OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS

REPUBLIC OF SLOVENIA

EARLY ELECTIONS OF THE NATIONAL ASSEMBLY
4 DECEMBER 2011

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

17-19 October 2011

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I. INTRODUCTION

In anticipation of an invitation from the Ministry of Foreign Affairs of the Republic of Slovenia to observe the 4 December 2011 early elections to the National Assembly, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) from 17 to 19 October. The NAM included Nicola Schmidt, Deputy Head of OSCE/ODIHR Election Department, and Tamara Otiashvili, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with representatives of the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Public Administration, the State Election Commission, the Human Rights Ombudsman, the Constitutional Court, as well as with representatives of political parties and the media. A list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs of the Republic of Slovenia and the Permanent Representation of the Republic of Slovenia to the OSCE for their assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

Elections to the National Assembly will be held on 4 December, the first early elections in the history of independent Slovenia. These elections follow a vote of no confidence against Prime Minister Pahor and the subsequent failure to form a new government.

In addition to the political parties represented in the National Assembly, newly established parties will contest these elections. Most notably, Zoran Janković, the mayor of Ljubljana, as well as Gregor Virant, a former Minister for Public Administration, established new parties.

The legal framework provides a sound basis for the conduct of democratic elections. It has undergone number of substantial changes in the last years. Most notably, in 2006, the Law on Elections to the National Assembly was amended to include a 4 per cent threshold (as required by the Constitution since 2000) and a 35 per cent gender quota. It also refined rules for appointing members of election commissions.

Voters will elect 90 Members of the National Assembly (MPs), including 2 MPs for the Italian and Hungarian national minority communities for four-year terms using a mixed system of proportional representation and majoritarian constituencies.

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1 On 17 October, the OSCE/ODIHR was formally invited to observe the elections.
The elections are administered by the State Election Commission (SEC), 8 Constituency Election Commissions (ConECs), 88 District Election Commissions (DECs) and over 3,500 Polling Boards (PBs), including PBs established abroad. In addition, two election commissions for special constituencies are formed for the election of representatives of the Italian and Hungarian minorities. Each election commission is appointed for a four-year term, while PBs are established for each election separately. All OSCE/ODIHR NAM interlocutors noted that the election administration enjoys a high level of confidence among all election stakeholders.

The Law on Elections to the National Assembly contains provisions to facilitate universal franchise, providing for early voting as well as special procedures for the infirm and for voters who are in hospitals or retirement homes and for voters living abroad. In addition, special legal provisions exist to accommodate voters with disabilities.

The Division for Civil Status, Public Documents and Residence Registration of the Ministry of Interior is the government entity that maintains the voter register. All OSCE/ODIHR NAM interlocutors expressed high trust in the accuracy of the voter lists.

The election campaign commences 30 days before election day and ends 24 hours before election day. A provision banning publication of opinion polls seven days prior to election day was recently overturned by the Constitutional Court.

Compliance by election contestants with regulations governing campaign and campaign finance is overseen by the Inspectorate of the Ministry of Interior, while supervision of campaign expenditure falls within the remit of the Court of Audits and, partly, the National Assembly. Some OSCE/ODIHR NAM interlocutors questioned whether the Court has sufficient resources to carry out thorough audits of campaign expenditure and to investigate party and campaign financing.

There are a variety of public and private television channels and radio stations as well as regional daily and weekly newspapers. Public media is obliged to ensure credible and impartial broadcasting of information and to provide equal conditions for campaign coverage. Many OSCE/ODIHR NAM interlocutors voiced concerns about equal and balanced coverage by the media of the campaign and individual candidates and parties.

Complaints and appeals can be lodged at every stage of the election process. The legal framework provides for timely and effective remedy. However, the role of the National Assembly Commission for Public Office and Elections to receive complaints pertaining to MPs’ terms of office may raise a potential conflict of interests.

The legislation does not specifically provide for international or domestic election observation. However, all OSCE/ODIHR NAM interlocutors welcomed a possible OSCE/ODIHR election observation activity. They recognized that electoral processes can always be improved and that an external assessment and recommendations by the OSCE/ODIHR would contribute to this process. OSCE/ODIHR was assured access to all stages of the election process in the eventuality of an observation activity.

