

Comparison of and Demarcation between Selected Economic Minor Offences and Economic Criminal Offences

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Purpose:

In the article, we are discussing demarcations between selected economic minor offences and selected economic criminal offences: *Fraud in Securities Trading; Abuse of Insider Information; Disclosure and Unauthorised Acquisition of Trade Secrets*. By now, this topic has been given virtually no attention in legal literature. Criminal law theory has mainly addressed only the question of which criteria to use in order to recognise criminal offences amongst all unlawful actions, while on the other hand, law of minor offences has generally focused strictly on less serious unlawful actions. However, in practice, a certain action can sometimes correspond to the definition of both a criminal offence and a minor offence. Consequently, it is of the essence that the statutory elements of a particular unlawful action are precisely defined and clearly demarcated. Only this can ensure legal certainty that should be guaranteed to everyone already on the basis of the Constitution of the Republic of Slovenia. A problem arises if the statutory elements of a criminal offence and a minor offence completely overlap, which leads to legal uncertainty.

Design/Methods/Approach:

The research is based on a quantitative investigation in the course of which we conducted a survey in order to test our assumption. First, we used basic one sided t tests on the data from section 1 questions to try our general assumption. Afterwards, we designed three sets of factors using factor analysis in order to use them on questions from sections 2–6, 7 and 8. In the last part, we took all the designed variables and some other basic information on respondents and used them in regression models for analysis of factors that affect the opinion on adequacy of Slovenian legislation regarding sanctioning and prosecution of economic crime.

Findings:

With the research, we wished to obtain new knowledge on the adequate demarcation between selected economic minor offences and selected criminal offences. In practice, it is material that statutory elements of a particular unlawful action are clearly defined. On the basis of our findings we propose elimination of

legal vacuum in which the chosen legal articles for minor economic offences and criminal offences overlap.

Research Limitations/Implications:

Limitations of the present article mostly relate to the availability of data and the willingness of state agencies for cooperation in the research. This relates to the quality of primary and secondary data, particularly to the issues related with consistency in data collection and data accuracy (unwillingness of the respondents to complete the survey and the problems of time and sectorial consistency in the definitions of individual statistical variables).

Practical Implications:

Results of the study can provide recommendations for the consequent changes in the studied legislation and clearer demarcation of legal articles on the chosen economic and criminal offences with the purpose of strengthening of respective legal protection.

Namely, this is the only way to ensure legal certainty that should be guaranteed to everyone on the basis of the Constitution of the Republic of Slovenia.

Originality/Value:

Value of this article is in the empirical demonstration and normative arrangement of a specific field of law, i.e., the legislation in the field of sanctioning and prosecution of economic crime.

UDC: 343.37

Keywords: economic criminal offences, economic minor offences, demarcation, legal certainty, unlawful actions

Primerjava in razmejitev med izbranimi gospodarskimi prekrški in gospodarskimi kaznivimi dejanji

Namen prispevka:

V prispevku obravnavamo razmejitve med izbranimi gospodarskimi prekrški in gospodarskimi kaznivimi dejanji, in sicer: *preslepitev pri poslovanju z vrednostnimi papirji; zloraba notranje informacije; izdaja in neupravičena pridobitev poslovne skrivnosti*. Gre za temo, ki v literaturi tako rekoč ni obravnavana. Kazenskopravna teorija se ukvarja predvsem z vprašanjem, po katerih merilih naj se med protipravnimi dejanji prepoznajo kazniva dejanja. Pravo o prekrških pa se praviloma ukvarja z lažjimi oblikami kaznivih ravnanj. V praksi se lahko zgodi, da kako ravnanje ustreza opisu kaznivega dejanja in prekrška hkrati. Zato je zelo pomembno, da so zakonski znaki določenega protipravnega dejanja točno določeni in jasno razmejeni. S tem se zagotovi pravna varnost, ki naj bi bila vsakomur zagotovljena že z Ustavo RS. Problem nastane, če se zakonski znaki kaznivega dejanja in prekrška popolnoma prekrivajo, kar lahko pripelje do pravne negotovosti.

Metode:

Raziskava temelji na kvantitativnem raziskovanju, kjer smo za preverjanje domneve naredili anketno raziskavo. Najprej smo z osnovnimi enostranskimi t testi

preverili našo osnovno domnevo na podatkih vprašanj pri prvem poglavju, nato smo za vprašanja pri poglavjih 2–6, 7 in 8 oblikovali tri nabore faktorjev s pomočjo uporabe faktorjske analize. V zadnjem delu smo vse oblikovane spremenljivke in še nekatere osnovne podatke o vprašanih uporabili v regresijskih modelih za analizo dejavnikov, ki vplivajo na mnenje o ustreznosti slovenske zakonodaje na področju sankcioniranja in pregona gospodarske kriminalitete.

Ugotovitve:

Z raziskavo smo želeli priti do novih spoznanj na področju ustrezne razmejitve med izbranimi prekrški in izbranimi kaznivimi dejanji. V praksi je zelo pomembno, da so zakonski znaki določenega dejanja točno določeni. Na podlagi novih ugotovitev lahko predlagamo odpravo pravne praznine, kjer se izbrani členi prekrškov in kaznivih dejanj prekrivajo.

Omejitve/uporabnosti raziskave:

Omejitve pričujočega članka se nanašajo predvsem na dostopnost do podatkov, pripravljenost državnih organov za sodelovanje v raziskavi. Navedeno se nanaša na kvaliteto primarnih in sekundarnih podatkov. Sem uvrščamo vprašanja doslednosti v zbiranju in stopnjo točnosti podatkov (nepripravljenost anketirancev izpolniti anketo oziroma intervju ter probleme časovne in sektorske doslednosti v opredelitvi posameznih statističnih vrst).

Praktična uporabnost:

Rezultati študije lahko ponudijo priporočila glede nadaljnje spremembe obravnavane zakonodaje in jasnejše razmejitve izbranih prekrškovnih oziroma kazenskih členov z namenom krepitve pravne varnosti.

Izvirnost/pomembnost prispevka:

Vrednost naslovnega članka je v empiričnem prikazu in normativni ureditvi posebnega pravnega področja, kot je zakonodaja na področju sankcioniranja in pregona gospodarske kriminalitete.

UDK: 343.37

Ključne besede: gospodarska kazniva dejanja, gospodarski prekrški, razmejitev, pravna varnost, protipravna dejanja

1 INTRODUCTION

According to Bele (2005), Slovenian legislation normatively divides criminal conducts in the broader sense into two categories, criminal offences and minor offences, forming a dichotomy of delicts. In his commentary on the Minor Offences Act, Jenull (2009) states that due to the specific structure of criminal law norms which define sanctions for unlawful actions, delicts seem to form a whole but need to be considered as belonging to two separated subsystems of criminal law as a result of the legal differences they show in all other aspects.

In his scientific paper titled *Constructive division of minor offences and criminal offences*, Selinšek (2009) argues that minor offences generally relate to less serious unlawful actions, with sanctions considerably milder than those prescribed for

criminal offences. Additionally, Kocbek, Plavšak, and Premk (2007) claim that a trichotomy of criminal conducts had existed in Slovenia prior to the amendment of the Minor Offences Act in 2000. In addition to the criminal offences and minor offences, the Slovenian legal system had also recognised economic offences as the third form of delicts.

The study presented by Jakulin, Korošec, Ambrož, and Filipčič (2014) establishes that regardless of different concepts of the legal nature of minor offences, these are consistently caught in the middle between the criminal and administrative parts, although the evolution of modern criminal law theory and international human rights law provides enough arguments to support the thesis of minor offences law being a part of a comprehensive criminal law system. Accordingly, as concluded by Bavcon, Šelih, Korošec, Ambrož, and Filipčič (2013), in Slovenia it is more correct to speak of criminal law in a narrower sense, consisting only of criminal offences, and criminal law in a broader sense, which, according to Jakulin et al. (2014), also covers minor offences, than to speak of penal law.

