



Accession of Slovenia to the OECD

Review of international investment policies



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FOREWORD

This review is based on the report prepared by the Investment Committee as part of the process of Slovenia's accession to OECD membership.

The OECD Council decided to open accession discussions with Slovenia on 16 May 2007 and adopted an Accession Roadmap, setting out the terms, conditions and process for accession, on 30 November 2007.

In the Roadmap, the OECD Council requested a number of OECD Committees to provide it with a formal opinion. In light of the formal opinions received from OECD Committees and other relevant information, the OECD Council decided to invite Slovenia to become a Member of the Organisation on 10 May 2010.

In the Accession Roadmap, the Investment Committee was requested to examine Slovenia's position with respect to OECD instruments, standards and benchmarks, to assess the adequacy of its policies taking into account its economic and social situation and to provide the Council with its formal opinion on the willingness and ability of Slovenia to assume the obligations of membership in the field of investment.

The accession review of Slovenia was based on the following information:

- The Initial Memorandum of Slovenia setting out its preliminary position under all OECD legal instruments;
- The responses of Slovenia to a questionnaire prepared by the Investment Committee;
- A Secretariat mission on 4-5 February 2009;
- A Secretariat report which was revised following each accession review meeting;
- Accession review meetings of the Investment Committee on 23 March and 5 October 2009 comprised of a question and answer session with the Slovenian Delegation and a closed session during which the Committee discussed its conclusions;
- The response by Slovenia to a letter from the Chair of the Investment Committee Accession Examinations requesting further improvements, confirmations and clarifications of the country's position under the instruments, following the first accession review meeting; and the letter from Slovenia following the second accession review meeting;
- The technical assessment of the Committee's Working Group on International Investment Statistics (WGIIS) which considered Slovenia's position under the Benchmark Definition of Foreign Direct Investment, its response to the Survey of Implementation of Methodological Standards for Direct Investment (SIMSDI) and its commitments regarding the reporting of statistics on international investment;

- Information on recent macroeconomic and financial developments provided by the Secretariat of the Economic and Development Review Committee;
- The outcome of the review of Slovenia by the Committee on Financial Markets concerning the parts of the Codes of Liberalisation dealing with banking and financial services;
- The outcome of the review of Slovenia by the Insurance and Private Pensions Committee and its Working Party of Governmental Experts on Insurance concerning the parts of the Codes of Liberalisation dealing with insurance and private pensions.

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¹ This review was finalised on the basis of information available as of 25 March 2010, date of its approval by the OECD Investment Committee.

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1. INTRODUCTION AND SUMMARY

1.1. Accession Review Procedure

In the Accession Roadmap for Slovenia [C(2007)104/FINAL], the Investment Committee was requested to “examine Slovenia’s position with respect to OECD instruments, standards and benchmarks, to assess the adequacy of its policies taking into account its economic and social situation” and to “provide the Council with its formal opinion on the willingness and ability of Slovenia to assume the obligations of membership” in the field of investment.

The Accession Roadmap provided that Slovenia should commit to the following core principles in the investment area [Annex 1]:

- i) full compliance with the principles of non-discrimination, transparency and ‘standstill’, in accordance with the OECD Codes of Liberalisation and the National Treatment instrument of the OECD Declaration on International Investment and Multinational Enterprises (reservations under the Codes must be limited to existing restrictions);
- ii) an open and transparent regime for FDI including in key sectors. Restrictions must be limited and concern sectors where restrictions are not uncommon in OECD countries;
- iii) liberalisation of other long-term capital movements, including equity investment and debt instruments of a maturity of one year or more; commercial credit and other capital operations relating to international trade are also to be liberalised; a timetable for the abolition of remaining controls on short-term capital movements is required;
- iv) no restrictions on payments or transfers in connection with international current account transactions; the candidate countries must comply with all IMF Article VIII requirements;
- v) relaxation of restrictions on cross-border trade in services, particularly banking, insurance and other financial services;
- vi) fair and transparent implementing practices and proportionality of the measures relative to the stated objective pursued;
- vii) effective enforcement of intellectual property rights;
- viii) key commitments under investment protection and other international agreements;
- ix) capacity to present a credible plan for the establishment of a visible, accessible, transparent and accountable National Contact Point for the OECD Guidelines for Multinational Enterprises; evidence of the candidate's commitment to the various international instruments cited in the Guidelines.

The Roadmap specifically provided for:

- i) A review and assessment by the Committee of the willingness and ability of Slovenia to assume the obligations of the Decisions on the Codes of Liberalisation of Capital Movements and Current Invisible Operations (1961 and subsequent amendments) and of the Decisions Related to the Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments);
- ii) A review and an assessment by the Committee of Slovenia's position under the Recommendation on the OECD Benchmark Definition on Foreign Direct Investment (1995, recently revised) and under the Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments). In addition, Slovenia would be required to comply with statistical reporting requirements associated with the Benchmark Definition;
- iii) An assessment of Slovenia's position under the Recommendation on OECD Principles for Private Sector Participation in Infrastructure.

In January 2008, the Committee adopted a procedure to be followed for the review of the candidate countries in the investment field. It was decided that the Committee would hold at least two accession review meetings including a discussion with the candidate country. The Committee agreed that its Working Group on International Investment Statistics would review the position of the candidate countries under the Fourth Edition of the OECD Benchmark Definition of Foreign Direct Investment [C(2008)76] and associated reporting requirements, notably their responses to the OECD Survey of Implementation of Methodological Standards for Direct Investment (SIMSDI) and their agreement to report data on FDI trends in accordance with the timetable and template agreed by Members.

The Committee also noted that, in accordance with the Accession Roadmaps, the Committee on Financial Markets (CMF) and the Insurance and Private Pensions Committee (IPPC) would assist the Investment Committee in reviewing and assessing the willingness and ability of candidate countries to accept the financial services obligations of the Codes in their respective areas of competence [C(2007)100-104/FINAL, Appendices A.VII and A.VIII].

The Investment Committee's Report on Slovenia's Position under the OECD Investment Instruments presents the full account of the Investment Committee's examination of Slovenia. The Report was transmitted to Council separately for the adoption of the lists of proposed reservations by Slovenia to the Code of Liberalisation of Capital Movements and to the Code of Liberalisation of Current Invisible Operations, as well as proposed updated exceptions to the National Treatment instrument.² The Report also includes the updated list of measures reported for transparency in accordance with the Declaration on International Investment and Multinational Enterprises.³

1.2. Slovenia's position under OECD instruments relating to investment

This section presents the summary of Slovenia's position under the OECD legal instruments in the investment field.

² Information on the OECD Codes of Liberalisation can be found at www.oecd.org/daf/investment/codes

³ Information on the OECD Declaration on International Investment and Multinational Enterprises, including the National Treatment instrument, can be found at www.oecd.org/daf/investment/declaration

Of the 18 OECD instruments in the investment field (see Annex 1 for a complete list) Slovenia has already formally adhered to two: the Declaration on International Investment and Multinational Enterprises in 2002 and the Declaration on Sovereign Wealth Funds and Recipient Country Policies at the time of its adoption on 5 June 2008.

Slovenia accepts all of the OECD investment instruments with the following qualifications:

- *Decision of the Council adopting the Code of Liberalisation of Capital Movements [OECD/C(61)96]*

Slovenia accepts this Decision subject to a list of proposed reservations to the Code of Liberalisation of Capital Movements.

- *Decision of the Council adopting the Code of Liberalisation of Current Invisible Operations [OECD/C(61)95]*

Slovenia accepts this Decision subject to a list of proposed reservations to the Code of Liberalisation of Current Invisible Operations.

- *Declaration on International Investment and Multinational Enterprises [C(76)99]*

Slovenia accepts the Declaration and related Decisions and Recommendations [C(89)76; C(88)131; C(88)41; C(87)76 and C(86)55] subject to a list of proposed exceptions to the National Treatment instrument. Slovenia also updates a list of other measures reported for transparency under the instrument.

The Codes of Liberalisation

Slovenia has endorsed the objectives and principles of the Codes of Liberalisation of Capital Movements (CLCM) and Current Invisible Operations (CLCIO), hereinafter “Codes of Liberalisation”. Slovenia’s acceptance of the obligations of the Codes of Liberalisation is subject to reservations, which are listed in Annexes 2 and 3 of the Investment Committee’s Report. The Report examines the conformity of measures maintained by Slovenia with the Codes of Liberalisation, as well as the implications of Slovenia’s proposed adherence to the OECD Codes of Liberalisation. Slovenia’s proposed position under the OECD Codes of Liberalisation can be summarised as follows:

In the field of inward direct investment, Slovenia has opened up all sectors to investors from European Economic Area (EEA) countries.⁴ Restrictions on investment by non-EEA residents apply to maritime and air transport. Non-EEA institutions may not establish branches for the purpose of providing depository services to resident collective investment funds. Overall, the level of restrictiveness of Slovenia’s regulations related to inward direct investment is well below the OECD average [Annex 6].

In the mining sector, prior incorporation in Slovenia or in an EEA country is a condition for a foreign-controlled entity to apply for a concession. In order to comply fully with the principle of non-discrimination, mining concessions will be granted on an equal basis also for non-EEA OECD members by amendments to the Mining Act. The amendments were expected to be in force within the second half of 2010.

4. In addition to the EU countries, OECD members of the EEA include Iceland and Norway.

Slovenia maintains only two restrictions on other capital movements. One applies to the building or purchase of real estate by non-residents who are not nationals of an EU country. However, Slovenia has committed to providing equal conditions for the acquisition of real estate for nationals from and enterprises established in any OECD country and submits that legislative amendments are not required for this purpose. Slovenia's reservation under item III/A of the CLCM only covers acquisition of real estate by natural persons who are residents but not nationals of an OECD country. The other restriction concerns foreign portfolio investment, which may be affected in the transport sector, because restrictions on inward direct investment apply to aggregate foreign ownership.

In the field of exchange controls, residents and non-residents may carry out freely payments and transfers in connection with international current transactions, as well as with permitted capital account transactions. Slovenia accepted the obligations of Article VIII of the Articles of Agreement of the International Monetary Fund in September 1995.

In the area of cross-border trade in services, Slovenia maintains restrictions vis-à-vis non-EEA resident service providers in the following areas: road transport services; most insurance, banking and other financial services.

Non-discriminatory treatment among members is another obligation of the Codes (Articles 8 and 9). Slovenia has confirmed that reciprocity clauses will not apply to any OECD country. Slovenia currently maintains reciprocity in areas such as real estate, cross-border transport, and cross-border provision of professional services, as a consideration to be taken into account by the authorities in deciding to authorise a transaction by a non-EEA resident. As a result of the accession review, reciprocity considerations in insurance branching were eliminated in March 2009. The Slovenian authorities worked on amendments to the relevant laws for adoption by Parliament before accession to the OECD to specify that the remaining reciprocity clauses will not apply to OECD countries.

Liberalisation vis-à-vis EEA countries, not extended to other OECD Members is another form of discriminatory treatment. Slovenia had already eliminated discrimination in the area of gambling where until January 2010 ownership of operators of games of chance was limited to EEA nationals or companies established in an EEA country. Slovenia has committed to eliminate discrimination against non-EEA OECD countries for the granting of mining concessions and in the cross-border provision of marine, shipping, commercial aviation and transport insurance. The cross-border provision of these insurance services is in conflict with Slovenia's GATS commitments. Slovenia has also committed to liberalise the cross-border provision of non-compulsory insurance services of commercial land vehicles. Slovenia planned to amend its Insurance Act in 2010 to eliminate restrictions on the cross-border provision of these insurance services by non-EEA OECD countries.

In a letter to the Chair following the second accession examination, Slovenia made a declaration to the effect that it "wishes to reaffirm that it fully adheres to the principles of liberalisation and non-discrimination contained in the OECD Codes of Liberalisation and notes that it has taken a number of liberalisation measures during the accession process, which apply to all OECD Members. Slovenia will continue to make progress after accession, giving special attention to extending the benefits of liberalisation beyond the European Economic Area to all OECD Members. Slovenia will report to the Committee on progress within a reasonably short timeframe after eventual accession".