The OSCE/ODIHR has not previously observed or assessed elections in the Republic of Slovenia, although it did visit the country in the context of the June 2009 elections to the European Parliament.
Although all OSCE/ODIHR NAM interlocutors expressed significant confidence in the
election administration and trust in the legal framework, the election process could benefit
from closer scrutiny in some areas. These include implementation of regulations on party
funding and campaign finance, effectiveness of legal redress, and access to media by
parliamentary and non-parliamentary political parties. As none of the OSCE/ODIHR NAM
interlocutors expressed concerns related to the conduct of election day procedures, the
OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission
(EAM) for these elections.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The National Assembly is comprised of 90 deputies (MPs) elected for terms of four years,
including one representative each of the Hungarian and Italian minorities. Seven parties and
two deputies from the national minorities are represented in the outgoing National
Assembly: the Social Democrats (SD) and the Slovenian Democratic Party (SDS) with 27
seats each, the Party For Real – New Politics (ZARES – Nova Politika) with 7 seats, the
Democratic Party of Pensioners of Slovenia (DeSUS) with 5 seats, the Slovenian National
Party (SNS) with 5 seats, the Slovenian People's Party (SLS) and the Youth Party of
Slovenia (SMS) with 6 seats, and the Liberal Democracy of Slovenia (LDS) with 5 seats. In
addition, 5 MPs constitute the non-aligned parliamentarian group and one MP is
unaffiliated. The outgoing government was led by SD, in coalition with ZARES, LDS and
DeSUS.

According to the Constitution and the Law on Elections to the National Assembly, they are
called by the President. In the event the National Assembly is dissolved, an election must
be held no later than two months after its dissolution.

On 28 September, President Danilo Türk announced he would dismiss the National
Assembly effective on 21 October 2011. This followed a vote of no confidence in Prime
Minister Pahor and the subsequent failure to form a new government. On 21 October, the
President dismissed the National Assembly and called elections for 4 December 2011,
which will be the first early elections in the history of independent Slovenia.

Prior to the dissolution of the National Assembly it was widely discussed whether the
President could dissolve it immediately or whether he needed to wait for the expiry of the
30-day period for forming a new government, as determined in the Constitution. The
President consulted with representatives of the governing coalition, but none of the parties
ominated a candidate for prime minister within seven days from the day that the vote of no
confidence took place.

In addition to the political parties in the outgoing National Assembly as well as other
established political parties, these elections will be contested by newly established parties.
Most notably, mayor of Ljubljana Zoran Janković established the new ‘Positive Slovenia’
party while former Minister for Public Administration Gregor Virant established ‘Citizens’

2 According to the Constitution, MPs can leave their party but retain their parliamentary seat.
List of Gregor Virant’. As highlighted by a number of OSCE/ODIHR NAM interlocutors, both are perceived as being able to have a strong impact on the election campaign.

OSCE/ODIHR has not previously observed or assessed elections in the Republic of Slovenia, although it did visit the country in the context of the June 2009 elections to the European Parliament.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

According to OSCE/ODIHR NAM interlocutors, the legal framework provides a sound basis for the conduct of democratic elections. The Constitution, the Constitutional Act Amending Article 80 of the Constitution of the Republic of Slovenia, the Law on Elections to National Assembly (election law), the Elections and Referendum Campaign Act and the Voting Rights Register Act are the primary documents regulating the conduct of elections. Additionally, the Political Party Act, the Radio and Television Corporation of Slovenia Act, and the Court of Audits Act apply.

The legal framework has undergone a number of substantial changes in the last years. Most notably, the 2006 amendments to the election law included a 4 per cent threshold for participation in the distribution of seats (as required by the Constitution since 2000) and a 35 per cent quota for gender representation in candidate lists. It also refined procedures for appointing members of election commissions and included some amendments of a technical nature. The Elections and Referendum Campaign Act was amended in February 2011, but these amendments do not impact on elections to the National Assembly. The Political Party Act, as amended in November 2007, adjusted the level of fines imposed for violations of its provisions and extended the list of legal persons not permitted to donate funds to political parties.

The legal framework does not contain explicit provisions for domestic or international election observation nor does it provide for the voting and counting process to be public. However, a number of OSCE/ODIHR NAM interlocutors noted that some legal provisions emphasize the public nature of the electoral process and hence that election observation by any interested party, including by international observers, is not legally precluded.

The legal framework provides for general, direct, free and equal suffrage by secret ballot. MPs are elected for a four-year term on the basis of a mixed system combining proportional representation and a majoritarian element. MPs elected by proportional representation are allocated seats using the d’Hondt formula with a four per cent electoral threshold required at the national level. MPs representing the Italian and Hungarian minority communities are elected through a simple majoritarian system, using the Borda count.

For election of the National Assembly, the country is divided into eight territorial constituencies, each represented by eleven elected MPs.3 For the election of the representatives of the Italian and Hungarian minority communities, two special constituencies are formed.4

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3 Constituencies include Kranj, Postojna, Ljubljana Center, Ljubljana Bežigrad, Celje, Novo Mesto, Maribor and Ptuj.
4 Constituency 9 for the Italian minority and Constituency 10 for the Hungarian minority.
Candidates can be nominated in each electoral constituency by political parties or as individual candidates by voters. When candidates are proposed by a political party, a list of candidates must be supported by at least three members of the National Assembly. In addition, the list must be supported by at least 50 voters residing in the respective electoral constituency. When candidates are nominated by non-party affiliated voters, the support of at least 100 voters in the respective constituency is required. Candidates’ seats in the two national minority constituencies require the support of 30 voters in the respective constituency.

