

# BALANCING PROFESSIONAL STANDARDS AND POLITICAL DISCRETION IN SELECTING TOP OFFICIALS IN SLOVENIA

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## Abstract

One of the key drivers of modern and efficient public administration under the good governance doctrine is an efficient top officials' selection system. A targeted selection and recruitment system is a prerequisite for the whole administration to act in compliance with the political priorities of the government. However, civil servants and top officials alike must put professional competencies above political loyalty. Therefore, a new system was introduced in Slovenia following the 2003 Civil Servants Act, aimed at ensuring professionalism against (over)politicization of public administration. A research carried out in 2012 among candidates and selected top officials and ministers, as their political superiors, revealed an overall efficiency of the Slovenian selection scheme in the sense of restricted over-politicization and increased professionalism. Its outcomes lead to the conclusion that the selection system in Slovenia, owing to its two-phase professional and political selection, is most adequate in terms of both regulation and practice since it takes into account the twofold role of top officials and civil service or public administration as a whole (first, as a force providing professional solutions by ensuring legality and efficient resource management, and second, as the closest collaborators of the political leadership implementing government policies).

**Keywords:** top officials, selection, politicization, professionalism, management, public administration, Slovenia, research.

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## 1. Introduction

The relation between politics and public administration (PA) has always been a topical issue both in theory and in practice, particularly when the selection and appointment of top officials are concerned<sup>1</sup>. In modern society, the idea of a fully apolitical top civil service is obsolete, and top officials have long outgrown their classic and merely instrumental role of implementers of political orders. Specific sources of power in PA are acknowledged (professional knowledge, effective networking, potential delaying or omissions of political guidelines etc.)<sup>2</sup>. But the separation principle arising from the Weberian rational bureaucratic organization still seems to be the prevailing concept despite numerous critiques and alternative models. However, politicization is inevitable – administration often interferes with political decision making and politics (over)influences administrative operations, which leads to several dysfunctions of the system, from democratic deficit to unprofessionalism and lower effectiveness (Peters and Pierre, 2004, p. 3; Almendares, 2011, p. 2067). Therefore, a clear answer to the dilemma as to what degree of political influence is adequate and admissible when it comes to the selection of top officials is hard to find even in traditional democracies (Rouban, 2005, p. 318). It varies greatly from country to country, depending on several societal, legal, political and other sets of criteria, including decades-long traditional or rather ‘new democracies’, where the search for balance between the required degree of professionalism and still admissible political influence on the selection of top officials is particularly challenging due to lack of tradition and the transitional gap in implementation (details in Verheijen, 1999, pp. 78, 334-337; OECD, 1999, p. 21; pursuing separation between politics and PA and merit system).

Modern society calls for a PA that is efficient and more responsive to users’ needs, that applies modern human resources management (HRM) and total quality management (TQM) tools etc. The public, i.e. citizens, undertakings, NGOs and other users of public services nowadays demand from the state and its administration

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1 In this article the notion of ‘top officials’ is used, meaning the highest ranking civil servants as top public managers. However, different notions can be found from country to country or in scientific literature (Halligan, 2005, p. 98), like ‘senior civil servants’ in UK, ‘political employees’ in Germany (*politische Beamten*) or ‘officials at government discretion’ in France (*fonctionnaires a la discretion du gouvernement*). Kuperus and Rode (2008, p. 5) distinguish between ‘top public managers’ and other civil service appointees. On the other hand some argue that all public servants share loyalty and public ethics, objectivity etc. (more in Farnham and Horton, 1996), therefore no subgrouping is developed.

2 Pusić, 1996, pp. 176–179; Aberbach *et al.*, 1981, p. 252; Brezovšek and Haček, 2004, p. 147. Some argue that the relation between officials and political appointees in contemporary administrative science is a specific problem of modern society as it reflects the contradiction between technical efficiency and democratic accountability, and is therefore an important aspect of the reflective behavior in public organizations. Most scientific literature has been dedicated to these issues from the viewpoint of political science (only), but lately more holistic approaches have been pursued, acknowledging organizational theory and PA as an autonomous integral science (Meier, 1997, p. 194).

much more than just legality<sup>3</sup> and expertise – they expect it to provide quality service and generate maximum results and effects for taxpayers' money. Their expectations are even more pronounced in times of economic and financial crisis when the state and local communities are compelled to reduce public spending, balance the budgets, and keep public debt under control. In order to meet these expectations, PA should take advantage of the approaches, methods and techniques developed in the private sector (Farnham and Horton, 1996, p. 324; Pirnat, 2004, p. 49; Peters and Pierre, 2005, pp. 100-104). Systematic changes within PA to introduce modern principles such as user orientation, efficiency, openness, quality and business excellence, were triggered worldwide in the 1980s by a movement known as the New Public Management<sup>4</sup>, and continue today under the concepts of good administration and good governance<sup>5</sup>. These trends call for a new profile of top officials or top public managers. Just like top managers in the private sector, also top officials play a key role in the functioning of the organization. Thus, to better achieve the goals of the organization, selection must be based on the candidate's qualifications (knowledge and skills, motivation and values etc.). Therefore, Halligan (2005, pp. 99, 101) identifies two patterns of senior civil service, those who have been modestly modernized within state traditions and those who have been receptive to management change and leadership concepts. On the other hand, top officials closely collaborate with the political leadership of the state. Therefore, the political level and the top civil service level should act in harmony, based on mutual respect of the different roles they play in the system since the actions of officials are directly related to trustworthiness in the democratic nature of the state and the polity (Brezovšek and Haček, 2004, p. 19; Meier, 1997, p. 196). The specific position of top officials raises several questions. What kind of selection procedure is adequate to guarantee a high level of candidates' qualifications? What is the role of politicians in these procedures? How

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3 The supreme principle guiding the work of PA and top officials is legality, especially in continental Europe and Slovenia (Ziller *apud* Peters and Pierre, 2005, p. 260; Article 120 of the Constitution of the Republic of Slovenia (RS); Šturm, 2010, pp. 867-882; Pusić, 1996, p. 33). Officials fulfill their mission as long as they act lawfully within the scope of their powers and comprehend the purpose of the law, which is to protect general social benefit and public interest, together with human or legally protected rights and individual interests. The principle of legality is closely related to the principle of separation of powers, meaning that the executive is bound by the valid legal order adopted in the Parliament.

