinions of experts from different countries shows that experts generally support the vertical equity of tax systems, but their statements also reflect the current regulation of individual countries, so the estimation and comparison of statements by individual countries need to be interpreted in the light of the tax system in which the experts work.

6 Conclusion

Both research questions can be answered with an analysis of the opinion on statements connected to vertical equity among Slovenian experts. Similar to other professional public abroad, the Slovenian professional public is in favour of achieving the principle of vertical equity in the tax system. By this, they are more in favour of those theories that defend the redistribution of income through the same taxation of all income, the greater progressiveness

of these taxes, as well as the progressiveness of consumption tax. Generally, they support an opinion stating that it is important to consider the property of an individual, but particularly in the taxation of luxury goods and real estates. The stronger agreement or disagreement with some statements in comparison to other foreign experts is mostly a result of various orders in individual countries. For example, advocating the reduction of the highest marginal tax rate in personal income tax comes from the fact that it is at the highest rate in Slovenia compared to the other analysed countries. The diversity of agreement with individual statements not only expresses favourability or unfavorability to vertical equity, but also criticism of the existing system in terms of inappropriate redistribution.

On the other hand, there are restrictions to opinion polls on the tax system. Opinion polls on tax systems generally reach the conclusion that feelings of relative deprivation are the main source of dissatisfaction with taxes and the tax system. This means that the inequality of taxes is seen particularly from the perspective of personal interest. No tax system could actually be seen as fair and perfectly satisfactory, since it is directly connected to the individual who is answering the poll. This can partly be seen in our findings, since assessments of statements are, as has been mentioned before, also an expression of the actual state of an actual tax system, about which the professional public is able to judge even in the light of comparison with other regulations. In the framework of our own analysis, we can therefore discover that in addition to personal interests, political trust has an important impact on the opinion. Like other research studies about tax systems, our research study includes findings about the influence of education and the position in the society (similar to research studies, such as Dornstein, 1985; Hammar, Jagers & Nordblom, 2008). Despite that, in our future research studies, we could carry out a survey among the professional public from the perspective of their opinion on an individual theory or an individual empirical research study, and then compare them with the assessment of a concrete tax system. In this way, we could partly limit the effect of the subjectivity of the given assessments.

An interesting finding in the Slovenian research is that favourability towards vertical equity is also influenced by the sector from which the experts originate. The greatest favourability towards vertical equity comes from the state sector, which is also the main decision maker, lawmaker and creator of the tax system as such. It is this particular group of experts that looks at statements connected to vertical equity in a broader way, for, in addition to providing redistribution, it indirectly takes into account the ability to implement the tax system and is thus less critical to the regulation. On the other hand, the private sector evaluates the tax system more "objectively" from the perspective of vertical equity. It stands up for redistribution, but only within certain "fair" frameworks.

Both in theory and in practice, different approaches towards vertical equity exist, just like the different levels of support for vertical equity. In the future, it would be interesting to obtain the opinion of the professional public on the European level to see which theory it is more inclined to and how this affects

the formation of their national tax systems. This means that in future research studies, we would approach from the other side and study the influence on the formation of the systems that we have in practice.

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POVZETEK

1.01 Izvirni znanstveni članek

Analiza odnosa strokovnjakov do vertikalne izenačenosti davčnega sistema v Sloveniji in primerjava s Hrvaško, BiH in ZDA

Vertikalna izenačenost pravi, naj se zavezanci, ki niso v enakem položaju, obravnavajo različno, pri tem pa je treba upoštevati vse relevantne značilnosti. Glavni namen uporabe principa vertikalne izenačenosti je v tem, da zahteva redistribucijo dohodka tako, da se zmanjša dohodkovna neenakost v družbi. S predstavljenimi raziskavo smo želeli preveriti, kakšno je mnenje strokovnjakov s področja davčnega sistema v Sloveniji o principu vertikalne izenačenosti. Rezultati za Slovenijo so primerjani s podobno analizo, opravljeno v Hrvaški, ter deloma tudi z rezultati anket v Bosni in Hercegovini ter Združenih državah Amerike. Rezultati kažejo, da se strokovna javnost strinja z načelom vertikalne izenačenosti pri postavitvi davčnih sistemov. Naklonjenost je podobna v vseh primerjanih državah, vendar pa na to vplivajo tudi trenutne davčne ureditve posameznih držav.

Ključne besede: vertikalna izenačenost, davčni sistem, pravična porazdelitev, Slovenija.

Reduced Consumption for Transport due to Population Ageing? An Analysis of Expenditures of Private Households in the European Union and Potential Implications for the Public Sector

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ABSTRACT

The paper focuses on potential effects of the ageing of the population on consumption expenditures of private households in the field of transport. Theoretical considerations as well as previous empirical results suggest that older households consume different goods and services than younger ones due to changing preferences and needs by increasing age. Possible consequences of these changes for goods and services in the transport sector are in focus. The expenditures of European households on transport based on the national household budget surveys of the 28 member countries of the European Union are analysed. The results suggest that expenditures in transport decrease at retirement age in all considered countries. Moreover, the structure of goods and services consumed in the transport sector changes over the life cycle of a private household, with implications for the public sector due to the ageing of the population to be expected.

Key words: household expenditures, private consumption, transportation goods and services, ageing, public transport.

JEL: D12

1 Introduction

Looking at statistics on the population structure by age, one would have to search for countries where the ageing of the population is not directly visible. The long-term change of the population structure from a younger to an older one, also known as *demographic change*, is a worldwide observable

development. This development can be led back to a decrease in the fertility rate, i.e. the number of birth per woman, accompanied by an increase in life expectancy (Schimany, 2003). Although these two demographic trends are worldwide visible, its rapidity and the recent status of the so called demographic transition vary greatly by continent, nation, province, and even region. Despite of the two mentioned relevant components (fertility rate, life expectancy) also the current population structure (e.g. number of women at childbearing age), as well as migration patterns play an important role (e.g. outmigration of young people) for the changing age distribution.

According to UN comparisons, the ageing of the population is most advanced in Europe. 19 out of the 20 countries of the world with the highest share of people aged 60 or above are situated in Europe. The only exception is Japan, which is ranked number one (United Nations, 2013). With more than a fifth of the population being 65 years or older Italy, Greece and Germany are the countries with the oldest population in Europe. On the contrary, the countries with the youngest population within the European Union are Ireland, Luxembourg and Slovakia, with a share of older people between 13% and 14%. During the last decade there has already been an increase in the share of population aged 65 and more of up to 5 percentage points within the countries of the European Union (Eurostat, 2017). And the ageing of the population will be going on in all countries of the European Union: According to the recent projections the share of the older population in the EU as a whole is presumably going to increase from 18% to 28% in 2060 (European Commission, 2015).

The increase of the older population will have various effects on the economy. The ageing of the population leads to a reduction of the population in working age being a challenge for the labour market, productivity and public budgets. The European Commission projects a stabilization of total labour supply until 2023, followed by a decline of 8.2% between 2023 and 2060; increases in the participation rates of female and older workers as well as migration inflows already being considered. The decreased labour input will also influence the output growth negatively, leaving labour productivity growth as sole source of potential output growth. Regarding the budgetary projections, the changes to be expected in public age-related expenditures (pensions, health care, long-term care and education) will increase public expenditures by almost 2 percentage points of GDP between 2013 and 2060 (European Commission, 2015).

But besides these macroeconomic trends and challenges the ageing of the population also influences the consumption expenditure structure of the population. Older people consume different goods and services than younger ones and also the level of total consumption expenditures varies over the life cycle. The paper at hand highlights the question of how the consumption expenditures of goods and services in the field of transport changes over the life cycle and draws potential implications of the ageing of the population on aggregate demand within the transport sector. Therefore, theoretical

considerations and previous empirical results on differences in private consumption expenditures by age with a special focus on the transport sector are in focus in chapter 2. Subsequently, chapter 3 gives an overview of the following empirical investigation and the data considered. Chapter 4 demonstrates results on the level of expenditures for transport over the life cycle of households within the EU, while in Chapter 5 also the structure of these expenditures is highlighted. The paper closes with an analysis of potential reasons and implications of the observed trends. This includes a discussion of implications for the public sector.

2 Theoretical Considerations and Previous Empirical Results

According to microeconomic consumer theory, the decision of a household on which goods and services to consume is dependent on the income of the household, the prices of goods and services as well as preferences of the household. Hereby theory states that the choice of goods and services is determined by the preferences of the household, with the aim to maximize utility under the given income of the household and prices of the goods and services (Pindyck and Rubinfeld, 2005; Woeckener, 2006; Mankiw and Taylor, 2014). Considering the level of consumption expenditures in general, in particular the income of the household is of relevance. Furthermore, objective indicators (as the interest rate or taxes), subjective needs, psychological affections and habits play a role (Keynes, 1936). Under the life cycle theory (Modigliani and Brumberg, 1966) a household aims to smooth consumption over the life cycle. This implies saving during the working life and dissaving in retirement, as income drops. The empirically seen hump-shaped form of consumption is according to Modigliani (1986) mainly caused by a change in the number of household members.

Having in mind the demographic change, the age of household members has an influence on the income of the household, the number of household members, as well as the preferences of the household. The income of the household as well as the number of household members show a hump-shaped form over the life cycle, with the consequence of lower consumption levels at the beginning and the end of a households life cycle (Dyan, Edelberg and Palumbo, 2009; Foot and Gomez, 2006; Fernández-Villaverde and Krueger, 2002). But the consumption behaviour of a household varies also greatly by age due to differing preferences and needs with increasing age of the household's representative (Solomon, 2014). For example, one might expect that young people will have higher expenditures in the field of education, while older people demand more goods and services in the health sector. Furthermore, the consumption structure differs by age cohort due to the comparable historical, economical or societal framework people went through (Evans, Jamal and Foxall, 2009).

Empirical results on the level of consumption over the life cycle for Germany based on the sample survey of income and expenditure of the years 1993 to 2003 show that households in the age between 50 and 64 years have the

highest consumption level. When entering retirement age consumption drops by approx. 20%, and those having a representative over 75 years show again a reduction in consumption of 20% (Bundesministerium für Familie, Senioren, Frauen und Jugend 2007). Moreover, the concave development of consumption over the life cycle appears in empirical work of Deutsche Bank Research (2007) for Germany, Aigner-Walder (2012) for Austria, Fernández-Villaverde and Krueger (2002) for the US or Deaton and Paxson (1994) for Taiwan. Fernández-Villaverde and Krueger (2002) find that the hump-shaped form of consumption can be explained by the changing household size over the life cycle by 50%. For the lower consumption levels in younger ages they assume lower income levels, higher future insecurity and low possibilities for credits as potential explanations. The drop in consumption at higher ages, also known as retirement-consumption puzzle, has been investigated profoundly in empirical studies, especially as consumption drops at higher rates than income. Potential explanations are a decrease of work related expenses and a higher relevance of own production (Hurd and Rohweder, 2005; Lührmann, 2009) as well as shocks in retirement (e.g. height of retirement benefits, health related shocks; Banks, Blundell and Tanner, 1998).

Besides changes in the consumption level also differences in consumption structure by age are empirically shown by various studies. While Buslei, Schulz and Steiner (2007) as well as Lehmann (2004) illustrate age-specific consumption patterns for German households, they also find a significant influence of the variable age on all consumption categories. Differences in the consumption structure by age are also depicted by Deutsche Bank Research (2007, again for Germany), Foot and Gomez (2006) for Great Britain, Aigner-Walder (2015) as well as Aigner-Walder and Döring (2012) for Austria or Martins et al. (2005) for the OECD countries. Their main findings are quite similar: expenditure shares for housing, water and fuel as well as health increase by age, while expenses for transport decrease at higher ages. Projections on the effects of the ageing of the population on the aggregate demand of private households, based on empirical findings, result in increases in the budget shares for health and housing, while the transport sector is expected to lose consumption shares (Martins et al., 2005; Foot and Gomez, 2006; Deutsche Bank Research, 2007; Buslei, Schulz and Steiner, 2007; Aigner-Walder, 2015). For Germany, the decrease in expenditures in transport is quantified by 5% up to 2035 (Bundesministerium für Familie, Senioren, Frauen und Jugend, 2007).

Having in focus private consumption, in the sense of expenditures for goods and services, in the field of transport, the analysis so far suggests, that households spend lower shares of their total consumption expenditures for transport at higher ages. As consumption is in general lower after retirement a potential reduction in aggregate demand of transport goods and services would be the outcome with the population ageing. Within the following considerations, the consumption expenditures for transport over the life cycle within the countries of the European Union will be in focus, with the aim to get a deeper insight if the stated thesis can be generalized, and in order to

highlight potential country-specific differences between different member states.

3 Data Basis and Methodology

For the analysis at hand data on a household's consumption expenditures as well as socio-demographic variables like the age of the household are of relevance. As the whole European Union is of interest, comparable data for all 28 countries is needed. Consequently, the data of the Household Budget Surveys (HBS) has been considered. The HBS are national sample surveys of households, conducted in all EU member states, focusing on the expenditures of the households on different kinds of consumer goods and services over a specified time period. These surveys are mainly carried out to provide the weights for the Consumer Price Index (CPI) (Eurostat, 2015). For the categorization of the goods and services the Classification of Individual Consumption According to Purpose (COICOP) is taken into account, resulting in twelve different consumption groups, as represented in Table 1. The budget category transport can be disaggregated into the purchase of vehicles, the operation of personal transport equipment and transport services.

Table 1. *Categorization of goods and services according to COICOP*

| |
|---|
| CP01: Food and non-alcoholic beverages |
| CP02: Alcoholic beverages, tobacco and narcotics |
| CP03: Clothing and footwear |
| CP04: Housing, water, electricity, gas and other fuels |
| CP05: Furnishings, household equipment and routine maintenance of the house |
| CP06: Health |
| CP07: Transport |
| CP07.1: Purchase of vehicles |
| CP07.2: Operation of personal transport equipment |
| CP07.3: Transport services |
| CP08: Communication |
| CP09: Recreation and culture |
| CP10: Education |
| CP11: Restaurants and hotels |
| CP12: Miscellaneous goods and services |

Source: Eurostat (2015), own illustration.

Eurostat publishes the HBS data on individual countries and European aggregates every five years. For the following analysis the most recent available HBS data of 2010 has been taken into account. It is available for all 28 member states. Despite of aims of harmonization there are still methodological differences given between the national surveys carried out

e.g. in terms of definitions, the structure or the imputation of owner-occupier imputed rent. Furthermore, for those countries which did not have the survey year matching the reference year of 2010, price adjustments have been carried out (Eurostat, 2015).

From a methodological point of view, the paper uses descriptive statistics to analyse differences in consumption expenditures for transport goods and services of private households within the European Union. Besides distinctions in the mean expenditures for transportation over the life cycle within the 28 countries in general, the structure of transportation goods and services is in focus. For the age differentiation households of the following four age categories are considered: less than 30 years, from 30 to 44 years, from 45 to 59 years and 60 years or more.

4 Share of Expenditures for Transport Over the Life Cycle of European Households

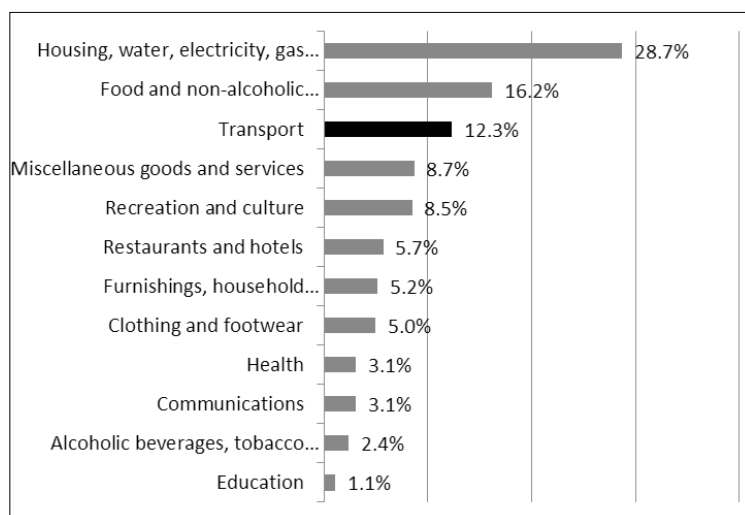
Before having a detailed look at the consumption expenditures for transport over the life cycle, it seems of interest to get a general overview of how much households spend on goods and services in the field of transport compared to other consumption categories. As visible in Figure 1, a representative household within the European Union spends on average 12.3% of total expenditures on transport. With that quite high amount transport is found directly after expenditures for housing, water, electricity, gas and other fuels (28.7%) and food and non-alcoholic beverages (16.2%). The three mentioned consumption categories are summing up to almost 60% of total expenditures, whereas all other consumption shares amount to less than 10% of total budget. For the consumption categories health (3.1%), communication (3.1%), alcoholic beverages, tobacco and narcotics (2.4%) and education (1.1%) even less than 5% of the budget is spent. The budget structure of households within the European Union reveals the high relevance of expenditures for transport.

As one already might expect, the consumption structure is very much depending on the households' origin, too. On the one hand income and prices differ throughout the European Union, and on the other hand consumption habits depend on culture, consumption possibilities, legal settings, etc. For transportation goods and services differences in prices of fuels or highway tolls as well as prices for transport modes (e.g. public or private transport services, specific car types) or varying preferences in the use of transport vehicles (e.g. mainly small cars vs. SUVs) may affect the structure of expenditures. Moreover, in the case of transport also settlement structures, distances between cities, topographic characteristics or the supply of public transport are important influential factors.

As Figure 2 reveals, the budget share of households on transport varies greatly between EU member states, with a minimum of 4.6% and a maximum of 17.5%. While Finland (17.5%), the United Kingdom (15.4%) and Austria

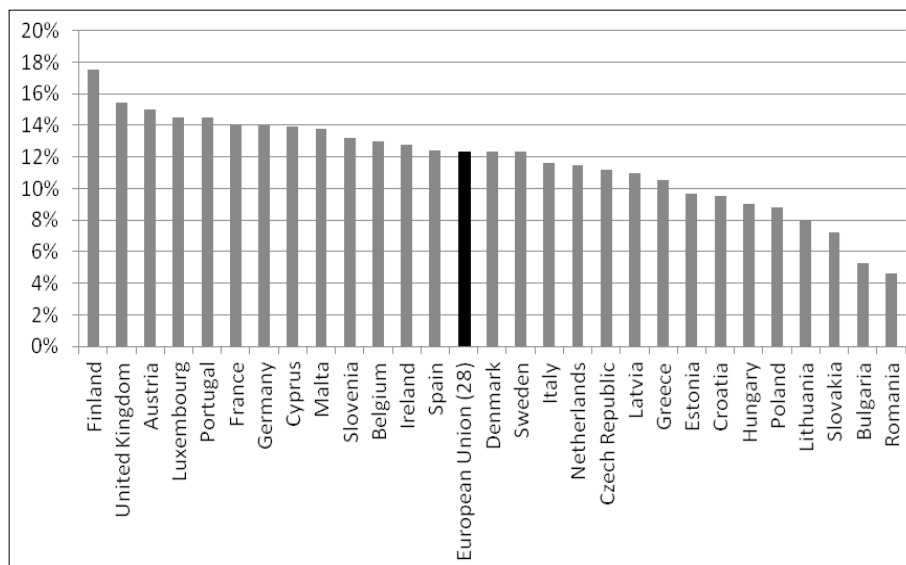
(15.0%) are those countries with the highest household budget shares for transport, Slovakia, Bulgaria and Romania are with 7.2%, 5.3% and 4.6% those countries, where household spend least.

Figure 1. *Average Consumption structure of private households within the European Union, 2010*



Source: Eurostat (2015), own calculation.

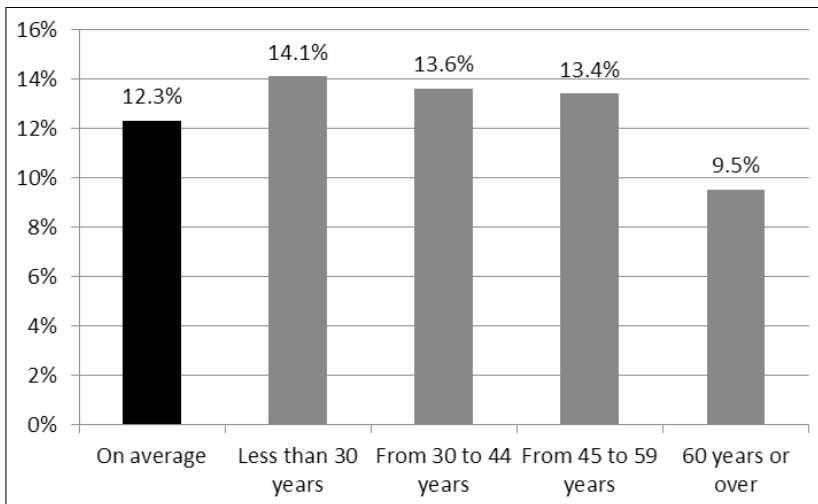
Figure 2. *Share of private households transport expenditures in total consumption expenditures in the EU28 countries, 2010*



Source: Eurostat (2015), own calculation.

In the following paragraphs age-specific consumption expenditure patterns are analysed. Figure 3 gives a general overview of the consumption profile on transport within a household's life cycle in the European Union. The reduction of private expenditures for goods and services in transport is – in accordance with previous empirical results – also clearly visible for households within the European Union. While households with a household representative aged less than 30 years spent 14.1% of total expenditures on transport, the share is already slightly reduced by those between 30 and 44 years (13.6%) and 45 to 59 years (13.4%). But households with a representative at the age of 60 or more spend much less on transport: the expenditure share decreases by almost four percentage points to 9.5%.