In cases where Slovenia commits (i) to a liberalisation measure without making legislative amendments or (ii) to a liberalisation measure and to amending its legislation accordingly in due course, Slovenia submits that these liberalisation measures will have effect from the date of Slovenia's accession to the OECD by virtue of the fact that, according to Slovenia's Constitution, international obligations, including those set out in the Accession Agreement with the OECD, prevail over national law.

Slovenia maintains national security related measures in the area of defence. Slovenia has committed to observe the guiding principles of non-discrimination, transparency and predictability, proportionality, and accountability in the implementation of national security related investment measures as expressed in the Recommendation on Guidelines for Recipient Country Investment Policies relating to National Security, adopted by the OECD Council on 25 May 2009 [C(2009)63]. Slovenia took part in the development of this Recommendation as a participant in the Freedom of Investment process and formally accepts the Recommendation.

Declaration on International Investment and Multinational Enterprises

Slovenia's updated lists of exceptions to national treatment and of other measures reported for transparency are presented in Annexes 4 and 5 of the Report.

With regard to the Guidelines for Multinational Enterprises contained in the Declaration on International Investment and the subsequent Council Decision on the OECD Guidelines for Multinational Enterprises [C(2000)96], Slovenia has made efforts to promote the Guidelines and the establishment and operation of a National Contact Point (NCP). No specific instance has been brought before the Slovenian NCP so far.

2. INWARD DIRECT INVESTMENT

2.1. Foreign direct investment trends

Foreign direct investment flows, both inward and outward, remain at relatively low levels as a ratio of GDP in Slovenia, although the stock of FDI in GDP reached 28% by the end of 2007. High growth rates in inward direct investment were recorded in the run-up to European Union (EU) membership. Outward direct investment flows have shown greater dynamism and for 2006-2007 Slovenia has become a net exporter of capital, as Slovenian companies have invested abroad more heavily than foreign companies have invested in Slovenia (Table 1). However, the stock of Slovenian investments abroad remains half of the stock of foreign investments in Slovenia.

The overwhelming part of inflows is received from other EU countries. By the end of 2007 Austria became by far the first foreign direct investor in Slovenia with 45% of the stock of foreign investments, followed by Switzerland (11%). The stock of Slovenian investment abroad is concentrated in the countries that formerly were part of Yugoslavia (69% of the total). Serbia (29%), Croatia (22%) and Bosnia and Herzegovina (12%) are the largest recipient countries, followed by the Russian Federation (5%) and the Netherlands (4%).

Table 1. Slovenia: Inward and outward direct investment, 2001-2008

	2001	2002	2003	2004	2005	2006	2007	2008
Inward direct investment								
<i>o/w</i>								
<i>Flows</i>								
Amount (EUR million)	310.0	970.4	938.3	562.4	661.5	503.6	1165.4	1234.7
In per cent of GDP	1.4	4.0	3.6	2.1	2.3	1.6	3.4	
<i>Stocks</i>								
In per cent of GDP	13.1	16.4	19.9	20.9	21.7	22.4	28.5	
Outward direct investment								
<i>flows o/w</i>								
<i>Flows</i>								
Amount (EUR million)	219.1	362.5	456.7	377.5	535.1	747.7	1374.5	977.6
In per cent of GDP	1.0	1.5	1.8	1.4	1.9	2.4	4.0	
<i>Stocks</i>								
In per cent of GDP	5.0	6.0	7.4	8.3	9.9	11.3	14.6	

Source: Bank of Slovenia

FDI inflows are primarily into the financial sector (40% of the outstanding stock), followed by manufacturing (which holds slightly more than a quarter of the total), particularly chemicals (10% of the total). On the outflows side, investments of Slovenian enterprises are mostly in manufacturing (with close to one third of the total outstanding stock), particularly chemicals (9% of the total stock), followed by the financial sector (15%) and other business activities (14%).

2.2. General legal framework for FDI

Legislation governing FDI

Slovenia has gradually liberalised its foreign direct investment regime, and maintains very few restrictions in this field. The Foreign Exchange Act of 1999, which replaced the former Foreign Investment Act of 1988, introduced freedom for inward and outward FDI as a general rule. As part of the procedures to join the EU in 2004, Slovenia fully liberalised the movement of capital and aligned its investment legislation with the requirements of the EU *acquis*. Slovenia adopted the Euro on 1st January 2007. A new Foreign Exchange Act entered into force in September 2008.

The Foreign Exchange Act defines residents as companies and other legal entities with a registered office in Slovenia (except their branches abroad, engaging in a profit-making activity); branches of foreign companies engaged in a profit-making activity and entered in the Register of Companies of Slovenia; sole proprietors and individuals independently performing business activities as their prime occupation, with a registered office in Slovenia or having permanent residence in Slovenia and natural persons with permanent or temporary residence in Slovenia, except for foreign citizens employed by foreign consular and diplomatic representative offices and their family members.⁵

The overall framework for doing business is determined by the Companies Act of 1993, as amended. The latest amendments took place in 2006 and 2008, and aimed, *inter alia*, to implement all relevant EU Directives into Slovenian law. The Act contains a chapter on “foreign undertakings”, which stipulates that, as a principle, with regard to its rights, obligations and responsibilities, a foreign undertaking is equated with domestic undertakings or entrepreneurs with registered office in Slovenia in respect of business conduct in Slovenia, unless otherwise provided by applicable legislation.

Before Slovenia’s entry into the EU, foreign investors could only establish a branch in Slovenia if they had been registered in their own country for at least two years. Following accession to the EU, this measure applied only to companies from non-EEA countries. According to the Slovenian authorities, the main reason for this measure was to avoid the establishment of branches for pure regulatory, tax and other arbitrage purposes with no substantial business activities. The effects of this measure in practice appear to have been fairly limited, since branching is a form of establishment mainly used in financial services where more demanding tests for verification of track record than the two-year rule apply.⁶ In the framework of the accession discussions, Slovenia decided to remove this requirement for investors from all countries and in March 2009 passed the necessary amendments to the Companies Law.

Transparency, consultation and accountability in public decision-making

The Accession Roadmap requires the Investment Committee to review transparency and fairness of implementing practices of the candidate countries in the regulatory domain. The Slovenian government is aware that dissemination of public information is important for ensuring transparent and open policies and is actively promoting transparency and consultation practices. The Access to Public Information Act of 2003 requires government bodies to publish via Internet public information, such as consolidated texts of regulations, programmes, strategies, views, opinions and instructions of a general nature which are

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5. Diplomatic, consular and other representative offices of the Republic of Slovenia abroad financed from the budget, as well as Slovenian citizens employed at these representative offices and their family members, are also considered Slovenian residents.
 6. Moreover, under the GATS, Slovenia committed itself not to require registration of the parent company in its country of origin for more than one year. The bilateral investment agreement with Chile also requires that foreign undertakings be registered for one year before establishing a branch in Slovenia.

important for the interaction of the body with natural and legal persons and for deciding on their rights or obligations; studies, and other similar documents related to the field of work of the body; and documents such as proposals for regulations, programmes and strategies, etc. The obligation also concerns all publications and tendering documentation in accordance with regulations governing public procurement; information on public bodies' activities, administrative, judicial and other services; and all public information requested by the public on three or more occasions.

The information portal geared towards foreign investors, www.investslovenia.org, provides information and assistance to investors. Key legislation, including the Banking Act, the Insurance Act and the Investment Funds and Management Companies Act has been translated into English and is available on the Internet. English translations of secondary legislative acts are published on the internet pages of the relevant sectoral supervisors, in accordance with EU requirements. Slovenia's Model Agreement on the Mutual Promotion and Protection of Investments also explicitly provides for prompt publication of laws, regulations, procedures and international agreements which may affect the operation of investment agreements.

Government bodies must consult with the public and civil society organisations on regulatory proposals or intended Government actions. Draft legislation is published on the relevant Ministry's web page, as well as, during different stages in the process, on the web pages of the Government and the National Assembly. In addition to web-based public consultations, face to face consultations are held with relevant stakeholders, including the business community. In order to further improve public cooperation and consultation in the decision-making process, the government is developing an "e-democracy state portal", where all legislative proposals are published in each stage, from the planning of the proposal to its adoption.

The Ministry of Public Administration systematically examines secondary draft legislation and monitors public consultation. It also examines primary draft legislation during the inter-ministerial consultation processes. Where it considers that requirements regarding reduction of administrative burdens and consultations have not been met, the Ministry can reject proposals of secondary draft regulations. Between 2006 and 2008, the Ministry requested amendments to 29% of draft legislation. The Ministry of Public Administration is working on further developing regulatory impact assessment. It is currently preparing a Handbook for Conducting Impact Assessment, which is scheduled to be incorporated into the Government Rules of Procedure in the first half of 2009. The necessary financial and technical means (*e.g.* information technologies) are being put in place and all public servants involved in preparing regulatory impact assessment will benefit from training.

According to the Slovenian authorities, the administrative and judicial system ensures procedural fairness and integrity. Remedies and appeals mechanisms are accessible to domestic and foreign investors alike, including in relation with licensing and approval procedures.

Operations in real estate

Restrictions apply to acquisition of real estate by non-Slovenian citizens. According to Article 68 of the Constitution of Slovenia, "aliens may acquire ownership rights to real estate under conditions provided by law or a treaty ratified by the National Assembly". The term alien refers to non-Slovenian citizens, and includes non-resident companies and branches of foreign enterprises. Acquisition of real estate by nationals from EU countries was liberalised by virtue of the Treaty of Accession of Slovenia to the EU. For EU candidate countries, the law currently prescribes reciprocity as a precondition for granting an authorisation to acquire real estate. In addition, a number of treaties are in force allowing nationals from most OECD countries to acquire ownership rights to real estate. None of these treaties provides for reciprocity.

Slovenia has committed to providing equal conditions for nationals from, and enterprises established, in all OECD countries for the acquisition of real estate, from the date of its accession to the OECD. The Slovenian authorities state that this will not require legislative amendments as the Accession Agreement with the OECD, which will reflect this liberalisation measure by the absence of a reservation will be considered a treaty under Article 68 of the Constitution and will therefore prevail over national law. The acquisition of real estate by natural person OECD residents, who are not nationals of an OECD country, will still not be allowed. This therefore calls for a reservation under item III/A of the CLCM.

Essential security interests

Slovenia maintains restrictions to national treatment based on essential security considerations in the defence-related industry. In accordance with the Defence Act of 1994, manufacturing by foreign nationals of defence-related products, in addition to general requirements for production activities based on other legislation and regulations, requires special approval by the Ministry of Defence. This restriction was recorded in Slovenia's list of measures reported for transparency under the National Treatment instrument (NTI) (Annex 5) when it adhered to the instrument in 2002.

The Slovenian authorities have indicated that, should Slovenia have to exercise its right under the Codes of Liberalisation or the National Treatment instrument to restrict foreign investment on public order and essential security grounds, it would observe the guiding principles of non-discrimination, transparency and predictability, proportionality and accountability in the implementation of national security investment measures, as provided for in the OECD Recommendation on Guidelines for Recipient Country Investment Policies relating to National Security, which Slovenia, as a participant in the Freedom of Investment process, contributed to develop and has accepted.

Monopolies and concessions

Slovenia maintains concessions and monopolies in limited areas, as reflected in the list of measures reported for transparency under the NTI. Natural resources are categorised as a public good by the Constitution of Slovenia, and their exploitation is possible only after obtaining a concession based on specific legal acts and regulations at governmental or local community levels. Prior incorporation in Slovenia or an EEA country is a condition for a foreign-controlled entity to apply for a concession. In order to fully comply with the principle of non-discrimination, mining concessions will be granted on an equal basis also for non-EEA OECD countries by amendments to the Mining Act. The amendments are expected to be in force within the second half of 2010. The Slovenian authorities have stated that, should the legislative amendments not be in force by the time of OECD accession, no restrictions on the grant of mining concessions will apply to residents of non-EEA OECD countries by virtue of the fact that, according to Slovenia's Constitution, international obligations, including those derived from OECD accession, prevail over national law. Concessions also exist in the area of gambling, as described in section 1.3 below.

Slovenia has public monopolies in the field of postal services for pieces weighing up to 50 grams; passenger rail transport; mandatory pensions and national lottery. Private or mixed monopolies remain in public health insurance and water and electricity distribution.