4 Striving for rather strict distinction between political strategic steering and apolitical administrative rowing (Flynn and Strehl, 1996, p. 135; Bevir, 2011, p. 419).

5 The right to good administration has been specifically regulated since 2010 by Article 41 of the EU Charter of Fundamental Rights (OJ C 83/337). In fact, the administrative process in this respect holds legitimacy through politics and administrative expertise as well as democracy with a participative strategic component in the sense of contemporary theories of governance (Meier, 1997, p. 193; Haque *et al. apud* Bevir, 2011, p. 330, p. 420), which leads to changes of the HRM also in PA (with the selection of top officials), where increasing emphasis is placed on their management role.

to achieve balance between politicization and professionalism of civil service within the government sector?

## 2. Relation between politics and professionalism in PA

PA is a comprehensive phenomenon defined by several criteria, such as function, structure, labor law (e.g. the system governing civil servants and wages in the public sector), public finance limitations etc. PA indeed acts in public interest yet the articulation thereof falls under the domain of politics. In fact, at the very top of PA at both state and local levels is always politics, i.e. the government and individual members thereof (Prime Minister, ministers) at the state level, and individual and collective executive bodies (mayor, local committees) at the local level. The functioning of PA largely depends on political management which sets goals and makes strategic decisions concerning laws, regulations, the budget etc. Politics and PA are thus closely related. The administration provides professional support to and implements the policies designed by the political leadership, while the latter directs and controls the work of the administration and holds political accountability for its results (according to (1) an institutional or administrative (answerability and responsibility) and (2) a professional accountability in Bevir, 2011, pp. 373-375). In fact, political leadership is not responsible only for creating policies but also for implementing laws and other political decisions. Despite the close relation between political leadership and PA, there are significant differences between these two systems to consider. Political leadership has a limited mandate and must periodically test the trust of the voters. As long as political leadership changes following periodical elections, PA is much more stable. Employment in PA is based on contracts on employment relations (permanent employment prevails<sup>6</sup>), and the accountability held by civil servants is not political but rather based on labor law (more in Ziller, 1993; Pirnat, 2004, pp. 79-82; Bevir, 2011, p. 369, p. 419). Civil servants are accountable for the results of their work and for complying with contractual obligations as persons in an employment relation, whereas political leadership is responsible for setting political goals. Political accountability is the warranty of a democratic system while PA should provide for professionalism and efficiency.

Politicization, however, is in this context and more broadly, understood in terms of several notions, directing unlawful or undesired impact in both directions: from politics to PA and vice versa (as emphasized by Aberbach *et al.*, 1981). As put by Peters and Pierre (2004, p. 2): politicization of the civil service at the most basic level

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6 Lately this concept is becoming rather relative. Similarly to the economic sector, also PA increasingly often opts for fixed-term employment. Data for the Slovenian state administration reveals e.g. that at the end of 2008 the share of fixed-term employment accounted for 16% and was largely related to projects of limited duration. Fixed-term employees, too, have responsibilities under labor law rather than political accountability. Prior to the expiry of their contract, they can be dismissed only on the account of non-performance or serious disciplinary breaches.

is the substitution of political criteria for merit-based criteria in the selection, retention, promotion, rewards, and disciplining of members of public service. In general, institutional politicization, motivated by patronage negative to effectiveness and democracy, and positive policy orientation, is combined with behavioral politicization, when policy is mediated through bureaucracy, but also with (mis)using agency discretion for purely political ends (Almendares, 2011, pp. 2064-2067; Rouban, 2005, pp. 311-313). The greater the extent of politicization through political appointees, the less effective the agency is at its allotted tasks. Therefore, PA should respect politics and its role in the society, namely to set goals and be held accountable for their realization. Thus, politics provides a strategic framework and guidelines for the work of the administration and exercises control over the latter, also seeing that PA does not become 'self-sufficient' and ensuring that it acts to the benefit of the citizens. On the other hand, politics must understand the role of PA and pursue it to establish a healthy, functional and socially useful collaboration between these two subsystems and other parts of the society (Meier, 1997, p. 193; Brezovšek and Haček, 2004, p. 44; Bevir, 2011, p. 422).

All countries have introduced and are still developing several reforms or tools to develop effective and democratic public governance (namely 'network governance', according to Bevir, 2011, p. 421) and limit (over)politicization<sup>7</sup>. What these countries have in common is that they strive for balance between democratically controlled PA by elected politicians and PA's effective operations in compliance with professional standards and management by results to design responsive and effective authority (Flynn and Strehl, 1996, p. 24, p. 269; Halligan, 2005, p. 105). As regards the selection of top officials the EU Member States generally apply two models (Ziller, 1993; Peters and Pierre, 2004; Rouban, 2005)<sup>8</sup>. The first, also known as the British 'merit' model, is based on independent selection of candidates where top managers in state administration are selected by the senior appointment selection commission, and the Prime Minister and individual ministers play no particular role in the selection procedure. Under the second and prevailing 'spoil' model, top officials are selected by the political leadership (Government, Prime Minister, ministers); however, selection is restricted to persons who have already acquired the rank of top officials or to outside candidates who meet high professional standards. There are numerous solutions in between the two 'extreme' models. For instance, the Dutch and Swedish systems are close to the UK model, while German or French models are, despite a strong tradition of apolitical PA, more open to replacement of certain circles of top officials (about 60% in Germany) which should, however, be combined with high

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<sup>7</sup> See comparative analysis in Flynn and Strehl, 1996, pp. 19-21, and Peters and Pierre, 2004. Civil service career protections may help encourage bureaucrats to develop expertise (Almendares, 2011, p. 2066).

<sup>8</sup> Criteria of policy design, implementation, interests' coordination and values/ideals in Aberbach *et al.*, 1981, p. 239.

professional qualifications achieved through ENA or legal education of these officials<sup>9</sup>. These top officials serve as a bridge between politics and civil service<sup>10</sup>.