The 2006 amendments to the election law aim to improve women’s representation. Each gender should represent at least 35 per cent of the total number of candidates on a list. In cases where there are only three candidates on the list, at least one from each gender should be included. A number of OSCE/ODIHR NAM interlocutors stressed that it is difficult to find enough female candidates to adhere to the quota.

Citizens of Slovenia aged 18 years or older by election day enjoy the right to vote. The right to stand in an election is accorded to all who have the right to vote. Those who have been declared mentally incapable or who are placed under parental guardianship for “failure to comprehend the meaning, purpose and effects of elections” can be deprived of their right to vote by a court decision.5

Representatives of political parties told the OSCE/ODIHR NAM that, overall, there is a high degree of public confidence in the election system and the legal framework for elections. Some interlocutors noted that amendments to the existing legislation had been submitted and discussed in the National Assembly, but not passed.

C. ELECTION ADMINISTRATION

The elections will be administered by a State Election Commission (SEC), 8 Constituency Election Commissions (ConECs), 88 District Election Commissions (DECs) and over 3,500 Polling Boards (PBs), including those abroad. In addition, two special constituency election commissions are formed for the election of Italian and Hungarian minority MPs. Election commissions are appointed for four years, while PBs are established for each election.

The SEC is responsible for the overall conduct of elections and is composed of a president and five members and their substitutes, using a mixed professional-political model. The president and her/his substitute are appointed from amongst judges of the Supreme Court. Two members and their substitutes are appointed from amongst legal experts. The remaining members are appointed by parliamentary groups, taking into consideration the proportional representation of political parties. ConECs and DECs are composed similarly.

ConECs and DECs are responsible for organizing elections and determining the results in their respective constituencies and districts. The ConECs also receive candidate nominations and ascertain whether they are in line with the legislation.

Each PB is responsible for a particular polling station. It is composed of a president and eleven members, each of whom has a substitute. PBs are established on the basis of nominations from parties represented in the National Assembly. If nominations are

5 Article 7 of the election law.
insufficient, officials employed in state or local administrations can be appointed. All political parties met by the OSCE/ODIHR NAM intend to nominate members to PBs.

There are no legal provisions for ethnic and gender representation on election administration bodies. Only in the ConECs in the national minority constituencies, at least one member must be a member of the respective minority community.

In addition to election commissions, 58 administrative units under the Ministry of Public Administration play a significant role in organizing elections by providing technical assistance to election commissions.

All OSCE/ODIHR NAM interlocutors expressed high levels of confidence in the election administration and their ability to organize elections professionally and transparently.

D. Voting Methods

The election law contains provisions to facilitate universal franchise, providing for early voting as well as special procedures for the infirm or disabled, for voters who are in hospitals or retirement homes, and for voters living abroad.

Voting is conducted without interruption from 07:00 to 19:00. The law allows the closing of polling stations before 19:00 if all voters on the voter list have voted, or extending of opening hours after 19:00 upon agreement with the DEC. However, voting may not begin before 04:00 or end after 23:00.

Advance voting does not require any special conditions and is envisaged five days prior to election day. It is conducted at special polling stations established at DECs. In addition, the law provides for the possibility to vote by post for voters who are in hospitals or retirement homes, as well as for voters living abroad. Voters abroad can also vote at diplomatic representations. To prevent double voting, a note is made across the name in the voter list to specify by which method the vote was cast.

Special provisions are also in place for voters with disabilities. The law obliges DECs to identify at least one polling station with access for disabled voters. These polling stations are equipped with specially tailored ballots and electronic voting machines. Voters wishing to vote at such polling station must inform the DEC no later than three days before election day.

A voter is to vote in the constituency in which s/he has permanent resident status. Voters residing abroad without permanent residence in Slovenia have the right to vote in the constituency of one of their parents’ permanent residence. Alternatively, they can decide on a single basis in which constituency to vote. The Italian and Hungarian minority communities are entitled to vote in their general constituency of residence as well as in their minority constituency. This dual voting right is provided by the Constitution to ensure representation of minority communities in the National Assembly. In addition, the number of votes required to elect a member of the National Assembly of a minority community is considerably smaller than the number of votes required in other constituencies. While commendable as a method to ensure minority representation, this raises certain questions about the equality of the vote.
E. **VOTER REGISTRATION**

The Division for Civil Status, Public Documents and Residence Registration of the Ministry of Interior (MoI) is the government entity that maintains the voter register. Since 2005, the Central Registration Database (CRD) is used to register all citizens and maintain their residency registration at the local level. Local level offices are linked and continuously cross-check, excluding errors. Each citizen is assigned a unique personal identification number at birth, which allows accurate tracking of changes, such as in residence, death, name and marital status.