Figure 3. *Budget share on transport over the life cycle of a household in the European Union, 2010*



Source: Eurostat (2015), own calculation.

A glimpse on the budget shares for transport over the life cycle on national level reveals that the lowest expenditure share for transport is within the oldest age group (60 years or over) throughout all 28 member states (see Table 2). On average, the expenditures of households for transport decrease by almost 4 percentage points, when reaching retirement age. The highest downturn of relative expenses on transport can be found in Portugal (7.2 percentage points), the lowest in the Netherlands (1.2 percentage points). Moreover, in 12 out of the 28 countries, the expenditure share for transport is already reduced at the age between 45 and 59 years. In 7 countries the share spent for transport decreases even steadily by age (see marked fields in Table 2). Nevertheless, it has to be kept in mind that the expenditure share for transport in the considered age groups varies greatly throughout the European Union: Households with a representative aged 60 years or over spent between 2.5% in Romania and 14.4% in Finland of their budget for transport goods and services.

The data of the Household Budget Survey suggests that the downturn of consumption expenditures in the field of transport relative to total expenditures seems to be generally visible. Potential reasons and consequences of these results under the perspective of the ageing of the population are discussed in chapter 6. But before doing so, a more detailed view on the structure of expenditures in the field of transport is given in section 5.

Table 2. Average budget share for transport over the life cycle within the EU28 countries, 2010

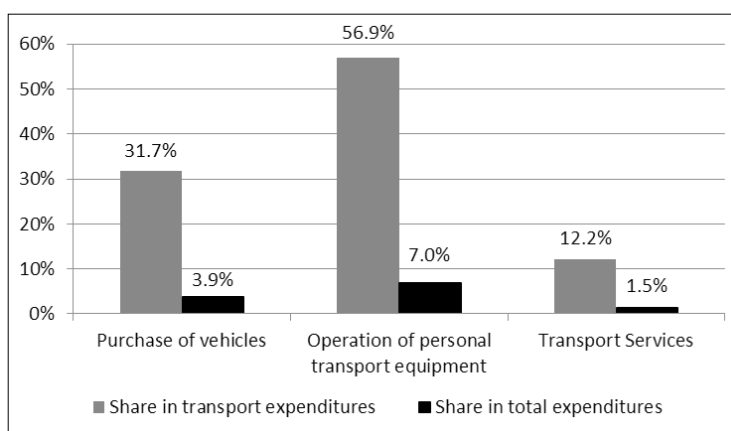
| Country | Less than 30 years | From 30 to 44 years | From 45 to 59 years | 60 years or over |
|----------------|--------------------|---------------------|---------------------|------------------|
| Austria | 15.5% | 15.6% | 16.4% | 12.0% |
| Belgium | 14.9% | 15.2% | 12.7% | 10.6% |
| Bulgaria | 6.9% | 6.9% | 6.2% | 4.0% |
| Croatia | 9.7% | 11.0% | 11.4% | 7.0% |
| Cyprus | 13.9% | 15.7% | 14.2% | 10.4% |
| Czech Republic | 15.0% | 13.3% | 11.1% | 8.4% |
| Denmark | 15.0% | 13.4% | 13.5% | 9.3% |
| Estonia | 13.2% | 11.3% | 9.6% | 5.4% |
| Finland | 18.8% | 18.9% | 18.6% | 14.4% |
| France | 16.1% | 14.9% | 15.0% | 11.7% |
| Germany | 16.4% | 15.5% | 15.1% | 11.0% |
| Greece | 10.8% | 11.5% | 11.7% | 8.4% |
| Hungary | 10.1% | 10.3% | 10.4% | 6.0% |
| Ireland | 13.0% | 13.7% | 13.2% | 10.4% |
| Italy | 15.4% | 13.3% | 13.5% | 8.3% |
| Latvia | 12.6% | 12.6% | 11.6% | 7.7% |
| Lithuania | 9.8% | 9.4% | 8.5% | 4.4% |
| Luxembourg | 20.3% | 15.6% | 14.5% | 11.2% |
| Malta | 14.9% | 14.2% | 15.0% | 11.2% |
| Netherlands | 12.3% | 11.3% | 12.0% | 10.8% |
| Poland | 11.5% | 10.2% | 8.9% | 5.0% |
| Portugal | 19.3% | 15.5% | 16.6% | 9.4% |
| Romania | 4.8% | 5.9% | 4.9% | 2.5% |
| Slovakia | 7.9% | 9.4% | 7.0% | 3.6% |
| Slovenia | 13.6% | 15.6% | 14.0% | 9.2% |
| Spain | 15.6% | 14.3% | 13.7% | 8.4% |
| Sweden | 12.6% | 13.5% | 12.6% | 10.3% |
| United Kingdom | 13.7% | 16.0% | 17.1% | 13.4% |

Source: Eurostat (2015), own calculation.

5 Structure of Expenditures on Transport Over the Life Cycle of European Households

The expenditures on transport can be disaggregated into expenditures for the purchase of vehicles, costs for the operation of personal transport equipment, as well as expenses for transport services. The highest share of expenditures on transport is used for the operation of personal transport equipment. The category accounts for 56.9% of transport expenditures and 7.0% of a household's total expenditures within the European Union. Hereby, spare parts and accessories for personal transport equipment, fuels and lubricants, maintenance and repair, as well as other services in respect of personal transport equipment are included. Almost one third of the expenditures in transport (31.7%) are allocated to the purchase of vehicles, which includes cars, motor cycles, bicycles and other vehicles. Those expenditures account on average for 3.9% of total budget of a European household. For transport services, as passenger transport by railway, road, air, sea and inland waterway or other purchased transport services, only 1.5% of a household's total expenditures, or 12.2% of all expenditures in the field of transport, are used (see Figure 4).

Figure 4. *Structure of average expenditures on transport of European households, 2010*



Note: Due to rounding, the sum of the listed individual positions may be higher/lower than 100%.

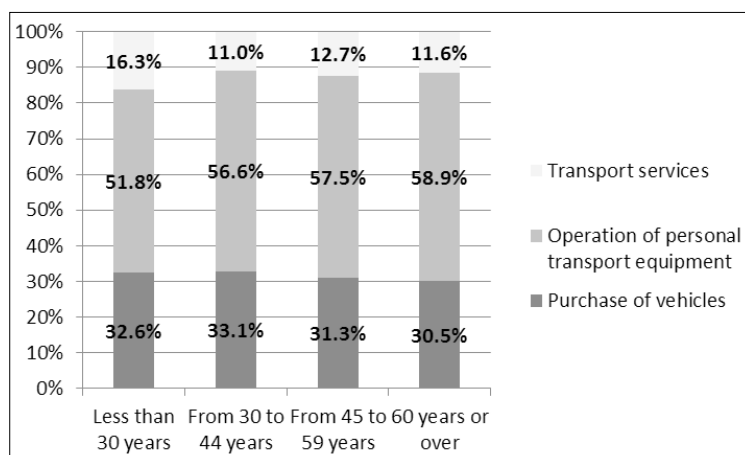
Source: Eurostat (2015), own calculation.

There are again essential differences in the expenditure behaviour of households within the 28 member countries of the European Union. For example, the expenditure share for the purchase of vehicles in total expenditures by households varies between less than 1% in Bulgaria (0.1%), Romania (0.3%), Lithuania (0.7%), and Slovakia (0.8%) and more than 7% in Cyprus (7.4%) and Luxembourg (7.7%). For expenditures on the operation of personal transport equipment the range is lower, with a minimum of 3.1% in Romania and a maximum of 9.3% in Portugal. The highest expenditure share for transport services is reached in the United Kingdom with 2.3% and the lowest one in

Slovenia with 0.6%. In some countries even the relevance of the consumption classes in transport is deviating from the presented European average (e.g. higher expenditures on the purchase of vehicles than the operation of personal transport equipment; see table A1 in the appendix). As already mentioned in chapter 2, (relative) prices of the goods and services, their availability, the settlement structure within the countries as well as topographic characteristics of the countries and cultural habits can be stated as potential reasons for the differing structure in consumption expenditures for transport.

Having in mind the downturn of the expenditure share for transport at higher ages, it seems of interest, to have a look if all consumption classes are affected equally. As Figure 5 shows, the transport expenditures of a household are slightly redistributed over a household's life cycle. The operation of personal transport equipment gains steadily in importance, from 51.8% at younger ages to 58.9% at higher ages. At the same time, the purchase of vehicles increases up to middle age and decrease thereafter, from 33.1% in the age category from 30 to 44 years to 30.5% in retirement age. Regarding transport services, the highest share is reached by the youngest age group (16.3%) and it decreases to levels between 11.0% and 12.7% at higher ages. For the aggregate European household, hence, expenditures for transport services as well as the purchase of vehicles decrease above the average rate over the life cycle, while the decrease in expenditures for the operation of personal transport equipment is below the average rate. To be more specific, in general, the budget share for transport decreases by 29.1% at retirement age compared to middle age. While the expenditure share for the operation of personal transport equipment in total consumption expenditures decreases by 27.3% only, the ones for transport services and the purchase of vehicles decrease by 35.3% and 31.0%, respectively (see Figure A1 in the appendix).

Figure 5. Structure of expenditures on transport over the life cycle of European households, 2010

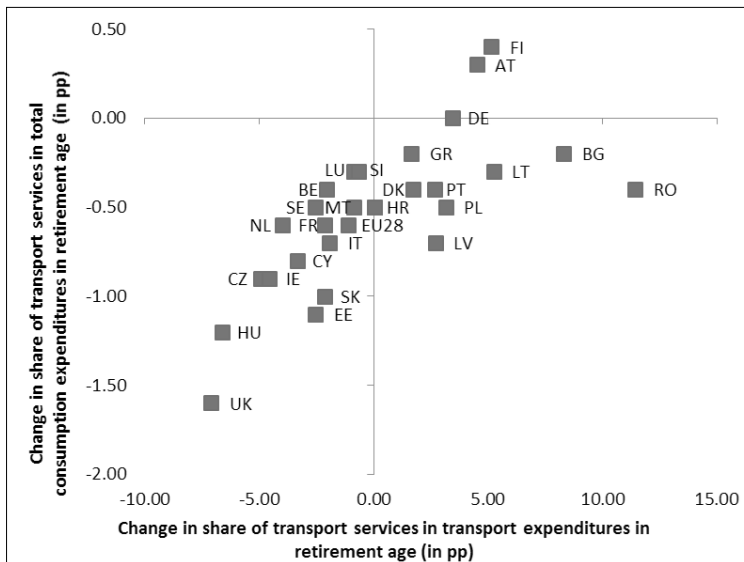


Note: Due to rounding, the sum of the listed individual positions may be higher/lower than 100%. Source: Eurostat (2015), own calculation.

Rather surprising in the results on the structure of transport expenditures is the decrease in expenditures on transport services in retirement age, as one might expect the opposite, an increase in the use of transport services, e.g. due to health-related limitations in mobility. An analysis for Germany shows an obvious increase of the consumption category for transport services in relation to total expenditures for transport at higher age (Aigner-Walder and Döring, 2014). Also an analysis by Currie and Delbosc (2009) suggests that those aged 60 years and over reduce public transport trip rates substantially less than overall trip rates (16% and 30%, respectively) compared to those aged below 60. Hence, it seems of interest to take a closer glimpse on the expenditures for transport services of households at retirement age in our data.

In Figure 6 the change of the expenditure share for transport services at retirement age is shown. Hereby, axis x shows the change in the share of transport expenditures and axis y the change in the share of total expenditures. As shown in Figure 6, in some countries (including Germany) the share of transport services in transport expenditures increases at retirement age, whereby the highest increase was found in Romania and Bulgaria. But in 15 countries out of the 28, expenditures for transport services loose in relevance, compared to the other two transport categories. Nevertheless, as the expenditures in transport in total decreases at retirement age compared to middle age (45-59 years), the demand in transport services in total expenditures decreases in almost all observed countries. The only exceptions are Finland and Austria where an increase in the share of transport services in total expenditures is clearly visible, meaning that transport services gain of relevance from middle to higher age. For Germany a constant development is identified.

Figure 6. *Change of expenditure share for transport service from middle to retirement age, 2010*



Source: Eurostat (2015), own calculation and illustration.

Summing up, we find a differing structure in transport expenditures over the life cycle of households within the European Union. The reduction of expenditures for transport at retirement age leads in general to a decrease of expenditures in all three expenditure categories of transport, although the decrease in the operation of personal transport equipment is lower compared to the two other categories. Due to the differing levels and structure of transport expenditures within the countries, country-specific differences have to be taken into account. So we find, for example, in three out of the 28 countries no decrease of expenditures for transport services in total expenditures, namely in Finland, Austria and Germany.

6 Discussion of Results

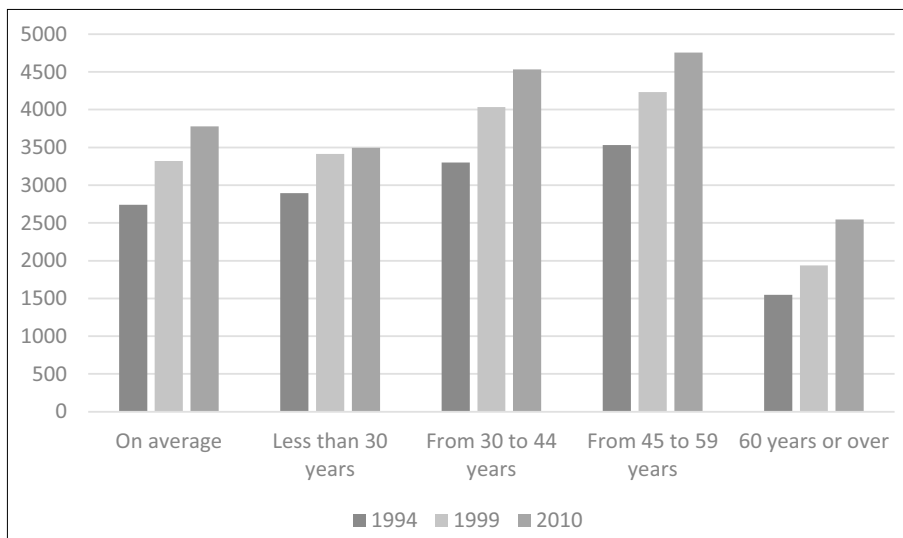
According to the theoretical discussion in chapter 2, a decrease of expenditures in the transport sector from middle to retirement age could already be expected. The reduction of work related expenses leads to a decrease of expenditures at the retirement age in general. In particular, expenditures for goods and services in the field of transport as well as clothing and restaurants are mentioned as the main determinants (Hurst, 2008; Aguila, Attanasio and Meghir, 2008). From the perspective of transportation, without work obligations the daily commuting to work and back home is not needed anymore, leading to a decrease of expenditures. Besides the reduction of work related mobility, also reduced mobility of older people due to health limitations could be a reason for the existing structure of expenditures for transport over the life cycle (Banks, Blundell and Tanner 1998). Ziems et al. (2010) also find that in terms of preferences, older people derive greater utility from in-home activities. The mentioned arguments can also be applied to the expenditure structure within the transport sector. As the use of transport facilities decreases, the expenses for transport services decrease, as well as potential investments in cars in the sense of the purchase of vehicles. On the other hand, the costs for the operation of existing personal transport equipment are – relatively seen – increasing in importance. A potential reason could be that households are not willing to purchase a vehicle anymore, due to its reduced use and uncertainty in life expectancy, with the consequence of spending more for repairing the existing one(s).

The results suggest that the shift from a younger to an older population within the EU could lead – under the analysed expenditure pattern for transport – to a reduction in aggregate demand for goods and services in the field of transport on the European market. This would also affect the production in the transport sector. Hereby, it has to be considered that transport is not only influencing the private sector but the public sector as well, as streets and transport services are commonly provided by the state. But a reduced demand in transportation would also have potential positive public effects. On the one hand, a reduction in CO₂ emissions would be the consequence of less demand in transportation facilities (Kluge et al., 2014). On the other hand, the decrease of work related expenditures and especially mobility, could lead to an increase in economic growth within the living region of

retired people due to the shift in demand for regionally offered products and services (Mayerhofer, Aigner and Döring, 2010).

There are still some uncertainties which have to be considered regarding the future development of the demand for transport goods and services: On the one hand, there is a high probability that the expenditure structure of future households at retirement age will differ from those households which are in retirement nowadays. Except for changes in lifestyles and potential effects of an increased (healthier) life expectation, also technological progress in the sense of new products and services has to be considered. Analyses show that cohort effects seem to play a comparable role to age effects. Wakabayashi and Hewings (2007) found a high influence of such cohort effects in the transport sector. Currie and Delbosc (2010) show for example an increasing holding of licences in the age group over 60 and a small increasing longitudinal trend towards public transport use with Australian data.

Figure 8. Average household consumption expenditures for transport by age in EU15 (in PPS), 1994, 1999 and 2010



Source: Eurostat (2015), own calculation.

A comparison of the mean consumption expenditure per household in the EU15 countries based on previous consumer expenditure surveys suggests an increase in expenditures for transport over the time within all age categories. From 1994 to 2010 the expenditures for transport increased on average by approx. 40%. But this considerable average increase is mainly driven by the households over 60 years with an increase of almost 65%. Households of the age category under 30 years show the lowest increase of 20.1%. But Fig. 8 once more highlights the gap between households over 60 years and younger households in consumption expenditure of transport goods and services. A more detailed look at the data reveals that households over 60 years doubled expenditures for the operation of personal transport equipment from 1994

to 2010. Furthermore, they showed the highest increase in expenditures for the purchase of vehicles, while expenditures for transport services increased only modestly compared to the other age groups (Eurostat, 2015).

Besides changing habits in consumption expenditures over time, also changes in income or prices could lead to substantial differences in the expenditure structure. For example, previous results show a high expenditure elasticity for transportw, especially at younger ages (Yoon and Hewings, 2006; Wakabayashi and Hewings, 2007; Aigner-Walder, 2012). This means that expenditures for transportation goods and services rise disproportionately in the case of an increase of expenditures of the household. Such an increase of consumption expenditures could be triggered by an increase of income of the household. As especially younger age cohorts could profit in earnings from the demographic change due to lacking (younger) labour force, this would affect the demand for transport services positively. This could balance or even over compensate the direct negative effect of the aging of the population on expenditures in transport services and goods (Lehmann, 2004; Deutsche Bank Research, 2007; Aigner-Walder, 2015). Regarding prices, especially the (relative) price of oil as well as alternative modes of transportation (e.g. electric cars) are of relevance for consumption expenditure decisions in the transport sector.

7 Overall Conclusions and Public Sector Consequences

As the results of the paper show, the share in consumption expenditures for goods and services in the field of transport decreases at retirement age. A reduction in relative expenditures is visible for the average household within the European Union, as well as within all EU28 countries. More than half of the expenditures for transport are spent for the operation of personal transport equipment, almost one third for the purchase of vehicles and the remaining 12% for transport services. But also the structure of expenditures in transport goods and services varies over a household's life cycle. Especially the expenditures for transport services as well as the purchase of vehicles decrease in retirement, whereas we see a lower decrease for the operation of personal transport equipment; but country-specific differences are visible.

The results of the analysis suggest a decrease of expenditures in the field of transport by private households due to the ageing of the population. The potential negative effects could be reduced by cohort effects, meaning an increase in expenditures for transport goods and services over the time, due to changing preferences and lifestyles of households as well as technological progress. Furthermore, indirect effects of the ageing of the population, as a potential redistribution of income to younger age cohorts, or changes in (relative) prices have to be taken into account.

For public authorities these results are of relevance for various reasons: On the one hand, a reduction in the demand of goods and services in the field of transport would have positive consequences in the sense of a reduction of greenhouse gases. On the other hand, the changed consumption structure

by age should be considered in the supply of transportation infrastructure and services. Moreover, changes in the consumption structure of private households will directly affect the economic structure of an economy, including not only the demand for goods and services but also human capital.