Filipčič and Korošec (2010) and Selinšek (2002) agree that there are two primary criteria for the legislator's decision on the category into which a certain negative conduct or action should be classified. The first relates to the question on harmfulness and danger the conduct or action presents for the legally protected good.¹ The second criterion relates to the question of unlawfulness, that is to the question whether the conduct amounts only to a violation of a rule and does not endanger or harm the protected good, or the conduct directly endangers or even harms the protected good.² Besides the two main criteria a number of additional factors exist, e.g. the field of social life in which the negative conduct appears, frequency of such conduct, and the state's possibility for prevention of such conduct. Taking into account these facts, demarcation between minor offences and criminal offences is in some cases not clear and precise, especially if the same conduct can be qualified as both a minor and a criminal offence, depending on the circumstances of the case.

2 CRIMINAL LAW AND LAW OF MINOR OFFENCES ON THE LEVEL OF EUROPEAN UNION

Anderson and Apap (2002) argues that the fundamental objective of the EU concerning the law enforcement's response to economic criminal offences and economic minor offences is to provide all EU citizens with a high level of protection in terms of freedom, safety and rights. Tratnik, Ferčič, and Ferlinc (2004) add

1 Selinšek (2002) believes that, in this sense, the meaning of minor offences coincides with the meaning of criminal offences, since minor offences also point at a certain level of danger for the protected good, while, on the other hand, the level of minor offences' danger is much lower than the danger of criminal offences.

2 As for criminal offences, it is of prime importance that the law clearly describes the conduct, while the unlawfulness is not explicitly specified and can be indirectly inferred (Bele, 2005). On the contrary, for minor offences it is essential that a law, a government decree, or a decree of a self-governing local community accurately indicates the regulation that is violated, while the question of violation's means is of secondary importance (Selinšek, 2002).

that the EU member states can achieve this goal through adoption of common measures and harmonisation of national legislation concerning economic crime as well as economic minor offences.

Calderoni (2010) calls for the preparation of common instruments which are binding upon all member states and incorporated into their national legal systems (e.g. the obligation to define a certain act as a crime is contained within the EU law which prescribes the common statutory elements of a criminal offence). According to Filipčič and Korošec (2010), all EU member states need to apply common provisions, but their mode of enforcement should rest with individual member states. However, Grover (2010) believes that common provisions should be directly applicable in all EU member states through a special EU-wide procedure.³

Furthermore, Grover (2010) states that, in order to increase the efficiency of investigations into economic criminal offences and economic minor offences, it would be necessary to facilitate and promote cooperation in the proceedings and enforcement of decisions between the competent ministries and the judicial and other comparable government bodies within the EU member states. On the other hand, Filipčič and Korošec (2010) believe that it is essential to ensure compliance of regulations applied in the EU member states, as well as gradual adoption of measures to define minimum regulations specifying the elements of criminal acts that fall under the category of economic crime.

As for the theoretical background to this issue, Sereďyńska (2012) acknowledges the existence of studies into the independent European criminal law but argues their merit. As stated by Selinšek (2006), the European primary law authorises the Council of the European Union, acting upon a proposal of the European Commission and in consultation with the European Parliament, to adopt a regulation or a directive to impose sanctions for certain violations relating to this field.

The Treaty establishing the Constitution for Europe, which is not yet in effect, stipulates that European framework laws may establish minimum rules concerning the definition of criminal offences (Rovna & Wessels, 2006). Sovdat (2013) mentions that this possibility is limited to particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis (currently, these offences are not governed by Articles detailing provisions for fraud in securities trading, abuse of insider information, and disclosure and authorized acquisition of trade secrets. As argued by Trstenjak (2012), the provisions of European framework laws do not apply directly to the EU member states since the European framework laws bind the member states to strive for the overall objective of the law, but leave the choice of the mode and methods of achieving this objective at the discretion of each member state.

Currently, the EU member states are undergoing a process of harmonisation of the laws governing criminal offences and minor offences, in particular as

³ This solution has not been adopted on the EU level for any area of law. When (or if) it is passed, it will follow the *Corpus Iuris*, which is an attempt at extending the jurisdiction of the EU in the field of criminal and substantive law. The model is designed as a type of a European finance and penal code (with a substantive and procedural part), which was to be directly applied in all EU member states (Filipčič & Korošec, 2010).

regards the acts which violate the interests of the EU. The fundamental argument that supports the harmonisation and the development of the European criminal law lies in the simple fact that it is not reasonable to open up the borders for perpetrators of criminal offences while closing them up to the law enforcement bodies.

3 ECONOMIC CRIMINAL OFFENCES IN SLOVENIAN LEGAL ORDER

In Slovenia, criminal offences are governed by the Penal Code of the Republic of Slovenia as of 2008 (hereinafter referred to as PC-1, 2008), as explained by Bavcon and Šelih (2009). PC-1 (2008) regulates all criminal law issues in one place.⁴ It is divided into two parts: the general part and the specific one. The general part applies to all criminal offences and includes: fundamental provisions, application of the penal code, general provisions on criminal offence, sentences (admonitory sanctions, safety measures, confiscation of property benefits gained by committing of criminal offence) and their implementation, legal consequences of conviction, statute of limitations and provisions on amnesty and pardon. The specific part of PC-1 contains descriptions of individual criminal offences, categorised into different sections, and presents a comprehensive display of all actions that are in Slovenia marked as criminal offences. As noted by Selinšek (2009), PC-1 (2008) is a "law above laws", since it envisages and sanctions the worst violations from all legal fields as criminal offences.

Deisigner (2007) states that, in the Slovenian Penal Code, the criminal offences against the economy are defined in chapter XXIV, while the criminal offences that can be committed by legal persons are exhaustively listed in Article 25 of the Law for Legal Persons Committing Criminal Offences as of 2004 (hereinafter referred to as LLPCCO, 2004). Economic criminal law in a narrower sense can be described as a group of legal rules that define economic criminal offences, sanctions for them, and conditions under which natural and legal persons are liable for these criminal offences. Bele (2005) establishes that in legal theory the scope of economic criminal law, when interpreted broadly, includes not only economic criminal offences but also (economic) minor offences.

As proposed by Pinto (2003), substantive conception derives the notion of economic criminal offences from legally protected values and goods, that is from the direct object of attack of the particular criminal offence. Correspondingly, Pedneault (2010) defines as economic criminal offences all those criminal offences that are committed in the field of economic activities and those that endanger the property of corporations or other business entities, while Lamberger (2009) sees as important two aspects that at least partly lean on the definition of economic activity as described under items 10 and 11 of the first paragraph of Article 99 of PC-1 (2008). Economic criminal law can, therefore, relate only to economic operations

⁴ *Contrary to the majority of other legal orders that govern this field in lateral criminal legislations, the Slovenian legislator followed the principle of collecting all criminal offences in one place, that is, in the Penal Code, and thus moved away from the statutory regulation of other criminal law systems that encompass extensive lateral criminal legislations where norms regarding economic criminal law are dispersed into various statutes and decrees that govern a certain field of economy or economic activity and its borders.*

and activities (in terms of the cited provision: production and trade of goods, performance of services on the market, banking and other financial operations, management services and participation in the management, representation and supervision). The second aspect represents operations within a business entity or mutual economic operations between different business entities.

4 ECONOMIC MINOR OFFENCES IN THE SLOVENIAN LEGAL ORDER

In his study, Pruša (2008) explains that minor offences generally relate to less serious forms of criminal conduct, which, in comparison to criminal offences, requires milder sanctions. Further Bele (2002) explains that needs to be noted that, prior to the amendment of the Minor Offences Act in 2000, a trichotomy of criminal conducts had existed in Slovenia, as in addition to the criminal offences and minor offences, the Slovenian legal system also recognised economic offences as the third form of delicts.

According to Herega (2010), minor offences law in Slovenian legal order is comprised of general, specific and procedural parts. While the general and the procedural parts are uniformly governed by the Minor Offences Act as of 2007 (hereinafter referred to as MOA-1, 2007), the provisions of the specific part are dispersed throughout various statutory instruments and documents that contain descriptions of particular minor offences (generally in the section named “Penal Provisions” at the end of the regulation).