According to the Slovenian authorities, dismantling of monopolies by way of privatisation has improved access to related services. While electricity transmission is still under public monopoly, five companies have been established for electricity supply, with a view of creating an electricity market and competitive prices. New health service providers are now in place in addition to the public health insurance scheme.

Privatisation

According to the Slovenian authorities, foreign investors have participated in privatisation on a non-discriminatory basis.

As part of the country's economic and social reform programme, the Slovenian government has taken a series of measures to limit the role of the State in economic activities, notably through privatisation. Nevertheless, this role remains strong. Measures included diminishing the role of the two state-controlled funds that were established as part of the privatisation process initiated in 1992, the pension fund ("KAD") and the restitution fund ("SOD"), in the management of companies; and privatising some large companies, like banks, insurance companies and Telekom, in which the State had large direct shares. In the period between 2004 and 2007, the number of companies owned by KAD and SOD fell from 492 to 198. By January 2009, the number of companies in which the State held direct investments had fallen to 93 (42 of them are in majority ownership, the rest are minority shares).

In addition, privatisation programmes have been prepared for some of the largest remaining state-owned companies. In companies in which there is a specific national economic interest, such as in the areas of electricity, railways, roads, infrastructure, telecommunications, banks, insurance, it is possible to propose only a partial privatisation and the State has the possibility to retain a "25% + 1" ownership. This measure could apply to 23 state-owned companies, but so far the government has not made use of it. The purpose of the measure is to allow the government to withdraw from the business of managing companies, and simultaneously to maintain the ability to prevent major changes in the operation of certain companies. According to the Slovenian authorities, the measure, which can be applied in the case of acquisition of a company by domestic or foreign investors, is neither discriminatory nor does it aim to limit foreign ownership.

One of the most important transactions was the sale of the State's share in the Slovenian Steel Group in 2007. The State already sold a 49% share in the Nova Kreditna Banka Maribor (NKBM) bank in November 2007 via an Initial Public Offer. The shares of Telekom are listed on the stock exchange since 2006 and a public tender was issued for the sale of 49% of its equity to a strategic owner, but it was not concluded.

At present, due to the global financial turmoil and reduced interest by investors in equity investments, all privatisation procedures have been halted.

Conflicting requirements

As an adherent to the Declaration on International Investment and Multinational Enterprises, Slovenia has committed to co-operate to avoid or minimise the imposition of conflicting requirements on multinational enterprises and to report on any measures which may conflict with the legal requirements or policies of an OECD Member country and lead to conflicting requirements being imposed on MNEs in different jurisdictions. At this stage, no specific cases of conflicting requirements relating to Slovenian regulation and policies have been reported.

Sovereign Wealth Funds

Slovenia adhered to the OECD Declaration on Sovereign Wealth Funds and Recipient Country Policies on 5 June 2008, the day of its adoption by the OECD Council.

2.3. Sectoral regulations other than financial services

Transport

Slovenia's transport legislation is based on EU rules. Foreign investment in air and maritime transport is subject to limitations which Slovenia proposes to reflect as reservations to item I/A of the CLCM (inward direct investment).

Air transport

Before 2004, registration of an aircraft in Slovenia and ownership of aircraft registered in Slovenia was limited to citizens of Slovenia, commercial companies which were majority-owned and under actual control of Slovenian citizens; societies, associations and flying schools which were domestic legal persons and were majority owned and under actual control of Slovenian citizens, local communities and the state of Slovenia. After accession to EU membership, these rights to register and own an aircraft in Slovenia have been extended to citizens and legal persons of EU and other EEA countries.

Regulation (EC) No 1008/2008 ("the Air Services Regulation") requires that majority ownership and effective control must remain with EU Member States, their nationals, or both. As all EU members, Slovenia has been under the obligation to renegotiate its bilateral air service agreements with non-EU States by introducing standard clauses which bring these agreements in line with this EU requirement. Slovenia proposes to lodge a reservation under item I/A of the CLCM to reflect the fact that liberalisation has not been extended to non-EU investors.

Maritime transport

As a general rule, vessels flying the Slovenian flag must be majority-owned by Slovenian or EU nationals or by legal entities which have their registered seats in Slovenia or another EU country. However, majority-ownership of a vessel flying the Slovenian flag by foreign citizens is possible provided that the operator of the vessel is a Slovenian or EU national or a company having its registered seat in Slovenia or an EU country. Slovenia proposes to reflect these restrictions as a reservation under item I/A of the CLCM.

Gambling

In accordance with the Gaming Act of 1995, operators of games of chance must be established in Slovenia in the form of a public limited company and may only be operated on the basis of a concession granted by the government. The Gaming Act provides that the ownership of operators of games of chance must be limited to nationals of Slovenia or an EEA country, or companies established in Slovenia or in an EEA country.

According to the Slovenian authorities, restrictions on investment in this sector were originally motivated by the need to safeguard the interests of consumers and minors, to prevent gambling addiction, fraud, illegal gambling and money laundering, and to preserve public order. When Slovenia joined the EU, the restrictions were partly lifted, and the right to invest in gambling was extended to EEA-based investors. During the accession discussions, the Slovenian authorities have undertaken to amend the Gambling Act to remove the current discriminatory restrictions based on nationality. Slovenia's parliament adopted this amendment in early 2010. Limitations on ownership were removed by the adopted amendment, while the other – non-discriminatory – conditions for the operation of games of chance, as described above continue to apply. Hence no reservation is needed under item I/A (inward direct investment) of the CLCM.

2.4. Special incentive schemes to attract foreign investment

Fiscal incentives apply to domestic and foreign investors alike. Other financial incentives to foreign investors are granted pursuant to the Act on Attracting Foreign Direct Investment and Internationalisation of Companies of 2004 and the Decree on Financial Incentives for Foreign Direct Investments 2007. Incentives are provided through the Foreign Direct Investments Cost Sharing Grant Scheme which has been in place since 2000 and aims at motivating and facilitating foreign direct investments.

The main goal of these incentives is to lower the entry cost for foreign investors in the manufacturing and service sectors in Slovenia. Grants are available for investments in manufacturing; strategic services (customer contact centres, shared services centres, logistics and distribution centres and regional headquarters) and research and development. To benefit from these grants, investment projects and new jobs created with financial support through the scheme must remain in Slovenia for no less than five years for large companies and no less than three years for small and medium companies. In 2008, around EUR 6 million were allocated to this scheme; EUR 5 million were allocated for 2009.

For the time being, the Slovenian authorities plan to keep in place these special schemes for encouraging foreign investments. At the same time, they are well aware of Slovenia's undertakings under the Decision on International Investment Incentives and Disincentives to which it adhered in 2002. Adhering countries recognise the need to give due weight to the interest of other adhering countries affected by the laws and practices in this field, endeavour to make measures as transparent as possible and are prepared to consult one another on the above matters. The Slovenian authorities also acknowledge that excessive reliance on investment incentives can create vulnerabilities for the economy and that incentives should not become a substitute for broader policies aimed at establishing a sound enabling regulatory environment for investment. They consider that their duration should not exceed that of the shortcomings for which they have been established, and make them subject to regular scrutiny. Periodical net cost-benefit reviews are carried out in order to assess the appropriateness of the incentive programs in light of their goals and to ascertain whether these are the proper tools for achieving the intended goals, including whether to continue with the programs. This practice conforms to the recommendation of the OECD Checklist for FDI Incentive Policies.

2.5. International investment agreements

Bilateral investment treaties in force

Slovenia has signed agreements on the mutual promotion and protection of investments (bilateral investment treaties – BITs) with the following countries: Albania (entered into force in 2000), Austria (2002), the Belgo-Luxembourg Economic Union (2002), Bosnia and Herzegovina (2002), Bulgaria (2000), China (1995), Croatia (2004), the Czech Republic (1994), Denmark (2002), Egypt (2000), Finland (2000), France (2000), Germany (1998), Greece (2000), Hungary (2000), Israel (1999), Kuwait (2004), Lithuania (2002), the Former Yugoslav Republic of Macedonia (1999), Malta (2001), Moldova (2004), the Netherlands (1998), Poland (2000), Portugal (2000), Romania (1996), the Slovak Republic (1996), Spain (2000), Sweden (2001), Switzerland (1997), Thailand (2000), Turkey (2006), Ukraine (2000), the United Kingdom (1999), Uzbekistan (2004) and the Federal Republic of Yugoslavia (2004).

As a member of the EU, Slovenia is also Party to the Partnership, Cooperation and Association agreements signed between the European Communities and their Member States, and third countries. Some of these agreements contain investment-related provisions, such as “most favoured nation” (MFN) treatment for the establishment of subsidiaries and branches. Examples include the agreements with Armenia (1999), Azerbaijan (1999), Chile (2005), Croatia (2005), the Former Republic of Macedonia (2004), Georgia (1999), Jordan (2002), Kazakhstan (1999), the Kyrgyz Republic (1999), Moldova (1998),

the Russian Federation (1997), Ukraine (1998) and Uzbekistan (1999). The Economic Partnership Agreements with Cariforum States and Korea, both signed in October 2008, includes a chapter on investment with provisions directed at facilitating commercial presence and cross border supply of services.

Main characteristics of Slovenia's model BIT

Slovenia accepts the principles embodied in the OECD Draft Convention on the Protection of Foreign Property of 1967. These principles are reflected in Slovenia's model BIT, as follows.

Under the provision on *promotion and protection of investments*, Parties commit to promote and encourage within their territory investments by investors of the other Contracting Party, to accord them fair and equitable treatment and to grant them protection and security. This includes promoting and encouraging, as far as possible, within its territory, investments by investors of the other Contracting Party and admitting such investments into its territory in accordance with its laws and regulations. Parties also commit to accord to investors MFN treatment.

Direct and indirect expropriation: nationalisation or any other measure having equivalent effect to expropriation or nationalisation is prohibited except for public purposes, on a non-discriminatory basis, under due process of law against prompt, adequate and effective compensation. The compensation should be computed on the basis of the fair market value of the investment immediately before the expropriation or impending expropriation becomes public knowledge, whichever is earlier.

The model BIT further provides for *free transfers of funds* related to investments without restriction or delay, at the market rate of exchange applicable on the date of transfer, in a freely convertible currency. Exceptions are possible, and a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to bankruptcy, insolvency or the protection of the rights of creditors; issuing, trading or dealing in securities; criminal or penal offences; or ensuring compliance with orders or judgements in adjudicatory proceedings, provided that such measures and their application are not be used as a means of avoiding the Contracting Party's commitments or obligations under the Agreement.

The model BIT includes both State-to-State and investor-to-State dispute settlement mechanisms. Disputes between the Contracting Parties can be submitted to an arbitration tribunal established in accordance with the provisions of the Agreement. Disputes between an investor of one Party and the other Contracting Party which cannot be settled amicably, can be brought before the competent court or administrative tribunal of a Contracting Party, or conciliation or arbitration established under the rules of UNCITRAL, the International Chamber of Commerce or the ICSID, or any other form of arbitration agreed between the Parties. So far, there have been no disputes brought against Slovenia under a BIT.

2.6. Intellectual property rights

Regulatory framework

Slovenia is aware of the importance of adequate protection of intellectual property rights (IPRs) of both domestic and foreign right holders and has revised its legal framework in this area to adapt it to the requirements of EU and international instruments. This review focuses on the impact that Slovenia's regime for the protection and enforcement of IPRs may have on the investment environment. The review of Slovenia by the Trade Committee will include a more comprehensive review of IPR protection and enforcement.

Slovenian IPR legislation covers authors' rights and neighbouring rights, namely the rights of performers, producers of phonograms, film producers, broadcasting organisations, publishers and makers of databases; patents and supplementary protection certificates; industrial designs, trademark and/or service marks, geographical indications, topography of semi-conductors, plant varieties rights and company names. Key laws include the Copyright and Related Rights Act of 2007, which governs authors and neighbouring rights, including collective management of these rights and collecting societies, and the Industrial Property Act of 2006, which regulates the acquisition and maintenance of patents, supplementary protection certificates, industrial designs, marks and geographical indications for manufactured products.

The non-exhaustive, assets-based definition of investment in Slovenia's model BIT covers IPRs, including protection of copyright and neighbouring rights, computer programmes, patents, industrial designs, trademarks and service marks, geographical indications and appellations of origin, topographies of integrated circuits as well as undisclosed information on know-how.