### 3. Top officials' selection system in Slovenia

In Slovenia, the civil servants system underwent significant changes when national legislation and PA were harmonized to suit the needs of full EU membership in 2004. By application of the Civil Servants Act, Slovenia has established since 2003 – following the EU and OECD Sigma<sup>11</sup> guidelines – an entirely new system for the selection of top-ranking civil servants. This applies to positions specified by Article 60 of the Civil Servants Act, such as directors-general, principals of bodies and secretaries-general within ministries, principals of government offices, and principals of administrative units. All-together, the Act applied to around 150 official positions in 2012. Based on a status/structure definition of PA (as provided e.g. by the Civil Servants Act), the Slovenian PA employs around 46,000 civil servants, while the total number of employees in the public sector is close to 160,000 or 8% of the labor force of the country. The state administration alone – headed by the Government and comprising ministries, executive agencies, government offices and local administrative units – employs approximately 19,000 people (police and armed forces excluded). The new regulation provided the definition of top civil service positions that are separated from political positions and functions, thus ensuring greater expertise in administration owing to a specific system of selection, training and promotion, as well as greater stability of the

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9 Peters and Pierre, 2004, pp. 58, 720; Rouban, 2005, pp. 313-318. However, when assessing politicization, one has to have in mind regulation and especially its implementation. The latter can be a measure of career mobility of top officials (Aberbach *et al.*, 1981, p. 71) that varies from approximately 50% in UK to 30% in Germany and 18% in Italy, if indicated by those who served more than one government. For Slovenia the share is approximately 50%. Or to illustrate the difference between merit and spoil system, the US Office of Management and Budget has over 7% of its staff appointed by the executive, as opposed to UK's Treasury Ministry with only 0.5% of its staff being political appointees (Almendares, 2011, p. 2064).

10 Ziller (1993, p. 321) speaks of 'employees as interfaces between politics and administration' (*les emplois d'interface entre le politique et l'administratif*). The author argues that 'political employees' undermine the Weberian myth of strict distinction between politics and the world of career employees, and serve as transmitters between politics and administration (in both directions, again). In Sweden the concept of 'samsyn' was developed, meaning that politicians and officials share common vision of governing certain public policy (Peters and Pierre, 2004, pp. 42-45).

11 More in the Sigma Papers, which provide analyses of data concerning civil servants, public finance, public procurement, regulation, organisation and governance of the public sector in individual countries since 1995. For data on the civil servants system see documents no. 1, 5, 12, 14, 16, 21, 23, 27, 38, and 44. The latter highlights the importance of making top positions – the holders of which play a central role in the implementation of public tasks – professional, allowing political appointment for the highest positions only. In Paper no. 27, 1999, pp. 21-24, depoliticization and professionalism in the civil service are cited as two out of five basic principles guiding administrative reform.

administration and less negative impacts of political replacements on its work. Top civil service positions are now subject to a special legal regime.

In Slovenia, the system of selection falls in the domain of the Officials Council (OC), which is a body outside the government. The Council is composed on a multipartite basis: three members are appointed by the President of the republic from among experts in the public sector, three members are elected by high officials from their own ranks, two members are appointed by the trade unions of professions in the PA, and four members are appointed by the Government, as a general rule for a period of six years. The OC is supposed to restrict (over)politicization (Pirnat, 2004, p. 418) by ensuring that recruitment – at the very top of the ministries in particular – is not based merely on political interests, and highlights professionalism in the work and management of the administration, with due consideration of the significance of the political orientation of ministers and other functionaries as principals of the highest civil servants. OC defines special professional qualification standards and procedural guarantees for selection (Standards, first edition of 2003<sup>12</sup>), and appoints special competition commissions to carry out the professional phase of selection (the chair of such commission is always a member of the OC, thus contributing to the independence and unification of approaches adopted by the commissions). Pursuant to the Constitution (Article 122), an open competition must be called to select the candidates for top civil service positions (more in Šturm, 2010, pp. 893-895)<sup>13</sup>. Pursuant to the Civil Servants Act (Articles 60-65 and related articles), the procedure for the appointment to the positions concerned is based on the combination of professional and objective criteria and

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12 The Standards were amended in 2011 with due consideration of the experience acquired over the past years. The paper refers to the Standards of 2003 (more about methodology below), since as regards the relation between politicization and professionalism the Standards had not changed much. Moreover, the authors wished to provide a comparative view of several government terms and therefore focused on the period before 2010 (see MIPA's website). The Standards aim at balancing the expected experience, skills and knowledge of candidates by combining individual elements which are indivisibly related, and abolish the reliability on mere administrative fulfilment of hitherto criteria and methods.

13 Officials in fact perform public tasks and have been conferred public authority to design public policies, while the users of administration indeed deserve an optimal level of service (to such end, the state can even provide for certain restrictions, contrary to the otherwise free movement of labor and other forced EU rules - Bossaert and Demmke 2003, p. 81; e.g. the requirement of Slovenian citizenship enshrined in the Civil Servants Act). The question whether open competition is the best method to seek candidates for key positions can also be placed in more general terms. In the private sector, open competitions to select top management positions are rare and in some way point to the inability of the employer to find a suitable candidate. In Slovenia, it had been suggested that open competition is only one possible way to select candidates for top management positions, the alternative being direct proposal by political appointees and testing of professional qualifications by the commission of the Officials Council. Such a system was introduced by a sector-specific act for the selection of the Director General of the Police.

a subjective selection at political discretion. The competition procedure is initiated by the principal of the future official. Candidates are first assessed in terms of formal requirements (e.g. education, work experience, special certificates); eligible candidates are then invited to appear before the special commission, established for each competition separately and comprising at least one member of the Officials Council, a representative of the state administration, and an outside expert. The commission examines the candidates' suitability in accordance with the Standards, i.e. in terms of work and leadership experience, professional knowledge in the field covered by the body in which the candidate is applying for the head post, and management and communication skills, whereby candidates are entitled to legal protection. Finally, the politically superior official (as a general rule, the minister) can take advantage of his political discretion to choose from among suitable candidates the one with whom he wishes to collaborate<sup>14</sup>.