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*Reduced Consumption within the Transport Sector due to the Ageing of the Population? An
Analysis of Expenditures of Private Households within the European Union*

Ziems, S., Konduri, K., Sana, B. , Pendyala, R. (2010). Exploration of Time Use
Utility Derived by Older Individuals from Daily Activity-Travel Patterns.
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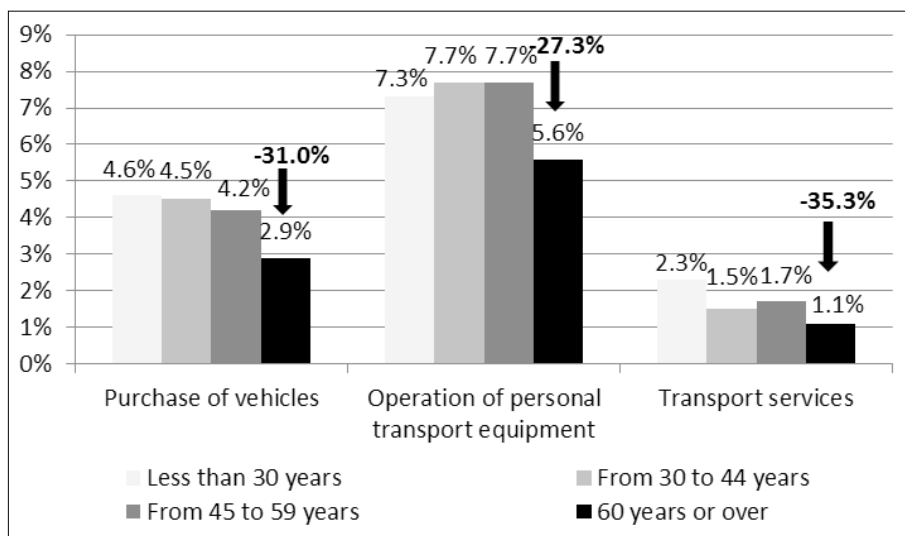
Appendix

Table A1. *Average structure of expenditures on transport relative to total consumption expenditures of private households in the EU28 countries, 2010*

| Country | Purchase of vehicles | Operation of personal transport equipment | Transport Services |
|----------------|----------------------|---|--------------------|
| Austria | 5.8% | 8.1% | 1.1% |
| Belgium | 4.9% | 7.1% | 1.0% |
| Bulgaria | 0.1% | 3.9% | 1.3% |
| Croatia | 1.7% | 6.8% | 1.1% |
| Cyprus | 7.4% | 5.3% | 1.3% |
| Czech Republic | 3.0% | 6.6% | 1.5% |
| Denmark | 4.1% | 6.3% | 1.9% |
| Estonia | 2.5% | 5.3% | 1.9% |
| Finland | 7.0% | 8.3% | 2.1% |
| France | 6.5% | 6.0% | 1.6% |
| Germany | 4.7% | 8.5% | 1.4% |
| Greece | 3.6% | 5.8% | 1.2% |
| Hungary | 2.6% | 4.9% | 1.5% |
| Ireland | 4.4% | 6.5% | 1.9% |
| Italy | 2.8% | 7.7% | 1.1% |
| Latvia | 1.2% | 7.5% | 2.2% |
| Lithuania | 0.7% | 6.4% | 1.0% |
| Luxembourg | 7.7% | 5.8% | 1.0% |
| Malta | 4.0% | 8.3% | 1.5% |
| Netherlands | 4.0% | 5.9% | 1.5% |
| Poland | 2.0% | 5.4% | 1.3% |
| Portugal | 3.9% | 9.3% | 1.3% |
| Romania | 0.3% | 3.1% | 1.3% |
| Slovakia | 0.8% | 4.8% | 1.5% |
| Slovenia | 5.9% | 6.7% | 0.6% |
| Spain | 3.7% | 7.4% | 1.2% |
| Sweden | 4.2% | 6.4% | 1.5% |
| United Kingdom | 4.6% | 8.4% | 2.3% |

Source: Eurostat (2015), own calculation

Figure A1. Average structure of consumption in transport relative to total consumption expenditures over the life cycle of European households, 2010



Source: Eurostat (2015), own calculation.

POVZETEK

1.02 Pregledni znanstveni članek

Zaradi staranja prebivalstva zmanjšana potrošnja za promet? Analiza izdatkov zasebnih gospodinjestev v Evropski uniji in možne implikacije za javni sektor

Staranje prebivalstva bo imelo različne učinke na gospodarstvo. To vključuje tako učinke na strukturo izdatkov zasebnih gospodinjestev kot tudi učinke na trg dela in javne proračune. Potrošniško vedenje gospodinjestev se močno razlikuje glede na starost zaradi različnih želja in potreb. Mladi imajo, denimo, višje izdatke na področju izobraževanja, starejši pa potrebujejo več zdravstvenih izdelkov in storitev. Poleg tega se struktura potrošnje razlikuje glede na starostne skupine tudi zaradi primerljivega zgodovinskega, gospodarskega oz. družbenega ozadja teh ljudi. Na razlike v strukturi potrošnje glede na starost so empirično pokazale različne študije. Njihove glavne ugotovitve so precej podobne: delež izdatkov za nastanitev, vodo in gorivo ter zdravje se z leti povečuje, stroški za prevoz pa so pri višjih starostih nižji. Napovedi učinkov staranja prebivalstva na skupno povpraševanje zasebnih gospodinjestev predvidevajo povečanje deleža proračunskih sredstev za zdravje in nastanitev, delež potrošnje v prometnem sektorju pa se bo po pričakovanjih znižal.

Pričujoči članek izpostavlja vprašanje, kako se skozi življenje spreminjajo izdatki za izdelke in storitve na področju prevoza, in predstavlja možne implikacije staranja prebivalstva za skupno povpraševanje v prometnem sektorju. V predmetni analizi so uporabljeni podatki o potrošniških izdatkih gospodinjestev in sociodemografske spremenljivke, npr. starost gospodinjstva. Potrebni primerljivi podatki za vseh 28 držav so bili pridobljeni iz anket o porabi v gospodinjstvih (HBS) v državah članicah Evropske unije. Ankete HBS so nacionalne vzorčne raziskave gospodinjestev, ki se izvajajo v vseh državah članicah EU in se osredotočajo na izdatke gospodinjestev za različne vrste potrošniškega blaga in storitev v določenem času.

Rezultati kažejo, da reprezentativno gospodinjstvo v Evropski uniji v povprečju 12,3 % vseh izdatkov nameni za izdelke in storitve na področju prevoza, vendar se delež razpoložljivih sredstev, ki jih gospodinjstva porabijo za prevoz, med državami članicami EU močno razlikuje: najmanjši je v Bolgariji (4,6 %), največji pa na Finskem (17,5 %). Izdatke za prevoz je mogoče razdeliti na izdatke za nakup vozil, operativne stroške osebnih prevoznih sredstev in stroške prevoznih storitev. Največji delež izdatkov za prevoz predstavlja obratovanje osebnih prevoznih sredstev. Ta kategorija predstavlja 56,9 % izdatkov za prevoz in 7,0 % vseh izdatkov gospodinjestev v Evropski uniji. Skoraj ena tretjina izdatkov za prevoz (31,7 %) je namenjenih nakupu vozil. Ti izdatki v povprečju predstavljajo 3,9 % vseh razpoložljivih sredstev v evropskem gospodinjstvu. Prevozne storitve, tj. potniški prevoz po železnici, cestah,

zraku, morju in celinskih plovni poteh oz. drugi stroški prevoznih storitev, predstavljajo zgolj 1,5 % vseh izdatkov gospodinjstev ali 12,2 % vseh izdatkov na področju prometa.

Zmanjšanje zasebnih izdatkov za prevozne izdelke in storitve je – skladno s predhodnimi empiričnimi rezultati – pri gospodinjstvih v Evropski uniji jasno zaznavno. Gospodinjstva s člani, mlajšimi od 30 let, 14,1 % vseh izdatkov namenijo za prevoz, ta delež pa rahlo pade že pri skupini ljudi, starih od 30 do 44 let (13,6 %), in pri ljudeh, starih od 45 do 59 let (13,4 %). Gospodinjstva s člani, starimi 60 ali več, porabijo precej manj za prevoz – delež izdatkov se zmanjša za skoraj štiri odstotne točke, na 9,5 %. To zmanjševanje izdatkov za prevoz v upokojitveni starosti je mogoče zaznati v vseh državah članicah EU. V povprečnem evropskem gospodinjstvu do zmanjšanja izdatkov prihaja v vseh treh kategorijah izdatkov za prevoz, čeprav je zmanjšanje pri obratovanju osebnega prevoznega sredstva manjše kot v drugih dveh kategorijah. Poleg zmanjšanja mobilnosti v zvezi z delom je za takšno strukturo izdatkov za prevoz skozi celotno življenjsko dobo lahko odgovorno tudi zmanjšanje mobilnosti starejših zaradi zdravstvenih omejitev ali povečanje števila dejavnosti na domu pri višjih starostih.

Rezultati kažejo, da bi staranje prebivalstva v EU lahko povzročilo – skladno z analiziranim vzorcem izdatkov za prevoz – zmanjšanje skupnega povpraševanja za izdelke in storitve na področju prometa na evropskem trgu. Ti rezultati so za državne organe pomembni zaradi več razlogov. Po eni strani bi zmanjšanje povpraševanja po izdelkih in storitvah na področju prometa imelo pozitivne posledice zaradi zmanjšanja emisij toplogrednih plinov, po drugi strani pa bi bilo treba spremenjeno strukturo potrošnje glede na starost upoštevati tudi pri zagotavljanju prometne infrastrukture in storitev. Poleg tega bodo spremembe strukture potrošnje zasebnih gospodinjstev neposredno vplivale tudi na ekonomsko strukturo gospodarstva, torej tako na povpraševanje po izdelkih in storitvah kot tudi na človeški kapital.

Ključne besede: izdatki gospodinjstev, zasebna poraba, pretok blaga in storitev, staranje, javni prevoz.

The Effects of the Public-Private Partnership Act on the Slovenian Public Utilities Providers¹

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ABSTRACT

The paper presents the legal status of existing public enterprises in Slovenia before and after the adoption of Public-Private Partnership Act, that demanded the reorganization of existing public enterprises in the period 2007-2009. The paper also presents the analysis of local public utilities delivery mechanisms in Slovenia, focusing on the local public utilities providers in the field of water and waste management. The aim of the paper is to introduce the changes in the legal status of existing public enterprises, caused by new legislation and also to give an insight into the current state of local public utilities providers in the field of water and waste management. The results confirm the fact that public enterprise is the most common organizational form of local public utilities providers in the field of water and waste management and lead to conclusion that in the reorganization process the majority of existing public enterprises retained the status of a public enterprise.

Key words: economic public service, public enterprise, public-private partnership, local public utilities.

JEL: H40

1 Introduction

Slovenia provides public services by specific legal persons, e.g. public institutions, public commercial institutions, public enterprises etc., established

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by the state or municipality. Municipalities provide public commercial services primarily in two ways: through public enterprises and by awarding concessions. Public enterprises became a principal form of local public services provision. To enable and encourage mutual help and cooperation between entities from the public and the private sectors, which would lead to economical and efficient provision of public services and other goods or services in the public interest, Slovenia adopted the Public-Private Partnership Act in 2006, that came into force in 2007 (Bauby & Similie, pp. 116-117). Besides establishing forms, rules and procedures for implementation of public-private partnership, the Act also determined the transformation of existing public enterprises, which in the specified period should made the appropriate changes in their organization status or should their founders consider about the need to change and adapt their current status to new legislative conditions.

The aim of the paper is to introduce the changes in the legal status of existing public enterprises in Slovenia, which happened due to the adoption of Public-Private Partnership Act, and to give an insight into the current state of local public utilities providers in the field of water and waste management. The paper first presents the legal status of public enterprise in Slovenia and some open questions before the adoption of the Public-Private Partnership Act and after that the legal status' changes that the mentioned Act has caused to existing public enterprises. In the second part, the paper presents the analysis of local public utilities delivery mechanisms, focusing on the local public utilities providers in the field of water and waste management. At the end the paper gives some concluding remarks.

2 Reorganization of Existing Public Enterprises in Slovenia

Slovenia experienced reorganization of the existing public enterprises, which had happened in the period 2007-2009 due to the adoption of the Public-Private Partnership Act (Official Gazette of RS, no. 127/06). The Law demanded reorganization of the existing public enterprises (to transform into a company or remain public enterprise) and awarding concessions to public enterprises which had transformed into companies.

2.1 The Legal Status of Public Enterprises in Slovenia Before Reorganization

Before the adoption of the Public-Private Partnership Act, the inclusion of the private sector in traditional public sphere of public services was allowed by the Public Utilities Act (ZGJS, Official Gazette of RS, no. 32/1993) for the provision of commercial public services used in the form of concessionary relationship and in the form of capital investment in the activities of private law; and by the Institutions Act, which has allowed awarding concessions for non-commercial public services provision (Institut for Public-Private Partnership, 2017).

Since the nineties until today there have been three concepts of public enterprises in the Slovenian legal system, based in particular on the system of property ownership. According to Public Utilities Act a public enterprise was a form of the commercial public services provision. Public enterprise did not have its own status, because this regime was directly relied on the regulation of commercial companies. A public enterprise could have, as a commercial company, also shared capital. The status of a public enterprise therefore did not differentiate from commercial companies, the significant difference was only in the management rights, where the state or local government as a founder of such enterprise had special founder's rights, independent of its capital structure. Under the Public Utilities Act a public enterprise can be established only for the provision of commercial public services or for the performance of activities that are carried out in a manner of public utilities (Brezovnik, 2009, p. 181; Trpin, 2007, p. 6).

Further on, in 2007 the The Transparency of Financial Relations and Maintenance of Separate Accounts for Different Activities Act (ZPFOLERD, Official Gazette of RS, no. 53/2007, 65/2008) changed the definition of a public enterprise into a broader definition. According to this Act a public enterprise is any enterprise over which the public authorities may perform a dominant influence. Therefore, a public enterprise is any organization with legal form of public institutions, public commercial institutions, public enterprises established under the Public Utilities Act and enterprises, in which public authorities have a dominant position (Brezovnik, 2009, p. 182; Trpin, 2007, pp. 6-7).

The position of private capital in the public enterprise in terms of its legal certainty was unsustainable, as stated by Brezovnik (2009, p. 187). The public enterprise was a commercial company on one side, whose shareholder may have been a person of private law, and on the other hand, it carried out activities in the public interest, which prices were regulated by the state or local governments. Brezovnik (2009, p. 189) also points out to the question of establishment of public enterprises. The formation of public enterprise is controversial in both cases, when a public enterprise is set up by the state or by the local community and also when it is set up by several founders (public-public partnership). The regulation is not clear which legal instrument forms a public enterprise. There are also shortcomings in the relationship between the founder of public enterprise and the public enterprise. In relation to public enterprise, the State or local community act as a regulator of public services implemented by the public sector on one hand, and on the other hand, as the enterprise's (co-)founder or the owner of the majority of capital share. Proceeding from that the state or the local community have a dual role (Brezovnik, 2009, p. 190).

2.2 Reorganization of Existing Public Enterprises in Slovenia in Accordance with the Public-Private Partnership Act

In 2006, Slovenia adopted the Public-Private Partnership Act that entered into force in March 2007. The Act had a strong influence on the legal status of public enterprises (especially Articles 141, 142 and 143), especially for further organisation and operation of the public enterprises providing public services. It has determined the rules of transformation of existing public enterprises, which shall *mutatis mutandis* apply also to public institutions and public commercial institutions (Brezovnik, 2010, p. 24). In the sense of public institutions' regulation, Tičar & Zajc (2010, p. 211) highlight the importance of a repeal of Article 80 in the 1999 Public Finance Act by the Public-Private Partnership Act. The Article 80 of Public Finance Act specifically regulated the privatization of public institutions (also public commercial institutions and public enterprises), more specifically it had frozen all privatization initiatives since it did not allow the transfer of capital investments or establishment rights of the state or municipality in public institutions. Privatization was possible only if so provided by a specific law on the performance of a public service, but since 2002, no such laws had been adopted. This restriction was then removed with the implementation of the Public-Private Partnership Act in 2007.

The Act provides the definition of the legal status of public enterprises. The aim of the new regulation is to differentiate between genuine public enterprises that shall remain exclusively publicly owned to perform public service activities, and other public enterprises that shall be transformed into commercial companies. There are two options for the public enterprises in which there are private equity stakes. One option is that a public enterprise can be transformed into a commercial company in accordance with the Companies Act, and the other option is that the public enterprise status can be retained, provided that the private equity stakes are in a way nullified in the public enterprise, and that only the equity stakes owned by the Republic of Slovenia or local communities remain (Kocbek, 2011, p. 86). Public enterprises where private investors held shares had to be transformed into commercial companies and public enterprises that wanted to remain public enterprises had to transfer the private ownership to the State or local community. The decision had to be taken by the founder of the enterprise within three years from the adoption of the Act, which is by March 2010. Under the new regulation a public enterprise may be an enterprise which is wholly owned by the state or local government (Hrovatin, 2010, p. 102; Brezovnik, 2010, p. 24; Trpin, 2007, p. 6).

The Act also regulates awarding concessions to public enterprises, which are transformed into a commercial company. First, the founder shall award concessions without public tender to the commercial companies that were created out of the public enterprises where provided persons of private law have no investments in such enterprises. This had to be done within one year, by March 2008. And the second, public enterprises transformed

into commercial companies must obtain a concession in compliance with the legislation. The concession should be awarded within one year by the founder of the enterprise as a result of the bidding process on the public tender. In determining the duration of the concession the founder of a public enterprise have to take into account the nature of the public service and the extent of its implementation, current investment in the public service and the degree of their depreciation and any necessary new investments and other circumstances. When deciding on the duration of the concession the founder have to determine the minimum necessary duration of the concession in accordance with the Act. The founder had to do the bidding process on the public tender by March 2008 also in the case of those commercial companies providing commercial public services that had been already transformed on the basis of previous regulations (Hrovatin, 2010, p. 102; Brezovnik, 2010, p. 24; Trpin, 2007, p. 13).

Mužina (2007, p. 37-38) highlights the fact that the reorganization of existing public enterprises itself does not mean exemption from the Public Procurement Act (Official Gazette of RS, no. 128/2006), therefore even after an eventual reorganization the commercial company will have to fully operate in accordance with these rules. Procurement rules would no longer be mandatory only at the moment when local communities lose a managerial or financial control in commercial company, and if they would leave the entire business to market regulations. Further on, the reorganization also does not mean reducing supervision, because even after the reorganization all the conditions that the legal entity may be a subject of audit by the Slovenian Court of Audit, continue to be met. Similarly, also the decision-making power in the administrative procedure, has remained unchanged, as far as it is undertaken on the basis of public authorization.

3 The Analysis of Local Public Utilities Delivery Mechanisms in Slovenia

In Slovenia, the majority of public utilities in the field of water and waste is managed by public sector, on municipal level. In 2013 new legislative provisions were set. The regulation of local public utilities was transferred from central to municipal level. This means that municipal administration is now responsible for local public utilities regulation, which includes industries like water supply, wastewater treatment, waste collection and waste treatment (Cerkvenik, 2015). Form of local public service provision is prescribed by the municipality by decree to ensure its implementation within the functionally and spatially complete supply systems. The municipal decree regulates conditions for the provision and use of public goods; sources of funding and the manner of their formation; rights and obligations of users; position of the infrastructure for the public service (Grafenauer, 2009, p. 213).

3.1 The Current State of Municipalities in Slovenia

A municipality is the basic self-governing local community. Slovenia has in total 212 municipalities, from which 11 municipalities are so-called urban municipalities. In accordance with the Constitution and within their competence, urban municipalities may also perform tasks under state competence stipulated by law, which refer to the development of the city. Municipalities, in accordance with the Constitution and laws, autonomously regulate and perform matters, duties and functions assigned to them by law (Pevcin, 2012, p. 706; Vlaj, 2010, p. 7).

Municipal administration in Slovenia is organized by the municipal representative body or the mayor. This organization involves number of working posts, a detailed organizational structure and the possibility of independent decision-making powers delegated to the head of the municipal administration. The way municipal administration is organized, also depends on the competencies of a municipality, its size and its ability to organize and provide sufficient funding for the administration. In general, Slovenian municipalities are organized according to the same model. Therefore, there is the problem of obligatory public services provision and a very small size of some municipalities (Haček & Bačlija, 2014, pp. 88-89).

Although Local Self-Government Act in Slovenia stipulates that a municipality has at least 5,000 residents, they are not all formed in accordance with the legal standards. More than a half of municipalities (110) have a population less than 5,000 residents, of which 7 municipalities have less than 1,000 residents (the smallest municipality has 372 residents). A total of 48 municipalities have a population between 5,000 and 10,000; 36 municipalities have population between 10,000 and 20,000; 14 municipalities a population between 20,000 and 50,000 and 4 municipalities have population more than 50,000 (of which one municipality has more than 100,000 and one has more than 200,000 residents).

Table 1. *Municipalities in Slovenia by population size in 2016*

| Population size | Number of municipalities | % of all municipalities |
|-----------------|--------------------------|-------------------------|
| < 1,000 | 7 | 3,30 |
| 1,000 – 5,000 | 103 | 48,58 |
| 5,000 – 10,000 | 48 | 22,65 |
| 10,000 – 20,000 | 36 | 16,98 |
| 20,000 – 50,000 | 14 | 6,60 |
| > 50,000 | 4 | 1,89 |
| Total | 212 | 100,00 |

Source: Statistical Office of Slovenia, 2017; authors' calculations

3.2 The Analysis of Slovenian Public Utilities' Providers in the Field of Water and Waste Management

In Slovenia, a municipality may provide commercial public services via the municipal administration body, by establishing public institutes and public enterprises, by awarding concessions and in any other way determined by law. Overhead plant is a relatively rare form of local commercial public services provision. It may be used when it would be uneconomical or irrational to establish a public enterprise or to give a concession due to the small size or the characteristics of the service. Public commercial institute is also a very rare form of local commercial public services provision. It is used when a public service, due to its nature, cannot be provided as a profit activity or if profit is not a goal of such a service. Public commercial institute may be either a legal entity of public law or an entity without legal personality. (Pevcin & Rakar, 2015, pp. 705-706). Concession is the only possible form providing commercial public services, performed by a legal person of private law. By its nature, it is a form of public-private partnership (Institut for Public-Private Partnership, 2017). Public enterprise is the most widespread form of local commercial public services provision. Public enterprise is used for the provision of one or more services of increased volume or when economic public service is a monopoly. In both cases, services are required to be performed profitably (Pevcin & Rakar, 2015, pp. 705-706). Public enterprise can be established as a Limited Liability Company or as a Public Limited Company.

The analysis of public utilities providers takes into consideration the public utilities providers for drinking water supply, wastewater treatment and waste collection and treatment. Regarding the data available at the database E-komunala (E-Utilities), Slovenia has 61 providers for drinking water supply, 66 providers for wastewater treatment and 62 providers for waste collection and treatment. Many of these utility providers provide all three or two of the analyzed public utilities.