Slovenia is a Party to most international instruments in the area of IPRs, including: the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); the Convention Establishing the World Intellectual Property Organization; the Berne Convention for the Protection of Literary and Artistic Works; the Universal Copyright Convention; the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms; the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations; the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty; the Paris Convention for the Protection of Industrial Property; the Patent Cooperation Treaty; the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure; the Strasbourg Agreement Concerning the International Patent Classification; the Patent Law Treaty; the Convention on the Grant of European Patents and related Protocols; the Hague Agreement Concerning the International Deposit of Industrial Designs; the Locarno Agreement Establishing an International Classification for Industrial Designs; the Madrid Agreement Concerning the International Registration of Marks; the Trademark Law Treaty; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks; the International Convention for the Protection of New Varieties of Plants.

The Slovenian authorities report that Slovenia has also implemented EU legislation in the field of IPRs, and follows the goals set out in strategic documents of the EU, such as the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, "An Industrial Property Rights Strategy for Europe" of July 2008 and the Resolution by the Council of September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan.

Enforcement

Slovenia is committed to provide strong intellectual property protection and to improve continuously its enforcement system to make such protection effective. Its legislation (Industrial Property Act, Copyright and Related Rights Act) is harmonised with the TRIPS Agreement and, since 2006, also with the EU Directive 2004/48/EC on enforcement of intellectual property rights, which goes beyond TRIPS requirements.

The Slovenian Intellectual Property Office, which is part of the Ministry of Economy and one of the key agencies charged with IPR protection, has intensified its activities in the last three years. It has organised seminars and conferences, including some in cooperation with other organisations, like the WIPO, the European Commission, the European Patent Office and the Slovenian Chamber of Commerce; issued publications on intellectual property, launched a new web-page, and established the electronic publication of the official gazette, which contains data on applications, as well as granted and registered

industrial property rights. It also maintains databases on patents, industrial designs and marks registered by the Office, and established in 2006 a new database on supplementary protection (or patent term extension) certificates registered by the Office which are now accessible on-line, free of charge.

In cases of IPR infringements, right holders may have recourse to administrative, civil and criminal measures.

Administrative measures

The Slovenian customs authorities may act *ex officio* or on request and may seize goods suspected of infringing intellectual property rights. They cooperate with the police, the World Customs Organisation and the European Anti-Fraud Office. They also cooperate closely with customs authorities of other EU members and exchange data on goods and IPR holders who have filed requests for action.

The Market Inspectorate, part of the Ministry of Economy, is competent to carry out *ex officio* supervisory controls. Market inspectors may, among others, enter the premises of a suspect; search computers for illegal software; seize goods which were used or intended for the commission of an offence or were created by such offence; order the infringer to remedy the irregularity within the prescribed time limit and impose monetary fines. Market inspectors regularly report on their activities, mainly in the area of cable retransmission, use of protected works in the public and illegal use of software in the companies. There are only a few such cases per year.

Civil measures

The Copyright and Related Rights and Industrial Property Acts include provisions on civil measures, including injunctions, recall or destruction of infringing goods, destruction of tools used exclusively or principally for infringement, surrender of infringing goods to the plaintiff against the reimbursement of production costs; compensation, publication of judgements; right of information and presumption of ownership for authors and holders of neighbouring rights. In addition, as a rule, the general provisions of the Civil Code, Civil Procedure Act and Execution of Civil Judgements and Securities Act are applicable in disputes concerning intellectual property rights.

While, as a rule, in disputes regarding IPRs courts are only entitled to grant compensation for damages, for some infringements (copyrights and neighbouring rights), the Copyright and Related Rights Act also provides for punitive damages. This provision was introduced in 1995 and remained unchanged because of positive feedback from authors and holders of neighbouring rights.

There is no specialised court for intellectual property disputes. However, the District Court in Ljubljana is exclusively competent in first instance for all disputes concerning intellectual property rights. Appeal against the decisions of the first instance court is possible to the High Court in Ljubljana, and in some cases, to the Supreme Court.

Criminal measures

Serious infringements of IPRs constitute criminal acts and are subject to monetary fines or imprisonment for up to eight years. Infringing goods are confiscated. Legal entities are also liable for infringements of IPRs constituting criminal acts. Sanctions include monetary fines, forfeiture and closure of the company. Only few criminal suits are filed per year.

Enforcement issues are also part of the National Action Plan for the period 2007-2010 for cooperation between the European Patent Organisation and the Slovenian Intellectual Property Office. The plan

provides for the establishment of a national forum for cooperation in enforcement issues with the aim of strengthening cooperation between state authorities and rights holders.

The Slovenian authorities are aware of problems related to enforcement of IPR legislation in the country and report that they have taken measures to address them. For example, there were substantiated criticisms concerning the first Slovenian Industrial Property Act of 1992 and the lack of special provisions on provisional measures for industrial property rights, but this has changed with the entry into force of the second Slovenian Industrial Property Act in 2001, amended in 2006, which introduced provisional measures for industrial property rights.

There have also been concerns regarding the length of court proceedings and backlogs in courts in issuing decisions. To address this problem, the authorities have taken measures such as the introduction of alternative dispute resolution mechanisms; the “Hercules Project”, where experienced judges from high courts and the Supreme Court work at first instance courts; and projects to simplify and standardise court procedures, improve the organisation, management and use of information technologies in courts, etc. These measures have already shown positive results, such as a shorter average duration of proceedings and a decrease in backlogs at some courts. All proceedings concerning intellectual property rights are considered urgent, and the courts have to deal with them as a priority. Proceedings for provisional or preliminary measures are by definition fast and the time limits set by the Law on Execution and the Interim Protection of Claims are very short.

A government pricing regulation for pharmaceuticals (2007) has been criticised by some interested parties as being discriminatory and granting insufficient IPR protection. The regulation establishes that in Slovenia the price for innovative pharmaceuticals would be the lowest price applicable in a range of EU countries, while, for generics, average prices would be applied. According to the Slovenian authorities, this regulation, which was developed in close consultation with the industry, does not affect the IPR protection of pharmaceuticals. It is aimed at ensuring access to high-quality pharmaceutical products to citizens in Slovenia, while at the same time affording adequate revenues to producers.

3. OTHER CAPITAL MOVEMENTS

3.1. Macroeconomic and financial policy context

The Slovenian economy is undergoing a significant slowdown. Economic stability and prudent policies have fostered rapid convergence with the rest of Europe, supported the early adoption of the euro, and should help contain the greater risks for the financial system after a period of rapid credit expansion and easy access to international lending.

Following accession to the European Union in 2004, between 2006 and 2008, above-trend growth was sustained by solid productivity growth and rapid expansion of domestic demand. Domestic spending was spurred by credit expansion to the household sector in the form of consumer and mortgage loans. Capital inflows in the form of credits and loans channelled through domestic financial institutions financed a significant widening of the current account deficit to 4.2 % in 2007 from 0.8 % of GDP in 2003. Half of the widening of the current account in mid-2007 was explained by a rise in domestic commercial banks' net interest payment on loans taken out abroad. Various indicators pointed to an overheating of the Slovenian economy.

Prospects for the Slovenian economy deteriorated in the second half of 2008, mostly on account of shifts in the external environment, with major trading partners entering recession in mid-2008 and external loans becoming less readily available. The flow of net foreign lending to domestic banks turned negative in mid-2008 as a result of the spreading financial crisis and related tightening in international inter-bank markets. Consequently, the expansion of domestic bank loans to domestic non-bank sectors has recorded significant slowdown.

The current macro environment has resulted in larger risks for financial stability. A range of measures have been adopted, including extension of government guarantees to the financial system, which help to mitigate those risks. On the financial side, these measures include amendments to the Banking Act and the Public Finance Act to provide temporary unlimited public guarantee on bank deposits of natural persons and scope for use of public funds to provide support to financial institutions. Banks face increased credit risks associated with the rapid expansion of their lending in recent years and the Governing Board of the Bank of Slovenia noted in its press release of 13 January 2009 that in the future banks must pay particular attention to raising additional capital.

Measures have also been taken to smooth the impact of the global financial turmoil and weaker external trade on economic activity. On the fiscal policy side, the margin of manoeuvre for domestic policy action is enhanced by past efforts to maintain fiscal discipline and the deficit is expected to widen to reach 5.1% of GDP in 2009. The authorities are also considering additional measures in the area of labour market and industrial policies, and a faster implementation of already planned reforms to stimulate economic activity. A recent easing of inflationary pressures has helped to contain the pace of real exchange rate appreciation; however, restoring price competitiveness will require significant labour market flexibility in the context of a common currency.

In the nineties, Slovenia was one of the EU candidate countries that only slowly liberalised its capital account. In 1995-1999, Slovenia introduced new capital controls in the form of unremunerated reserve requirements (in domestic currency) on foreign-trade related loans with a maturity of less than five years.

However, after the adoption of the Foreign Exchange Act in 1999, which was based on the core OECD principle that all operations between residents and non-residents are free unless otherwise specified, the liberalisation of capital movements, on an *erga omnes* basis, was achieved in 2001-2002. The only remaining restriction concerned investments in foreign securities by mutual and investment funds, which was eliminated in 2004. On 1 February 2008, a new Foreign Exchange Act was adopted, which mainly regulates the practical execution of foreign exchange transactions and the physical movement of means of payments in conformity with EU directives.

In the meantime, in order to ensure the compilation of accurate macroeconomic statistics, the Slovenian authorities maintained a reporting requirement for transactions between residents and non-residents. The reporting requirement encompasses both capital inflow and outflow items and covers: (i) data on residents' accounts held abroad; (ii) commercial claims and liabilities to residents; (iii) claims and liabilities arising from trading in securities; (iv) information on non-resident accounts held with banks in Slovenia; (v) foreign currency cash held with banks in Slovenia; (vi) claims and liabilities stemming from cross-border credit arrangements; (vii) data on direct investment equity flows and positions; and (viii) data on trade in services, current and capital transfers. Residents are obliged to report directly to the Bank of Slovenia or indirectly via authorised banks, authorised securities-market participants, the Stock Exchange, the Central Securities Clearing Corporation, the Securities Market Agency (SMA) and other institutions, which maintain securities databases, as well as via the Customs Administration of Slovenia. These reporting requirements conform to Article 5 of the CLCM on controls and formalities.

Overall, the Slovenian authorities consider that their commitments to free capital movements have brought tangible benefits and are sustainable. As an EU member, Slovenia's possibilities to return to capital controls are further limited by the fact that derogations are for situations where free capital movements cause or threaten to cause serious difficulties for the operation of economic and monetary union, subject to decision by the European Council as a whole and for maximum periods of six months.⁷

3.2. Capital Inflows

Securities

There are no restrictions on the admission of domestic securities on foreign capital and money markets (items IV/A1, V/A and VII/A of the CLCM).

There are no restrictions on the purchase by non-residents of capital market, money market and collective investment securities in Slovenia (items IV/C1, V/C1 and VII/C1 of the CLCM), except that portfolio investment may be affected in sectors where restrictions on inward direct investment (reflected in proposed reservations under item I/A of the CLCM) apply to aggregate foreign ownership rather than individual investors' shares of the enterprise's capital (item IV/C1).

Residents may freely sell securities abroad (items IV/D2, V/D2 and VII/D2).

Credit, loans and deposits

There are no restrictions on items VIII/A (credits granted by non-residents to residents, linked with international commercial transactions or with the rendering of international services) or IX/A (financial credits and loans granted by non-residents to residents).

7. "Maastricht Agreement: implications for capital movements", Note by the representative of the EU Commission [DAFFE/INV(92)14] and the Treaty on the Functioning of the European Union, Article 66.

Other operations

The Slovenian authorities confirmed that they have no restrictions on capital inflows arising from operations in negotiable instruments and non-securitised claims (item VI), sureties, guarantees and financial backup facilities (item X), operations in foreign exchange (item XII), life assurance (item XIII), personal capital movements (item XIV) and the physical movement of capital assets (item XV).