Selinšek (2006) states that minor offences are mainly determined in a specific section of a particular regulation (entitled “Penal Provisions”) or in a specific article located before transitional and final provisions. Minor offences are generally defined indirectly. Namely, the “penal” provision that determines a particular action as a minor offence and prescribes the sanction directly refers to an obligation or a prohibition described in the substantive part of the regulation, indicating the article and thus including it in the minor offence’s abstract state of facts.

Article 6 of MOA-1 (2007) defines a minor offence as an *“action that is a violation of a law, governmental decree or municipal ordinance, which is determined as a minor offence and for which a sanction for minor offences is prescribed”*. MOA-1 (2007) thus redefines minor offences by determining them as violations of law, which means that the applicable minor offences law stems from the pure formal conception. On the contrary, the definition of criminal offences in the applicable law is based on the formal-substantive conception, since it requires not only violation of law but also protection of legal values and a description of conduct’s elements, as explained by Jakulin et al. (2014). The requirement of description of elements by interpretation applies also to minor offences; however, necessity of protection of legal values is the one that should primarily lead the legislator when deciding whether an unlawful conduct should be incriminated as a criminal offence or as a minor offence. MOA-1 (2007) is divided into 5 parts: substantive provisions, the procedure regarding minor offences, enforcement and documentation of decisions, jurisdiction and organization of minor offences courts, transitional and final provisions.

As proposed by Gril, Kovač, and Vitužnik (2009), the legislator decides whether a forbidden conduct should be identified as a criminal offence or as a minor offence. The position of the Slovenian Constitutional Court is that the choice of criminal sanction (and thus the decision on the type of criminal offence) reflects the state of the society in a particular moment: importance of the protected value that is affected by the prohibited action, the frequency of particular conduct, the level of its unacceptability, etc. In his study, Jenull (2013) finds that the Constitution gives no advantage to any specific purpose of punishment as it stated in Decision of the Constitutional Court of the Republic of Slovenia no. RS U-I-183 (1996). A minor offence is generally determined by a law, yet, according to Article 3 of the Minor Offences Act (2007), minor offences can also be stipulated in decrees and governmental or municipal ordinances. Regardless of the type of regulation that defines the minor offence, *lex certa* principle has to be taken into account when formulating the norms – the regulation that determines an action as criminal has to be specific, clear and foreseeable. In its Decision no. U-I-213/98 of 16 March 2000, the Constitutional Court of the Republic of Slovenia adopted a position that the requirement for an exact definition of criminal offences has to be considered also when defining minor offences. Additionally, the legislator has to assure that a minor offence and a criminal offence do not have identical statutory elements (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-213/98, 2000).

MOA-1 (2007) thus differs from PC-1 (2008) by including the provisions on the procedure, while it does not regulate specific minor offences or include specific provisions on minor offences, as it is the case with PC-1 (2008) regarding criminal offences. Namely, MOA-1 (2007) applies to minor offences in general, whereas the descriptions of particular minor offences are dispersed throughout different sector-specific laws, governmental decrees and municipal ordinances.

5 DIFFERENCES IN THE WAY OF SANCTIONING

5.1 Criminal Sanctions

For the majority of economic criminal offenses, Slovenian PC-1 (2008) provides for prison sentence in different durations, depending on the nature and seriousness of the offence.⁵ As established by Lamberger (2009), a fine is only stipulated for the criminal offence of deception of purchasers, as defined in the third paragraph of Article 232 of PC-1 (2008), while it is considered an alternative for some other economic criminal offences.⁶

An overview of the prescribed sanctions for criminal offences against economy, included in the specific part of the Penal Code, eloquently shows that the primary status is not given to fines but to imprisonment. The statistical data

⁵ The lowest prescribed punishment is imprisonment to maximum one year, the highest prescribed punishment is imprisonment from one to fifteen years.

⁶ E.g. for criminal offences of Fraud in Obtaining Loans or Benefits (Article 230 of PC-1, 2008), Fraud in Trading with Securities (Article 231 of PC-1, 2008), Deception of Purchasers (Article 232 of PC-1, 2008).

for the years 2013 and 2014 relating to sentencing of perpetrators of economic criminal offences demonstrates that suspended sentences⁷ are in such a majority that they could almost be labelled as a rule. If the perpetrators are not sentenced to prison, the (prison) sentence is generally suspended. Some authors, for example Alber (2013) and Jakulin (2012), identify the reasons for this in keeping up with the tradition established in our former country where the majority of middle-class offenders who had committed criminal offences that were not particularly serious were sentenced to probation.⁸

On the other hand, Mazi (2003) argues that in the developed European countries, a fine has been the prevailing criminal sanction for a considerable length of time, with a share of 70 to 85 percent amongst all imposed criminal sanctions. Such a share is in Slovenia comparable with the share of suspended sentences. This data relates to all imposed criminal sanctions, however, there is no significant difference when focusing only on criminal offences against economy.

5.2 Sanctions for Minor Offences

Minor offences are forbidden actions that are, taking into account their consequences, less serious in comparison to criminal offences, which is why no punishments are imposed on the offenders but only sanctions that can have penal nature (Jenull, 2009). The regulation that defines the statutory elements of a particular minor offence also determines the sanction for this minor offence. Unlike the Minor Offences Act of 1983, MOA-1 (2007) does not envisage different types of sanctions (punishments, protective measures), but includes only a uniform category of sanctions. In Article 4, MOA-1 (2007) stipulates the sanctions for a minor offence and prescribes the basic conditions for their determination and imposition. Sanctions for minor offences are governed by and described in detail in chapter 3, Articles 17 to 27, of MOA-1 (2007).

Slovenian minor offences law (MOA-1, 2007) uses only one main sanction, a fine (Article 17), while all the other sanctions, except of a warning, are of accessory nature, since they can be imposed exclusively accompanying a fine and not independently. A warning (Article 21) cannot be prescribed for a minor offence

⁷ According to Article 58 of PC-1 (2008), a court may suspend the sentence when the perpetrator has been punished by imprisonment for a term not exceeding two years or by a fine and if the court, considering the circumstances under which the offence was committed, comes to the conclusion that it is reasonable to expect that the perpetrator will not commit any further criminal offences.

⁸ For centuries, punishment was the only form of criminal sanctions. In the first forms of human social life, punishments acted as a revenge of the injured party, while also representing a symbolical means for appeasing the evil caused with the violation. In the beginning, especially death penalty, very cruel corporal punishments and punishments affecting the perpetrator's honour were used. The history of evolution of punishments shows that punishments eventually started humanising, even though slowly. Custodial sentences that gradually replaced corporal punishments present the first step in this direction. However, the main purpose of punishment remained and will always remain the same: it is the key and most frequent means of society's reaction to criminal offences. A punishment always included a negative moral and ethical appraisal of the perpetrator and the criminal offence he committed; its execution presented an interference with one or more values that were of high importance to the perpetrator. Today, punishment remains the most frequently used form of criminal sanctions, while, in the last century, being accompanied with some other forms of reactions to criminality (Jenull, 2009).

in advance, it can only be issued instead of a fine (and not instead of any other sanction). In such a case, a warning takes over the role of the main sanction, which is why accessory sanctions, besides a warning, can also be imposed.

Zobec (2014) stresses that minor offences law needs to distinguish between sanctions and formal cautions, since the first paragraph of Article 4⁹ of MOA-1 (2007) expressly stipulates that a formal caution is not a sanction but represents an alternative to the sanctions. Unlike the warning that can be issued instead of a fine, a formal caution is issued instead of any sanction, as stipulated by the seventh paragraph of Article 4 of MOA-1 (2007), which states that a formal caution is issued instead of instituting the procedure for the minor offence or instead of issuing a decision regarding the minor offence. As established by Filipčič (2005), no procedure needs to be carried out in order to issue a formal caution. This also means that along with a formal caution (which is not a sanction) it is not possible to impose an accessory sanction, since an appropriate procedure would then have to be conducted. Conditions for issuing a formal caution are defined in Article 53 of MOA-1 (2007).