Table 2. *Public utilities providers in Slovenia in 2017*

| Public utilities providers | Drinking water supply | Wastewater treatment | Waste collection and treatment |
|----------------------------|-----------------------|----------------------|--------------------------------|
| No. of providers | 61 | 66 | 62 |

Source: E-komunala, 2017; authors' calculations

Therefore, in Slovenia 43 public utilities providers provide all three studied public utilities (drinking water supply, wastewater treatment and waste collection and treatment). There are 12 providers for drinking water supply and wastewater treatment and 6 providers for wastewater treatment and waste collection and treatment. Slovenia also has providers for one public utility only, namely 6 providers for drinking water supply, 5 providers for wastewater treatment and 13 providers for waste collection and treatment.

In total Slovenia has 85 public utilities providers in the field of water and waste management.

Table 3. *The range of public utilities covered by public utilities providers in Slovenia in 2017*

| The range of public utilities | No of public utilities providers |
|---|----------------------------------|
| drinking water supply, wastewater treatment, waste collection and treatment | 43 |
| drinking water supply, wastewater treatment | 12 |
| wastewater treatment, waste collection and treatment | 6 |
| drinking water supply | 6 |
| wastewater treatment | 5 |
| waste collection and treatment | 13 |
| Total | 85 |

Source: E-komunala, 2017; authors' calculations

Most of the public utilities providers are public enterprises and only small share goes to concessionaires and overhead plants (E-komunala, 2017).

Table 4. *The organizational form of public utilities providers in the field of water management*

| Public utility | No of providers | Organizational form | | | | | |
|-----------------------|-----------------|---------------------|------|------------|-----|----------------|-----|
| | | Public enterprise | | Concession | | Overhead plant | |
| | | No | % | No | % | No | % |
| Drinking water supply | 62 | 56 | 90.3 | 4 | 6.5 | 2 | 3.2 |
| Wastewater treatment | 67 | 62 | 92.5 | 5 | 7.5 | 0 | 0.0 |
| Total | 73 | 66 | 90.4 | 5 | 6.8 | 2 | 2.7 |

Source: eKomunala, 2017; authors' calculations

Table 3 shows that the majority (around 90 %) of analysed public utilities providers for drinking water supply and wastewater treatment represents public enterprises, around 7 % are concessionaires and around 3 % are overhead plants, which are only found for providing drinking water supply.

3 Conclusion

In Slovenia, local commercial public services are most often provided by public enterprises, followed by concessions and (rarely) overhead plants. Slovenia faced the reorganization of existing public enterprises in the period 2007-2009 with the adoption of a Public-Private Partnership Act, which has influenced the legal status of public enterprises and brought significant

changes in their ownership. The sole ownership of the public enterprises by the state or local government has increased public ownership and control in Slovenia. The Act has left the decision on the organizational structure of public enterprises to their founders.

The analysis of local public utilities providers confirm the fact that public enterprise represents the most common organizational form in Slovenia in the field of drinking water supply and wastewater treatment. This can lead to conclusion that the majority of existing public enterprises retained the status of a public enterprise on the basis of the Public Private Partnership Act and thus transfer the ownership into 100% municipal ownership.

As there are still some open questions present e.g. on the legal status of public enterprises, which motives led municipalities to buy equity stakes in public enterprises; a deeper analysis about the reorganization and current state of public enterprises in Slovenia would give a more specific insight to the organizational structure of public enterprises and an insight into the reorganization process. The results of such analysis would give evidence about the final outcome of the reorganization, whether it was implemented in accordance with the law and what concrete institutional changes and experiences has it brought.

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POVZETEK

1.02 Pregledni znanstveni članek

Učinki Zakona o javno-zasebnem partnerstvu na slovenske izvajalce javnih služb

V Sloveniji je bil leta 2006 sprejet Zakon o javno-zasebnem partnerstvu, ki je prinesel spremembe institucionalnega okvira obstoječih javnih podjetij v procesu njihovega preoblikovanja. Zakon je vplival predvsem na pravni status javnih podjetij, ki izvajajo javne službe. V obdobju 2007-2009, ko je potekal proces preoblikovanja obstoječih javnih podjetij, so le ta skladno z zakonom lahko ohranila status javnega podjetja ali pa se preoblikovala v gospodarsko družbo. Podjetja so se v gospodarsko družbo preoblikovala skladno z Zakonom o gospodarskih družbah. V primeru, da so ohranila status javnega podjetja, pa so morala odkupiti vložke zasebnega kapitala in jih prenesti v lastniške deleže v lasti Republike Slovenije ali lokalnih skupnosti. Javno podjetje je tako lahko le tisto podjetje, ki je v stoddostni lasti države ali lokalne skupnosti. Zakon je torej z vidika lastništva prinesel velike spremembe, in sicer povečal javno lastništvo in nadzor lokalnih javnih služb. Odločitev glede organizacijske strukture javnih podjetij je prepustil njihovim ustanoviteljem. Poleg spremembe statusa javnega podjetja, omenjeni zakon obravnava tudi podeljevanje koncesij javnim podjetjem, ki so se preoblikovala v gospodarske družbe. V tem primeru so morala podjetja pridobiti koncesijo z javnim razpisom.

V Sloveniji se lokalne gospodarske javne službe zagotavljajo na občinski ravni, obliko izvajanja predpiše občina z odlokom. Občina lahko zagotavlja gospodarske javne službe bodisi z režijskim obratom, javnim gospodarskim zavodom, javnim podjetjem, s podeljevanjem koncesij ali na kakršen koli drug način, ki ga določa zakon. Režijski obrat in javni gospodarski zavod sta redki obliki zagotavljanja lokalnih gospodarskih javnih služb.

Koncesija je edina možna oblika izvajanja gospodarskih javnih služb s strani pravnih oseb zasebnega prava. Javno podjetje pa je najpogostejša oblika izvajanja lokalnih gospodarskih javnih služb. To potrjuje tudi analiza stanja izvajalcev javnih gospodarskih služb na področju urejanja voda in odpadkov. V analizo so vključeni izvajalci s portala E-komunala. Rezultati analize, glede na razpoložljive podatke portala E-komunala, kažejo, da imamo v Sloveniji 61 izvajalcev za oskrbo s pitno vodo, 66 izvajalcev za odvajanje in čiščenje komunalne in padavinske vode ter 62 izvajalcev za zbiranje in obdelavo določenih vrst komunalnih odpadkov. Veliko teh izvajalcev izvaja vse tri ali dve od omenjenih gospodarskih javnih služb na področju urejanja voda in odpadkov. Le šest izvajalcev le oskrbuje s pitno vodo, pet izvajalcev le odvaja in čisti komunalno in padavinsko vodo ter trinajst izvajalcev le zbira in obdeluje določene vrste komunalnih odpadkov. Večina izvajalcev gospodarskih

javnih služb so javna podjetja. To kažejo tudi analizirani podatki, in sicer na področju urejanja voda je kar okoli 90 % izvajalcev javnih podjetij, okoli 7 % je koncesionarjev in le 3 % predstavljajo režijski obrati, ki pa so po analiziranih podatkih prisotni le pri oskrbi s pitno vodo.

Iz rezultatov analize lahko sklepamo, da je večina obstoječih javnih podjetij, skladno z Zakonom o javno-zasebnem partnerstvu, ohranila status javnega podjetja in tako postala izključna last občin. Se pa pri tem postavljajo vprašanja, kaj je občine vodilo k odkupu lastniških deležev podjetij, kakšen je bil končni rezultat procesa reorganizacije, ali je bila reorganizacija izpeljana v skladu zakonom. Za tovrstne odgovore je potrebna podrobnejša analiza izvajalcev.

Ključne besede: *gospodarska javna služba, javno podjetje, javno-zasebna partnerstva, lokalne javne službe.*

Sodelovanje javnih raziskovalnih organizacij in gospodarstva v Sloveniji v obdobju 2007–2013¹

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POVZETEK

Financiranje raziskovalno-razvojne dejavnosti je pomemben element vsake družbe.

Slovenija je v obdobju 2007-2013 povečevala delež bruto domačih izdatkov za raziskovalno-razvojno dejavnost, nato je sledil rahel upad, kar nas ponovno oddaljuje od zastavljenega cilja, to je doseči 3 % BDP vlaganj v raziskave in razvoj.

V članku so predstavljeni nekateri statistični podatki, ki kažejo delež vlaganj v raziskovalno razvojno dejavnost v Sloveniji v obdobju 2008-2015 in ukrepa, ki ju je objavilo Ministrstvo za izobraževanje znanost in šport v letih 2009 in 2010 (tedaj še Ministrstvo za visoko šolstvo, znanost in tehnologijo) in katerih namen je bil kar najbolj povezati skupno sodelovanje raziskovalcev iz javnih raziskovalnih organizacij in gospodarstva. To sta bila Javni razpis za razvoj centrov odličnosti in Javni razpis za razvoj kompetenčnih centrov v obdobju 2010-2013, in sta bila sofinancirana s sredstvi strukturnih skladov. Tako kot Slovenija, si je tudi Hrvaška postavila cilj doseči 3 % BDP vlaganj v raziskave in razvoj, vendar glede na podatek za leto 2015, ki je 0,85 % BDP, precej zaostaja tako za povprečjem držav članic (2,03 %) kot za zastavljenim ciljem.

Osrednji namen raziskave je bil preučiti stanje in trdnost partnerstev po koncu financiranja, ki se je zaključilo konec leta 2013. V intervjujih so bili sogovorniki, sedanji ali bivši direktorji centrov odličnosti in vodje kompetenčnih centrov, enotnega mnenja, da sta bila oba izvedena ukrepa, tako s strani javnih raziskovalnih organizacij kot s strani gospodarstva sprejeta zelo pozitivno, vendar je bilo podanih tudi nekaj predlogov za izboljšanje. Rezultati raziskave lahko pripomorejo pri pripravi bodočih ukrepov za povezovanje vseh deležnikov, ki aktivno delujejo na področju raziskav in razvoja.

Ključne besede: raziskave in razvoj, strukturni skladi, Evropski sklad za regionalni razvoj, centri odličnosti, kompetenčni centri.

JEL: O38

1 Prispevek je predelava magistrskega dela Pogorelec, Romana: Sodelovanje javnih raziskovalnih organizacij in gospodarstva (2017).

1 Uvod

Država, ki ima vzpostavljen kakovosten sistem financiranja raziskav, razvoja, inovacij in tehnološkega razvoja, tako v javnem kot zasebnem sektorju, lahko suvereno tekmuje z najrazvitejšimi in najbolj konkurenčnimi državami. Spodbujanje konkurenčnosti v posamezni državi članici na nivoju Evropske unije pomeni dvig konkurenčnosti celotne regije v svetovnem merilu. Evropski svet je 23. in 24. marca 2000 v Lizboni postavil strateški cilj postati najbolj konkurenčno in dinamično, na znanju temelječe gospodarstvo na svetu. Med sprejetimi cilji je najpomembnejši barcelonski cilj, ki je predvideval povečanje vlaganj v raziskovalno-razvojno dejavnost na 3 % BDP do leta 2010, kar se do zadanega roka ni realiziralo. Cilj naj bi se na podlagi novih strategij uresničil do leta 2020 (Evropska komisija, 2010).

V članku je predstavljena analiza statističnih podatkov, vključno z zadnjimi znanimi podatki za leto 2015, in na podlagi rezultatov analize ugotovljen obseg vlaganj v raziskovalno-razvojno dejavnost v Sloveniji v obdobju 2005-2015. Podatki o vlaganju sredstev v raziskave in razvoj za leto 2016 v času raziskave še niso bili znani.

Načrtovanega cilja vlaganj 3 % BDP v raziskave in razvoj brez povezovanja javnega sektorja z gospodarstvom v Sloveniji ne bo mogoče doseči in tako posledično dvigniti konkurenčnosti slovenskega gospodarstva. Tudi v ta namen so bili tako v Sloveniji kot tudi v Evropi vzpostavljeni različni instrumenti, npr. centri odličnosti in kompetenčni centri. Osrednje vprašanje je, ali so tovrstne povezave utrdile in zbližale sodelovanje javnega ter zasebnega sektorja in ali take oblike povezav in sodelovanja lahko uporabimo tudi v trenutni perspektivi 2014–2020.

Kot odgovor na to vprašanje je bila izvedena raziskava, v kateri je bila narejena primerjava dveh instrumentov, ki sta bila izvedena v obdobju 2007–2013 in sta na področju vlaganj v raziskovalno-razvojno dejavnost povezovala javni sektor ter gospodarstvo, in sicer že omenjena instrumenta centrov odličnosti in kompetenčnih centrov. Raziskava je osvetlila vidik kakovosti in trajnost partnerstva med javnimi raziskovalnimi organizacijami in gospodarstvom ter razlike glede na organizacijsko obliko partnerstev pri centrih odličnosti in kompetenčnih centrih.

V preteklosti so bile izvedene evalvacije instrumentov tako tekom izvajanja (vmesna evalvacija centrov odličnosti s strani tujih ekspertov) kot tudi po zaključku izvajanja projektov (Mešl, Bučar, 2008 in Bučar, Stare & Udovič, 2014). Osrednji namen raziskave je bil preučiti stanje in trdnost partnerstev po koncu financiranja, ki se je zaključilo konec leta 2013. Z namenom pridobitve realnih podatkov, je bilo izvedeno preverjanje na nižjem nivoju izvajanja obeh programov, to je na nivoju projektov. Namen takega načina je bilo ugotoviti prednosti in pomanjkljivosti obeh izvedenih instrumentov, kar bi bila lahko

dobra podlaga za pripravo novih instrumentov financiranja raziskovalno-razvojne dejavnosti s sredstvi strukturnih skladov.

2 Intenzivnost raziskovalno-razvoje dejavnosti

Intenzivnost raziskovalno-razvojne dejavnosti (v nadaljevanju RRD) se meri z deležem skupnih izdatkov za RRD v BDP. Glede na velikost bruto domačih izdatkov za RRD v BDP je Slovenija v letu 2015 med državami EU-28 na osmem mestu (za Švedsko, Avstrijo, Dansko, Finsko, Nemčijo, Belgijo in Francijo) in z 2,21 % BDP za RRD še nad povprečjem držav EU-28, ki je 2,03 odstotka BDP (vir EUROSTAT, 2016).

V letu 2014 se je, po več letih rasti, trend intenzivnosti raziskav in razvoja v Sloveniji znižal. Raven intenzivnosti raziskav in razvoja v Sloveniji se je v obdobju 2000 do 2013 povišala z 1,36 % BDP na 2,6 % BDP, kar jo je uvrščalo med vodilne države članice EU. Pozitivna rast je bila posledica spremenjenega sistema davčnih spodbud za raziskave in razvoj ter ukrepov, ki se nanašajo na sofinanciranje inovacij iz strukturnih skladov. Vendar podatki Eurostata kažejo na padec ravni naložb v raziskave in razvoj v letu 2014 na 2,39 % BDP. Zmanjševanja javnih odhodkov za raziskave in razvoj negativno vpliva na spodbujanje gospodarske dejavnosti ter ovira zasebne naložbe v raziskave in razvoj. Cilj naše države, da do leta 2020 doseže 3 % BDP vlaganj v raziskave, je še vedno dosegljiv, vendar z ukrepi in političnimi odločitvami, ki podpirajo in spodbujajo dolgoročnojšo trajnost in kontinuiteto naložb v raziskave in razvoj (Evropska komisija, 2016).

Na podlagi statističnih podatkov je v letu 2015 Slovenija za raziskovalno-razvojno dejavnost (RRD) namenila 853,1 milijona EUR ali 2,21 % bruto domačega proizvoda. Sredstva, namenjena za RRD, so se glede na prejšnje leto 2014, kjer je bilo za RRD namenjeno 2,39 % BDP oz. 890,2 milijona EUR, po večletnem naraščanju že drugo leto zapored zmanjšala. Razlika nominalno znaša 37 milijonov EUR (vir SURS).

V obdobju zadnjih petih let (2011–2015) je Slovenija po obdobju rasti od leta 2011 do 2013 zmanjšala delež BDP za RRD in sicer v letu 2015 v primerjavi z letom 2013, v katerem je bil dosežen največji delež 2,60 % BDP za RRD za 0,39 %. Na lestvici EU-28 je posledično nazadovala za dve mesti. Le v državnem sektorju je bilo v letu 2015 za izvajanje RRD porabljenih nekaj več sredstev kot v prejšnjem letu (za 6 %), v visokošolskem, zasebnem nepridobitnem in poslovnem sektorju pa so bila za RRD namenjena sredstva nominalno nižja kot v prejšnjem letu 2014. V poslovnem sektorju, ki porabi največ sredstev za izvajanja RRD (v 2015 jih je porabil 650,6 milijona EUR ali 76 % vseh za RRD porabljenih sredstev), so se ta sredstva v primerjavi s prejšnjim letom nominalno zmanjšala za 6 %, v visokošolskem sektorju pa za 7 % (vir Eurostat).

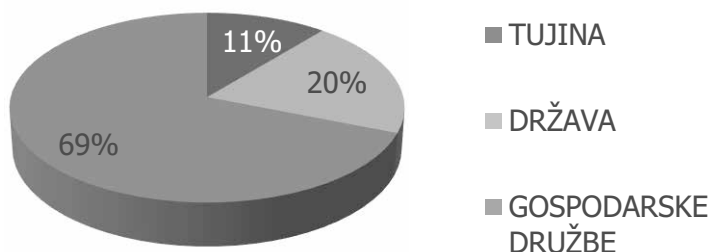
Tabela 1. Bruto domači izdatki za raziskovalno-razvojno dejavnost v Sloveniji za leto 2015

| VIRI FINANCIRANJA V 1.000 € | SKUPAJ | POSLOVNI SEKTOR | DRŽAVNI SEKTOR | VISIKOŠOLSKI SEKTOR | ZASEBNI NEPRIDOBITNI SEKTOR |
|---|---------|--------------------|-------------------|------------------------|-----------------------------------|
| SKUPAJ | 853.065 | 650.578 | 115.217 | 86.933 | 337 |
| GOSPODARSKE DRUŽBE | 590.397 | 570.972 | 9.268 | 9.895 | 262 |
| DRŽAVA | 169.644 | 27.789 | 84.529 | 57.277 | 49 |
| VISOKO ŠOLSTVO | 2.893 | - | - | 2.893 | - |
| ZASEBNE NEPRIDOBITNE ORGANIZACIJE | 65 | 24 | 9 | 21 | 11 |
| TUJINA | 90.066 | 51.793 | 21.411 | 16.847 | 15 |

Vir: SURS, 2016

Iz grafikona 1 je vidno, da so največji delež BDP za RRD prispevale gospodarske družbe, sledi država z eno petino vseh sredstev, 11 % je bilo virov iz tujine.

Grafikon 1. Delež bruto domačih izdatkov za raziskovalno-razvojno dejavnost po virih financiranja v Sloveniji za leto 2015



Vir: Tabela 1

V letu 2015, je bilo po podatkih SURS, med vsemi 20.633 fizičnimi osebami, redno zaposlenimi v RRD, 11.308 (ali 55 %) raziskovalcev in raziskovalk. Delež žensk med vsemi zaposlenimi v RRD in vsemi raziskovalci je v primerjavi z letom 2014 ostal približno enak, med vsemi zaposlenimi v RRD je bilo 35 %, med raziskovalci pa 36 % žensk.

Obseg dela v RRD se običajno izrazi v ekvivalentu polnega delovnega časa (EPDČ)². Na tako predstavljen način je v letu 2015 raziskovalno delo opravilo 14.225 oseb s polnim delovnim časom, od tega 7.900 raziskovalcev, delež žensk je v obeh primerih predstavljal 34 %.

² Obseg časa (število delovnih ur), ki ga zaposleni dejansko porabijo za RRD, izražamo tudi v ekvivalentu polnega delovnega časa (EPDČ), in sicer zato, da preprečimo podcenitev ali precenitev podatkov o zaposlenosti v raziskovalno-razvojni dejavnosti.

Za lažjo predstavo o tem, koliko je Slovenija vlagala v RRD v primerjavi s povprečjem EU v daljšem obdobju, so bili zbrani podatki za obdobje 2005-2015 (Tabela 2). Obdobje desetih let je zadosti dolgo, da je razvidna uspešnost vlaganj v primerjavi s povprečjem EU.

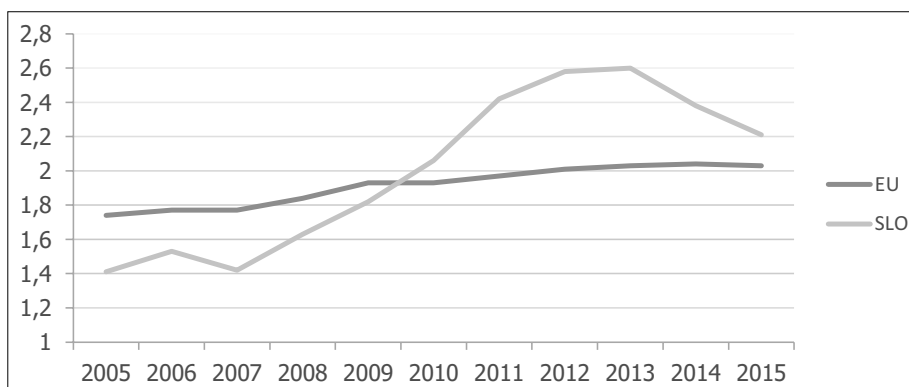
Tabela 2. *Delež bruto domačih izdatkov za raziskovalno-razvojno dejavnost v Sloveniji in EU v obdobju 2005-2015 (%)*

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-----|------|------|------|------|------|------|------|------|------|------|------|
| EU | 1,74 | 1,77 | 1,77 | 1,84 | 1,93 | 1,93 | 1,97 | 2,01 | 2,03 | 2,04 | 2,03 |
| SLO | 1,41 | 1,53 | 1,42 | 1,63 | 1,82 | 2,06 | 2,42 | 2,58 | 2,60 | 2,38 | 2,21 |

Vir: Podatki EUROSTAT, lasten preračun

Iz grafikona 2 je razvidno, da so bili bruto domači izdatki za RRD v Sloveniji v obdobju 2005-2009 pod povprečjem EU, nato pa so v obdobju 2010-2015 naraščali, najvišji delež je bil dosežen v letu 2013, nato pa je naslednjih dveh letih postopoma upadal. Naraščanje bruto domačih izdatkov za RRD je bilo v Sloveniji v letih 2007 – 2013 dosti hitrejše kot na nivoju EU.