The special competition commissions' resolution concerns both the principal and the government, which can appoint for definite mandate<sup>15</sup> only a candidate who meets the conditions and has been assessed by commission as suitable. Thus, neither the commission nor the Council selects a candidate but rather carries out a preliminary selection while the final, discretionary and politically supported decision is reserved to the Government. The selected candidate is appointed and given the title through a decision, on which also the employment contract is based (Article 82 of Civil Servants Act). The act concerning non-selection cannot be subject to judicial review as it is issued at political discretion. If only objective criteria were considered in the appointment of position officials, the appointment could actually be carried out by the Officials Council; however, since it is in the public interest that the political will expressed at elections be manifested through the work of the respective government, the selection of position officials, based on political discretion as an expression of governance or exercise of power, falls within the competence of the minister, with due consideration also of personal compliance and thus greater efficiency of work, as stated by the Supreme Court (Case U 220/2008-14 of the 2<sup>nd</sup> of December 2009). As in such event the minister violates the constitutional principle of e.g. equality, such procedure is deemed unconstitutional pursuant to Article 66 of the Administrative Dispute Act, yet nevertheless decisions are neither annulled nor annulled *ab initio*.

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14 Article 64 of the Civil Servants Act: 'The competition commission shall submit the list of candidates that are held to be suitable for the position in view of their professional qualifications to the functionary to whom the official in the position is held responsible. The functionary (...) shall among these candidates select the candidate that he believes to be the most suitable.'

15 In Slovenia for a period of five years. According to Kuperus and Rode (2008, p. 15) the situation is similar (2-7 years) in Italy or Netherlands, while some countries provide a permanent mandate.

The candidate is appointed for a five-year term, with possibility of re-appointment. Early dismissal is also possible, namely on fault-based grounds or for not achieving the expected results, or without fault-based grounds within one year from the appointment of the official or from the beginning of term of the political appointee. The latter possibility allows changes at the top of state administration in the event of a change of government. In such case, however, dismissed officials have special rights (such as transfer to another adequate position, severance pay), and an open competition must again be called to select the new top official. The Slovenian system is thus very close to the French and German systems where top state officials must meet high professional standards while the final selection of candidates for top civil service positions is at the discretion of political leaders. Such system was positively evaluated in the comparative studies by the OECD for taking into account the special position of top officials between politics and professionalism, whereby politicization is restricted by binding political discretion to professional standards. Slovenia successfully fulfilled such objective, contrary to e.g. Poland, Slovakia and Hungary, with Estonia being the only country ranking higher given the actual depth of depoliticization (Meyer-Sahling, 2009, p. 21, p. 33)<sup>16</sup>. The OECD report underlines the importance of defining top positions that play a central role in the exercise of state authority as professional rather than political due to strong communists' PA control and lack of professional PA tradition (Verheijen, 1999, p. 67). In order to examine how individual aspects thereof are seen in practice, a survey was carried out in 2012 on the implementation of the Standards over the past two Government terms. The main findings are presented below.

#### **4. Research methodology applied to evaluate the top officials' selection system**

The paper presents the key findings of the research carried out in 2012 by the Faculty of Administration, in collaboration with the Officials Council. Politicization was analyzed from one aspect only: as over-influential interference of politics with the top officials' selection system yet expressed as institutional and behavioral politicization according to Almendares (2011, p. 2065). The research team examined the opinions of selected officials and ministers regarding the selection procedures and professional qualification standards. Two basic hypotheses were put forward.

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16 A similar system following the Slovenian role model was introduced e.g. in most countries of former Yugoslavia. For top civil service positions an open competition and a special selection procedure are foreseen, with the first selection based on professional criteria and the second on political appointments. More for Croatia, Serbia, Macedonia etc. in Virant (2011, pp. 206-214). The latter emphasizes greater appurtenance to democratic values, including participation and de-etatization compared to traditional democracies in Western Europe despite in general rather similar *pro forma* rules. Verheijen (1999, p. 493) finds experiences and practices from the West to be mechanically transferred in CEE without direct application, which leads to the so-called implementation gap.

First, the selection procedures in Slovenia are formulated properly, underlining professional and other competencies while at the same time allowing an admissible political influence on selection. Second, in carrying out the selection procedures the prescribed professional standards are observed regardless the government in power (left or central-right, the same or different than in the previous term). The empirical research was carried out based on data concerning selection procedures and applicants, i.e. selected top officials since 2003 when the Civil Servants Act and the new standards for the selection of top officials entered into force. The data relevant for the research were processed, further calculated and compared with data from annual reports of the Officials Council available since 2005, as well as with information from the official databases of the Ministry of Justice and Public Administration (MJPA)<sup>17</sup>. The empirical aspects were examined mainly by means of a survey and structured interviews assessing the respondents' level of agreement with the provided statements. The questionnaire for top officials, and the very similar questionnaire used for structured interviews with (former) ministers as their political superiors to evaluate the differences among the opinions of control groups, comprised three series of statements, 44 in total, all centered on the research question<sup>18</sup>. (However, note that the results in the following chapter join up closely connected or control statements as one item). The research however had some limitations, such as the empirical testing being focused on selected top officials rather than all applicants. Likewise, it failed to indicate the views of the users of PA services, which would indeed be relevant yet methodologically difficult to evaluate. From among 83 competitions carried out in 2006 and 2010, the survey questionnaire was sent to all selected candidates. The degree of response was 50.6%.

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17 Pursuant to the Civil Servants Act, the ministry provides to the Officials Council and the special competition commissions appointed thereby the necessary administrative and technical support.

18 The statements referred to: 1. Relation between political leaders in state administration and top officials, and suitability of the regulatory framework for the selection, appointment and dismissal of top officials – 19 statements; 2. Implementation of selection procedures – 11 statements; and 3. Suitability of individual standards or criteria to assess professional qualifications – 14 statements. Each statement was evaluated on a 4-point Likert scale – the number of points was odd in order to avoid the mean or 'neutral' answer. The respondents thus replied whether they agree or disagree with a statement, fully or partly (mostly yes or no), and had the possibility to select the option 'Don't know/don't wish to answer'; in the end, the respondents could add their personal views and additional explanations. The respondents were further asked to provide general data (e.g. type of body they had been heading, years of experience in PA, in the economy and in management, how many times they had been appointed to a similar position), which allowed the authors to test control data and the correlation of indicators.