6 DEMARCATION BETWEEN SELECTED ECONOMIC MINOR OFFENCES AND ECONOMIC CRIMINAL OFFENCES

6.1 Fraud in Securities Trading

As regards the criminal offence of fraud in securities trading, Kaleb (2009) finds that the direct object of criminal law protection is the securities market. This criminal offence is a typical example of stock exchange delicts. Stock exchange is in layman's vocabulary a synonym for securities market. Selinšek (2009) points out that although the term "stock exchange delict" is not used in the relevant part of PC-1 (2008), this word is often used in theory as a collective term for the criminal offence in question.

As explained by Lamberger (2009), the criminal offence described in Article 231 of PC-1 2008 is normally defined as a general criminal offence, which means that it can be committed by any subject of criminal law. On the other hand, Selinšek (2007b) argues that because this criminal offence can be committed only when trading with stocks, other securities and options, the scope of possible perpetrators is limited to persons who are placing securities on the market or are trading with securities, i.e., mostly issuers of securities and stock brokers. In accordance with item 9 of Article 25 of LLPCCO (2004), legal persons can also be held liable for committing a fraud in securities trading, as mentioned by Deisinger (2007).

Article 231 of PC-1 (2008) in fact protects investors in securities from the risks of wrong investment decisions caused by false information. Criminal offence of fraud in securities trading is linked to the law of securities and to corporate law,

⁹ For the committed minor offence, in accordance with the conditions indicated in the MOA-1 (2007), a prescribed sanction is imposed or a formal caution is issued.

especially regarding two questions: 1) who can commit this criminal offence,¹⁰ and 2) what other data¹¹ may importantly affect the value of securities.

According to Weygandt, Kimmel, and Kieso (2011), the perpetrator committing a criminal offence of fraud in securities trading falsifies important information in the prospectus, annual report or in some other way as a result of false indications, a different value of securities is derived from the data, which influences the decision on buying or selling the securities.

The study proposed by Peterlin (2013) states that minor offences, where the object of protection is securities market, are defined in the Financial Instruments Market Act as of 2007 (hereinafter referred to as FIMA, 2007). Minor offences related to securities trading are indicated in the penal provisions of FIMA (2007). A violation that is determined by FIMA (2007) as a minor offence and that corresponds to the definition of the criminal offence governed by the first paragraph of Article 231 of PC-1 (2008) (*“whoever, in trading stocks, other securities or other financial instruments, falsely represents the balance of assets, data on profits or losses, or any other data in the prospectus”*) is introduced in item 4 of the first paragraph of Article 556 of FIMA (2007).

Pursuant to item 4 of the first paragraph of Article 556, in connection with the second paragraph of Article 53 of FIMA (2007), a minor offence is committed already by the fact that information, included in the prospectus, is not correct or complete (and is therefore falsely indicated). On the other hand, in accordance with Article 231 of PC-1 (2008), for a criminal offence of fraud in securities trading to be committed, perpetrator’s intent to mislead one or more persons into buying or selling securities is prerequisite. **The minor offence and the criminal offence are, in this case, clearly demarcated.** It is true that the criminal offence of fraud in securities trading incorporates the elements of the minor offence defined under item 4 of the first paragraph of Article 556 of FIMA (2007) (there is a partial overlapping), however, in Slovenian legal order a general rule is used, in accordance with which a perpetrator’s liability for a more serious criminal conduct excludes his liability for a less serious criminal conduct.

NUMBER OF PROSECUTED CRIMINAL OFFENCES AND ESTIMATED DAMAGE

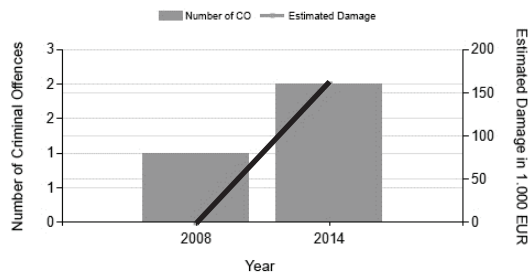


Figure 1: Number of treated criminal offences of fraud in securities trading under Article 231 of PC-1 (Source: Ministry of the Interior, 2009–2015)

10 Potential perpetrators are persons who put securities into circulation or who trade with securities. It is expected that the majority of criminal offences in terms of Article 231 of PC-1 will be committed by issuers of securities and stock brokers (Selinšek, 2007a).

11 “Other data” from Article 231 of PC-1 that could affect the value of securities appears in very diverse forms. Mostly, this will be information about business events that relate to the issuer or to the securities (Selinšek, 2007a).

Based on an analysis of statistical data for the period from 2008 till end 2014, police investigated one criminal offence relating to fraud in securities trading in 2008 and two such criminal offences in 2014, as shown in Figure 1. The annual reports on prosecution activities indicate that two of these cases were dismissed by prosecution. The analysis of the annual reports of the Securities Market Agency (2009–2015; hereinafter referred to as SMA) as the competent minor offence authority responsible for violations of FIMA (2007) and a public authority shows that since 2008 the Agency has issued more than 25 decisions on minor offences, imposing 26 fines and 30 cautions on the perpetrators. Interestingly, only one of these cases was reported to the police and the prosecution as a criminal offence of fraud in securities trading.

6.2 Disclosure and Unauthorised Acquisition of Trade Secrets

The criminal offence of disclosure and unauthorised acquisition of trade secrets (Article 236 of PC-1, 2008) does not indicate the scope of persons who have the “duty to protect trade secrets”, which is why the text of the first paragraph of Article 236 should be interpreted as silent blanket referral to the provisions of the Companies Act as of 2006 (Articles 39 and 40 of the Companies Act; hereinafter referred to as CA-1, 2006).

Selinšek (2007a) claims that the criminal offence of disclosure and unauthorised acquisition of trade secrets is determined as a general criminal offence, where the scope of possible perpetrators is narrowed by the statutory definition to persons that have the duty to protect trade secrets. On the other hand, Deisinger (2007) points out that in accordance with item 9 of Article 25 of LLPCCO (2004), legal persons can also be held liable for the criminal offence of disclosure and unauthorised acquisition of trade secrets.

Protection Article 13 of the Protection of Competition Act (1993; hereinafter referred to as PCA, 1993), as a form of unfair competition, also indicates acquisition of other company’s trade secret and unjustifiable exploitation of other company’s trade secret (item 14 of the third paragraph of Article 13 of PCA, 1993), as also pointed out by Grilc et al. (2009). The indicated conduct is defined as a minor offence in accordance with Article 30 of PCA (1993) and simultaneously as a criminal offence governed by the second paragraph of Article 236 of PC-1 (2008).

The aforementioned text indicates similar or even essentially the same scope of incrimination under the criminal offence of disclosure and unauthorised acquisition of trade secrets, defined in Article 236 of PC-1 (2008), and the minor offence from Article 30 of PCA (1993) in connection with item 14 of the third paragraph of Article 13 of PCA (1993). Nevertheless, a minor offence requires unauthorised acquisition of *other company’s* trade secret, which is not indicated in the second paragraph of Article 236 of PC-1 (2008) regarding the criminal offence. It can thus be concluded that, according to second paragraph of Article 236 of PC-1 (2008), the criminal offence of unauthorised acquisition of trade secrets is committed regardless of the company to which the information relates. In case of both criminal offence and minor offence, unauthorised exploitation and use of trade secrets is also incriminated. Statutory elements of the minor offence defined

in Article 30 of PCA (1993) in connection with item 14 of the third paragraph of Article 13 of PCA (1993) **completely overlap with the statutory elements of the criminal offence of disclosure and unauthorised acquisition of trade secrets**, governed by the second paragraph of Article 236 of PC-1 (2008). Taking into account the opinion of the Slovenian Constitutional Court Described in its decision no. U-I-88/07 of 8. January 2009, this could be interpreted as an “*unconstitutional mutual indivisibility of two different criminal conducts*” (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-88/07, 2009).