Grafikon 2. *Gibanje deleža bruto domačih izdatkov za raziskovalno-razvojno dejavnost v Sloveniji v obdobju 2005-2015*



Vir: Tabela 2

3 Mednarodna primerjava in viri financiranja za obdobje 2007–2015

Slovenija se je v obdobju 2007 - 2015 na lestvici držav članic EU uvrščala med prvih dvanajst držav z najvišjim deležem BDP izdatkov za RRD. Od leta 2012, ko je bila na dvanajstem mestu je napredovala na šesto mesto, ki ga je zadržala v letih 2011, 2012 in 2013, nato je v letu 2014 nazadovala na sedmo mesto in v letu 2015 še za eno, na osmo mesto. Če pogledamo delež po letih, je Slovenija od leta 2007 (1,42 %) do 2013 (2,60 %) konstantno napredovala, nato je v letih 2014 in 2015 sledil rahel upad. V spodnji tabeli je prikaz podatkov za 15 držav, ki so imele v obravnavanem obdobju najvišji delež BDP izdatkov za RRD.

Slovenija je od leta 2010 nad povprečjem EU, zaostaja le za Finsko, Švedsko, Dansko, Nemčijo, Avstrijo, Francijo in Belgijo.

Tabela 3. *Delež bruto domačih izdatkov za raziskovalno-razvojno dejavnost v BDP za 15 najuspešnejših držav EU (v %) v obdobju 2007–2015*

| Država/leto | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|------------------|------|------|------|------|------|------|------|------|------|
| EU (28) | 1,77 | 1,84 | 1,93 | 1,93 | 1,97 | 2,01 | 2,03 | 2,04 | 2,03 |
| Finska | 3,35 | 3,55 | 3,75 | 3,73 | 3,64 | 3,42 | 3,29 | 3,17 | 2,90 |
| Švedska | 3,26 | 3,50 | 3,45 | 3,22 | 3,25 | 3,28 | 3,31 | 3,15 | 3,26 |
| Danska | 2,51 | 2,78 | 3,07 | 2,94 | 2,97 | 3,00 | 3,01 | 3,02 | 3,03 |
| Nemčija | 2,45 | 2,60 | 2,72 | 2,71 | 2,80 | 2,87 | 2,82 | 2,89 | 2,87 |
| Avstrija | 2,43 | 2,59 | 2,61 | 2,74 | 2,68 | 2,93 | 2,97 | 3,06 | 3,07 |
| Francija | 2,02 | 2,06 | 2,21 | 2,18 | 2,19 | 2,23 | 2,24 | 2,24 | 2,23 |
| Belgija | 1,84 | 1,92 | 1,99 | 2,05 | 2,16 | 2,36 | 2,44 | 2,46 | 2,45 |
| Slovenija | 1,42 | 1,63 | 1,82 | 2,06 | 2,42 | 2,58 | 2,60 | 2,38 | 2,21 |
| Nizozemska | 1,69 | 1,64 | 1,69 | 1,72 | 1,90 | 1,94 | 1,95 | 2,00 | 2,01 |
| Velika Britanija | 1,63 | 1,64 | 1,70 | 1,68 | 1,68 | 1,61 | 1,66 | 1,68 | 1,70 |
| Estonija | 1,07 | 1,26 | 1,40 | 1,58 | 2,31 | 2,12 | 1,73 | 1,45 | 1,50 |
| Luksemburg | 1,61 | 1,64 | 1,71 | 1,51 | 1,47 | 1,28 | 1,31 | 1,28 | 1,31 |
| Irska | 1,23 | 1,39 | 1,61 | 1,60 | 1,54 | 1,56 | 1,56 | 1,51 | .. |
| Češka | 1,31 | 1,24 | 1,30 | 1,34 | 1,56 | 1,78 | 1,90 | 1,97 | 1,95 |
| Portugalska | 1,12 | 1,45 | 1,58 | 1,53 | 1,46 | 1,38 | 1,33 | 1,29 | 1,28 |

Vir: EUROSTAT, lasten preračun

Poleg višine sredstev, namenjenih za raziskave in razvoj, je pomemben element uspešnosti RRD kot dejavnika rasti tudi način uporabe teh sredstev, izkoristek, učinkovitost in povezanost različnih akterjev na tem področju. Za Slovenijo je znano, da je pretočnost raziskovalnih rezultatov iz javne raziskovalne sfere v gospodarstvo otežena, kar je posledica enosmernosti finančnih tokov in visoke stopnje zaprtosti posameznih sektorjev. Poslovni sektor v največjem obsegu financira raziskovalne enote v gospodarskih družbah, podobno pa se državna proračunska sredstva zlivajo pretežno v javni sektor (Vidrih, 2002).

V nadaljevanju sta predstavljena oba osnovna načina spremljanja financiranja RRD v Sloveniji in sicer prvi način prikazuje bruto domače izdatke za RRD glede na vire financiranja (tabela 4), drugi predstavlja bruto domače izdatke po sektorjih izvajanja (tabela 5).

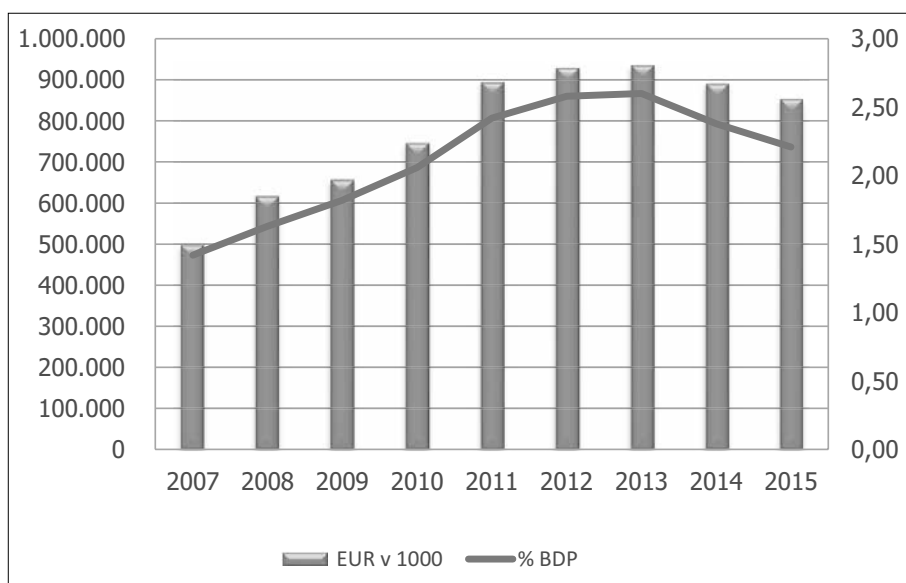
Tabela 4. Bruto domači izdatki za raziskovalno-razvojno dejavnost po virih financiranja v Sloveniji v obdobju 2007–2015 (v 1000€, %)

| Leto | Skupaj | | Gospodarske družbe | | Državni viri | | Visoko šolstvo | | Zasebne nepridobitne organizacije | | Viri iz tujine | |
|--------|-----------|-------|--------------------|-------|--------------|-------|----------------|------|-----------------------------------|------|----------------|-------|
| | EUR | % BDP | EUR | % | EUR | % | EUR | % | EUR | % | EUR | % |
| 2007 | 500.508 | 1,42 | 291.636 | 58,27 | 178.210 | 35,61 | 1.783 | 0,36 | 62 | 0,01 | 28.817 | 5,76 |
| 2008 | 616.949 | 1,63 | 387.494 | 62,81 | 193.101 | 31,30 | 1.801 | 0,29 | 73 | 0,01 | 34.480 | 5,59 |
| 2009 | 656.882 | 1,82 | 380.884 | 57,98 | 234.241 | 35,66 | 1.889 | 0,29 | 203 | 0,03 | 39.665 | 6,04 |
| 2010 | 745.942 | 2,06 | 435.450 | 58,38 | 263.077 | 35,27 | 2.118 | 0,28 | 459 | 0,06 | 44.838 | 6,01 |
| 2011 | 894.213 | 2,42 | 547.505 | 61,23 | 281.764 | 31,51 | 2.062 | 0,23 | 97 | 0,01 | 62.785 | 7,02 |
| 2012 | 928.306 | 2,58 | 577.610 | 62,22 | 266.190 | 28,67 | 4.021 | 0,43 | 994 | 0,11 | 79.491 | 8,56 |
| 2013 | 935.004 | 2,60 | 596.981 | 63,85 | 251.263 | 26,87 | 3.236 | 0,35 | 194 | 0,02 | 83.330 | 8,91 |
| 2014 | 890.231 | 2,38 | 608.828 | 68,39 | 193.930 | 21,78 | 4.572 | 0,51 | 422 | 0,05 | 82.479 | 9,26 |
| 2015 | 853.067 | 2,21 | 590.398 | 69,21 | 169.644 | 19,89 | 2.893 | 0,34 | 66 | 0,01 | 90.066 | 10,56 |
| Skupaj | 7.021.102 | | 4.416.786 | 62,91 | 2.031.420 | 28,93 | 24.375 | 0,35 | 2.570 | 0,04 | 545.951 | 7,78 |

Vir: SURS, lasten preračun

Največ sredstev za raziskovalno-razvojno dejavnost je bilo namenjeno v letu 2012, in sicer 928 mio EUR ali 2,58 %, in v letu 2013, kar 935 mio EUR ali 2,60 % slovenskega BDP, kar je največ v obravnavanem obdobju, kar je razvidno tudi iz grafikona 7. Najmanj smo za raziskovalno-razvojno dejavnost namenili leta 2007, le 1,42 % BDP. Največji delež sredstev zagotavljajo gospodarske družbe, katerih delež je konstantno naraščal, od dobrih 58 % v letu 2007 do nekaj več kot 69 % v letu 2015. Nasprotno pa se je delež sredstev iz državnih virov zmanjševal od 35,61 % v letu 2007, na nekaj manj kot 20 % v letu 2015. Vzporedno s padanjem sredstev iz državnih virov, so se povečevali viri iz tujine, ki so v letu 2015 znašali 10,56 %, kar je skoraj dvakrat več kot leta 2007.

Grafikon 3. *Financiranje raziskovalno-razvojne dejavnosti v Sloveniji v obdobju 2007–2015 (1000 € in deležu BDP)*



Vir: Tabela 4

Največ izdatkov za RRD v nominalni vrednosti so namenile gospodarske družbe oz. poslovni sektor, največ v letu 2014 in sicer kar 608,8 milijonov EUR ali 1,6 % BDP. Za poslovni sektor je ugotovljena precejšnja konstantna rast obsega bruto domačih izdatkov do leta 2014, na kar je v letu 2015 zaznan malenkosten upad. Stopnja rasti v letu 2015 je bila -4,17 %, povprečna letna stopnja rasti v obdobju 2007-2015 pa dobrih 7 %.

Poslovni sektor je skozi celo obravnavano obdobje prispeval več kot 50 % sredstev. Največ je prispeval v letu 2015, kar 600 milijonov EUR ali 68 % vseh izdatkov za raziskave in razvoj, najmanj, 290 milijonov oz. 58 %, pa v letu 2007. Stopnja rasti bruto domačih izdatkov gospodarskih družb v letu 2015 je bila sicer negativna in je znašala -3 %, najvišja pa je bila v letu 2008, kar 32 %. Povprečna letna stopnja rasti gospodarskih virov v celotnem opazovanem obdobju je bila pozitivna in je znašala 9,2 %.

Državni viri so drugi večji vir financiranja. Največ sredstev, 281 milijonov EUR, zagotovljenih iz državnih virov je bilo v letu 2011, najmanj v letu 2015, le 169 milijonov EUR in je znašal 19,89 % vseh sredstev. Največjo stopnjo rasti so imeli državni viri v letu 2009, ki je znašala 21,3 %, povprečna letna stopnja rasti v opazovanem obdobju pa je bila negativna, -0,6 %, kar je posledica evidentnega zmanjševanja virov od leta 2011 do leta 2015.

Viri iz tujine predstavljajo tretji pomembnejši vir financiranja raziskav in razvoja. Skozi obdobje so se viri iz tujine konstantno povečevali in v letu 2015 presegli 90 milijonov EUR, ko je bil tudi delež v strukturi vseh sredstev največji, in je znašal 10,5 %. Stopnja rasti je v tem letu znašala 9,2 %, povprečna letna stopnja rasti skozi obravnavano obdobje je znašala 15,3 % in je bila najvišja med vsemi viri.

Zadnja dva vira financiranja raziskav in razvoja, visoko šolstvo in zasebne nepridobitne organizacije, skupaj predstavljata nizek delež sredstev, ki ne doseže 1 % vseh virov.

Kot drugi način spremljanja RRD so v tabeli 5 predstavljeni bruto domači izdatki po sektorjih izvajanja. Izdatki za RRD po sektorjih izvajanja RRD povedo, koliko sredstev so organizacije, uvrščene v posamezni sektor, skupno porabile za izvajanje RRD, ne glede na vir financiranja.

Tabela 5. Bruto domači izdatki za raziskovalno-razvojno dejavnost po sektorju izvedbe v Sloveniji v obdobju 2007–2015 (v 1000 €, %)

| | SKUPAJ | % BDP | Poslovni sektor | | Državni sektor | | Visokošolski sektor | | Zasebni nepridobitni sektor | |
|--------|-----------|-------|-----------------|-------|----------------|-------|---------------------|------|-----------------------------|------|
| Leto | EUR | % | EUR | % | EUR | % | EUR | % | EUR | % |
| 2007 | 500.508 | 1,42 | 299.455 | 59,83 | 122.488 | 24,47 | 77.867 | 0,16 | 698 | 0,14 |
| 2008 | 616.949 | 1,63 | 398.274 | 64,56 | 135.224 | 21,92 | 82.834 | 0,13 | 618 | 0,10 |
| 2009 | 656.882 | 1,82 | 424.399 | 64,61 | 136.351 | 20,76 | 95.669 | 0,15 | 463 | 0,07 |
| 2010 | 745.942 | 2,06 | 505.817 | 67,81 | 135.921 | 18,22 | 103.771 | 0,14 | 433 | 0,06 |
| 2011 | 894.213 | 2,42 | 660.483 | 73,86 | 127.831 | 14,30 | 105.429 | 0,12 | 469 | 0,05 |
| 2012 | 928.306 | 2,58 | 703.098 | 75,74 | 121.483 | 13,09 | 103.283 | 0,11 | 442 | 0,05 |
| 2013 | 935.004 | 2,60 | 715.536 | 76,53 | 121.662 | 13,01 | 97.432 | 0,10 | 374 | 0,04 |
| 2014 | 890.231 | 2,38 | 688.518 | 77,34 | 108.289 | 12,16 | 93.061 | 0,10 | 364 | 0,04 |
| 2015 | 853.067 | 2,21 | 650.579 | 76,26 | 115.217 | 13,51 | 86.934 | 0,10 | 337 | 0,04 |
| Skupaj | 7.021.102 | | 5.046.158 | 71,87 | 1.124.466 | 16,02 | 846.280 | 0,12 | 4.198 | 0,06 |

Vir: SURS, lasten preračun

Največ izdatkov za RRD je imel poslovni sektor v letu 2013, in sicer 715,5 milijonov EUR, z deležem 76,53 % vseh virov, kar je največji v obravnavanih letih. Za poslovni sektor je očitna precejšnja in konstantna rast izdatkov. Največji preskok je bil narejen v letu 2011, ko je bila stopnja rasti kar 30,6 %. V

obravnavanem obdobju je bila povprečna letna stopnja rasti 10,2 %. Izdatki za RRD v poslovnem sektorju so tako glavni pokazatelj doseganja konkurenčne sposobnosti gospodarstva.

Za razliko od poslovnega sektorja se je obseg in delež državnega sektorja zmanjševal. Največji obseg virov je bil dosežen v letu 2009, 136 milijonov EUR, največji delež med viri pa je imel državni sektor v letu 2007, in sicer 24,5 %. Tudi pri tem načinu spremljanja uspešnosti RRD ima državni sektor v obdobju negativno stopnjo rasti -0,76 %.

Največjo stopnjo rasti bruto domačih izdatkov za RRD je visokošolski sektor zabeležil v letu 2009, 15,5 % in je do leta 2015 padel na 10,1 %. Izdatki za RRD v visokošolskem sektorju, so v tem letu znašali 95,7 milijona EUR. Kljub temu, da se stopnja rasti od leta 2010 zmanjševala, ostaja povprečna stopnja rasti v obdobju še vedno 6,9 %.

Najmanjši delež bruto domačih izdatkov za RRD je bilo namenjenih zasebnemu nepridobitnemu sektorju. Največ virov, 698 tisoč EUR, je bilo namenjenih v letu 2009, kar je predstavljalo 0,14 % med vsemi viri. V obravnavanem obdobju je zaslediti negativno stopnjo rasti, ki je -8,7 %.

4 Razvoj centrov odličnosti in kompetenčnih centrov v obdobju 2010-2013

Osrednja tema je v članku namenjena osvetlitvi, pregledu in analizi podatkov dveh izvedenih instrumentov v programskem obdobju 2007-2013, to sta Javni razpis za razvoj centrov odličnosti in Javni razpis za razvoj kompetenčnih centrov v obdobju 2010-2013.

Instrumenta Javni razpis za razvoj centrov odličnosti v obdobju 2009-2013 (v nadaljevanju JR CO) in Javni razpis za razvoj kompetenčnih centrov v obdobju 2010-2013 (v nadaljevanju JR KC) sta bila pripravljena na podlagi OP RR - Operativnega programa krepitve regionalnih razvojnih potencialov za obdobje 2007 – 2013, v okviru 1. Razvojne prioritete Konkurenčnost podjetij in raziskovalna odličnost.

Tabela 6. *Struktura razvojnih prioritet Operativnega programa za krepitev regionalnih razvojnih potencialov*

| Operativni program Evropskega sklada za regionalni razvoj; raven razvojnih prioritet | Sredstva ESRR; EUR | % |
|--|--------------------|------|
| Skupaj | 1.709.749.522 | 100 |
| 1. Konkurenčnost podjetij in raziskovalna odličnost | 402.133.645 | 23,5 |
| 2. Gospodarskorazvojna infrastruktura | 396.934.393 | 23,2 |
| 3. Povezovanje naravnih in kulturnih potencialov | 263.235.116 | 15,4 |
| 4. Razvoj regij | 619.442.634 | 36,2 |
| 5. Tehnična pomoč | 28.003.734 | 1,6 |

Vir: NSRO, 2008, str. 125

Kot je navedeno na arhivski spletni strani MVZT, so bili v okviru znanstveno-tehnološke politike centri odličnosti ukrep, ki je bil namenjen spodbujanju koncentracije znanja na prioritetnih tehnoloških področjih in horizontalnega povezovanja v celotni verigi razvoja znanja, in se je izvajal na temelju strateškega partnerstva med gospodarstvom in akademsko sfero. Pri tem ukrepu je bil dan poudarek na celosten, interdisciplinaren raziskovalno-razvojni program, kjer so bili upoštevani horizontalni cilji pospeševanja prehoda v energijsko učinkovito gospodarstvo z nizkimi izpusti toplogrednih plinov oz. intenzivnega spodbujanja prehoda v nizkoogljično družbo. Kompetenčni centri so bili opredeljeni kot razvojno-raziskovalni centri, ki so bili pod vodstvom industrijskih partnerjev iz gospodarstva in javnega raziskovalnega sektorja usmerjeni v krepitev sposobnosti razvoja in uporabe novih tehnologij za razvoj novih konkurenčnih proizvodov, storitev in procesov na prednostnih področjih tehnološkega razvoja. Instrument je komplementaren z instrumentom centrov odličnosti in skupaj tvorita zaključeno celoto na področju razvojno-raziskovalne dejavnosti v obdobju 2007-2013.

Tabela 7. *Primerjava osnovnih podatkov Javnega razpisa za razvoj centrov odličnosti in Javnega razpisa za razvoj kompetenčnih centrov v obdobju 2010-2013*

| | Javni razpis za razvoj centrov odličnosti v obdobju 2009-2013 | Javni razpis za razvoj kompetenčnih centrov v obdobju 2010-2013 |
|--|---|---|
| Datum objave JR v Uradnem listu RS | 15. maj 2009 | 6. avgust 2010 |
| Višina razpisanih sredstev | 84.138.865 € | 45.284.676 € |
| Višina sofinanciranja upravičenih stroškov | Višina sofinanciranja upravičenih stroškov je bila od minimalno 3.000.000 € do maksimalno 10.000.000 €. | Maksimalna višina sofinanciranja je bila 6.400.000 €. |
| Število prijav | 61 | 22 |
| Število izbranih | 8 | 7 |
| Odobrena sredstva | 77.553.986,35 € | 44.736.292,00 € |

Vir: MIZŠ

Prednostna področja obeh javnih razpisov, pri čemer so bila pri JR KC še podrobneje določena, so bila:

- informacijske in komunikacijske tehnologije (IKT);
- napredni (novi) sintetični kovinski in nekovinski materiali in nanotehnologije;
- kompleksni sistemi in inovativne tehnologije;
- zdravje in znanost o življenju;
- tehnologije za trajnostno gospodarstvo.