Table 1: Numerical indicators of research on selection procedures in 2006 and 2010

Selection procedures and research indicators	2006	2010	Yearly average 2005-2010	Total 2006 and 2010
No. of open competitions	40	43	59	83
No. of candidates – total (and on average by competition)	166 (4.2)	192 (4.5)	215 (4.3)	358 (4.3)
No. of eligible candidates	111	144		255
No. of competition commissions' meetings/interviews with candidates	44	50	63	94
No. of candidates assessed as suitable	74	58		132
Share of <b>selected candidates</b> - in all tenders run – from among all suitable candidates (= <b>research addresses</b> )	54%	74%		63%
No. and % of received replies	18 45%	24 56%		42 51%
No. of interviews with ministers	2	2		4

The replies of candidates and selected top officials were compared with the replies of politicians i.e. their superiors, and the experience and opinions of participants in two different years, namely in 2006 and 2010, were presented. These two years relate to different government terms – the center-left Government led by Drnovšek between 2000 and 2004, the center-right Government led by Janša between 2004 and 2008, and the center-left Government under Pahor between 2008 and 2011. In order to ensure that the replies provided are as objective as possible, the years 2006 and 2010 were chosen as they were not particularly sensitive to the change of government<sup>19</sup>.

According to the table, the average number of applicants in open competitions is relatively small (4.3). Many of them were in fact considered ineligible, meaning that they failed to meet the formal requirements, which points to a certain degree of under-estimation of selection procedures. The ratio between the number of applicants meet-

<sup>19</sup> Interviews were conducted for each term with the minister responsible of PA and one of the line ministers. Previous research in fact revealed that the number of replacements and new appointments of top officials in the year following the change of Government, particularly when the orientation of the Government changes, is much higher. Thus, if the survey had involved procedures carried out in 2005 and 2009 – when a Government of different orientation was appointed – the results would have evidently leaned toward politicization of the selection of top officials and the PA as a whole. The entire calendar year was taken into consideration, also to involve a sufficient number of respondents necessary for the statistical significance of results and their extrapolation (see Table 1). According to the 2010 research for Slovenia, the number of replacements and therefore new selection procedures in the year following the appointment of a new Government (usually in December) is up to 80% higher than in other 'regular' years, particularly when also the Government's orientation changes, as it occurred in Slovenia in 2004 and 2008, from left to right wing coalition and vice versa. The number of replacements and new selection procedures however presents a downward trend over the years (e.g. 2009 saw 'only' 45% more selection procedures than the 2003-2010 average), which according to Meyer-Sahling (2009, p. 33) demonstrates the maturation of the system, i.e. the actual depth of politicization over time.

ing formal requirements and the number of candidates who, according to competition commissions, also comply with standards indicates that interviews are taken very seriously. A significant share of candidates does not pass through the sieve of competition commissions, which means that the latter perform their task responsibly and that the principal purpose of the law – i.e. to set up a list of competent candidates – has been achieved. Although such cannot be reliably proven, less so for all procedures, the above information is indeed an important indicator pointing in this direction. The basic intention of the law was to restrict political discretion in the selection of top officials and to provide professional standards to help the ministries select qualified staff. The data also reveal that quite often ministers have their ‘favorites’ chosen in advance. Based thereon, it would be reasonable to consider changing the system, so that in addition to open competition it would also allow direct selection by the minister, followed by professional verification of qualifications before the Officials Council’s commission. Thus, it would be possible to avoid wasting time and money and misleading the candidates in cases where the favorite is selected in advance. The idea already turned up among the expert public and in political debates, but was rejected for fear of criticisms that the change would create non-transparency and unequal treatment. Yet it needs to be said that neither the existing regulation can prevent a minister to choose their favorite in advance. The nomination of the favorite candidate can be prevented only by excluding such candidate from the competition procedure.

## **5. Results and discussions**

While examining the relation between political influence and professionalism, the research team decided to focus on selected aspects combined into different groups and subgroups, also considering that certain elements appear in multiple subgroups in order to allow consistency control checks. To ensure more clarity, the results are presented in three groups, namely (1) general perception of the system, (2) individual selection criteria, and (3) conduct of selection procedures, followed by an evaluation of the basic hypotheses.

### ***5.1. Relation between politicians and top officials – regulatory framework***

First, the survey examined how the respondents evaluate the regulatory system of selection standards as provided by Civil Servants Act and, above all, the Officials Council’s Standards 2003.

Data reveal that officials and ministers alike are well aware of the importance and responsibility of top officials in PA. Although most responsibility lies with political leaders (ministers), top officials significantly influence the work and decision-making. Without a competent top management and without adequate respect of top managers by politicians, no quality and effective decisions can be expected. It is interesting that in such regard, ministers and top officials share the same view. A similar convergence of opinions is observed in relation to being (a)political. The fact that most officials only partly agreed with the statement that they must be fully apolitical, and the fact that according to the ministers top officials should be politically compatible with the

**Table 2:** Collaboration between top officials and politicians (officials N= 42/83, ministers N=4)

Statements (selected/joined up)	Share (%) of officials who agree fully & mostly	Views by ministers as their political superiors
Top officials in state administration have a significant influence on the work/performance of PA bodies.	92	Same (4/4), but stressing that politicians have greater responsibility.
Top officials must be fully apolitical. In the selection thereof account should be taken exclusively of professional qualifications rather than political affiliation.	83	The majority (3/4) believes that officials should be professionals yet they must also be politically compatible with the minister.
Top officials must follow the instructions of their political superiors even if they disagree with them from a professional aspect.	58 (As much as 33% express a clearly dissenting opinion.)	The majority (3/4) agrees with the statement.
Top officials must be allowed to disclose to the public and the media if and when they disagree of the political decisions made by their political superiors.	42	The majority (3/4) believes that collisions should be resolved without public involvement.
The system for selecting top officials based on open competitions is the only suitable system.	64	Same in principle, but the ministers express the wish for more discretion.
The possibility for a superior to dismiss a top official even on non-fault-based grounds within a year from appointment is adequate.	42 (83% of officials believe that such possibility could be politically misused.)	The majority (3/4) does not agree with the officials. On the contrary, they welcome the possibility of non-fault-based dismissal although they agree that such could be misused for political purposes.

minister, point to the specific nature of top official positions. The prevailing opinion among the respondents was that in addition to the necessary qualifications, conceptual compatibility with the minister was also important to avoid problems of cooperation. To our opinion, political compatibility in the sense of affiliation with the same party is an unnecessary and inadequate criterion. On the other hand, the compatibility of conceptual views on the area of work headed by the official is indeed desired.