Statutory elements of minor offences indicated in the first paragraph of Article 401 of Banking Act as of 2006 (hereinafter referred to as BA-1, 2006) overlap with the statutory elements of the criminal offence of disclosure and unauthorised acquisition of trade secrets, defined in the first paragraph of Article 236 of PC-1 (2008). Confidential information which is in the possession of the bank and needs to be safeguarded by the bank is interpreted as a trade secret pursuant to Article 39 of CA-1 (2006). Statutory elements of the minor offence indicated in Article 401 of BA-1 (2006) and statutory elements of the criminal offence of disclosure and unauthorised acquisition of trade secrets, governed by the second paragraph of Article 236 of PC-1 (2008), **completely overlap**. Taking into account the opinion of the Slovenian Constitutional Court Described in its decision no. U-I-88/07 of 8. January 2009, this could be interpreted as an “*unconstitutional mutual indivisibility of two different criminal conducts*” (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-88/07, 2009).

NUMBER OF PROSECUTED CRIMINAL OFFENCES AND ESTIMATED DAMAGE

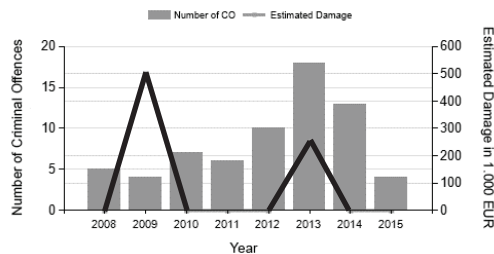


Figure 2:
Number of treated criminal offences of disclosure and unauthorised acquisition of trade secrets under Article 236 of PC-1 (2008) (Source: Ministry of the Interior, 2009–2015)

Based on an analysis of statistical data for the period from 2008 till end 2014, police investigated 67 criminal offences of disclosure and unauthorised acquisition of trade secrets, as shown in Figure 2. The majority of these cases were treated in 2013 (18 cases), while the number of the cases was lowest in 2009 (4 cases). The annual reports of the prosecution activities indicate that 35 cases were dismissed by the prosecution due to the absence of reasonable grounds for suspicion. In six cases, the prosecution filed an indictment. In the remaining 26 cases the prosecution has not yet pronounced itself regarding the acts submitted by the police. Interestingly, the competent minor offence bodies, i.e., the Bank of Slovenia (hereinafter referred to as BS) and the Slovenian Competition Protection Agency (hereinafter referred to as CPA) as the bodies overseeing the violations relating to the disclosure or unauthorised acquisition of trade secrets, did not refer any of the above mentioned cases to the police or the prosecuting authority within the period studied although the annual reports show several violations concerning trade secrets were treated. In fact, the Bank of Slovenia (2009–2015)

treated 11 cases within the study period. In two cases, a fine was imposed while others were concluded with a caution or warning. CPA (2009–2015), on the other hand, did not issue any decisions indicating cases relating to the disclosure of trade secrets.

6.3 Abuse of Insider Information

The criminal offence of abuse of insider information is determined as a general criminal offence, as explained by Ferlinc (2003). Yet, from the individual descriptions of the criminal offence it can be concluded that the scope of possible perpetrators differs in accordance with the provisions of different paragraphs of Article 238 of PC-1 (2008). Consequently, Selinšek (2009) states that the criminal offence indicated in the first paragraph of Article 238 of PC-1 (2008) can therefore be committed only by a person that obtains insider information in relation to the position he occupies with the issuer of the security or equity in the capital of the issuer of the security, their employment, or when performing activity. The criminal offence indicated in the second paragraph of Article 238 of PC-1 (2008) can be committed by any person who can be subject of criminal law and who (lawfully or unlawfully) obtains insider information. Perpetrator of the criminal offence described in the third paragraph of Article 238 of PC-1 (2008) can be any person who can be subject of criminal law and who obtains insider information without authorisation. In accordance with item 9 of Article 25 of LLPCCO (2004), legal persons can also be held liable for the criminal offence of abuse of insider information, as stated by Deisinger (2007).

Mavko (2010) argues that when committing a minor offence in accordance with item 1 of the first paragraph of Article 566 of FIMA (2007) and when committing a criminal offence of abuse of insider information in accordance with the first paragraph of Article 238 of PC-1 (2008), the perpetrator obtains insider information, uses it to buy (acquire) or sell (divest) the financial instrument (which includes securities) for himself or any third person, directly or indirectly. According to Selinšek (2009), the first paragraph of Article 238 of PC-1 (2008) stipulates who can be punished as a perpetrator of the criminal offence of abuse of insider information, while, regarding the minor offence governed by item 1 of the first paragraph of Article 566 of FIMA (2007), this element is included in the first paragraph of Article 382 of FIMA (2007), as pointed out by Mavko (2010). In both cases, the perpetrator can be the person who obtains insider information in relation to the position he occupies with the issuer of the security (as a member of issuer's managerial and supervisory bodies), to equity in the capital of the issuer of the security (as an owner of a share in issuer's capital), his employment, or when performing activity (because he has access to information in the course of performing his work assignments). It can be concluded that the statutory elements provided under item 1 of the first paragraph of Article 566 of FIMA (2007), in connection with Article 382 of FIMA (2007), **completely overlap with the statutory elements of the criminal offence of abuse of internal information** governed by Article 238 of PC-1 (2008). Taking into account the opinion of Slovenian Constitutional Court Described in its decision no. U-I-88/07 of 8. January 2009, this

could be interpreted as an “unconstitutional mutual indivisibility of two different criminal conducts” (Decision of the Constitutional Court of the Republic of Slovenia no. U-I-88/07, 2009).

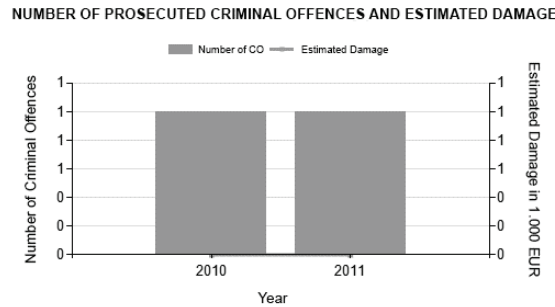


Figure 3:
Number of treated criminal offences of abuse of insider information under Article 238 of PC-1(2008)

(Source: Ministry of the Interior, 2009–2015)

Based on an analysis of statistical data for the period from 2008 till end 2014, police investigated only two cases of criminal offences relating to abuse of insider information, as shown in Figure 3. As evident from the reports on the prosecution activities, an indictment was filed in both cases. Interestingly, within the study period the SMA (2009–2015) as the competent minor offence authority responsible for overseeing the violations relating to the abuse of insider information issued more than 25 minor offence decisions, imposing 26 fines, 24 cautions and 30 warnings. However, only two referrals to the police or the prosecuting authority were made.

7 METHODS

7.1 Choice of Mode, Method and Sample of Study

The study is based on a quantitative research in the course of which we tested the assumption that reads “Slovenian legal order, governing economic minor offences and economic criminal offences from the field of takeovers, is not adequate and thus enables misuse” by conducting a survey. The questionnaire consisted of two parts: in the first part, respondents were asked about their employment, education and work experience; in the second part, we established statements that were categorised into eleven sections and related to the topic in question. In section 1 of the questionnaire, respondents expressed their view on four statements in which we claimed that economic criminal offences and economic minor offences are adequately positioned in the Slovenian legal order and that their statutory elements are defined clearly and precisely. In sections 2–4, respondents assessed adequacy of demarcation of provisions governing economic criminal offences and economic minor offences: *Fraud in Securities Trading*; *Abuse of Insider Information*; and *Disclosure and Unauthorised Acquisition of Trade Secrets*. In section 7, we asked respondents how efficient is their institution as regards discovery and prosecution of economic criminal offences and economic minor offences in comparison to other similar institutions in Slovenia and in EU. In section 8, respondents were asked to assess the listed 12 activities in terms of their potential contribution to more

efficient procedures regarding discovery and prosecution of economic criminal offences. In sections 9, 10 and 11, which are not essential for this article's analysis, we set questions on how many hours of additional education respondents had in the last 24 months in the pre-specified fields; in the fields in which they would like to acquire more knowledge in order to have better work results; and on frequency of pre-specified obstacles respondents face when performing their duties. Except in section 10, where respondents only encircled the most suitable answer, in all sections respondents ranked the answers by using the 5-level Likert-type ranking, where 1 and 2 represented their disagreement with the statement, 3 represented their inability to decide, while 4 and 5 represented their approval of the statement. The questionnaire was of a closed type.