3.3. Capital Outflows

Securities

Operations by non-residents to issue securities on the Slovenian securities market are fully liberalised. The Slovenian Market in Financial Instruments Act (2007), which implements the relevant EU directives, provides that securities may not be offered to the public without prior publication of a prospectus approved by the SMA. The prospectus of an EEA issuer does not have to be approved by the SMA if it has been already approved in any other EEA country based on relevant EU directives. The criteria for approving the prospectus are based on International Organization of Securities Commissions' internationally recognised standards and are the same for domestic and non-EEA based issuers.

Investment coupons or investment funds' shares of non-EEA origin may be marketed or advertised in Slovenia only if: (i) these investment coupons or investment funds' shares are sold in Slovenia and (ii) the investors in these funds enjoy at least the same level of protection as do funds established in Slovenia and the EU. The admission and sale of foreign collective investment securities are covered under items VII/B and C2. A non-EEA management company is allowed to market and sell those investment coupons and investment funds' shares that are included in its authorisation. The processes to establish whether the level of investor protection is at least on the same level as in Slovenia and the EEA are case-by-case, non-discriminatory assessments.

According to the information provided by the SMA, no application for an authorisation to market non-EEA based investment funds was received so far and therefore the above provisions have not yet been tested in practice. However, the Ministry of Finance confirmed that it will monitor future market developments. If the current rules prove to provide insufficient opportunities for applicants to demonstrate that in the respective non-EEA OECD countries the protection of investors in marketing of investment coupons or investment funds' shares is equivalent to that applicable in Slovenia, the Ministry will propose appropriate amendments to the current legal framework.

While the rules are not identical for EEA and non-EEA-based residents, they meet the "equivalent treatment" test of the Codes. Therefore, no reservations are proposed on the admission (issue and introduction) of securities on domestic markets (items IV/B, V/B and VII/B), the sale in Slovenia of securities of non-residents (items IV/C2, V/C2 and VII/C2) and the purchase of foreign securities by residents (items IV/D1, V/D1 and VII/D1).

Unlike a domestic issuer or an issuer from an EEA-country, a non-EEA issuer, a person intending to publicly offer in Slovenia securities from such issuers or an applicant for the admission of such issuer's securities to public trading on the stock exchange, may do so only through an investment firm that has been authorised by the supervisor to perform investment services in Slovenia. To the extent that this provision corresponds to a requirement that the issue and introduction of foreign securities must be carried out through authorised resident agents, it is not deemed a restriction under the CLCM. Until now, no third country issuer has applied for public offer or introduction of securities in Slovenia.

Banks, insurance companies and pension funds face no restrictions regarding their holdings of foreign assets. Banks are obliged – in accordance with EU directives – to calculate their net foreign exchange

position as a basis for the calculation of their capital requirements for foreign exchange risk. There are supervisory limits on banks' net open foreign exchange positions, but these limits are in conformity with international standards, as laid down in the Basel Core Principles. Under the CLCM, countries may regulate the net external position of domestic financial institutions dealing in foreign exchange, so the rule on the net open position limits does not require a reservation.

Other operations

The Slovenian authorities have confirmed that they have no restrictions on operations in negotiable instruments and non-securitised claims (item VI), sureties, guarantees and financial backup facilities (item X), operations in foreign exchange (item XII), life assurance (item XIII), personal capital movements (item XIV) and the physical movement of capital assets (item XV). There are no non-resident-owned blocked funds (item XVI).

4. FINANCIAL SERVICES: ESTABLISHMENT AND CROSS-BORDER TRADE

4.1. Overview of financial sector developments

Financial sector reforms during the past 15 years have brought about harmonisation with EU legislation. They have been aimed at fostering competition, while preserving stability in the context of free capital movements. Liberalisation of cross-border financial services has enabled direct competition between domestic and foreign financial institutions. Recent changes in financial sector regulation reinforce these trends. Greater competition in the retail financial sector is expected following the full implementation of the EU Payment Services Directive that will allow non-bank intermediaries to provide payment services. In addition, the full introduction of Single Euro Payments Area (SEPA) rules will boost integration with European markets as, under the SEPA scheme, all electronic payments in the Euro area are treated in the same way as domestic payments.

The Slovenian authorities have indicated that, despite the negative impact of the international crisis on the domestic financial system, they remain committed to open financial markets and that standstill and non-discrimination remain the guiding principles of their financial policy response to the crisis.

Despite financial sector reform efforts, financial deepening is modest compared to the Euro area average.⁸ This lag reflects both Slovenia's lower level of economic development and the relatively recent creation of financial markets and infrastructure.

Banks are dominant in the financial system, with approximately 73% of financial assets in 2007. Institutional investors (pension funds and insurance companies) represent merely 10% of total assets, but are gaining in importance in a trend that is likely to be sustained by population aging. Other financial intermediaries – primarily investment funds and leasing companies – made up approximately 16% of financial assets at end-2007.

Foreign participation in the banking system is significant, but remains modest in the insurance sector. Of the 21 banks operating in Slovenia at the end of 2007 (not counting the three savings banks), eight were subsidiaries of foreign banks. Overall, in 2008 foreign investment in the banking sector accounted for 31% of total equity. In addition, three foreign banks had branches in Slovenia. In contrast, the 5 foreign-owned insurance companies (out of a total of 14 insurance and 2 reinsurance companies) held a market share of only 9% of the entire insurance market, which is dominated by the state-owned company, Triglav.

Government ownership of assets of the banking system has declined after the sale of significant stakes in the two largest banks,⁹ but is still comparatively large. In spite of the partial privatisation, the two largest banks remain majority State-owned, partly by the central government and partly by KAD (compulsory second pillar pension fund) and SOD (state-owned fund, Slovenije Odskodninska Druzba).

8. Financial assets of the Slovenian financial sector without the central bank represented 177% of GDP as of end-2007, a level which is 40 percentage points lower than the average Euro area level (excluding the latest Euro zone member, the Slovak Republic).

9. These operations involved the sale of a 34% stake in Slovenia's largest bank to a Belgian bank and of a 49% stake in the second largest bank by means of an IPO in 2007.

4.2. Establishment

Banks

The Slovenian Banking Act follows EU principles when determining the procedures for granting an authorisation to establish a bank or to approve an investment in an existing bank. The requirements are the same for residents and non-resident investors; they include a fit and proper test and the submission of a business plan¹⁰ for the prospective institution to the Bank of Slovenia, which is responsible for bank supervision. Investment in existing banks, whether by foreign or domestic entities, is subject to authorisation at thresholds of 10, 20, 33 and 50% of a bank's capital or voting rights. Authorisation involves the submission of certain information and documents to the supervisor to determine whether the potential investor is fit and proper.

Branches of foreign banks also require an authorisation from the Bank of Slovenia, except for EEA-based banks falling under the European "single passport" system. In addition to the fit and proper test and presentation of a business plan, the foreign bank must obtain an authorisation from its home country supervisor (or a statement that such authorisation is not needed); a description of the deposit insurance scheme in its home country and a statement that the branch will keep all its documentation in Slovenian language. The Bank of Slovenia may also request financial guarantees from the parent bank to ensure that the liabilities of the branch will be met. There is no experience with how these rules operate, as there have been no requests yet for the establishment of a branch of a non-EEA bank. However, the Slovenian authorities confirmed that if they introduce capital requirements for banks' branches, the requirements will conform to the provisions of Annex II to Annex A of the CLCIO.

The Slovenian branch of a foreign bank may be required to join the Slovenian deposit guarantee scheme. Such a requirement will be imposed in those cases in which the deposit guarantee of the home country will not cover the branch or if the guarantee offered is lower than that required in Slovenia.

Slovenian banks that wish to establish a branch abroad must obtain authorisation from the Bank of Slovenia; however, for opening of a branch in an EEA-country only notification is necessary. Both the authorisation to establish a branch in a non-EEA country and the notification to establish a branch in an EEA country are granted if, after taking into account the volume and type of business that the bank intends to perform through its branch, the Bank of Slovenia decides that there are no good reasons to doubt the appropriateness of the organisation or management of the branch or of the bank's overall financial position. In granting the authorisation to establish a branch in a non-EEA country, an additional requirement is that the Slovenian authorities should have adequate access to information from the host country authorities, enabling them to perform their supervisory responsibilities effectively. The fulfilment of this requirement may necessitate the conclusion of a cooperation arrangement with the host country authorities.

Representative offices of non-EEA banks must be authorised by the Bank of Slovenia and branches of non-EEA investment firms and management companies by the SMA. However, the Slovenian authorities have confirmed that the authorisation is granted automatically once all prescribed documentation has been filed. Hence, the measure does not require the lodging of a reservation under item E/7 (conditions for establishment and operation of branches, agencies, etc.) of the CLCIO.

Regarding procedural rules for the treatment of applications for bank licences, the Banking Act requires that the Bank of Slovenia make a decision within six months from the receipt of an application. Furthermore, if the procedural conditions for deciding the application have not been met, and the

10. The law refers to "strategic orientation," which the authorities have clarified to mean "business plan."

deficiencies can be eliminated, the process can be stopped for a period between 8 and 15 days in order to give the petitioner the opportunity to remedy any deficiencies. These rules are in conformity with the provisions of Annex II of Annex A of the CLCIO.

The data on applications also suggests procedural fairness. In 2004-2007, authorities accepted all 20 applications submitted for performing banking services, establishing a branch in a non-EEA country, or establishing branches by non-EEA banks. During this period, there were two rejections of requests from domestic applicants to acquire a qualified holding. In 2008, the authorities responded positively to nine applications received for performing banking services and all three applications for acquiring a qualified holding in a bank, while one application of a domestic bank for establishing a branch in an EEA country was rejected.

Insurance and private pensions

The Slovenian insurance sector is open to foreign investment in existing companies and the establishment of subsidiaries on an equal footing with domestic investors. The Insurance Act of 2000 establishes that the Insurance Supervision Agency (ISA) should authorise the establishment of an insurance company (including subsidiaries) and the acquisition, by residents or non-residents, of qualifying holdings of insurance companies (10, 20, 33 and 50% of voting rights or capital in the company). The requirements include the provision of certain information and documents to the supervisor that help in determining whether the potential investor is fit and proper.

Foreign insurers and pension funds require prior authorisation from the ISA to open a branch, except for EEA-based insurance and pensions funds which fall under the European “single passport” system. Non-EEA insurance undertakings must obtain authorisation from their home supervisor, satisfy the fit and proper test and maintain a guarantee capital. The amount of the guarantee capital is determined by the obligations arising from insurance contracts concluded in Slovenia or covering risks situated in Slovenia. This financial guarantee has to be placed in Slovenia and amounts to 25% of the branch’s guarantee fund as defined in the Insurance Act. The amount of the guarantee capital for a branch from a non-EEA country is equal to the capital required for incorporating an insurer in Slovenia. Until now, no application has been received from a non-EEA insurance company to establish a branch in Slovenia. No reservation is proposed, as the guarantee capital required under Slovenian law is in conformity with the provision of the CLCM, which requires that “where financial guarantees of any kind are imposed for the establishment of a branch or an agency of a foreign insurer, the total amount of such financial requirements [should] be no more than that required of a national insurer to engage in similar activities.”¹¹

Branches of non-EEA insurance companies are also required to invest the surplus of own assets over the required guarantee capital in the territory of the EEA. According to the Seventh Examination of Members’ Reservations to the Insurance and Private Pensions Provisions of the CLCIO [C(2008)4], this was deemed to be an equivalent requirement to that imposed on national insurers in the EU and hence EU countries did not have to lodge a reservation under this item. Nevertheless, the Slovenian authorities indicated that they intend to change the law to allow the investment of the surplus of own assets over the required guarantee capital of a branch in any OECD country.

Before the OECD accession process begun, reciprocity considerations applied in Slovenia to the granting of authorisation for branches of non-EEA based insurers and private pension service providers. These considerations applied to item I/A (direct investment) of the CLCM and items D/6 (conditions for establishment and operation of branches and agencies of foreign insurers), D/7 (entities providing other

11. Annex I to Annex A of the CLCIO.

insurance services) and D/8 (private pensions) of the CLCIO. The reciprocity provision was eliminated vis-à-vis OECD members in March 2009.

Procedural rules require that the ISA issue a decision within six months of receiving an application, which is in conformity with the requirements of the CLCIO.