Discrepancies between the opinions of ministers and top officials arise, as expected, in relation to the possibility of publicly disclosing disagreement with political superiors. To a large extent (although positive replies are still in slight minority), top officials wished to preserve the right to publicly expressing disagreement. Such is indeed in public interest as any mistakes committed by ministers can thus be revealed to the public. On the other hand, there is a risk that top officials misuse publicity to assert their own interests. Without a doubt, public conflicts between the minister and top officials negatively affect the work of the ministry. Our opinion however is that the right of the public to become familiar with the work of the ministry and freedom of expression outweigh the risks, and that such right should be protected both by legislation and codes of ethics. As regards following the instructions even if they professionally disagree with such, most top officials believed that instructions needed

to be followed although a considerable share of respondents dissented therefrom. In accordance with the principle of political neutrality, officials should follow the instructions of the minister, unless they assess that such force them into illegal conduct. Ministers' and top officials' views differed also as regards the question whether it is appropriate for a minister to dismiss a top official within one year from appointment, even on non-fault-based grounds. Most officials see the risk of political misuse while ministers naturally welcome such discretionary right. The legislature decided to preserve ministers' discretion even after appointment, not only in the selection of top officials. Such discretion allows the ministers to discharge top officials from office without any special procedure if they are not satisfied with their work or if they assess that further collaboration would not be adequate. One reason for such differ could be the fact that the minister has another, to his opinion, better candidate for a specific management position. Such regulation is a logical extension of the concept of ministerial discretion in selecting top officials. If the previous minister had the discretion to select a candidate, such right should be given also to the new minister. Of course, in the event of dismissal the entire procedure – including open competition and evaluation whether the candidate meets professional standards – should be carried out for the selection of the new candidate. For a country whose PA tradition cannot compare to the British, American or German ones<sup>20</sup> such regulation is appropriate as it provides for competence in the top management positions of PA while at the same time giving the ministers the necessary discretion.

## ***5.2. Criteria and elements of selection – professional and management skills***

The Standards comprise several sets of elements, which can in general be classified into (1) work and management experience, (2) knowledge, and (3) management, organization and communication skills. The aim of the research was to examine whether, based on the respondents' experience, the above elements were adequately balanced in selection procedures. This was examined also because the Officials Council – with due consideration of the opinions of members of competition commissions arguing

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<sup>20</sup> This was also evident from the shares of agreement with individual statements and from the comparison of control statements (not in the table). PA in Slovenia is therefore culturally close to the continental understanding of the management role focused on legal and political values (Koprić, 1999, p. 275) as opposed to the focus on political-economic values deriving from a pragmatic environment as in the USA, fostering collaboration to higher democratic level and effectiveness of public policies at the same time (Bevir, 2011, p. 286, p. 386). E.g. the statement made by one of the responding officials: 'The philosophy of an average official, although holding a management position, is indeed bureaucratic'. And another one made the comment: 'A smooth operation of the state is only possible if the civil service is stable and apolitical, thus maintaining balance with interest-determined politicians'. Only four of the participating officials (4/42, i.e. 10%) stressed that the Government should appoint top officials according to its own criteria, as it 'must carry out its own program'. One respondent added that setting professional standards eventually contributes to the awareness that 'replacements are not always and everywhere necessary'.

that the Standards of 2003 underestimated management skills – introduced in 2011 new criteria that took greater account of the modern concept of PA in the sense of good administration rather than mere implementation of government guidelines, thus placing more emphasis on management skills (formal especially in 2003 and 2011; according to Flynn and Strehl, 1996, p. 21, and OECD, 1999, p. 24, on development of managers within the civil service in West and CEE). The increasing awareness of the importance of management skills is shown also in the respondents' answers: in almost all statements related to the importance of management skills, the agreement rate among the officials involved in selection procedures in 2010 was by 10% higher than among those appointed in 2006.

**Table 3:** Knowledge & management skills as selection criteria (officials N= 42/83, ministers N=4)

Statements (selected/joined up)	Share (%) of officials who agree fully & mostly	Views by ministers as their political superiors
The standards as such should contain more operational requirements, not only two or three sets of requirements and a few standards within such. Each standard should be considered a prerequisite of selection (and cannot be replaced by another one).	67 (75% of respondents believe that the purpose of the standards is to generally examine knowledge and skills, which is why the standards should be the same for all types of bodies).	The majority believes that professional requirements should indeed be defined yet they should not be too detailed or formalistic, which confirms the officials' opinion that having different standards for different positions or types of bodies is senseless.
The knowledge of the following areas should be included in the standards: – modernization of administration; – rationality of work and resource use; – legal system in Republic of Slovenia and the EU.	92 92 92	
When filing their applications, candidates should present their vision of work of the body, including a plan to accomplish such vision with the available resources.	92	
Top employees in PA should have professional knowledge of the specific field of work, while management skills are less important.	30 (All 30 agree only in part, 40% believe otherwise.)	Politicians agree that officials should be able to manage the specific field of work, the organization and the resources, yet professional knowledge is indispensable.
Top officials should above all be able to manage (i.e. plan, organize, coordinate), while other civil servants will provide that work in the specific field covered by the body is carried out professionally.	58 (20% of officials strongly disagree.)	The politicians share the majority opinion of the officials.
Potential is more important for appointment than work and management experience.	25 (40% of officials explicitly believe that potential alone does not suffice; at least a few years of work and management experience are needed.)	Compared with officials, more politicians (2/4) believe that experience and the required work and management practice are mere formalities that can easily be made up for by potential.

The above statements relate to the first phase of selection of top officials during which the candidates' qualifications are being tested. Top officials and ministers generally believed that management skills, knowledge and experience were more important than skills and experience in specific areas. A large share of respondents was of a different opinion, but the majority prevails. There was a high rate of agreement with including the evaluation of general knowledge (modernization of PA, rational use of resources, legal system in Slovenia and the EU). As regards the last statement, most top officials believed that a candidate's experience was more important than his/her potential. Some ministers, on the other hand, believed that lack of experience could be made up for by personal potential. In defining qualification standards for top management positions in PA, the following elements should be adequately balanced:

- a) Work and management experience with potential (knowledge, skills and personal qualities).