The sample – the studied population – consisted of the expert public, employees of institutions – Police/criminal investigators from the department for economic crime, State Prosecution/prosecutors from the departments for economic crime, Securities Market Agency/minor offences inspectors, Bank of Slovenia/minor offences inspectors, Competition Protection Agency/minor offences inspectors – that are active in the field of research in question within the institution they belong to. Since the topic at hand is very specific and the answers of employees in different positions would differ, it was necessary that the questions were answered by persons that actually work in the field of this article's topic. Sampling was random and stratified. We acquired a list of relevant employees from each institution, inserted the data into Excel and, using the function "Random", selected 30 random persons/prosecutors,¹² thereby assuring representativeness of the sample. We expected an approximately 80-percent level of responses, which gives an expected size of the sample amounting to 120 units. Surveying was anonymous, conducted through a website hosting the questionnaire and based on prior approval of respondents' supervisors.

We analysed the acquired data using statistical software SPSS and Stata. For the basic analysis of data we used frequency distribution and descriptive statistics. We also reproduced the data in a graphic form. In the course of this article's analysis, we will use the following methodology: first, we will use basic one-sided t tests on the data from section 1 questions to try our general assumption. Afterwards, we will design three sets of factors using factor analysis in order to use them on questions from sections 2–6, 7 and 8. In the last part, we will use all the designed variables and some other basic information on the respondents and use them in regression models for the analysis of the factors that affect the opinion on adequacy of Slovenian legislation regarding sanctioning and prosecution of economic crime.

7.2 Study Results

We measured the reliability of the questionnaire by using the reliability test, the Cronbach's Alpha.

¹² These are persons that are, within the specific institution, involved in investigating criminal offences and minor offences from the field of takeovers, e.g. inspectors, criminal investigators, state attorneys, etc.

| Cronbach's Alpha | N of Items |
|------------------|------------|
| .806 | 63 |

Table 1:
Cronbach's
Alpha

Cronbach's Alpha measures reliability of a questionnaire on the basis of correlations between the variables. If the correlation is higher than 0.8, the reliability is high, if it is between 0.6 and 0.8 the reliability is medium and if it is lower than 0.6 the reliability is low (Šifer & Bren, 2011). In our case Cronbach's Alpha amounts to 0.806, meaning that the reliability of the questionnaire is high.

| | Average value | Standard deviation | Standard error of the average value | t-statistics | p-value of the one sided test | Number of observations |
|--|---------------|--------------------|-------------------------------------|--------------|-------------------------------|------------------------|
| In Slovenian legislation, arrangement of economic criminal offences and economic minor offences is adequately positioned within the legal order. | 2.6420 | 0.9913 | 0.1101 | -3.2504 | 0.0008 | 81 |
| The same conduct that can under certain circumstances be considered an economic minor offence and under different circumstances an economic criminal offence is clearly demarcated and specific. | 2.5802 | 0.9336 | 0.1037 | -4.0465 | 0.0001 | 81 |
| Statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific. | 2.9012 | 1.1468 | 0.1274 | -0.7751 | 0.2203 | 81 |
| Statutory elements in the field of economic criminal offences relating to unlawful conduct in the course of takeovers are in Slovenian legal order clearly formed and specific. | 2.4815 | 1.0737 | 0.1193 | -4.3446 | 0.0000 | 81 |
| Prescribed punishments for economic minor offences in the field of takeovers are fair and proportional to the committed minor offence. | 2.3375 | 1.1017 | 0.1232 | -5.3785 | 0.0000 | 80 |
| Prescribed punishments for economic criminal offences in the field of takeovers are fair and proportional to the committed criminal offence. | 2.5455 | 1.0456 | 0.1192 | -3.8146 | 0.0001 | 77 |

Table 2:
Results of
testing of
the basic
hypothesis

Table 2 shows the results of basic statistics regarding individual section 1 questions and results of testing (one sided t test), showing that the average value regarding each question is lower than 3, which means that the respondents are of the opinion that the indicated areas are inadequately regulated in the Slovenian legislation. The results clearly show that the average values, except in the case

of question No. 3 (“statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific”), are statistically significantly lower than 3.

Afterwards, as can be seen from Table 3, we used factor analysis in order to shrink the dimensions in sections 2–6. In-depth results of all the statistics and tests regarding the designing of factors are included in the appendix. We have designed four factors, whereby each factor was designed on the basis of the answers under following items: with the first factor, we used the answers to questions 2a, 3a, 4a, 5a, and 6a (in all these questions respondents were asked to assess the adequacy of demarcation between statutory provisions regarding economic criminal offences and economic minor offences “by statute”); with the second factor, the answers to questions 2b, 3b, 4b, 5b, and 6b (same questions, but “by amount”); with the third factor, the answers to questions 2c, 3c, 4c, 5c, and 6c (same questions, but “by service form”); with the fourth factor the answers to questions 2d, 3d, 4d, 5d, and 6d (same questions, but “demarcation is not necessary”).

Factor analysis was also used to shrink the dimensions in section 7. In-depth results of all the statistics and tests regarding the designing of factors are included in the appendix, while the rotated factor matrix showing the interpretation of factors is displayed below.

Table 3:
Rotated factor matrix, section 7

| | Factors | |
|--|---------|--------|
| | 1 | 2 |
| Assess how efficient is your institution in discovering criminal offences in comparison to other comparable institutions in the country. | 0.8122 | |
| Assess how efficient is your institution in discovering criminal offences in comparison to other comparable institutions in the EU. | 0.7162 | |
| Assess how efficient is your institution in prosecuting criminal offences in comparison to other comparable institutions in the country. | 0.8898 | |
| Assess how efficient is your institution in prosecuting criminal offences in comparison to other comparable institutions in the EU. | 0.7996 | |
| Assess how efficient is your institution in sanctioning economic minor offences in comparison to other comparable institutions in the country. | | 0.8884 |
| Assess how efficient is your institution in sanctioning economic minor offences in comparison to other comparable institutions in the EU. | | 0.9131 |

Extraction Method: Principal Component Analysis

Rotation Method: Varimax with Kaiser Normalization

** Only factor weights higher than 0.35 are reproduced*

The matrix above shows that the interpretation of both factors can be written as follows:

- first factor: efficiency in discovering and prosecuting criminal offences;
- second factor: efficiency in sanctioning economic minor offences.

A similar factor analysis was used also to shrink the dimensions in section 8. In-depth results of all the statistics and tests regarding the designing of factors are included in the appendix, while the rotated factor matrix showing the interpretation of factors is, again, displayed below.

| Assess to which extent the particular activities would contribute to a better efficiency of procedures carried out by law enforcement authorities as regards economic criminal offences. | Factors | | |
|--|---------|--------|--------|
| | 1 | 2 | 3 |
| Clearer demarcation between economic criminal offences and economic minor offences. | | | 0.8052 |
| Better proportionality of criminal sanctions to the unlawfully gained property benefit. | | | 0.6489 |
| Shortening of court proceedings. | | | 0.6984 |
| Simplification of court proceedings for confiscation of unlawfully gained property benefit. | | 0.6151 | |
| Lowering of standards of proof during the court trial. | 0.7607 | | |
| Raising the level of expert knowledge of law enforcement authorities. | 0.4758 | | 0.4327 |
| Higher fines imposed by minor offences authorities. | 0.5527 | 0.4624 | |
| For a higher productivity and investigation of economic criminal offences criminal investigators and state prosecutors should work in the same working environment. | 0.7965 | | |
| Improvement of equipment and work conditions. | 0.7728 | | |
| Development of mechanisms for decreasing fluctuation of staff. | 0.8212 | | |
| Exchange of knowledge among various investigation authorities. | | 0.8440 | |
| Joint work on cases. | | 0.7732 | |

Table 4:
Rotated factor matrix,
section 8

Extraction Method: Principal Component Analysis

Rotation Method: Varimax with Kaiser Normalization

* Only factor weights higher than 0.35 are reproduced

The matrix above shows that the interpretation of both factors can be written as follows:

- the first factor: human resources aspects and aspects of work of law enforcement institutions' employees;
- the second factor: inter-institutional cooperation;
- the third factor: legal environment.