Securities firms and other non-bank financial institutions

Foreign investors receive national treatment for the establishment of investment companies and investment management companies in Slovenia. The establishment and acquisition of qualifying holdings in management companies (at thresholds of 10, 20, 33 or 50% or more of shares or other rights) is regulated by the Investment Funds and Management Companies Act. The Act also regulates qualifying holdings by a management company in another legal person (the acquisition of 10% of the voting rights or capital). The supervisor may reject an authorisation request from a foreign prospective qualifying shareholder if it is likely that the exercise of prudential supervision would be considerably hindered or made impossible. Supervision would be deemed to be impossible or considerably hindered – among other prudential considerations – in case of non-transparent ownership and inadequate financing by the prospective shareholder.

Branches of non-resident investment management companies require prior authorisation, except for EEA-based institutions. An authorisation may be refused if it is likely that the exercise of supervision will be made impossible or considerably hindered. Branches may sell only those investment coupons or shares of those investment funds that have been included in their authorisation and have to request a new authorisation if they wish to sell other coupons or shares. As the rule is applicable to all management companies, no reservation is proposed.

Another condition for establishing a branch of a non-EEA management company is that the branch should hold, placed on an account opened in Slovenia, at least 25% of the total value of units, shares or investment funds that it intends to sell in its first month of operation in Slovenia. Subsequently, the branch has to keep on such an account funds that at least cover its liabilities to holders of the investment coupons and investment fund shares sold by it in Slovenia. This rule is the equivalent of a liquidity ratio; hence no reservation is proposed.

Based on saver protection considerations, Directive 85/611/EEC requires Slovenia to ensure that a depository of an undertaking for collective investment in transferable securities (UCITS) either have its registered office in the same EU country as that of the undertaking or be established in the EU country if its registered office is in another EU country. This rule calls for a reservation under item I/A of the CLCM and E/7 of the CLCIO.

The Securities Market Agency must reply to authorisation applications within statutory periods which are in conformity with the provisions on controls and formalities in the CLCM and Annex I to Annex A of the CLCIO. No requests for authorisation have been rejected in the 2004-2008 period.

4.3. Cross-border provision of financial services

Insurance services

Slovenian regulations are in line with the requirements under the Codes established under item D/1 (social security and social insurance), which covers transfers and payments. Slovenian residents are allowed to transfer freely contributions and premiums for social security and social insurance payable in another OECD member. Foreign social insurers are allowed to transfer freely the benefits payable to Slovenian residents.

As a general principle, the cross-border provision by a non-resident insurer of most insurance services in Slovenia is not allowed, except for EEA-based entities. At the same time, Slovenian residents may purchase abroad insurance services at their own initiative.

Regarding insurance relating to goods in international trade (item D/2), Slovenian legislation applies restrictions on operations in the following three categories:

- The cross-border provision by non-EEA residents of marine shipping, commercial aviation and transport insurance. This restriction is in conflict with Slovenia's commitment under the GATS¹² not to apply restrictions in this area to any GATS members, including therefore all current OECD Members. No reservation under the CLCIO may be lodged for those operations that are liberalised under Slovenia's GATS commitments. The Slovenian authorities intend to modify the Insurance Act in order to ensure conformity between the legislation and Slovenia's commitments under the GATS. As a general overhaul of the Insurance Act is planned for 2010 to codify the changes related to the EU Solvency II regime, the changes required to eliminate the inconsistency between Slovenia's GATS commitments and domestic legislation will be enacted at the same time. Slovenia has indicated that the procedure for the modification of the Insurance Act is still in its initial stage; no formal proposal has been adopted yet. The Slovenian authorities submit that the cross-border provision of marine shipping, commercial aviation and transport insurance services will be liberalised upon Slovenia's accession to the OECD, by virtue of the constitutional principle that the international treaty obligations in the Accession Agreement prevail over domestic legislation.
- The cross-border provision by non-EEA residents of non-compulsory insurance services of commercial land vehicles (including of railway rolling stock or road vehicles). GATS obligations do not cover these services, so a reservation by Slovenia under the CLCIO would not conflict with its GATS obligations. Nevertheless, Slovenia does not propose to lodge a reservation in this area. The absence of a reservation implies that the non-compulsory insurance services of commercial land vehicles will be liberalised upon Slovenia's eventual accession to the OECD, by virtue of the constitutional principle that international treaty obligations in the Accession Agreement prevail over domestic legislation.
- The cross-border provision by non-EEA residents of compulsory third-party liability insurance for road vehicles. Slovenia proposes a reservation in this area under item D/2. GATS obligations do not cover compulsory third-party liability insurance for road vehicles.

The prohibition of the cross-border provision of life insurance and other insurance services by non-EEA providers gives rise to the proposed partial reservations to items D/3 (life assurance) and D/4 (all other insurance) of the CLCIO.

Slovenia maintains no restrictions on reinsurance and retrocession operations between residents and non-residents. Hence, no reservations are proposed under item D/5 (Transactions and transfers in connection with reinsurance and retrocession).

Regarding entities providing other insurance services (item D/7), Slovenia maintains restrictions on the cross-border provision in Slovenia of these services by non-EEA residents, but not on transactions

¹² According to a GATS Understanding, the areas in insurance falling under insurance relating to goods in international trade cover maritime shipping; commercial aviation; space launching and freight; and goods in international transit.

entered into at the initiative of the consumer, nor on the establishment of branches. The restriction on cross-border service provision is reflected in the proposed reservation under item D/7.

Regarding private pension services (item D/8), under Slovenian legislation, a provider of a non-EEA supplementary pension insurance scheme may only be a mutual pension fund, pension company, insurance company and a pension scheme provider established in accordance with the applicable EU Directive and the regulations applicable in an EEA country. Hence, a non-EEA supplementary pension insurance provider may not offer its services in Slovenia on a cross-border basis. However, non-resident companies (pension companies, insurance companies and banks) managing pension schemes may establish branches in Slovenia to provide such services. Thus, the proposed reservation under item D/8 (private pensions) reflects that the reservation is applicable only to the cross-border provision of services by non-EEA based entities.

In addition to these restrictions, there are certain tax provisions which grant preferential treatment to domestic and EEA-based insurers and private pension services providers. The Corporate Income Tax Law (CIT) allows the partial deduction of premiums paid to life insurers and contributions paid into occupational and non-occupational pension insurance schemes. The provision does not differentiate between premiums and contributions paid to domestic or foreign entities. However, the CIT and the Personal Income Tax Law (PIT) also allow for the deduction from the tax base of contributions to voluntary supplementary pension insurance schemes, on condition that these are paid to a pension provider with a registered office in an EEA country. The above rules in the CIT and PIT on the voluntary supplementary pension funds are discriminatory and lead to the proposed reservation under the relevant portion of item D/8 of the CLCIO.

Banking and investment services

Slovenia maintains restrictions on the cross-border provision of banking and investment services from outside the EEA. The general principle is that financial institutions established in another EEA country benefit from the single passport system and do not need to apply for an additional authorisation to offer their services in Slovenia. However, financial institutions that are not established in the EEA may not offer such services in Slovenia. This requirement leads to proposed reservations under items E/2 (banking and investment services), E/4 (asset management) and E/5 (advisory and agency services).

The requirement that fund transfer services may take place only through authorised domestic banks affects operations falling under item E/1 (payment services). The CLCIO allows this type of requirement¹³ and, therefore, no reservation is proposed under this item.

Operations falling under item E/2 are affected by the rule that cross-border banking services be provided only by EEA entities, except in the case of granting credit. Likewise, cross-border investment services may be provided directly only by EEA investment firms; others must do so only through an established branch. In the case of broker services, a non-resident service provider may offer its services in Slovenia, conclude transactions, accept and forward the orders of clients, sell financial instruments and provide advice to clients in relation to financial instruments or services. However, these services must be provided through the intermediation of an authorised agent acting on behalf of the non-resident broker. For an agent to be authorised it must be registered with the SMA and must have a registered office in Slovenia or in another EEA country. These measures are covered by the proposed reservation under item E/2.

13. This understanding is reflected in the Supplementary explanatory notes to item E/1 of the CLCIO, included in the User's Guide of the Codes, as approved by the OECD Council.

According to the Market in Financial Instruments Act of 2007, non-EEA based stockbrokers are not allowed to provide cross-border custodial and depository services. Accordingly, Slovenia proposes to lodge a reservation under item E/3 for custodial and depository services.

Cash management, portfolio management, pension fund management and safekeeping of assets may be provided without establishment only by an EEA-based financial service provider. These rules lead to the proposed reservation under item E/4 (asset management). There are no rules for trust services in Slovenian legislation.

5. CURRENT INVISIBLE OPERATIONS OTHER THAN FINANCIAL SERVICES

5.1. Current transfers and payments

Residents and non-residents may carry out freely payments and transfers in connection with current international transactions. Slovenia accepted the obligations of Article VIII of the Articles of Agreement of the International Monetary Fund in September 1995.

5.2. Trade in non-financial services

Transport

Maritime transport

There is one international port on the Slovenian coast. This port is open to international freight traffic, without any differentiation as to who owns the freight. Consequently, no reservation is proposed under item C/1 (maritime freights).

Road transport

There are restrictions on cross-border road transport services provided by non-Slovenian based residents, both for passengers (transit; picking up or setting down on an international journey; transport within the country) and for freights (transit; delivery on an international journey; collection on an international journey; return cargo where collection is authorised; return cargo where delivery is authorised; transport within the country, unless otherwise provided for in international agreements. Reciprocity applies to international regular transport of passengers. These restrictions lead to a proposed reservation under item C/3 (road transport: passengers and freights, including chartering).

Occasional carriage of passengers from Slovenia to countries signatories of the Interbus agreement¹⁴ and vice versa is performed in line with the provisions of this agreement, while transport from Slovenia to the countries which have not signed the Interbus agreement is performed according to other international agreements, bilateral agreements and the Road Transport Act. The Slovenian authorities have confirmed that they will not apply reciprocity to non-EEA OECD countries in the area of international regular carriage of passengers.

The reciprocity requirements regarding international regular carriage of passengers prescribed by the Road Transport Act will be abolished by amendments to the Act. With the envisaged changes, in the area of international regular carriages of passengers, non-EEA OECD countries will be treated equivalently to the parties of the Interbus agreement. Should the legislative amendment not be passed by the time of Slovenia's accession to the OECD, Slovenia submits that the reciprocity requirement will not be applied to

14. The Interbus Agreement (or Interbus Agreement on the International Occasional Carriage of Passengers by Coach and Bus) is a multilateral agreement on occasional carriage of passengers by coach and bus between EU and other states. A country can accede to the agreement at any time. A short summary and the whole text are available at <http://europa.eu/scadplus/leg/en/lvb/l24264.htm>.

OECD members by virtue of the constitutional principle that the international treaty obligations in the Accession Agreement with the OECD prevail over domestic legislation.

The Slovenian authorities have notified that they intend to withdraw the proposed reservation under item C/3 for “closed-door” tours.

Films

Slovenia is a Party to the European Convention on Transfrontier Television of the Council of Europe and has transposed the provisions of the EU Television Without Frontier Directive into its legislation. These EU rules include a provision by which quotas in favour of European productions are imposed “where applicable and by appropriate means”. The authorities are aware that the flexibility built into this provision enables them to ensure the conformity of their practice with the obligations of item H/1 of the CLCIO. The authorities do not propose a reservation under item H/1.

Item H/1 of the CLCIO does not cover all audiovisual works; it covers only the exportation, import, distribution and use by an OECD country of printed films and other recordings originating from another OECD country, for private or cinema exhibition and for television broadcasts. Item H/1 does not provide obligations on the use of films in public television broadcasting. Slovenia accepts the Recommendation of the Council concerning the Conclusion of Bilateral Agreements for the Co-Production of Films C(64)124.

Professional services

Reciprocity is a factor considered by the licensing authorities when deciding to allow the cross-border provision of legal, engineering, architectural, mountain guide and auditing services in the case of applicants from non-EU countries. Slovenia commits not to apply reciprocity provisions to non-EU OECD members and has committed to make the necessary legislative amendments. As indicated earlier, the Slovenian Government also confirmed that in case not all amendments can be passed by the National Assembly in time, the commitments will be directly applicable by virtue of the constitutional principle that international treaty obligations in the Accession Agreement with the OECD prevail over domestic legislation.