Tabela 8. Pregled izbranih programov na podlagi Javnega razpisa za razvoj centrov odličnosti in Javnega razpisa za razvoj kompetenčnih centrov v obdobju 2010-2013

| | |
|---|---|
| <ol style="list-style-type: none"> 1. Napredni (novi) sintetični kovinski in nekovinski materiali in nanotehnologije: <ul style="list-style-type: none"> - CO NAMASTE (Center odličnosti Napredni nekovinski materiali s tehnologijami prihodnosti) - CO NIN (Center odličnosti nanoznanosti in nanotehnologije) - CO POLIMAT (Center odličnosti Polimerni materiali in tehnologije) 2. Kompleksni sistemi in inovativne tehnologije: <ul style="list-style-type: none"> - CO BIK (Center odličnosti za biosenzoriko, instrumentacijo in procesno kontrolo) - CO VESOLJE (Center odličnosti Vesolje, znanosti in tehnologije) 3. Zdravje in znanost o življenju: <ul style="list-style-type: none"> - CO EN-FIST (NMR center odličnosti na raziskave v biotehnologiji, farmaciji in fiziki snovi) - CO CIPKEBIP (Center odličnosti za integrirane pristope v kemiji in biologiji proteinov) 4. Tehnologije za trajnostno gospodarstvo <ul style="list-style-type: none"> - CO NOT (Center odličnosti nizkoogljene tehnologije) - Na področju informacijske in komunikacijske tehnologije (IKT) ni bila izbrana nobena vloga. | <ol style="list-style-type: none"> 1. Kompleksni sistemi in inovativne tehnologije: <ol style="list-style-type: none"> a. Procesne tehnologije: <ul style="list-style-type: none"> - KC STV (Kompetenčni center za sodobne tehnologije vodenja) 2. Zdravje in znanost o življenju: <ol style="list-style-type: none"> a. Hrana in zdravje <ul style="list-style-type: none"> - KC BRIN (Kompetenčni center za Biotehnoški razvoj in inovacije) b. Biomedicinska tehnika <ul style="list-style-type: none"> - KC BME (Kompetenčni center Biomedicinska tehnika) 3. Tehnologije za trajnostno gospodarstvo: <ol style="list-style-type: none"> a. Trajnostno gradbeništvo <ul style="list-style-type: none"> - KC TIGR (Kompetenčni center Trajnostno in inovativno gradbeništvo) b. Učinkovita raba energije <ul style="list-style-type: none"> - KC SURE (Kompetenčni center Napredni sistemi učinkovite rabe električne energije) 4. Informacijske in komunikacijske tehnologije: <ol style="list-style-type: none"> a. Uporabniške platforme in vmesniki <ul style="list-style-type: none"> - KC OPComm (Kompetenčni center »Odporna komunikacijska platforma za integracijo storitev«) b. Omrežni sistemi in storitve <ul style="list-style-type: none"> - KC CLASS (Kompetenčni center Storitve podprte z računalništvom v oblaku) |
|---|---|

Vir: MIZŠ

4.1 Pregled doseženih rezultatov centrov odličnosti

Centri odličnosti so bili ukrep, ki naj bi med drugim pomagati izboljšati in dvigniti dodano vrednost domačemu gospodarstvu. Majhna in srednja podjetja, ki si razvojnih oz. raziskovalnih skupin iz različnih vzrokov niso mogla oblikovati, so tako lahko v javnih raziskovalnih organizacijah našla sogovornika, ki jim je pomagal pri reševanju njihovih konkretnih problemov oz. izzivov. Namen sodelovanja je bil pridobivanje in izmenjava idej, znanj, izkušenj, storitev in tehnologij. Nesporno je, da so centri odličnosti povezali gospodarstvo z negospodarstvom na različnih področjih znanosti in že v obdobju izvajanja ustvarili nove pristope in načine tesnejšega sodelovanja obeh deležnikov.

Po mnenju mag. Krajcarja (Pukl, 2014) je bilo v okviru instrumenta JR CO uspeh »združiti nekaj, kar je bilo prej nepojmljivo ali celo nezdružljivo, JRO in industrijo«, pri čemer se je vsak center odličnosti (v nadaljevanju CO) s tem izzivom soočal na svoj način. Po njegovem mnenju je najbolj pomembno, da

so raziskovalci iz javne raziskovalne sfere in industrije začeli sodelovati in da se zavedajo pomembnosti tovrstnega sodelovanja. Vključevanje industrijskih partnerjev je bilo še bolj pomembno in poudarjeno pri instrumentu JR KC.

V okviru JR CO so bili sofinancirani upravičeni stroški v višini 100 %, to pomeni, da upravičencem ni bilo potrebno zagotavljati lastnih sredstev. Zaradi pogoja, da mora izbran prijavitelj ustanoviti novo pravno osebo - zasebni zavod, ki je izvajal projekt, je bil upravičencem zaradi lažje vzpostavitve in zagona centra odličnosti, izplačan avans v višini 20 % vrednosti pogodbene vrednosti.

Od 77.553.986,00 € skupne vrednosti pogodb, je bilo realiziranih 76.622.538,00 €, kar predstavlja 98,80 % uspešnost. Dosežena realizacija je glede na dejstvo, da so se v sklopu projektov centrov odličnosti izvajale temeljne raziskave, zelo visoka, kar pomeni, da so bili finančni načrti in cilji projektov zastavljeni dokaj realno. Največji delež med vsemi stroški so predstavljali stroški investicij v raziskovalno opremo, kar dobrih 56%, sledijo stroški plač v višini slabih 27%. Z investicijami v visoko tehnološko raziskovalno opremo je bilo omogočeno izvajanje vrhunskih znanstvenih raziskav.

Za oceno uspešnosti instrumenta je potrebno analizirati tudi doseganje zastavljenih kazalnikov, ki so bili zastavljeni tako, da so kar v največji meri odražali znanstveno odličnost in hkrati povezovanje z gospodarstvom.

Tabela 9. Pregled skupnih doseženih kazalnikov v okviru JR CO v obdobju 2007-2013

| Kazalnik CO | Plan | Doseženo | Doseženo/plan v % |
|---|------|----------|----------------------|
| 1. Število raziskovalnih ur v FTE | 493 | 574 | 116% |
| 2. Število RRP v CO s sodelovanjem podjetij | 100 | 151 | 151% |
| 3. Število partnerstev z zasebnim sektorjem | 144 | 184 | 128% |
| 4. Število patentov | 80 | 100 | 125% |
| 5. Število inovacij | 213 | 322 | 151% |

Vir: MIZŠ

Iz tabele 9 je razvidno, da so bili vsi kazalniki preseženi. Razveseljivo je dejstvo, da je bilo skupaj ustvarjenih več kot 420 inovacij in patentov in da so bile povezave JRO in podjetij zelo uspešne, kar se vidi iz doseženih kazalnikov 2. in 3., s čemer je bil dosežen namen javnega razpisa.

4.2 Pregled doseženih rezultatov kompetenčnih centrov

Namen razvoja kompetenčnih centrov je bil spodbujanje in povezovanje znanja in kompetenc podjetij in raziskovalnih organizacij na določenih tehnoloških področjih. Rezultati tovrstnega povezovanja so novi produkti, storitve in procesi z višjo dodano vrednostjo ter s tem povečevanje konkurenčnosti.

Pregled podatkov o skupni realizaciji pogodbenih kaže, tako kot pri realizaciji centrov odličnost, na zelo visoko, skoraj 99% realizacijo pogodbenih vrednosti.

Uspeh programov kompetenčnih centrov se kaže tudi skozi presežene kazalnike (tabela 10) in kar je še posebej spodbudno z višino dodatnih vlaganj v raziskave in razvoj s strani zainteresiranih gospodarskih družb.

Tabela 10. Pregled skupnih doseženih kazalnikov v okviru JR KC v obdobju 2007-2013

| Kazalnik JR KC | Plan | Doseženo | Doseženo/plan v % |
|-----------------------------------|----------|--|-------------------|
| 1. Število raziskovalnih ur v FTE | 1211 | 1414 | 117% |
| 2. Število RRP | 52 | 52 | 100% |
| 3. Število patentov | 31 | 49 | 158% |
| 4. Število inovacij | 147 | 176 | 120% |
| 5. Vrednost zasebnih vlaganj | 20,6 mio | 20,6 mio + 30 mio dodatnih vlaganj v RRD | 246% |

Vir: MIZŠ

Glede na podatke o realizaciji in doseženih kazalnikih lahko strnemo, da sta bila oba instrumenta zelo uspešna, kar se odraža tudi na nivoju prednostne usmeritve in razvojne prioritete, ki je med vsemi razvojnimi prioritetami najuspešnejša pri črpanju strukturnih sredstev.

4.3 Evalvacija instrumentov

Za ugotavljanje pravilnosti usmeritve posameznega projekta in pregled doseganja ciljev centrov odličnosti v obdobju 2007-2013, ki so bili načrtovani v vlogah na javni razpis, je bila v drugi polovici leta 2011 s strani tujih strokovnjakov izvedena vmesna evalvacija vseh osmih programov centrov odličnosti. Namen vmesne evalvacije je bil podati oceno o napredku in sposobnosti posameznega centra odličnosti za uspešno implementacijo programa in doseganje zastavljenih ciljev. Evalvacija je bila razdeljena na dva sklopa (vir MIZŠ, 2016):

1. Analiza izvajanja programov CO z vidika ciljev celotnega programa, ki je zajemala oceno vseh ključnih kriterijev vrednotenja razvojnih programov:
 - učinkovitost izvajanja – doseganje zastavljenih ciljev in rezultatov;
 - smotrnost izvajanja – stroškovna učinkovitost, ocena realnosti doseganja končnih ciljev in rezultatov;
 - ocena relevance in potencialnih učinkov izvajanja programov na strateške razvojne cilje;
 - ocena trajnostne naravnosti in nadaljnega razvoja CO po zaključku financiranja.

2. Vsebinska evalvacija programov in dosežkov CO glede na sprejete programe, ki je zajemala oceno napredka in dosežkov glede na kriterije vrednotenja programov:
 - partnerstvo - koncentracija znanja, povezovanje zasebnega in javnega sektorja, interdisciplinarnost;
 - mednarodna odličnost - raziskovalne skupine, razvojni projekti, dosežki in sinergije;
 - prenos in uporaba znanja - razširjanje znanja, razširjanje partnerstva, pred komercialni projekti, patenti, inovacije;
 - strategija in organizacija - trajnostna strategija, poslovni model, urejanje pravic intelektualne lastnine.

Vsi programi so bili na podlagi evalvacije posameznega CO prepoznani kot uspešni, perspektivni, usmerjeni k dvigu konkurenčnosti in doseganju vrhunskih znanstvenih in tehnoloških dosežkov. Za vse programe centrov odličnosti so evalvatorju predlagali nadaljevanje financiranja.

Po zaključku financiranja v obdobju 2007-2013 je bila za oba instrumenta izvedena končna evalvacija instrumentov centrov odličnosti in kompetenčnih centrov. V evalvaciji instrumentov centri odličnosti in kompetenčni centri (Stare, Bučar & Udovič, 2014) je bilo ugotovljeno, da predhodne analize nacionalnega inovacijskega sistema poudarjajo določene pomanjkljivosti, kot so premalo učinkovit prenos znanja iz javne raziskovalne sfere v gospodarstvo, nizka raven inoviranja, problematika na področju intelektualne lastnine, premalo učinkovita uporaba IKT, tako v gospodarstvu kot tudi v javnem sektorju. Oba izvedena instrumenta sta omogočila podlage za odpravo omenjenih pomanjkljivosti in vsi projekti so presegli kvantitativne cilje, ki so bili načrtovani v prijavah na oba javna razpisa.

V evalvaciji so bili izpostavljeni nekateri skupni dosežki obeh instrumentov. Ugotovljeno je bilo, da je bilo okrepljeno sodelovanje javnih raziskovalnih organizacij in podjetij, kar je bil tudi eden glavnih namenov obeh javnih razpisov. To je vidno tudi iz pregleda doseženih kazalnikov in sicer iz števila raziskovalnih projektov s sodelovanjem podjetij pri CO in razvojno raziskovalnih projektov pri kompetenčnih centrih (v nadaljevanju KC).

Z ustanovitvijo novih pravnih oseb – zavodov, kot je primer pri CO, in delovanjem v okviru konzorcijev pri KC, je bilo omogočeno oblikovanje novih partnerstev, ki so bila usmerjena v reševanje zastavljenih raziskovalnih problemov. S povezovanjem partnerjev iz javnih raziskovalnih organizacij in podjetij se je ustvarila kritična masa znanja in kompetenc na najbolj perspektivnih znanstvenih in tehnoloških področjih. Na tak način je bilo okrepljeno medsebojno zaupanje in ustvarjene možnosti za dolgoročno sodelovanje. Evalvatorji so izpostavili, da je bila dosežena interdisciplinarnost, ki sta jo omogočila oba instrumenta z novim, inovativnim pristopom povezovanja različnih področij.

V evalvaciji so bile izpostavljene nekatere pomanjkljivosti, ki so vplivale na izvajanje raziskovalnih aktivnosti v obdobju sofinanciranja. Predvsem za CO, pa tudi za KC, ki so izvajali raziskovalne aktivnosti bolj usmerjene v trg, velja, da je obdobje sofinanciranja občutno prekratko oz. bi morala biti podana možnost nadaljnega financiranja. Zaradi pravil kohezijske politike pri črpanju strukturnih sredstev, ki jim je bilo potrebno slediti pri izvajanju obeh instrumentov, je bilo na strani partnerjev izpostavljeno, da sta bila oba instrumenta administrativno precej zahtevna.

Predstavljeni so bili predlogi, ki bi jih bilo dobro upoštevati pri pripravi javnih razpisov. Predvsem bi bilo potrebno zaradi zagotavljanja celovitosti razvojnih faz od nastanka novih temeljnih spoznanj in znanj, preko razvoja tehnoloških rešitev do faze, ki omogoča uspešno trženje, podaljšati obdobje izvajanja raziskovalnih aktivnosti na 10 do 15 let. Poleg tega je potrebno slediti nacionalnim strateškim dokumentom (RISS, 2011) in jih izvajati tudi v praksi. Glede na dosežene rezultate je nadaljevanje dela tako CO kot KC smiselno, in jih je nujno vključiti v nacionalno strategijo na področju znanstveno-raziskovalnega in inovacijskega sistema (Stare, Bučar, Udovič, 2014).

5 Raziskava o uspešnosti instrumentov javni razpis za razvoj centrov odličnosti in kompetenčnih centrov v obdobju 2007–2013

Raziskava (Pogorelec, 2017) je namenjena osvetlitvi uspešnosti centrov odličnosti in kompetenčnih centrov z vidika upravičencev, to je zavodov v primeru CO in konzorcijev pri KC. Raziskovalni protokol je bil naslednji:

- V raziskavo so bili vključeni centri:
 - CO Vesolje-SI (Center odličnosti Vesolje, znanosti in tehnologije),
 - CO NIN (Center odličnosti nanoznanosti in nanotehnologije),
 - CO EN-FIST (NMR center odličnosti za raziskave v biotehnologiji, farmaciji in fiziki snovi),
 - CO CIPKeBiP (Center odličnosti za biosenzoriko, instrumentacijo in procesno kontrolo),
 - CO BIK (Center odličnosti za biosenzoriko, instrumentacijo in procesno kontrolo),
 - CO NAMASTE (Center odličnosti Napredni nekovinski materiali s tehnologijami prihodnosti),
 - CO PoliMaT (Center odličnosti Polimerni materiali in tehnologije),
 - CO NOT (Center odličnosti nizkoogljene tehnologije),
 - KCTIGR (Kompetenčni center Trajnostno in inovativno gradbeništvo),
 - KC OPCOMM (Kompetenčni center Odprta komunikacijska platforma za integracijo storitev),
 - KC BME (Kompetenčni center Biomedicinska tehnika),

- KC CLASS (Kompetenčni center Storitve, podprte z računalništvom v oblaku).
- Intervjuji so bili v večini izvedeni v obdobju junij–julij 2016, zadnji intervju je bil izveden v mesecu aprilu 2017.
- Zastavljena so bila naslednja vprašanja:
 - Ali lahko izpostavite glavne prednosti in pomanjkljivosti Javnega razpisa za razvoj centrov odličnosti v obdobju 2009–2013/Javnega razpisa za razvoj kompetenčnih centrov v obdobju 2010–2013?
 - Kako pri izvajanju operacij ocenjujete uspešnost povezovanja med JRO in podjetji? Kako vaši ustanovitelji oz. partnerji ocenjujejo uspešnost sodelovanja oz. katere slabosti izpostavljajo?
 - Ali se pri ocenah sodelovanja kažejo razlike med stališči JRO in podjetij?
 - Ali so kazalniki, določeni v javnem razpisu, ki ste jih dosegali tekom izvajanja aktivnosti, pravi pokazatelj uspešnosti in doseženih rezultatov? Ali bi za spremljanje doseganja ciljev predlagali kakšen nov kazalnik?
 - Ali so se aktivnosti, izvajane tekom obdobja upravičenosti, nadaljevale tudi po zaključku sofinanciranja s strani pristojnega ministrstva?
 - Na kakšne težave ste naleteli v zadnjih dveh letih po zaključku obdobja sofinanciranja (npr. pri dostopu do virov sredstev, dostopu do trgov, kadrov, pri odnosih s partnerji, pri obveznosti do financerja, na področju IPR)?
 - Namen javnega razpisa je bil povezovanje JRO in gospodarstva. Kakšni so konkretni učinki doseženih ciljev na partnerje iz gospodarstva in na kakšen način se kažejo?
 - S kakšnimi ukrepi bi lahko država v prihodnje spodbujala še tesnejše povezovanje in sodelovanje JRO in gospodarstva? Na kakšen način bi se po vašem mnenju lahko pospešil prenos znanja iz JRO v podjetja?

Za jasnejšo sliko uspešnosti centrov in trajnosti povezav, so bili izvedeni intervjuji s predstavniki navedenih CO in KC. S posebnim zanimanjem je bilo postavljeno vprašanje ali so bila vzpostavljena partnerstva tako trdna, da je na podlagi vseh doseženih rezultatov obstajala možnost dolgoročnega sodelovanja tudi po zaključku financiranja s strani MIZŠ, oziroma je bil namen partnerstev samo sodelovanje za čas obdobja izvajanja projektov za katerega so bili sofinancirani, in so po zaključku razpadla.

Na prošnjo k sodelovanju se je odzvalo vseh osem centrov odličnosti in štirje kompetenčni centri od sedmih. Sogovorniki so bili direktorji zavodov (pri centrih odločnosti) in vodje kompetenčnih centrov. Vsakemu intervjuvancu je bilo namenjeno osem vprašanj, katerih analiza je podana v nadaljevanju.

Vsi sogovorniki so bili aktivno vključeni v izvajanje aktivnosti v CO in KC, pri čemer so pridobili vsak svoje izkušnje in poglede, zato je bilo zanimivo videti katere prednosti oz. slabosti so izpostavili glede izvajanja programov obeh instrument.

1. Glavne prednosti in pomanjkljivosti javnih razpisov za razvoj centrov odličnosti in kompetenčnih centrov v obdobju 2009–2013.

Sogovorniki so v odgovorih na vprašanje o prednostnih in pomanjkljivostih obeh instrumentov poudarili, da je bilo prvič možno z javnim denarjem fokusirano in omogočeno resno projektno povezovanje raziskav med JRO in industrijo ter interdisciplinarno delovanje, kar je pogoj za odlično znanost. Oba javna razpisa sta bila pripravljena premišljeno in z ustreznimi pogoji, ki so usmerjali aktivnosti k doseganju konkretnih rezultatov. Večletno sodelovanje na skupnih projektih z močno koncentracijo znanja, je ustvarilo zaupanje, kar je motivacija za nadaljnja povezovanja in boljše medsebojno razumevanje potreb partnerjev. Predvsem pri KC je bila omogočena fleksibilnost pri izbiri in organizaciji partnerjev, pri čemer so se partnerstva oblikovala iz ključnih inštitucij znanja, uporabnikov in podjetij, ki so globalno usmerjena, inovativna in tržno uspešna. Za JRO je bilo to povezovanje pomembno iz razloga, ker je bilo delo raziskovalcev tudi na javnih raziskovalnih organizacijah merjeno s ključnimi kazalniki uspešnosti in ker je omogočalo usklajen prodor raziskovalnih institucij na globalne RR trge. Spodbujanje sodelovanja v timih, ki so bili sestavljeni iz raziskovalcev iz JRO in industrije je omogočilo prenos dobrih praks iz akademske sfere v gospodarstvo in obratno ter skupno odgovornost za raziskovalno-razvojno področje. Pri KC, kjer so bile izvajane raziskave na višjih fazah TRL lestvice, je združevanje kritične mase znanja, kadrovske in materialne pogoje, omogočalo hitre prenose raziskovalnih rezultatov v prodajne izdelke in revolucionarne preboje na globalnem trgu.