In the last methodological part, we examined which were the aspects that affect the opinion on the suitability of legal order. To this end, we used the answers to individual section 1 questions as respective dependent variables. Since such variables are of discrete nature and can exist only as whole numbers between 1 and 5, we have used the models of ordinal logit analysis (Greene, 2005; Verbeek, 2004). The econometric model we are using is therefore:

$$\ln \frac{\sum_1^j \Pr(y = j)}{\sum_{j+1}^k \Pr(y = j)} = \alpha_j + \sum_{i=1}^3 \beta_i D_i + \beta_4 educ + \beta_5 logyexp + \beta_6 fact1q26 + \beta_7 fact2q26 + \beta_8 fact3q26 + \beta_9 fact4q26 + \beta_{10} fact1q7 + \beta_{11} fact2q7 + \beta_{12} fact1q8 + \beta_{13} fact2q8 + \beta_{14} fact3q8 + \epsilon_j$$

where:

are respective dependent variables, that is the answers to the questionnaire section 1 questions;
are quasi (dummy) variables for individual institutions where respondents are employed, namely: has a value of 1 if the respondent works in the police force and 0 if anywhere else; has a value of 1 if the respondent works as a state prosecutor and 0 if anywhere else; has a value of 1 if the respondent works in court and 0 if anywhere else;
is a variable that aims at the highest achieved level of education and has a value of 1 where the respondent has finished high school, value of 2 where the respondent has finished a short-cycle college, value of 3 where the respondent has a university education, value of 4 for M.Sc. respondents and value of 5 for Ph.D. respondents;
is a variable that equals the value of logarithm of years of work experience;

is a variable that equals the value of the first factor from sections 2-6, that is the factor "by statute";
is a variable that equals the value of the second factor from sections 2-6, that is the factor "by amount";
is a variable that equals the value of the third factor from sections 2-6, that is the factor "by service form";
is a variable that equals the value of the fourth factor from sections 2-6, that is the factor "demarcation is not necessary";
is a variable that equals the value of the first factor from section 7, that is the factor "efficiency in discovering and prosecuting criminal offences";
is a variable that equals the value of the second factor from section 7, that is the factor "efficiency in sanctioning economic minor offences";
is a variable that equals the value of the first factor from section 8, that is the factor "human resources aspects and aspects of work of law enforcement institutions' employees";
is a variable that equals the value of the first factor from section 8, that is the factor "inter-institutional cooperation";
is a variable that equals the value of the first factor from section 8, that is the factor "legal environment";
and are the parameters we are assessing, indicates a random error.

The table below (Table 5: results of regression models) shows the results of regression models for the first three answers from section 1. As regards the first answer, which is most general, the following variables are statistically significant: the fact that the respondent works at the state prosecutor's office means he will give a higher score regarding this question; the fact that the respondent works in court also means he will give a higher score regarding this question, meaning that respondents who work in court or at the state prosecutor's office have a better opinion on the Slovenian legislation in the field of economic crime, which could also be a security mechanism, since the question directly speaks of their work. A higher level of the respondent's education also means he will give a higher score regarding this question, yet the link is less significant; the number of years of work experience also means a better opinion as regards this question, both showing that the highly educated respondents and respondents with more work experience have a better opinion of the Slovenian legal system in the field of economic crime. A better opinion as regards the "by service form" question also means a better opinion in the scope of the first question; as well as a better opinion on efficiency of respondent's own institution in discovering and prosecuting criminal offences means a better opinion in terms of this particular questions, which is of course not surprising, yet, it is interesting that a similar correlation with the opinion on efficiency in sanctioning of minor offences is not apparent.

The model for the second question that asks about a clear demarcation between economic minor offences and economic criminal offences reaches only a weak level of significance, while only one variable is significant – respondents that work at the state prosecutor's office have a slightly better opinion in terms of this question.

At the third question, the model again clarifies variability in the dependent variable a little better. The question asks about clarity of the legal system as regards economic minor offences in the field of takeovers. Representatives of all three institutions included in the model, that is, the police, prosecutor's office, and courts, have a slightly better opinion of this issue than other respondents. Additionally, those who have more work experience also have a better opinion about it, the link being statistically highly significant. It is interesting that those who have a better opinion on efficiency of their own institution in discovering and prosecuting criminal offences have a slightly lower opinion, which may indicate

demarcation or difference of minor offences from criminal offences. On the other hand, those who have a better opinion on efficiency of their own institution in sanctioning economic minor offences also have a better opinion, which is understandable.

| | In Slovenian legislation, arrangement of economic criminal offences and economic minor offences is adequately positioned within the legal order. | | | The same conduct that can under certain circumstances be considered an economic minor offence and under different circumstances an economic criminal offence is clearly demarcated and specific. | | | Statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific. | | |
|---------------------------------|--|--------------|--------------------------|--|-----------------|--------------------------|--|--------------|--------------------------|
| | Odds ratio | 95% CI | Statistical significance | Odds ratio | 95% CI | Statistical significance | Odds ratio | 95% CI | Statistical significance |
| D1 | 1.96 | 0.19-20.14 | | 2.22 | 0.20-24.42 | ** | 22.68 | 1.90-271.24 | ** |
| D2 | 13.60 | 1.51-122.60 | ** | 10.47 | 1.40-78.31 | ** | 13.23 | 1.57-111.51 | ** |
| D3 | 45.44 | 1.48-1394.26 | ** | 2.02 | 0.10-41.50 | | 72.96 | 2.62-2028.84 | ** |
| educ | 1.80 | 0.93-3.50 | * | 1.12 | 0.63-1.98 | | 1.62 | 0.82-3.18 | |
| logyexp | 109.32 | 2.51-4769.69 | ** | 509.51 | 0.12-2078681.00 | | 88.86 | 2.96-2666.48 | *** |
| fact1q26 | 0.87 | 0.41-1.86 | | 1.14 | 0.55-2.34 | | 0.80 | 0.36-1.78 | |
| fact2q26 | 0.70 | 0.27-1.82 | | 0.94 | 0.38-2.31 | | 1.39 | 0.50-3.85 | |
| fact3q26 | 2.10 | 0.87-5.05 | * | 0.86 | 0.38-1.91 | | 1.34 | 0.54-3.33 | |
| fact4q26 | 1.20 | 0.56-2.56 | | 1.60 | 0.76-3.36 | | 0.76 | 0.37-1.59 | |
| fact1q7 | 2.08 | 1.09-3.94 | ** | 0.83 | 0.44-1.55 | | 0.43 | 0.21-0.89 | ** |
| fact2q7 | 1.27 | 0.57-2.84 | | 1.03 | 0.46-2.30 | | 2.75 | 1.09-6.91 | ** |
| fact1q8 | 1.35 | 0.57-3.17 | | 1.40 | 0.60-3.27 | | 0.99 | 0.42-2.36 | |
| fact2q8 | 1.63 | 0.80-3.31 | | 1.18 | 0.61-2.29 | | 1.62 | 0.82-3.18 | |
| fact3q8 | 1.08 | 0.50-2.33 | | 1.66 | 0.84-3.26 | | 0.87 | 0.38-1.99 | |
| Observations | 56 | | | 56 | | | 56 | | |
| Pseudo R ² | 0.2850 | | | 0.1443 | | | 0.1794 | | |
| Logarithmic likelihood function | -56.0734 | | | -67.0862 | | | -68.0564 | | |

*** - statistical significance at 1%, ** - statistical significance at 5%, * - statistical significance at 10%

In the table below (Table 6: results of regression models, other three answers to question 1), there are the results of other three section 1 questions. The model for the fourth question is quite weak and has a non-significant value of the basic chi-square statistics of the odds ratio. Much better is the model for the fifth question, where six factors are significant. Again, the respondents that work in the police force, at the prosecutor's office, or in court have a better opinion of this issue (about fairness and proportionality of sanctions for economic minor offences in the field of takeovers). Moreover, an increase in years of work experience again improves the respondents' opinion of this issue, even though the correlation is of statistically weak significance. As expected, those who have a better opinion on the efficiency of their own institution in sanctioning economic minor offences have a better opinion also in terms of this question. Additionally, those who see a possibility of improvements in the legal environment have a lower opinion in terms of this question, which also seems in line with the expectations (since they have a lower opinion in terms of this question, they see a possibility for improvements in the legal environment).