The amendment to the Building Construction Act, which eliminated reciprocity requirements for engineering and architectural professions, was adopted at the end of 2009. The reciprocity provision for mountain guides in the Mountain Guide Act will be eliminated by amending the Act. According to the Government’s normative programme for the year 2010 the Act will be put in the Parliamentary procedure by the end of September 2010. The reciprocity provision in the Auditing Act (Article 51) for the approval of a third-country auditor as a statutory auditor is a direct transposition of Article 44 of EU Directive 2006/43/EC and hence no changes to the law can be effected by Slovenia unless the directive is amended. No MFN exemption under the GATS has been entered to cover reciprocity in auditing services. With reference to all these professional services, should legislative amendments not be passed by the time of Slovenia’s accession to the OECD, Slovenia submits that the reciprocity requirements will not be applied to OECD members by virtue of the constitutional principle that the international treaty obligations in the Accession Agreement with the OECD prevail over domestic legislation.

Legal services

To practice law in Slovenia, lawyers have to be members of the Bar Association. For acceptance into the Bar Association, lawyers who are not Slovenian nationals and have a licence to practice in another EU country need a certificate of knowledge of Slovenian law and must be proficient in the Slovenian language. The Slovenian authorities confirmed that the requirements for practising law in Slovenia are not discriminatory against non-EU residents from OECD countries. Notaries may practice their profession in

Slovenia only if they are Slovenians or residents of an EU country. This rule requires a reservation under item L/6 (professional services) of the CLCIO.

6. OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

6.1. Experience and performance of Slovenia's National Contact Point

Following its adherence to the OECD Declaration on International Investment and Multinational Enterprises in 2002, Slovenia established a National Contact Point (NCP) within the Ministry of Economy. It has published the Slovenian version of the Guidelines on Internet and submitted Annual Reports to the OECD meetings of National Contact Points. However, the NCP, for various reasons, was not fully operational, though activities were in progress for a few years to promote the Guidelines and there was a dialogue with relevant stakeholders.

The Government of Slovenia has declared that it has rectified this situation and has taken the necessary steps to ensure that its NCP, which is based in the Ministry of the Economy, will meet the standards of visibility, accessibility, transparency and accountability. These steps include clarification of the competences of the NCP, liaising with other government authorities, adopting rules of procedure, and a credible plan for the promotion of the Guidelines and the instruments cited therein. The Government also established an intergovernmental group comprised of several competent ministries, to consider specific instances of breach of the Guidelines, which might be brought to the NCP, as well as to discuss and make recommendations, as appropriate, on issues related to corporate responsibility in a broader sense.

The Slovenian authorities have indicated that the NCP is now fully operational. A new website has been established to publish all relevant information about the NCP in Slovene (www.mg.gov.si/si/nkt_oecd) and English (www.mg.gov.si/en/ncp_oecd). Contacts with stakeholder have been strengthened and public presentations of the Guidelines and of the NCP have met with growing interest. A range of activities has been prepared, such as an information campaign, which includes dissemination of the Guidelines, open electronic links, promotional activities, meetings with stakeholders, and seminars. The NCP is also to serve as a reference point for the promotion of responsible business conduct for Slovenian companies abroad.

6.2. Government policies and initiatives to promote responsible business conduct

Slovenia has ratified or otherwise adheres to the various international instruments mentioned in the Guidelines. These include the: Universal Declaration of Human Rights; Copenhagen Declaration for Social Development; ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977 Tripartite Declaration); ILO Declaration of Fundamental Principles and Rights at Work (1998 Declaration); ILO Convention 29 of 1930 and C.105 of 1957 (Elimination of all forms of compulsory labour); ILO Convention 111 of 1958 (Principle of non-discrimination with respect to employment and occupation); ILO Convention 138 of 1973 (Minimum age for admission to employment); ILO Convention 182 of 1999 (Elimination of the worst forms of child labour); ILO Recommendation 94 of 1952 (Consultation and Co-operation between Employers and workers on the Level of Undertaking); ILO Recommendation 146 of 1973 (Minimum age for admission to employment); Rio Declaration on Environment and Development; Agenda 21; Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus); UN Guidelines on Consumer Policy.

Since 2001, Slovenia is a Party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and has adopted legislation, or adapted existing legislation to implement the Convention. This includes amendments to the Criminal Code of 1995 and to the Law on the Liability of Legal Persons for Criminal Offences of 1999. In 2004 Slovenia adopted the Law for the Prevention of Corruption and adopted a national Anti-Corruption Strategy.

There is no government-wide specific strategy in place to promote responsible business conduct. Individual ministries have dealt with specific aspects of responsible business conduct, such as the Ministry of Labour, Family and Social Affairs, the Ministry of the Economy and the Anti-Corruption Commission (which focuses on corruption matters and on issues of conflict of interest). Through administrative reforms and improvements of administrative capacities carried out recently in order to deal with regulatory reform and the requirements of membership in the EU, progress has been made in dealing with responsible business conduct in the areas of environment, energy distribution, employment and social services, food safety and enforcement of regulations.

The Slovenian authorities are aware of the important role of the government in promoting responsible business conduct and are committed to become more active in this field.

7. OECD PRINCIPLES FOR PRIVATE SECTOR PARTICIPATION IN INFRASTRUCTURE

Slovenia's approach to private sector participation in infrastructure

Slovenia accepts the Recommendation on Private Sector Participation in Infrastructure [C(2007)23] and has indicated that its policy is, in general, consistent with the principles therein. The relevant legislation is the Public-Private Partnership Act of 2006 and implementing regulation of 2007 on the eligibility for the execution of projects carried out in public-private partnership.¹⁵ A 2006 decree on the uniform methodology for the preparation and treatment of investment documentation in the field of public finance, adopted on the basis of the Public Finance Act of 2002, is also of relevance.

This regulatory framework is being applied in the implementation of the Slovenian Development Strategy of 2005 and the 2006 Resolution on National Development Projects for the period 2007-2023. The resolution includes a list of key development projects, which will be developed, in part, through public-private partnerships. Projects include economic growth centres, the broadband network; tourism infrastructure; sports infrastructure; national and university libraries; high and postgraduate education; e-health; e-justice; a human resources development fund and scholarship scheme; hospitals and emergency centres; sustainable mobility; modernisation of the railway and motorway network; sustainable energy and hydrogen economy; modernisation of the electric power supply network; new electric power production facilities; and a natural gas storage facility. It is expected that the share of private investments will represent over 60% of the whole investment needed to carry out these projects. Implementation of the Strategy has only started and no projects have been completed yet, it is therefore premature to make a thorough assessment of Slovenia's approach to private sector involvement in infrastructure.

The Secretariat has examined Slovenia's legislation and has held discussions with Slovenian experts in the field of public-private partnerships and has concluded that:

- Slovenia is aware of the high importance of private sector participation in infrastructure for economic development.
- It is also aware of the challenges involved in increased private sector participation, *inter alia*, in terms of financial risks, performance, public buy-in, etc., and of the advantages, such as bringing in innovation, improving synergies between the public and the private sector and between domestic and foreign companies, increased competition, entry of financial and human resources, new technologies and know-how, etc.

Slovenia has had only little experience in involving the private sector in infrastructure projects. However, the regulatory framework in place and the incipient practice developed so far appear to be in line with the principles set out in the OECD Recommendation on Principles for Private Sector Participation in Infrastructure and consistent with Slovenia's declared acceptance of the Recommendation.

Slovenia's approach to public-private partnerships in general, and to private sector involvement in infrastructure more specifically, can be summarised as follows, along the headings of the OECD Recommendation.

15. The Act transposes into Slovenian law some key EU Directives in this area, including Directive 2004/18/EC of the European Parliament and the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Deciding on private or public provision of infrastructure services

The Public-Private Partnership Act prescribes a compulsory market test for all projects which exceed a cost of EUR 5.3 million. These projects can be financed from public resources only if there is no interest in participation by a private partner or when the later phases of the project demonstrate that the participation of a private partner is not economically justified. The main challenge that the Ministry of Finance faces in investment projects is often deficient investment documentation, which does not always enable the adequate execution of a market test as prescribed by the Public-Private Partnership Act and related regulation.

Enhancing the enabling institutional environment

The broad purpose of the Public-Private Partnership Act is to enable and promote private investment in the construction, maintenance and operation of infrastructure and other projects that are in the public interest. Among other issues, the Act aims at ensuring transparency, competitiveness, non-discrimination and regularity of procedures for the creation and operation of public-private partnerships. Other relevant aspects of the enabling institutional environment; *e.g.* issues related to corruption and environmental protection, are addressed in specific legislation. Slovenia's open market and its regulation on access to capital markets are also positive features that can contribute to attracting both domestic and foreign investors to participate in infrastructure projects.

Goals, strategies and capacities at all levels

As described earlier in this report, Slovenia regards transparency in the policymaking process to be very important. This is also reflected in the operation of public-private partnerships, where the government must ensure broad dissemination of public information. Tender notices and other procedural documents must be published on the web, all candidates must have access to the same information for preparing applications and for participating in the procedure; and contractors must be selected in a transparent manner. The Slovenian authorities are aware that officials often lack experience and capacity to fully cope with the challenges of partnerships with the private sector, including foreign investors, and have put training programmes in place to improve this capacity. The Slovenian government is also regularly updating its information technology infrastructure (*e.g.* public procurement portal) in order to facilitate access of private partners to relevant information.

Making the public-private co-operation work

The Slovenian Government is aware of the need to ensure the long term sustainability of relationships between public and private partners. Being a small country, coordination and cross-jurisdictional co-operation are not major challenges in Slovenia. The Public-Private Partnership Act provides for measures to ensure adequate legal protection, including compensation to the private partner in cases of disproportionate burden as a consequence of an unlawful decision by the public partner.

Encouraging responsible business conduct

The Public-Private Partnership Act contains only few specific requirements aiming at promoting responsible business conduct. For example, a selected private partner may be rejected if it is shown that it provided false information, including on the existence of acts of corruption, fraud and money laundering. In the case of two equivalent bids, the public partner may base its choice on the bidders' performance regarding previously determined social issues, such as the employment of unemployed or disabled persons. Current efforts by the Slovenian government to further promote responsible business conduct will also be extended to public-private partnerships.

ANNEX 1
EXTRACTS FROM THE ROADMAP FOR THE ACCESSION OF SLOVENIA TO THE OECD
CONVENTION

A. APPENDIX A.I

Investment Committee

Candidate countries should commit to the following set of core principles on cross border capital movements and services, foreign direct investment and multinational enterprises:

- full compliance with the principles of non-discrimination, transparency and standstill, in accordance with the OECD Codes of Liberalisation and the National Treatment instrument of the OECD Declaration on International Investment and Multinational Enterprises (reservations under the Codes must be limited to existing restrictions);
- an open and transparent regime for FDI including in key sectors. Restrictions must be limited and concern sectors where restrictions are not uncommon in OECD countries;
- liberalisation of other long-term capital movements, including equity investment and debt instruments of a maturity of one year or more; commercial credit and other capital operations relating to international trade are also to be liberalised; a timetable for the abolition of remaining controls on short-term capital movements is required;
- no restrictions on payments or transfers in connection with international current account transactions; the candidate countries must comply with all IMF Article VIII requirements;
- relaxation of restrictions on cross-border trade in services, particularly banking, insurance and other financial services;
- fair and transparent implementing practices and proportionality of the measures relative to the stated objective pursued;
- effective enforcement of intellectual property rights;
- key commitments under investment protection and other international agreements;
- capacity to present a credible plan for the establishment of a visible, accessible, transparent and accountable National Contact Point for the OECD Guidelines for Multinational Enterprises; evidence of the candidate's commitment to the various international instruments cited in the Guidelines.

These principles are reflected in the Instruments, Recommendations, Guidelines and Best Practices outlined below.

A) OECD Decisions and other legally binding instruments

- Decisions on the Codes of Liberalisation of Capital Movements and Current Invisible Operations (1961 and subsequent amendments).
- Decisions related to the Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments).

The Investment Committee (and its subsidiary bodies) will review and assess the willingness and ability of the candidate countries to accept the obligations of these instruments.