Poudarili so pomembnost koncentracije sredstev na nekaj prednostnih področjih, ki so bila usmerjena v raziskovalno delo, tako temeljno kot aplikativno. Centri odličnosti so poudarili edinstveno možnost nabave vrhunske raziskovalne opreme. Nakup raziskovalne opreme višje vrednosti (npr od 100.000 do 1 mio €) je bil v letih pred začetkom sofinanciranja, kot tudi v obdobju izvajanja raziskav v okviru CO, zelo otežen. Brez vrhunske, strateške in visokotehnološke opreme, ki je bila nabavljena v okviru CO, bi bilo zelo težko izvajati raziskave, ki bi bile konkurenčne najboljšim v svetovnem merilu. Sofinanciranje nakupa vrhunske raziskovalne opreme je vključene raziskovalce postavila v položaj, da so postali na svojih področjih »čez noč« konkurenčni tako v Evropi kot širše. Rezultati nakupa opreme so bili številni vrhunski članki, novi projekti, nove zaposlitve, novo sodelovanje s podjetji. Veliko raziskovalcev je dobilo zaposlitve in nova znanja. Prekinitev sofinanciranja je centrom odličnosti, ki so bili predvsem infrastrukturno usmerjeni, povzročilo težave pri zagotavljanju sredstev za popravila in vzdrževanje drage raziskovalne opreme.

Pri CO je bila izpostavljena preglednost vlaganj in posledično doseženih rezultatov, kar je bilo možno spremljati v okviru samostojne pravne osebe – zavoda, medtem ko pri KC sogovorniki vidijo prednost v tem, da je center lahko deloval zelo dinamično in pragmatično, ker ni bilo potrebno, tako kot v primeru nove pravne osebe, prezaposlovati ljudi za izvajanje RR aktivnosti in ker so bili pri koordinatorju že zaposleni sodelavci, ki so center usmerjali in vodili.

V primeru CO je bilo financiranje omogočeno za obdobje štirih, pri KC za obdobje treh let, kar je za raziskave in razvoj relativno kratko obdobje. Za optimalno doseganje rezultatov bi bilo potrebno dolgoročno obdobje, vsaj 8 do 10 let, kar je praksa v tujini. Ker po zaključku obdobja sofinanciranja, to je po letu 2013, s strani države ni sledilo obljubljenno novo financiranje za nadaljevanje raziskovalnih aktivnosti v okviru CO in KC, je prišlo pri centrih odličnosti do odpuščanja najboljših raziskovalcev, v katere se je vlagalo štiri leta. Raziskovalci, ki so v CO prišli iz JRO, so se, če je bilo mogoče, vrnili v matične javne raziskovalne organizacije, kjer se prijavljajo na nove projekte, ki se tako ne izvajajo v okviru CO. Predstavniki CO izpostavljajo, da bi že relativno majhen vložek sredstev omogočal nadaljevanje izvajanja aktivnosti, ki so v štiriletnem obdobju prinesle številne pozitivne rezultate, in sodelovanje v mednarodnih mrežah in pobudah ter možnost nadaljnjega sofinanciranja in pridobivanja mladih raziskovalcev. Po zaključku sofinanciranja se je pri KC tako zmanjšal in omejil obseg sodelovanja partnerjev, nujno je bilo prilagoditi cilje zmoglostim, ki jih je lahko financiral posamezen center. V osnovi so bili KC zastavljeni kot dolgoročni mehanizem, vendar v obdobju kratkih treh let niti eden od njih ni uspel razviti poslovnih funkcij za razvoj in nadaljevanje aktivnosti, kar je cilj dolgoročnih mehanizmov. Nujnost kontinuitete oz. nadaljevanja sofinanciranja, ki bi ga morala zagotoviti država, so izpostavili vsi sogovorniki, kar bi omogočilo nadgrajevanje izvajanih vsebin, za kar predlagajo kot eno izmed možnosti združitve različnih virov financiranja (npr. več ministrstev skupaj).

Izpostavljena je bila potreba po večjem poudarku na vsebinah, tako so pri KC pogrešali evalvacijo, izvedeno s strani zunanjih ekspertov, tako kot je bilo to izvedeno pri CO, pri čemer bi bila potrebno nujno prepoznati tudi uporabniško izkušnjo.

2. Ocena uspešnosti povezovanja med JRO in podjetji pri izvajanju projektov

Sogovorniki so imeli glede uspešnosti povezav med JRO in podjetji splošno pozitivno stališče, nekateri centri so izpostavili še nekatere druge vidike. Predstavniki CO so povedali, da je bilo sodelovanje na istih projektih od začetka do konca in v istih timih pozitivna izkušnja, ki je doprinesla k razvijanju novih kompetenc in povezovanje ocenjujejo relativno uspešno. Vendar pa se uspešnost povezovanja ugotavlja od primera do primera. Povečano zaupanje se izkazuje v sodelovanju mnogih partnerjev tako bilateralno kot tudi v drugih konzorcijih, in v skupnih prijavah na nove razpise. Delovanje v okviru CO je partnerjem prineslo srednje oz. dolgoročne pozitivne učinke.

Nekatera podjetja so v okviru CO pridobila prve reference in pričela s skupnimi strateškimi vlaganju v znanje in infrastrukturo na RR področjih, ki jih pokrivajo CO, pri čemer je razvoj produktov in storitev namenjen globalnim visokotehnološkim trgom. Znotraj programov so raziskovalci in razvojniki iz JRO in podjetij sodelovali v zelo usmerjenih projektih, z jasnimi časovnicami in jasnimi cilji. Vsi sodelujoči so se morali prilagoditi skupnemu tempu in visokim zahtevam, kar so premagovali z dobro komunikacijo. Predvsem mladi raziskovalci iz JRO so pokazali jasen interes in predanost k delu. V CO ocenjujejo povezave kot odlične, že obstoječe so bile nadgrajene, novo ustvarjene pa zelo učinkovite, kar se odraža v zadovoljstvu partnerstev z doseženimi cilji in rezultati projektov. Nekateri industrijski partnerji so na osnovi sodelovanja v CO dobili nove poslovne zamisli, predvsem pa so, kar je zanje zelo pomembno, vzpostavili bolj enakopraven dialog z akademskimi institucijami.

Tako kot pri CO, tudi pri KC povezovanje ocenjujejo kot zelo uspešno. Izpostavljajo, da so partnerji že ob snovanju projektnih vsebin vsak podprojekt zastavili tako, da je bilo povezovanje osnova vseh aktivnosti, na ta način so vzpostavili ali še utrdili že vzpostavljene odnose, ki se nadaljujejo tudi po zaključku sofinanciranja projektov. Pri KC so se aktivnosti raziskav in razvoja nadaljevale v smeri izdelkov in storitev, ki so bližje trgu.

Partnerji iz akademske sfere so v preteklosti bili večinoma izvajalci naročenih in plačanih razvojnih nalog. Sodelovanje pri izvajanju skupnih razvojnih projektov je odprlo nov način sodelovanja, ki je temeljil na skupnem izvajanju inovativnega procesa od ideje za novo rešitev ali izdelek preko razvoja do proizvodnje in trženja novega inovativnega izdelka. Takemu načinu medsebojnega sodelovanja so se morali prilagoditi tako partnerji javne raziskovalne sfere kot tudi v podjetjih, kar je pripeljalo do usmeritve inovativnosti v razvoj uporabnega in za trg primernega končnega izdelka in ne samo v razvoj novih tehničnih rešitev, ki niso nujno uporabne.

3. Razlike med stališči JRO in podjetji glede ocene uspešnosti sodelovanja

Na vprašanje ali se ocene sodelovanja razlikujejo med partnerji iz JRO in podjetij, so bili podani različni odgovori. Pri nekaterih se te ocene razlikujejo ne samo med posameznimi raziskovalnimi skupinami, ampak kar na individualni ravni. Do različnih ocen prihaja zaradi različnega nivoja inovativnosti, pri čemer je težko najti presečišča, ki bi ustrezala sodelujočim iz JRO in podjetij. Določene razlike so opazne tudi med nivoji. Na nivoju menedžmenta podjetij in vodstva JRO so stališča precej podobna, medtem ko so mnenja na nivoju raziskovalcev in razvojnikov deljena, predvsem zaradi subjektivnih ocen posameznikov. Na splošno so se razlike kazale zaradi različnih teženj, pri JRO po temeljnih raziskavah, pri podjetjih po aplikativnih raziskavah, kar so v določenih primerih reševali z usklajevanjem strateških načrtov.

Pri kompetenčnih centrih potrjujejo, da so mnenja partnerjev enaka ali zelo podobna in so si edini, da je bil model kompetenčnih centrov odličen za povezovanje znanosti in industrije. Iz odgovorov je opaziti, da pri splošnih

ocenah programa ni razlik, te se pojavljajo pri nekaterih posameznih vidikih, kjer je bilo izpostavljeno, da imajo JRO za cilj le posamezno raziskavo in iščejo odličnost v izvajanju le-te, medtem ko je pri podjetjih konkretna raziskava osnova za določitev smeri do razvoja rešitve oz. izdelka. Razlike, se po mnenju predstavnikov KC, med JRO in podjetji se kažejo tudi pri pojmovanju upravljanja intelektualne lastnine (IPR).

4. Primernost kazalnikov za oceno uspešnosti projektov

Sogovorniki so odgovori na vprašanje ali so bili nastavljeni pravi kazalniki, s katerimi je bilo spremljano doseganje rezultatov. Predstavniki iz CO so bili mnenja, da so bili kazalniki v osnovi dobro nastavljeni, da so bili tudi pravi pokazatelji uspešnosti, vendar ne edini. Oboji centri so lahko poleg kazalnikov, določenih na podlagi OP RR, opredelili dodatne specifične kazalnike, ki so jih spremljali tekom izvajanja programov.

Nekateri kazalniki, ki so konceptualno smiselni, so po mnenju predstavnikov CO težko merljivi (število novih delovnih mest ali število novih partnerjev, število inovacij, ipd.). Dosežene vrednosti so seveda točne, postavlja pa se vprašanje kakšen učinek imajo na razvoj družbe. Za nekatere kazalnike je težko dokazati, ali so nastali samo kot posledica izvajanja programov oz. projektov, oziroma so nanje vplivali tudi drugi momenti. Temu bi se lahko izognili z uvedbo bolj rigoroznih oz. realnih kazalnikov, ki bi jih bilo potrebno doseči v določenem obdobju po koncu obdobja financiranja. Glede kazalnika o doseganju patentov, so nekateri sogovorniki mnenja, da so nefunkcionalno breme in bi bilo bolje področje intelektualne lastnine upravljati skozi druge mehanizme. Poleg tega je patentiranje npr. izdelka, ki še ni pripravljen za takojšen prodor na trg lahko problematično iz vidika, da je patent javno dostopen, kar poveča tudi možnost kraje ideje, kar se v praksi že dogaja.

Izpostavljeno je bilo tudi dejstvo, da zaradi upoštevanja pravil državnih pomoči pri instrumentu centrov odličnosti, ni bilo možno izdelke plasirati na trg ali izdelati prototipa, kar bi celoviteje in bolj konkretno dokazovalo uspešnost, ker do faze komercializacije v okviru tega instrumenta ni smelo priti. Tako z opredeljenimi kazalniki ni bilo mogoče celovito meriti uspešnosti posameznega projekta in njegovih učinkov.

Sogovorniki iz KC so izpostavili, da so bili osnovni kazalniki smiselno zastavljeni in so bili pokazatelj uspešnosti in doseganja rezultatov. Kazalniki, ki so si jih kompetenčni centri dodatno postavili, odražajo specifiko posamezne dejavnosti. Dobra nadgradnja so bili kazalniki kot npr. novi procesi, nove tehnologije in novi izdelki, novi poslovni modeli. Izpostavljeno je bilo, da je potrebno kazalnike nadgraditi v smeri učinkov (npr. prihodki in prihranki od inovacij, prihodki od patentov, prihodki od novih izdelkov, delež novih izdelkov v celotnem prometu, delež izvoza novih izdelkov/storitev), kar pa je možno meriti le v daljšem časovnem obdobju in ne v prekratnem triletnem

obdobju trajanja projektov. Nekateri so tudi mnenja, da bi bilo potrebno preko novo oblikovanih kazalnikov, dati večji poudarek uporabniški izkušnji.

5. Nadaljevanje aktivnosti po zaključku sofinanciranja

Izvajanje aktivnosti obeh instrumentov se je začelo za CO v letu 2010 in za KC v letu 2011 in zaključilo konec leta 2013. MIZŠ mora centre odličnosti, ker zanje niso veljali pogoji in določila državnih pomoči, spremljati še pet let po zaključku aktivnosti, kar določa evropska uredba Uredbe (EU) št. 1303/2013 in določilo pogodbe o sofinanciranju. To ne velja za kompetenčne centre.

V raziskavi je bilo zastavljeno vprašanje ali so se aktivnosti, izvajane v obdobju sofinanciranja, nadaljevale po zaključku – po 31. 12. 2013.

S strani CO so bili podani odgovori v smeri, da so se aktivnosti, začete v okviru obdobja sofinanciranja, le delno nadaljevale po koncu leta 2013. V kolikor so se aktivnosti nadaljevale, tip aktivnosti ni bil enak kot med izvajanjem projektov. V nadaljevanju so se usmerili k bolj visoko inovativnim aktivnostim, za kar je potreben dodaten denar, ki ga skušajo pridobiti preko EU projektov. Nekateri začete aktivnosti se zaradi odličnih strokovnih povezav nadaljujejo preko projektov financiranih preko ARRS in nekaterih projektov, financiranih s strani partnerjev iz gospodarstva. Zaradi pomanjkanja sredstev so centri odličnosti drastično zmanjšali število zaposlenih raziskovalcev. Da zadostijo pogoju spremljanja 5 let po zaključku projektov, so nekateri svoje raziskovalno naravnane aktivnosti zmanjšali na minimum, pri čemer se je izgubil začetni zagon, ustvarjen v preteklih letih, svetovna konkurenca na posameznem raziskovalnem področju pa seveda hitro napreduje.

Pri izvajanju projektov v okviru kompetenčnih centrov je bil položaj drugačen. Kompetenčnih centrov po zaključku sofinanciranja ni potrebno spremljati, ker so bili že tekom izvajanja upoštevani pogoji, ki so veljali za državne pomoči. Velik del aktivnosti v okviru izvajanja projektov je bil zastavljen z namenom, da se je dosegel konkreten rezultat, to je prototip. Zaradi določenih poslovnih interesov podjetij, so se aktivnosti nadaljevale z industrializacijo, tudi v sklopu novih projektov.

6. Opredelitev težav po zaključku obdobja sofinanciranja

Sogovorniki so odgovarjali tudi na vprašanje o težavah, ki so bile zaznane pri njihovem delovanju približno v obdobju slabih treh po zaključku izvajanja projektov.

Centri odličnosti so se srečevali s precejšnjimi težavami, da so zagotovili svoj obstoj. Pri tem je prišlo do spremembe kadrovske strukture, kar je že predhodno omenjeno kot problem. Srečevali so se s pomanjkanjem sredstev za delovanje centrov in posledično z nelikvidnostjo. Nekaterim partnerjem je močno upadel interes za sodelovanje, predvsem je bilo to očitno pri JRO. Izpostavljen je bil tudi problem različnih pogledov upravljanja z intelektualno lastnino. Centri odličnosti, usmerjeni v vrhunske raziskave, tako kandidirajo na

razpisih ARRS ali pa pri Evropski komisiji, če so teme primerne in dovolj visok odstotek sofinanciranja, ker lastna sredstva težko zagotavljajo. Izpostavljajo, da je bilo v obdobju po zaključku sofinanciranja, premalo razpisov na ARRS in zanje občutno premalo sredstev. Ustrezni javni razpisi za obnovo infrastrukture ni bilo.

Vsi centri odličnosti, brez izjeme, so se spopadali s težko finančno situacijo, ker brez stalnega zanesljivega pritoka denarja ni bilo možno vzdrževati delovanja sistema. Zaradi tega je planiranje raziskav in drugih aktivnosti oteženo. Izvedene so bile predvsem aktivnosti desiminacije, ne pa tudi do raziskav, pri katerih bi lahko prišlo do inovativnih produktov in njihovega plasiranja na trg, kar bi lahko omililo finančne težave. Nekateri so skušali preko pogodb o sodelovanju, kjer so bili partnerji predvsem podjetja, zagotoviti sredstva za delovanje centra, vendar pa so bili stroški administracije za pokrivanje področja financ, upravljanja s človeškimi viri in obveznega poročanja MIZŠ, znatni in nezanemarljivi. Po zaključku financiranja v letu 2013 ni bilo mogoče zagotoviti dovolj sredstev, da bi zadržali vse mlade raziskovalke in raziskovalce, ki so že dosegli visoko raven znanja, pri čemer so se izgubila oz. izničila nekajletna vlaganja in investicije v kadre.

Pri kompetenčnih centrih ravno tako poudarjajo problem prekinitve sofinanciranja zaradi česar ni bilo moč zagotoviti kontinuitete delovanja. Cilj vsakega kompetenčnega centra je bil nadgradnja doseženih rezultatov. Razvojni cikel tehnologij in izdelkov naslednje generacije, ki bi moral slediti, se je praktično ustavil, ker med partnerji ni bilo nadaljnjega povezovanja in skupnega razvoja. Nekateri partnerji instrument kompetenčnih centrov niso prepoznali kot trajnostni mehanizem, temveč samo kot eden izmed projektov, kjer lahko sodelujejo.

7. Konkretni učinki doseženih ciljev na partnerje iz gospodarstva

Namen obeh javnih razpisov je bil, med drugim, povezovanje JRO in gospodarstva. Doseženi rezultati bi morali imeti učinke tudi na partnerje iz gospodarstva. Posamezni sogovorniki iz CO so imeli na vprašanje o tem različne odgovore:

- Oblikovale so se velike mreže partnerjev iz gospodarstva, ki so ustvarili institucijo, ki je vzpostavila osnovne pogoje razvoj visokotehnološkega podjetništva z globalno mrežo, v regiji kjer delujejo.
- Z gospodarstvom sodelujejo pri izvajanju ARRS projektov, pri čemer nastajajo nove patentne prijave.
- V nekaterih centrih so določena podjetja odkupila inovacije in jih sama patentno zaščitila.
- Bolj infrastrukturno naravnani centri kot največji dolgoročni učinek poudarjajo pridobitev opreme za izvajanje določenih raziskav in analiz, ki so vitalnega pomena za podjetja in pretok kadrov med JRO in podjetji.

- Nekatera podjetja so v okviru CO pridobila prve reference in pričela s skupnimi strateškimi vlaganju v znanje in infrastrukturo na RR področju.
- Za centre, v katerih so uspeli zagotoviti nadaljnje izvajanje projektov, je uspeh, da so vanje še vedno z velikim interesom vključeni partnerji iz gospodarstva.

Učinki sodelovanja se pri kompetenčnih centrih kažejo v novo razvitih izdelkih do faze prototipa, ki so rezultat skupnega dela JRO in industrijskih partnerjev in bodo po obdobju industrializacije plasirani na mednarodne trge. V nekaterih so industrijski partnerji močno izvozno orientirani, ker domači trg počasi postaja premajhen. V projekte so se vključevali zunanji izvajalci, ki niso bili konzorcijski partnerji, s čimer so se vzpostavili dodatni partnerski odnosi. Spodbujevalni učinek je viden tudi z vidika dodatnih vlaganj v projekte s strani podjetij. Pri partnerjih iz gospodarstva je poudarjena okrepljena konkurenčnost slovenskih proizvajalcev, ki svoj napredek gradijo na lastnem znanju, kar posledično zvišuje raven znanja na področju delovanja. Posledično je opaziti večjo koncentracijo vlaganj na tista področja v Sloveniji, kjer partnerji vidijo največje razvojne potenciale, kjer je opazno tesnejše in kontinuirano sodelovanje med inštitucijami znanja in gospodarstvom.

8. Predlogi ukrepov za spodbujanje povezovanja, sodelovanja in prenosa znanja med JRO in gospodarstvom

Kot vsak sistem, sta imela tudi oba obravnavana javna razpisa določene pomanjkljivosti, ki so se natančneje definirale skozi obdobje izvajanja projektov. Nekatere pomanjkljivosti so sogovorniki že izpostavili, npr. problem financiranja in kontinuitete, ipd... Namen zadnjega vprašanja glede ukrepov, s katerimi vi država lahko zagotovila še tesnejše povezovanje in sodelovanje med JRO in gospodarstvom ter hitrejšim prenosom znanja v podjetja, je bilo sogovornike spodbuditi k razmišljanju in podaji konkretnih predlogov. Podani so bili različni odgovori.

Problem prenosa znanja v podjetja, tiči v samem razumevanju potreb gospodarstva, ki ga je pri JRO še premalo. Ta segment bi moral biti vključen že pri sami zasnovi projektov. Pri raziskovalcih iz JRO bi bilo potrebno nadgraditi znanje in razumevanje, ki se veže na poznavanje osnovnih poslovnih procesov, specifiike delovanja partnerjev iz industrije in področje upravljanja z intelektualno lastnino.

Podanih je bilo kar nekaj predlogov, ki se v praksi še premalo uporabljajo. Prvi predlog je bil ponovna uvedba vavčerske sheme, ki je enkrat že bila izvedena, kjer sicer država podjetjem sofinancira »le« 50% stroškov raziskav, ki jih zanje opravijo JRO, vendar je kljub temu zanimanje za ta način financiranja še vedno zelo veliko. Naslednji predlog je bil, da se pripravi čim več instrumentov za izvajanje aplikativnih projektov skozi katere bi pridobili novo znanje, ki je usmerjeno praktičnemu cilju ali namenu. Kot tretji predlog, za našo državo dokaj nepoznan način, se predlaga nekakšno obliko »borze tehnoloških

problemov in rešitev», kot je npr. svetovna mreža Innoget, kjer lahko podjetja izpostavijo probleme, za katere raziskovalci ali druga podjetja, predlagajo okvirne rešitve. V podjetju nato ocenijo prispele rešitve in se odločijo ali gredo v konkretne raziskave ali ne. Po drugi strani pa, tako podjetja kot raziskovalci, lahko ponudijo nek izdelek ali rešitev, ki bi jo neko drugo podjetje lahko uporabilo v svoji proizvodnji.