The balance between these elements allows access to top management positions of candidates with high potential (knowledge, skills and personal qualities), even if they are slightly less experienced, while at the same time preventing access to fully inexperienced candidates.

- b) Generalist approach (general management skills and experience) with specialist approach (knowledge and experience in the specific area of work for which the candidate is running).

The dilemma is whether generalist knowledge, skills and experience suffice – can a person who, for example, successfully headed the tax administration stand as candidate for manager of the veterinary administration. Sector-specific qualifications are indeed useful, but the question is whether they are inevitably necessary. In our opinion, specific knowledge and experience are absolutely necessary at least in the more complex areas (tax system, police etc.). We therefore recommend that the dilemma between generalist and specialist qualifications be solved on a case-by-case basis.

- c) Internal knowledge and experience (i.e. related to PA) with external knowledge and experience (e.g. economy).

Applicable standards formally do not exclude candidates without PA experience, yet candidates from PA have a certain advantage since they have already acquired some of the required knowledge. Such approach is correct. The system must allow access to qualified candidates from the private sector. A few years ago, for example, the position of head of the tax administration was entrusted to the manager of a large tax counseling company. During his term in office, a user-friendly approach was pursued, numerous procedures were simplified and user satisfaction with the work of the tax administration was higher. It needs to be stressed, however, that in addition to skills and experience, candidates from the private sector must also demonstrate knowledge specifically required in PA, as well as an adequate attitude to the values that should prevail therein. Public and private management cannot be equaled (Bossaert and Demmke, 2003) since public managers are bound by the law and im-

partiality, thus presenting limited autonomy or efficiency etc. Public interest is the cardinal value of the public sector, providing for the legitimacy of its outcomes, i.e. output legitimacy as opposed to respect for procedural rules among the participants, i.e. input legitimacy (Bevir, 2011, p. 371). Hence, one has to distinguish the values and ethics of officials and politicians as 'public servants' when managing public tasks and resources from private managers (Brezovšek and Haček, 2004, pp. 44, 255; Peters and Pierre, 2005, pp. 86-93). In drafting regulations, the state should draw from its obligation to provide for the exercise of tasks in public interest and to ensure that public services are provided in an efficient, professional and impartial manner, which is only possible if it sets up a professional and efficient civil service which takes into account the general European principles of PA, such as the rule of law, openness and transparency, legal accountability, and efficiency and effectiveness (for more details in OECD, 1999, and Meyer-Sahling, 2009).

### *5.3. Politicization vs. professionalism in the conduct of selection procedures*

The two-phase selection procedure, where in the first phase the candidates' qualifications are evaluated while in the second phase selection is subject to political discretion, is considered a suitable 'compromise' between the requirement that top officials demonstrate an adequate level of professional qualification, and admissible or even required political influence on selection to establish democratic control (Almendares, 2011, p. 2066). On the other hand some argue the case for more bureaucracy and less democracy in this respect due to failures of electoral institutions and in bureaucracy performance (Meier, 1997, pp. 193-197). The survey tried to establish whether the above selection procedure principles are pursued in Slovenia in the actual conduct of selection procedures. If political influence was observed in phases where it had not been foreseen (i.e. before the evaluation of the candidate's suitability by the competition commission), or if the formal steps of procedure (e.g. expected necessary preparation for the interview with the expert commission, comparison of documents presented by fellow candidates) were merely a cover-up for prior political selection, selection could be considered distorted in the sense of over-politicization. On the other hand, the first phase of selection could be too formalistic and exclude the truly competent candidates.

Table 4 indicates that top officials take the professional part of the selection procedure very seriously and evaluate it as positive. Thus, they wished it had greater weight: half of them believed that the first phase of selection should have been decisive and final, while a significant share even thought that the competition commission should at least have drawn up a priority list. A different view was advocated by politicians who fully supported the existing system. The difference between the replies provided by officials and politicians was also evident in the evaluation of suitability of the procedure before the competition commission. Politicians drew attention to the possible rigidity or 'bureaucratization' of the procedure but nevertheless thought that professional evaluation before the commission was very useful for an optimal

**Table 4:** Selection procedures in practice (officials N= 42/83, ministers N=4)

Statements (selected/joined up)	Share (%) of officials who agree fully & mostly	Views by ministers as their political superiors
The application was filed upon thorough consideration. I underwent extensive preparations for the interview before the special competition commission.	92	The politicians report that according to their experience the candidates are very well prepared for the selection procedure.
The interview before the commission was adequately structured and sufficiently long to allow the commission – upon prior familiarization with the applicant's documentation – to evaluate the candidate's suitability.	84 (15% of respondents argue that the procedure lasted too long or was too bureaucratic).	The common opinion is that the commissions act as appropriate, although sometimes too formalistically, leading to situations where the expected candidate is excluded on grounds of 'bureaucracy'.
The procedure before the commission was impartial.	92	
The commission should select the best candidate rather than merely evaluating the suitability of all candidates.	50 (20% of officials believe that the commission should draw up at least a priority list even if the final selection is political.)	The politicians believe that the commission should (merely) be a professional sieve while selection should be politically-based.
Upon the expiry of the term, an evaluation of the vision and goals set at the beginning of the term should be performed.	75	The majority believes that there is no need for evaluation since 'the situation changes considerably' over the five-year term, with possible changes in the government orientation.

selection. Looking at the outcomes of this part of the survey, it can be said that the purpose of the law – i.e. to ensure a serious evaluation of candidates in the first phase of selection procedure – has been achieved. Candidates were well prepared and had no doubt as to the impartiality of the commissions, their professional expertise, and correct implementation. In contrast to the ministers, half of the responding top officials believed that the first phase of procedure should already produce the final decision. Such regulation would indeed be possible yet it would bring certain risks, above all the risk of conceptual non-compliance between the minister and the top official, which could have a negative impact on their cooperation and on work efficiency. Discretion in the second phase of procedure is reasonable, yet it is important that in the first phase the competition commission plays its role rightly. Another recommendation was that the competition commission informed the minister of the course of procedure and of the evaluations of individual candidates, ranking the latter by the score obtained in the selection procedure rather than by alphabet, as hitherto applied. The ministers might have some difficulties in such respect as they could find themselves in a position where they would need to explain why they have chosen the 'worse' candidate. To our opinion, such objection is not sufficiently grounded and priority should be given to full transparency and – in order to obtain the best candidate for public tasks – efficiency of the selection procedure.