B) OECD Recommendations and Declarations

i) The following key instruments have specific policy implications requiring an assessment of the candidate countries' position through a review by the Investment Committee and the subsidiary bodies concerned:

- Recommendation on the OECD Benchmark Definition of Foreign Direct Investment (1995, currently being revised).
- Declaration on International Investment and Multinational Enterprises (1976 and subsequent amendments).

In addition, the candidate countries would be required to complete the IMF/OECD Survey of Implementation of Methodological Standards for Direct Investment and agree to report data for the compilation of the OECD International Direct Investment Yearbook and the annual report on FDI trends published in International Investment Perspectives, in accordance with the timetable and template agreed by Members.

ii) The following instruments are primarily of a technical or operational nature. The position of the candidate countries will be assessed through a technical review by the Secretariat:

- Recommendation on OECD Principles for Private Sector Participation in Infrastructure (2007).

C) Other Issues

None.

B. OECD LEGAL INSTRUMENTS UNDER THE PURVIEW OF THE INVESTMENT COMMITTEE FOR THE PURPOSE OF THE ACCESSION DISCUSSIONS

Decisions

Decision of the Council on the OECD Guidelines for Multinational Enterprises C(2000)96

Decision of the Council on National Treatment C(91)147

Decision of the Council on Conflicting Requirements being imposed on Multinational Enterprises C(91)73

Second Revised Decision of the Council on International Investment Incentives and Disincentives C(84)92

Decision of the Council adopting the Code of Liberalisation of Capital Movements OECD/C(61)96

Decision of the Council adopting the Code of Liberalisation of Current Invisible Operations
OECD/C(61)95

Recommendations

Recommendation of the Council on Guidelines for Recipient Country Investment Policies relating to
National Security C(2009)63

Recommendation of the Council on the OECD Benchmark Definition of Foreign Direct Investment
C(2008)76

Recommendation of the Council on Principles for Private Sector Participation in Infrastructure C(2007)23

Recommendation of the Council on Member Country exceptions to National Treatment and Related

Measures concerning Access to Local Bank Credit and the Capital Market C(89)76

Recommendation of the Council on Member Country Exceptions to National Treatment and National
Treatment related Measures in the Category of Official Aids and Subsidies C(88)131

Recommendation of the Council on Member Country Exceptions to National Treatment and National
Treatment related Measures concerning the Services Sector C(88)41

Recommendation of the Council on Member Country Exceptions to National Treatment and National
Treatment related Measures concerning Investment by Established Foreign-Controlled Enterprises C(87)76

Recommendation of the Council on Member Country Measures concerning National Treatment of
Foreign-Controlled Enterprises in OECD Member Countries and Based on Considerations of Public Order
and Essential Security Interest C(86)55

Recommendation of the Council concerning the Conclusion of Bilateral Agreements for the Co-Production
of Films C(64)124

Other Instruments

Declaration on Sovereign Wealth Funds and Recipient Country Policies C/MIN(2008)8/FINAL

Declaration on International Investment and Multinational Enterprises C(76)99, including the Guidelines
for Multinational Enterprises

1967 Draft Convention on the Protection of Foreign Property

ANNEX 2
SLOVENIA'S RESERVATIONS
TO THE CODE OF LIBERALISATION OF CAPITAL MOVEMENTS

List A, I/A Direct investment:

- In the country concerned by non-residents.

Remark: The reservation applies only to:

- i) *investment in financial services to the extent that under Directive 85/611/EEC, a depository of an undertaking for collective investment in transferable securities (UCITS) must either have its registered office in the same EU country as that of the undertaking or be established in the EU country if its registered office is in another EU country;*
- ii) *majority ownership by non-EU residents of a Slovenian flag maritime vessel, unless the operator is an EU national;*
- iii) *majority ownership of an air company by non-EU residents.*

List A, III/A Operations in real estate:

- In the country concerned by non-residents.

Remark: The reservation applies only to non-residents who are not nationals of a member country.

List A,
IV/C1 Operations in securities on capital markets:

- Purchase in the country concerned by non-residents.

Remark: The reservation applies only to the purchase of shares and other securities of a participating nature which may be affected by the laws on inward direct investment and establishment.”

ANNEX 3
SLOVENIA'S RESERVATIONS TO THE CODE OF LIBERALISATION OF CURRENT
INVISIBLE OPERATIONS

C/3 Road transport: passengers and freights, including chartering.

Remark: The reservation applies to the following road transport operations:

i) for passengers:

- transit;*
- picking up or setting down on an international journey;*
- transport within the country;*

ii) for freights:

- transit;*
- delivery on an international journey;*
- collection on an international journey;*
- return cargo where collection is authorised;*
- return cargo where delivery is authorised;*
- transport within the country.*

D/2 Insurance relating to goods in international trade.

Annex I to Annex A, Part 1, D/2

Remark: The reservation, which includes the activity of promotion, applies only to compulsory third-party liability insurance for road vehicles by foreign insurers other than undertakings headquartered in the EU.

D/3 Life assurance.

Annex I to Annex A, Part I, D/3, paragraphs 1 and 3

Remark: The reservation, which includes the activity of promotion, does not apply to:

- i) insurance services provided by undertakings headquartered in the EU and*
- ii) if the policy has been taken out at the proposer's initiative.*

D/4 All other insurance.

Annex I to Annex A, Part I, D/4, paragraphs 4, 5 and 7

Remark: The reservation, which includes the activity of promotion, does not apply to:

- i) insurance services provided by undertakings headquartered in the EU and*
- ii) if the policy has been taken out at the proposer's initiative.*

D/7 Entities providing other insurance services.

Annex I to Annex A, Part IV, D/7

Remark: The reservation, which includes the activity of promotion, does not apply to:

- i) undertakings headquartered in the EU*
- ii) if the policy has been taken out at the proposer's initiative*
- iii) establishment of branches and agencies of entities providing other insurance services.*

D/8 Private pensions.

Annex I to Annex A, Part IV, D/8

Remark: The reservation, which includes the activity of promotion, does not apply to:

- i) private pension services provided by undertakings headquartered in the EU*
- ii) if the policy has been taken out at the proposer's initiative and*
- iii) the establishment of branches and agencies of private pension providers.*

E/2 Banking and investment services.

Remark: The reservation applies only to banking and investment services provided in Slovenia by undertakings headquartered in non-EU countries. The reservation does not apply to lending to residents.

E/3 Settlement, clearing and custodial and depository services.

Remark: The reservation applies only to custodial and depository services provided by undertakings headquartered in non-EU countries.

E/4 Asset management.

Remark: The reservation applies only to asset management services provided in Slovenia by undertakings headquartered in non-EU countries.

E/5 Advisory and agency services.

Remark: The reservation does not apply to advisory and agency services provided by undertakings headquartered in the EU.

E/7 Conditions for establishment and operation of branches, agencies, etc. of non-resident investors in the banking and financial services sector.

Annex II to Annex A, paragraph 1

Remark: The reservation on paragraph 1 concerns the requirement that under Directive 85/611/EEC, a depository of an undertaking for collective investment in transferable securities (UCITS) must either have its registered office in the same Member State as that of the undertaking or be established in the Member State if its registered office is in another Member State.

L/6 Professional services.

Remark: The reservation applies only to notaries from non-EU countries.”

ANNEX 4
SLOVENIA'S UPDATED LIST OF EXCEPTIONS UNDER THE NATIONAL TREATMENT
INSTRUMENT

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Air transport: Registration of an aircraft is only possible for aircraft owned by Slovenian or EU nationals or companies controlled by them. Granting of an operating or AOC license for performing airline services is provided only to companies controlled by Slovenian nationals or to carriers complying with EU regulations on ownership and control (including principal place of business and activity, and majority-owned by EU Member States/nationals).

Authority: Aviation Act [OG RS 18/01; Multilateral Agreement on the Establishment of a European Common Aviation Area (ECAA)].

Maritime transport: majority ownership by non-EU residents of a Slovenian flag maritime vessel, unless the operator is a Slovenian or other EU national.

Authority: Maritime Code.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.”

ANNEX 5
SLOVENIA'S UPDATED LIST OF OTHER MEASURES REPORTED FOR TRANSPARENCY
UNDER THE NATIONAL TREATMENT INSTRUMENT

A. Measures Reported for Transparency at the Level of National Government

I. Measures based on public order and essential security considerations

a. Investment by established foreign controlled enterprises

Defence: Production and trading of armaments.

Authority: Articles 77 and 78 of the Defence Act.

b. Corporate organisation

None.

c. Government purchasing

None.

d. Official aids and subsidies

None.

II. Other measures reported for transparency

None.

B. Measures Reported for Transparency at the Level of Territorial Subdivisions

None.

C. Activities Covered by Public, Private, Mixed Monopolies or Concessions

At the level of national government

I. Public monopolies

- Postal services for pieces weighing up to 50 grams;
- Passenger rail transport;
- Obligatory pensions;
- National lottery.

II. Private or mixed (public/private) monopolies

- Public Health insurance;
- Water and electricity distribution.

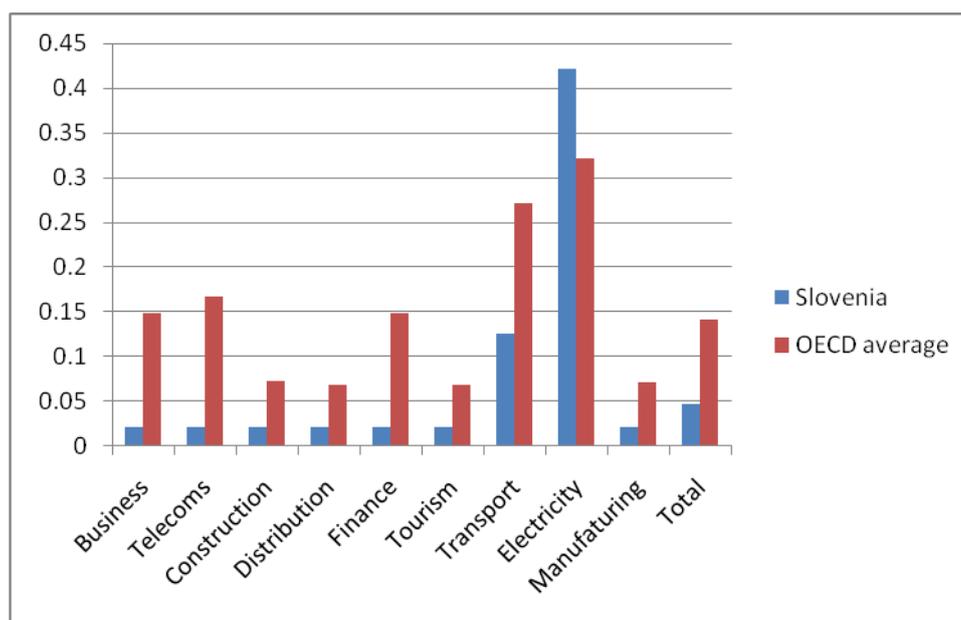
III. Concessions

- Natural resources;
- Games of chance.

At the level of territorial subdivisions

None.

ANNEX 6 SLOVENIA'S FDI REGULATORY RESTRICTIVENESS INDEX



Source: OECD Secretariat

Methodology:

The OECD FDI Regulatory Restrictiveness Index covers the following sectors: investments in i) professional services (including legal, accounting, architectural and engineering services); ii) telecommunications (fixed and mobile); iii) transport (air, road and maritime); iv) finance (insurance and banking); v) distribution; vi) construction; vii) tourism; viii) electricity and ix) manufacturing.

For each sector, the scoring was based on the following elements: 1) the level of foreign equity ownership permitted; 2) the screening and discriminatory notification requirements; and 3) other restrictions (including nationality and residency requirements for companies' key personnel and restrictions on branching). The restrictions are evaluated on a 0 to 1 scale ("0" is the absence of restrictions and "1" is a closed sector). The overall restrictiveness index is a weighted average of the indices, using fixed average FDI and trade shares as weights.

There are a number of important qualifications in using the index, in particular: national security related investment measures are not reflected and primary sectors are not covered. While only statutory restrictions are taken into account and not their actual enforcement, when combined with other factors beyond statutory restrictions, the Index has proven to be a good predictor of FDI performance.