Prenos med akterji iz javne in zasebne sfere bi lahko pospešili z zagotavljanjem sredstev v obliki razpisov za ta namen in preverjanjem, če so bili na trg res postavljeni novi izdelki. Kot primer so bile izpostavljene ZDA, kjer ta problem rešujejo preko ustanavljanja spin off in podobnih mehanizmov, vendar to lahko deluje v okolju, kjer je na razpolago dovolj sredstev, da se lahko najboljše ideje tudi realizirajo. V EU je sicer na voljo precej sistematičnih ukrepov, ki naj bi pospeševali pretok znanja v podjetja (Obzorje 2020 in drugi podobni mehanizmi), vendar vsi temeljijo na podobnih principih. Ena od pomembnih ovir je premajhna količina sredstev za ukrepe prenosa znanja. EU sicer v absolutnem smislu v to precej vlaga, ampak pri tem sredstva razpršuje po principu: raje mnogim malo kot manj številnim veliko. Prenos posamezne tehnologije pa v resnici zahteva zelo velika sredstva in razpršenost sredstev ne more dati dobrih rezultatov. V velikih podjetjih, na primer, nov produkt razvijajo mnoga leta pri čemer sodeluje precejšnje število zaposlenih. Že samo ti stroški so lahko večji kot je vrednost tipičnega EU projekta. Tudi ta večletna notranja vlaganja še vedno niso dovolj za dokončen prodor na trg, za kar podjetja namenjajo še veliko dodatnih sredstev. S tega vidika celoten vložek v nov produkt v podjetjih znaša precej več od vrednosti EU vlaganj v okviru posameznih projektov. Pri tem je viden ogromen razkorak pri vlaganjih, ki jih za projekte namenja EU in ZDA, sledenja bistveno več. Sredstva, ki jih na podlagi razpisov namenja EU in tudi Slovenija, zadoščajo le za preverjanje idej in ne za plasiranje produktov na trg.

Podan je biltudi drugačen predlog. V prihodnje naj država pristopi do financiranja podobnih programov bolj strateško in razdeli projekte na različne faze, kot so: razvoj ideje, od ideje do prototipa, od prototipa do izdelka, od izdelka do majhne proizvodnje, masovna proizvodnja, financiranje razvoja storitev, in podobno. Na ta način bi bilo jasno kdo in s kolikšno količino raziskovalnega dela bo sodeloval na projektu že od začetka, pri čemer financiranje ne sme biti vezano na nagrajevanje v skladu s plačnim sistemom v javnem sektorju, kot je bilo v primeru instrumenta centrov odličnosti, s ciljem ustvariti tudi nova delovna mesta. Sredstva bi morala biti nepovratna. V primeru, če bi bil projekt razdeljen v več faz, bi lahko financer zaustavil projekt in financiranje, v kolikor bi ocenil, da cilji ne bodo doseženi, kar bi dosegel z medfaznim ocenjevanjem s strani vnaprej določenih evalvatorjev iz gospodarstva, ki bi tako morali projekt ves čas spremljati. Poleg navedenega, se izpostavlja potrebo po večjem financiranju usmerjenih, aplikativnih projektov, ki so podprti z izkušnjami in odkritji v okviru bazičnih raziskav, v katerih sodelujejo ljudje, ki znajo, zmorejo in so motivirani za delo s podjetji. Stimulirati je treba

pretok raziskovalcev iz JRO v gospodarstvo in ustanavljanje novih start-up podjetij. Tu lahko doprinese svoj delež tudi država z npr. davčnimi olajšavami v okviru vlaganj v RRD, s podporo sodelovanju z visoko tehnološkimi podjetji (npr. start up-i, ki so nastali na podlagi izvajanja projektov), in podobno.

Nekateri sogovorniki poudarjajo, da bi tehnološka agencija s kompetentnimi kadri, kjer bi industrija imela primerno vlogo in besedo, zelo pospešila povezovanje in sodelovanje z gospodarstvom. Centri odličnosti so lahko pri tem prostor, v katerem bi bila poudarjena tudi izobraževalna vloga, kjer bi se lahko zaposlovali mladi doktorji znanosti in se seznanili z veščinami za delo v industrijskem okolju in prostor namenjen dvigu znanstvene, tehnološke in poslovne odličnosti, kar je ključ do upeha tako v akademski kot v gospodarski sferi. Na tak način bi imeli visoko izobražen kader (doktorje znanosti) s praktičnimi izkušnjami in s tem bi bil napredek v industriji prav gotovo hitrejši. Za primerjavo je izpostavila Nemčijo, kjer je v industriji zaposlenih 80% doktorjev znanosti, v Sloveniji le 20%. Prilagodljivost in hitro odzivanje na tržne zahteve sta ključna elementa v današnjem hitro spreminjajočem se svetu.

Tudi predstavniki kompetenčnih centrov so imeli kar nekaj konkretnih predlogov za sodelovanje in povezovanje JRO in gospodarstva. Pri tem se zavzemajo za nove razpise, s katerimi bi se nadaljevalo delovanje kompetenčnih centrov oz. inštitucij povezovanja. Sofinanciranje projektne pisarne in konkretnih projektov, ki bi jih oblikovali partnerji, bi bilo velika spodbuda za povezovanje. Primeren instrument bi bil, podobno menijo tudi predstavniki centrov odličnosti, sistem vavčerjev, vendar bi moral biti stalen, brez prekinitev, saj bi le na ta način partnerji lahko zastavili strategijo skupnega razvoja in oblikovali projektno sodelovanje.

Kot podlago za sodelovanje in povezovanje deležnikov na področju raziskav in razvoja, vidijo predvsem z dolgoročnim sofinanciranjem področij, ki so identificirana kot prednostna, saj spreminjanje strategije na tem področju vsakih nekaj let ni učinkovit pristop. Država naj opredeli trajnostni mehanizem financiranja RRD, pri čemer naj se upoštevajo tudi podani predlogi kompetenčnih centrov, ki so bili oblikovani po večletnem izvajanju programov. Razkorak med obdobji financiranja, oz. prenehanje financiranja, ne more prispevati k nadaljnjemu sodelovanju med JRO in podjetji. Cilj izvedenih programov je nadgrajevanje, kar je na podlagi navedenega onemogočeno. Posebej bi bilo potrebno izpostaviti uporabniško izkušnjo in zaradi hitro se spreminjajočih tehnologij, tudi fleksibilnost.

Posebej je bila poudarjena potreba po izvedbi študije učinkovitosti vlaganj v raziskave in razvoj v obdobju 2007-2013. Po izteku obdobja financiranja instrumenta Centrov odličnosti 2009 – 2013, je bila opravljena le končna evalvacija instrumenta, ne pa tudi vsebinska evalvacija dosežkov in učinkov CO.

6 Sklepne ugotovitve

V analizi so bili na podlagi uradno objavljenih podatkov, primerjani podatki o deležu bruto domačih izdatkov za RRD za 15 najuspešnejših evropskih držav v obdobju 2007–2015. Slovenija je bila na podlagi podatkov za leto 2013 na dokaj visokem šestem mestu. Povprečje EU je naša država presegla v letu 2010, v naslednjih letih je razlika do evropskega povprečja le še pozitivno naraščala, z rahlim upadom v letu 2014 in 2015.

Tako predstavniki centrov odličnosti kot predstavniki kompetenčnih centrov so v intervjujih izpostavili, da je bilo skupno sodelovanje raziskovalcev iz javnih raziskovalnih organizacij in podjetij na istih projektih od začetka do konca izvajanja aktivnosti, pozitivna izkušnja, ki je doprinesla k razvijanju novih kompetenc in povezovanje ocenjujejo kot uspešno. Nekajletno skupno timsko sodelovanje raziskovalcev, je ustvarilo močno koncentracijo znanja in medsebojno zaupanje, kar je bila motivacija za nadaljnje sodelovanje. Po koncu obdobja sofinanciranja so se pri CO nekatere aktivnosti zaradi odličnih strokovnih povezav nadaljevale preko mednarodnih projektov, projektov financiranih iz ARRS in projektov, financiranih s strani partnerjev iz gospodarstva. Pri nekaterih KC se je sodelovanje med partnerji nadaljevalo v sklopu novih projektov in z industrializacijo, ki so jo zaradi poslovnih interesov spodbujala posamezna podjetja.

Oba predstavljena instrumenta, tako centri odličnosti kot kompetenčni centri, sta bila uspešna pri doseganju zastavljenih ciljev. Večje število partnerjev iz javne in zasebne sfere, je znalo oblikovati raziskovalne time, ki so znali delovati strokovno in usklajeno, kar je pripeljalo do realizacije zastavljenih rezultatov in odprlo še več različnih možnosti nadaljnjega sodelovanja. Podobne oblike partnerstev, bi bilo zaradi pozitivnih izkušenj, priporočljivo ohraniti tudi pri pripravi novih ukrepov, ki se bodo oblikovali na področju raziskav, razvoja in inovacij.

Kljub vsemu, so se izkazale nekatere pomanjkljivosti, ne toliko tekom izvajanja projektov, kot po zaključku financiranja. Prekratko obdobje financiranja za izvajanje raziskovalno-razvojnih aktivnosti in nezagotavljanje kontinuitete financiranja po koncu obdobja financiranja s sredstvi strukturnih skladov, sta najpogostejše izpostavljeni pomanjkljivosti. Predvsem je to bila težava pri centrih odličnosti, ki so delovali kot samostojne pravne osebe. Po koncu financiranja, je bilo zaradi pomanjkanja finančnih sredstev, prekinjeno izvajanje nekaterih raziskovalnih aktivnosti ter prekinjeno delovno razmerje raziskovalcem, ki so v obdobju izvajanja projektov doprinesli svoj delež k doseganju rezultatov. Predvsem mladi raziskovalci so imeli možnost nadgraditi svoje znanje, izboljšati svoje kompetence in biti del vrhunskih raziskovalnih timov in se v njih tudi dokazati.

Centri odličnosti in kompetenčni centri so bili na podlagi končne evalvacije prepoznani kot dober instrument povezovanja javne in zasebne sfere in

uspešnosti pri doseganju zastavljenih ciljev in rezultatov. V centrih odličnosti je bila nabavljena vrhunska raziskovalna oprema in na ta način vzpostavljena osnova za izvajanje raziskav, ki bi Slovenijo lahko uvrstili med raziskovalno elito, vendar je ta potencial potrebno tudi dodobra izkoristiti. Država lahko vzpostavi prave pogoje, ki bi omogočali združevanje različnih finančnih virov za nadaljevanje raziskav na ključnih in najbolj perspektivnih prednostnih področjih. Kot je razvidno iz raziskave so sogovorniki najbolj izpostavili prekratko obdobje za izvajanje raziskav (pri centrih odličnosti štiri leta, pri kompetenčnih centrih tri leta) in prekinitev so(financiranja). Dejstvo je, da si tudi država želi, da bi se v RR vlagalo več sredstev in bi bil dosežen cilj 1 % vlaganj javnih virov v RRD in 2% virov iz poslovnega sektorja. Razpoložljivih sredstev za vse deležnike v RRD ni dovolj, zato je za državo pomembno, da prepozna najperspektivnejša raziskovalna področja, kjer so že doseženi in mednarodno prepoznani vrhunski rezultati in jim omogoči nadaljevanje raziskovalnih aktivnosti, nekaj njih je doseženih tudi v sklopu centrov odličnosti in kompetenčnih centrov.

Skozi raziskavo je bilo ugotovljeno, da je bila realizacija obeh instrumentov zelo visoka, doseženi ali preseženi vsi zastavljeni rezultati in vzpostavljeno kvalitetno partnerstvo med predstavnikov javne in zasebne sfere. Vendar je to le en vidik. Potrebno je preveriti kakšen vpliv imajo doseženi rezultati na različne elemente družbenega napredka po koncu obdobja izvajanja in financiranja v obeh primerih. Ker tudi država v sklopu financiranja aktivnosti iz strukturnih skladov doprinese svoj delež iz proračunskih sredstev, bi kot dober gospodar teh sredstev morala preveriti njihove širše pozitivne ali negativne družbene učinke.

Za ta namen bi bilo potrebno izdelati dobro premišljeni metodologijo, ki bi prikazala konkretne učinke in vplive, tako na znanstvenem področju, v gospodarstvu in celotni družbi. Osnova je lahko metodologija, ki je že bila izvedena z namenom merjenja izobraževalnih ali raziskovalnih učinkov na posamezne segmente družbo. Podrobno raziskavo o učinkih izobraževalne in raziskovalne dejavnosti so izvedli na Univerzi v Nottinghamu (The University of Nottingham, 2015). Učinke znanosti sta ovrednotila in razdelala tudi Benoît in Doré (2003). Raziskava na podlagi specifično prilagojene metodologije izvedenim ukrepom, bi podala konkretne podatke o tem, ali so bili javni viri v okviru konkretnih ukrepov (v primeru centrov odličnosti in kompetenčnih centrov) pravilno usmerjeni in uporabljeni. Širši javnosti podatki o doseženih posameznih rezultatih ne povedo kaj dosti, ker se z njimi ne identificirajo. Zato bi bilo potrebno, tudi s pomočjo različnih medijev, konkretneje predstaviti znanstvene, ekonomske in fiskalne učinke.

Dobro pripravljena metodologija, na podlagi katere bi preverjali učinke uporabe javnih sredstev in vpliv na širšo družbo, bi bila uporabna za vse vrste javnega financiranja, ne samo za so(financiranje) v sklopu Evropske kohezijske politike, in bi lahko vključevala vse uporabnike javnih sredstev. Na ta način bi država, kot skrbnica proračunskih sredstev, pridobila pomembne podatke

o pravilnosti svojih preteklih odločitev, kar bi lahko olajšalo odločitve pri plasiranju javnih sredstev na različnih področjih družbenega življenja, ne samo na področju raziskav, razvoja in inovacij.

Država bi morala stremeti k najučinkovitejši izrabi različnih virov, tako človeških in drugih, ki so vključeni v delovanje na področju raziskav, razvoj in inovacij. Slovenija ima odlične, tudi mednarodno prepoznane, znanstvenike in raziskovalce, kot tudi s pomočjo centrov odličnosti vzpostavljeno raziskovalno infrastrukturo, kar je potrebno maksimalno izkoristiti.

Stanka Setnikar Cankar, doktorica ekonomskih znanosti, je redna profesorica na Univerzi v Ljubljani, Fakulteti za upravo. Pet mandatov je bila dekanja fakultete, od septembra 2014 do marca 2015 je bila ministrica za izobraževanje, znanost in šport. Ukvarjala se je z ekonomiko javnega sektorja, ugotavljanjem učinkovitosti in uspešnosti v javnem sektorju, podjetniškimi funkcijami v javnem sektorju, centralizacijo in decentralizacijo storitev javnega sektorja, javnimi naročili, prenosom dobrih praks s čezmejnimi sodelovanjem, inovativnostjo in kreativnostjo v javnem sektorju in izobraževanju. Je avtorica številnih člankov in knjig s področja ekonomike javnega sektorja. 15 let je bila urednica Mednarodne revije za javno upravo. Vodila in koordinirala je delo v raziskovalnih projektih s področja reform javnega sektorja, merjenja učinkovitosti, zdravstva in čezmejnega povezovanja. Desetletje je bila članica Senata Univerze v Ljubljani, delovala pa je tudi kot članica Upravnega odbora mednarodne mreže inštitutov in šol za javno upravo v Srednji in Vzhodni Evropi NISPAcee.

Romana Pogorelec, diplomirana organizatorica menedžerka, zaključuje magistrski študij na Fakulteti za upravo. Doma je v Kočevju, kjer je pridobila nekajletne delovne izkušnje v gospodarstvu. Delovala je na kadrovskem, finančnem, komercialnem in menedžerskem področju. Po izgubi službe zaradi negativnih gospodarskih razmer na kočevskem, se je zaposlila na tedanjem Ministrstvu za visoko šolstvo, znanost in tehnologijo (sedanjem Ministrstvu za izobraževanje, znanost in šport), na Direktoratu za znanost, kjer sodeluje na področju financiranja raziskovalno-razvojnih projektov s sredstvi strukturnih skladov.

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ABSTRACT

1.04 Professional article

Cooperation Between Public Research Organizations and the Industry in Slovenia in 2007–2013

Funding for research and development activities is an important part of every society.

In the 2007-2013 period, Slovenia increased the share of gross domestic expenditures for research and development. The share then declined, and Slovenia is again falling short of the set goal of investing three percent of its GDP in research and development.

The article presents statistical data on the share of investments in research and development activities in Slovenia in the 2008-2015 period and two measures or instruments introduced in 2009 and 2010 by the Ministry of Higher Education, Science and Technology of the Republic of Slovenia. The stated goal of the measures was to foster collaboration and networking between researchers at public research organizations and the private sector. The measures in question were the Tender for the development of centers of excellence and the Public tender for the development of competency centers in the 2010-2013 period. The measures were co-financed through structural funds.

To get a clearer picture of investments in research and development in Slovenia and to achieve a comparison with similar investments across the European Union over a longer period, data were collected for the 2005-2015 period (Table 1). A ten-year period is sufficiently long to reveal the extent of these investments relative to the average across the EU.

Table 1: *Share of gross domestic expenditures for research and development in Slovenia and in the EU in the 2005-2015 period (%)*

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-----|------|------|------|------|------|------|------|------|------|------|------|
| EU | 1.74 | 1.77 | 1.77 | 1.84 | 1.93 | 1.93 | 1.97 | 2.01 | 2.03 | 2.04 | 2.03 |
| SLO | 1.41 | 1.53 | 1.42 | 1.63 | 1.82 | 2.06 | 2.42 | 2.58 | 2.60 | 2.38 | 2.21 |

Source: EUROSTAT, authors’ figures

The largest nominal share of expenditure for research and development came from companies, that is, the corporate sector; this share was at its largest in 2014, when it amounted to 608.8 million euros or 1.6% of the GDP. Looking at the corporate sector, we can observe substantial and constant growth in

gross domestic expenditures up to 2014, followed by a small decline in 2015. The growth rate in 2015 was -4.17%, while the average annual growth rate in the 2007-2015 period was over 7%.

Throughout the period examined here, the corporate sector contributed over 50% of research and development funding. The largest relative share of research and development funding from the corporate sector can be observed in 2015, when it contributed 600 million euros or 68% of all research and development expenditures; the smallest relative share can be observed in 2007, when this sector contributed 290 million euros, or 58% of all expenditures. The rate of growth of gross domestic expenditures by private-sector entities was negative in 2015, at -3%, while the largest growth occurred in 2008, when these expenditures rose by 32%. The average annual growth rate of funding from the corporate sector in the period studied was positive, at 9.2%.

The state was the second largest source of funding. The largest amount of state funding occurred in 2011, when these resources totaled 281 million euros; the smallest amount can be observed in 2015, when the state contributed just 169 million euros, or 19.89% of total funding. The largest growth in funding from state sources occurred in 2009, when the amount of this funding grew by 21.3%. The average rate of growth of funding from state sources in the studied period was negative, at -0.6%. This is clearly the result of reductions in funding from 2011 to 2015.

The third most important source of funding for research and development was funding from abroad. The amount of funding provided by entities outside Slovenia grew throughout the period, eventually surpassing 90 million euros in 2015, when this funding amounted to 10.5% of total funding. That year, this type of funding grew by 9.2%, while the average annual rate of growth in the studied period was 15.3%, the largest among the different types of funding.

The central theme of the article is a presentation, overview and analysis of two instruments carried out in the 2007-2013 period: the Public tender for the development of centers of excellence and the Public tender for the development of competency centers in the 2010-2013 period. Both tenders outlined the following priority working areas:

- Information and communication technology (ICT)
- Advanced (new) synthetic metallic and non-metallic materials and nanotechnologies
- Complex systems and innovative technologies
- Health and life sciences
- Technology for a sustainable economy

To assess the success of the two instruments, the study examined how well they achieved set indicators. These indicators were designed to express, to the greatest possible extent, scientific excellence and collaboration with the private sector.

The central objective of the research was to examine the condition and stability of partnerships once funding provided through the tenders ended (at the end of 2013). Interviews were mostly conducted in June and July of 2016, with the last interview conducted in April of 2017.

The interviews showed that current and former directors of centers of excellence and heads of competency centers shared the view that both measures were positively received. At the same time, they offered several suggestions for improvements.

Both instruments – centers of excellence and competency centers – successfully achieved the set objectives. But this was just one aspect. The effects of the results achieved on various elements of societal advancement following the period in which the two projects were conducted and financed were also examined. In the framework of its financing of activities through structural funds, the state contributes its share of budgetary resources. As a prudent manager of these funds, it has an obligation to assess their broader societal impacts, both positive and negative. In order to do this, it requires a well-thought-out methodology capable of shedding light on concrete effects and impacts in the field of science, in the economy and in society as a whole.

Some shortcomings were observed after financing through the instruments ended. The most commonly cited shortcomings were that the length of the funding period was insufficient for conducting research and development activities and that continued funding following state funding through the instruments was not provided for. This was largely a problem encountered by centers of excellence, which functioned as independent legal persons. Upon the conclusion of funding, a lack of financial resources led to the termination of certain research activities and the employment arrangements of some researchers.

The results of the research could make a meaningful contribution to the planning and preparation of future measures aimed at linking up stakeholders actively involved in the field of research and development.

Key words: research and development, structural funds, European Regional Development Fund, centers of excellence, competence centers.