Table 5: Results of regression models

As regards the last question that asks about fairness and proportionality of sanctions for economic criminal offences in the field of takeovers, where the model is of lower significance but still within the margin of tolerance, the following three factors are significant: those who work in court have a better opinion in terms of this question; again, years of work experience add up to the opinion in terms of this question; a slightly better opinion have also those who believe that economic criminal offences and economic minor offences in the field of takeovers should be demarcated "by service form".

Table 6:
Results of regression models

| | Statutory elements in the field of economic criminal offences relating to unlawful conduct in the course of takeovers are in Slovenian legal order clearly formed and specific. | | | Prescribed punishments for economic minor offences in the field of takeovers are fair and proportional to the committed minor offence. | | | Prescribed punishments for economic criminal offences in the field of takeovers are fair and proportional to the committed criminal offence. | | |
|---------------------------------|---|-------------|--------------------------|--|----------------|--------------------------|--|--------------|--------------------------|
| | Odds ratio | 95% CI | Statistical significance | Odds ratio | 95% CI | Statistical significance | Odds ratio | 95% CI | Statistical significance |
| D1 | 0.63 | 0.08-5.14 | | 9.73 | 0.86-109.96 | * | 1.68 | 0.20-13.84 | |
| D2 | 0.75 | 0.10-5.51 | | 18.91 | 2.16-165.57 | *** | 5.64 | 0.66-47.84 | |
| D3 | 5.75 | 0.29-115.62 | | 53.43 | 1.80-1584.26 | ** | 34.62 | 1.23-972.29 | ** |
| educ | 0.79 | 0.42-1.50 | | 1.43 | 0.78-2.62 | | 1.39 | 0.77-2.54 | |
| logyexp | 13.92 | 0.55-349.65 | | 1,250.62 | 0.44-256972.00 | * | 129.70 | 3.43-4906.29 | *** |
| fact1q26 | 0.98 | 0.46-2.09 | | 1.60 | 0.68-3.78 | | 0.56 | 0.26-1.21 | |
| fact2q26 | 1.44 | 0.58-3.59 | | 0.57 | 0.20-1.65 | | 0.67 | 0.24-1.90 | |
| fact3q26 | 0.79 | 0.34-1.81 | | 1.69 | 0.64-4.45 | | 2.28 | 0.92-5.64 | * |
| fact4q26 | 1.21 | 0.61-2.40 | | 0.96 | 0.43-2.15 | | 0.91 | 0.45-1.86 | |
| fact1q7 | 1.22 | 0.66-2.23 | | 0.78 | 0.38-1.58 | | 0.90 | 0.43-1.89 | |
| fact2q7 | 1.11 | 0.54-2.30 | | 2.32 | 1.01-5.30 | ** | 1.11 | 0.49-2.51 | |
| fact1q8 | 1.25 | 0.56-2.80 | | 0.89 | 0.38-2.08 | | 1.69 | 0.70-4.04 | |
| fact2q8 | 1.08 | 0.61-1.92 | | 0.81 | 0.43-1.51 | | 1.39 | 0.77-2.53 | |
| fact3q8 | 0.75 | 0.37-1.52 | | 0.29 | 0.12-0.72 | *** | 0.84 | 0.43-1.63 | |
| Observations | 56 | | | 55 | | | 55 | | |
| Pseudo R ² | 0.1132 | | | 0.1987 | | | 0.1531 | | |
| Logarithmic likelihood function | -66.3750 | | | -62.7175 | | | -63.2779 | | |

*** - statistical significance at 1%, ** - statistical significance at 5%, * - statistical significance at 10%

8 CONCLUSION

Economic criminal offences are regulated in the specific part of PC-1 (2008), more precisely in chapter 24 (Criminal offences against economy). Such a regime is partially suitable. The knowledge of these regulations and their use is made more accessible for experts and lay public. However, chapter 24 also covers criminal offences that (according to their description) have little in common with economy and economic values and goods, some are even not committed in the course of performing economic activities or by economic entities. The

fact that a certain criminal offence in Slovenian legal order is classified within the chapter on criminal offences against the economy does not necessarily mean that the economy or individual values from the field of economy are a direct object of attack of this criminal offence. Economic minor offences are regulated in individual sector-specific statutes and other legal acts governing the narrower fields of economy. Such a regime is, again, only partially suitable. Its good side is that the minor offences from a particular field are governed by the legal instrument that regulates the field in question (financial minor offences, etc.). However, the negative side is that the knowledge of these minor offences is, thereby, made much more difficult. Nobody can be familiar with all the regulations that govern a specific field of corporate law and thus cannot know what is incriminated by these regulations. After an overview of specific provisions on particular economic criminal offences and minor offences corresponding to these criminal offences, we came to the conclusion that the legislator did not devote enough attention to the arrangement of economic minor offences. Namely, on too many occasions, a specific economic criminal offence and an economic minor offence include identical statutory elements, meaning that there is no difference between them.

The results of testing of the set hypothesis clearly show that the average values are, except in the case of question No. 3 ("statutory elements in the field of economic minor offences relating to abuses in the course of takeovers are in Slovenian legal order clearly formed and specific"), statistically significantly lower than 3. Consequently, we can confirm the basic hypothesis. Further, empirical findings provide that respondents¹³ agreed with the position that statutory elements of respective criminal offences and minor offences overlap and that the Slovenian legal order, as regards economic criminal offences and minor offences, is not adequate, which is shown by the results of one sided t tests. Therefore, it would be sensible to consider the possibility of imposing a monetary threshold as a demarcation tool that would set the maximum amount of damage to property under which the act could be treated as a minor economic offence. All criminal acts above that threshold would be considered criminal offences. Also, it would be worth contemplating that the idea that the amount of damage to property should be defined by the injured party. Therefore, legal uncertainty between the above mentioned articles would be eliminated. Studies into the performance of minor offence authorities (SMA, BS, CPA), on the one hand, and law enforcement authorities (police, prosecution), on the other, have led to a conclusion that the officials addressing these issues should improve their professional knowledge, work the cases collectively, and shape the mechanisms to reduce staff turnover. On the other hand, an increase in fines for perpetrators and shorter court proceedings would also have a beneficial effect on the performance of minor offence authorities. The above conclusions have been confirmed through practical work. It has become evident that minor offence authorities make virtually no referrals for the criminal offences concerned, which has strengthened the need for mechanisms to increase the level of professional knowledge among the competent officials. The results of regressions have shown the strongest influence of respondents' workplace and

¹³ *The questionnaire exhibits a sufficient level of reliability, as demonstrated with the value of the Cronbach's Alpha.*

work experience, whereby it is interesting that those who work in the institutions that directly prosecute economic crime have a better opinion on the statutory regulation of this field, while, in almost all model specifications, those who have more work experience also have a much better opinion on the statutory regulation of economic crime. This clearly shows that also knowledge of or activity in this field is an additional aspect of satisfaction or dissatisfaction with the statutory regulation of this field: those who know the field better (because, for example, they have been working in the field for a number of years) improve their opinion on regulation of this economic crime.

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