## 6. Conclusions and recommendations

The selection of top officials managing administrative bodies is usually subject to specific regulations. The procedure must ensure that key positions are occupied by candidates with excellent qualifications. On the other hand, the question arises as to the role of political appointees to whom top officials will be held accountable. The selection of top officials by independent commissions without the possible intervention of a minister or other political appointee (the British merit system) ensures a qualification-based appointment yet can also lead to dysfunctions in the relation minister – top official. Thus, in order to ensure an optimal performance of tasks, the minister and the top official should be conceptually compatible as studied in a research among Slovenian top officials and ministers. Although it seems at first glance that the system tolerates politicization, the paper presents the empirical experience of various control groups from recent Slovenian practice, showing that the two-phase system – which in the first phase provides for the assessment of professional qualifications based on strict standards and in the second phase allows for political discretion – is internally consistent and sufficiently viable for implementation in compliance with the objectives set.

The research confirmed the two hypotheses initially put forward. The respondents' answers proved that selection procedures in Slovenia were adequately formulated, stressing the candidates' qualifications while still allowing an admissible political influence on selection. Evaluating professional and other qualifications (knowledge, skills etc.) is absolutely necessary considering the role that top officials play in modern public governance. At the same time, in order to ensure an effective design and implementation of public policies, institutional compatibility of top officials with their superiors i.e. ministers is needed. Thus, it may be concluded that the political part of selection is much less sensitive to possible system abuses if professional selection is carried out as appropriate. The research also confirmed that professional standards applying in selection procedures are in principle observed irrespective of the governing option (left-wing or right-wing, the same or different than in the previous term). The empirical experience of the respondents revealed that in practice the system takes adequate account of professional qualifications and restricts appointments based only on political criteria, and that the set standards are almost entirely observed in the implementation of selection procedures. No significant difference was recorded between the respondents selected under different political options (2006 and 2010), which can be understood as an expression of the system's maturity<sup>21</sup>.

This confirms the effectiveness of the system introduced by the Slovenian Civil Servants Act and of the Standards in attaining the set objectives – i.e. to ensure high professional standards along with a certain degree of political discretion to supple-

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21 The trend is analogous to the one observed in other analyses related to top officials (Kovač, 2011, pp. 6-8), showing a maturation of democracy and of the system already within a period of four or six years, a decreasing degree of politicization and simultaneously increasing awareness that in political-administrative relations civil service is based on professionalism.

ment the professional part of selection. An interesting finding of the research is that the differences between the opinions of officials and politicians are relatively small (similar in Haček, 2012, p. 100). Inasmuch as these differences can be identified, they are indeed expected – politicians for example give more emphasis to discretion in the selection of officials while the latter stress the importance of the professional phase of procedure. The discrepancy is identified also upon an issue of appropriateness of discretionary dismissal of a top official on non-fault-based grounds. But the majority of the results indicate an evident uniformity and consistency of views of all respondents. This is important since only concerted action by politicians and top government officials can successfully address the key challenges of modern PA<sup>22</sup>.

Slovenia could in this respect present its system as a good example of hybrid of professional merit-based selection and political discretion not undermining democratic control of policy and the civil service protection to societal beneficiary influence over policy and expertise development (Almendares, 2011, p. 2066). The system – if implemented in compliance with the set objectives – ensures a high level of competency of top officials while simultaneously allowing ministers' discretionary mandate to select the closest collaborators. The condition is the qualitative implementation of the first procedural phase. However, rather high standards have to be set and the selecting commissions have to act professionally, competently and independently. The result of second (political) phase of the selection procedure depends mostly on political culture and personal management style of an individual minister. Minister can select only by taking into account political affiliation of the candidates (bad practice) or due to conceptual, personal and overall compliance between him/her or the candidate/s (good practice). Furthermore, when nominated, a minister can automatically dismiss all prior selected top officials (bad practice) or continue collaboration with them to ensure the continuity of ministerial public policies (good practice).

The combined system of professional and political selection as in Germany or France is appropriate in Slovenia as well. However, the system needs incremental improvements, especially by further development of professional standards, including balancing external vs. internal experience, generalist vs. sectoral standards, and experience vs. potential. Officials Council and its selecting commissions could be developed as more professional and autonomous bodies, using professional assessment center to evaluate standardized managerial and other competences of candidates. Education and training systems are important too – if PA is about governance, then officials must learn both, politics and administration (Meier, 1997, p. 197). Therefore, in addition to the regulatory scheme on civil service in CEE, the development of high professional standards within distinguished education institutions is systematically required following French role model.

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22 Pusić (1996, pp. 248-314) and Bevir (2011, pp. 422-432), with emphasis on partnerships and creation of dialogue with the ruled, as well as on responsiveness in the solution of collisions of interests and ethical dilemmas within and outside the administration.

Nevertheless, Slovenian model could serve as a reference for CEE area, facing specific challenges in terms of democracy and effectiveness of PA<sup>23</sup>, which pursue the acknowledgment but simultaneously limitations of PA's politicization. The hybrid system is to our opinion more appropriate in CEE countries than 'pure' merit or spoil models. In the spoil system we could face decrease of professionalism in PA due to rather low developed political culture. On the other hand, in having no political direction in selecting top officials there is a danger of misuse or bypassing the system (like pressuring or ignoring selecting commissions) with dysfunctions arriving from noncompliance between political leaders and top officials in ministries. The hybrid system is therefore an adequate answer to the risks emphasized if the selection phase is run professionally and competences are set high enough. Such system leads to professional administrative elite that can build its career on professionalism rather than political affiliation, while on the other hand still allows the politicians to participate in the selection of their closest associates in PA, for whose work politicians are held accountable. However, further democratic and administrative culture is to be pursued, for politicians to accept the limits of the spoil concept and for public administration to support the elected politicians.

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23 Verheijen, 1999, p. 327; Rouban, 2005, p. 312; OECD, 1999; Meyer-Sahling, 2009.

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