There are three types of voter lists used for elections to the National Assembly: general voter lists, which include all citizens who are eligible to vote, voter lists of citizens who are residing abroad, and voter lists for the Italian and Hungarian national minority communities. The administrative units are responsible for the accuracy of the general voter list, the Ministry of Interior keeps records of citizens residing abroad, and the respective minority constituency commission is in charge of compiling minority voter lists.6

All voter lists are made available for public scrutiny 20 days before election day. The respective administrative unit informs voters of their right to inspect the voter list. Citizens can request corrections for themselves as well as on behalf of others no later than 15 days before election day. Based on the documentation provided, the administrative unit decides on the request. In case of rejection, the decision can be appealed to a district court, and then to the Supreme Court. Corrections are to be finalized no later than 6 days before election day. Voters not found in the voter list on election day can obtain a certificate from the respective Administrative Unit and present it to the PB if they are eligible to vote.7

On 21 October, the MoI announced the total number of voters as 1,711,345.8 All OSCE/ODIHR NAM interlocutors expressed high trust in the accuracy of the voter lists.

F. **THE CAMPAIGN AND CAMPAIGN FINANCING**

The election campaign commences 30 days before election day and ends 24 hours before election day. The Election and Referendum Campaign Act prohibits publication of opinion polls seven days before election day. However, this restriction was recently overturned by the Constitutional Court, which argued that voters have the right to unimpeded access to information about the elections.

Several OSCE/ODIHR NAM interlocutors highlighted the importance of the elections and expected the campaign to focus on social and economic issues. In addition to more traditional campaign methods, parties envisaged campaigning via social networks and the internet. OSCE/ODIHR NAM interlocutors noted that the short campaign period may to some extent limit their ability to reach out to voters.

The campaign can be organized by a political party, a candidate, a proposer of a candidate or other election campaign organizers. Campaign funds are raised through membership fees

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6 According to Article 35 of the Voting Rights Register Act, belonging to the Italian and Hungarian national communities is determined on the basis of voter registration records from previous elections.

7 During the 2008 parliamentary elections, only 25 voters voted using such a certificate.

and private contributions as well as through income from property and gifts. Recent amendments to the Political Parties Act imposed restrictions on campaign funding by limiting contributions from state bodies, humanitarian and religious organizations and commercial companies in which the state has at least 25 per cent of the shares.

The campaign expenditure ceiling is not to exceed 0.40 EUR per eligible voter in the electoral constituency where candidate lists have been submitted. Several OSCE/ODIHR NAM interlocutors expressed concern about the low expenditure ceiling, while others projected to spend only half of the allowed amount. Political candidates must open a special bank account for all campaign donations and expenditures and inform the SEC and the Court of Audits of this account. This account is used to pay all campaign expenses.

Election campaign expenses are partially reimbursed from the state budget. Candidates and political parties who obtained seats in the National Assembly are entitled to reimbursement of their campaign expenses in the amount of 0.33 EUR per valid vote cast for their list, provided that the total amount of the reimbursement does not exceed the amount of funds expended. In addition, those who obtained at least six per cent of votes in a particular election district or at least two per cent of votes countrywide are eligible to a reimbursement of 0.17 EUR per vote cast in their favour. Italian and Hungarian minority candidates who obtained at least 25 per cent of the total number of votes cast in their constituencies are entitled to a reimbursement of 0.33 EUR for every vote.

Compliance of regulations governing campaign and campaign finance rules is overseen by the MoI inspectorate. Non-compliance with campaign rules and breaches of campaign finance regulations can result in administrative fees being levied.

Supervision of campaign expenditure, on the other hand, falls within the remit of the Court of Audits, and partly the National Assembly. Campaign organizers are bound to submit financial reports on the total amount of funds received for the campaign from all sources as well as on expenditures incurred. The legislation does not envisage a fine for organizers of campaigns for accepting funds from illegal sources or for accepting individual donations which are over the allowed limit. It does, however, envisage a reduction in the reimbursement for campaign expenses in such cases. Some OSCE/ODIHR NAM interlocutors questioned whether the Court has sufficient resources to carry out thorough audits of campaign expenditure and to investigate party and campaign financing.

G. MEDIA

There is a variety of public and private television channels and radio stations as well as of newspapers providing a diversity of views. The internet is also a key source of information.


10 In the first quarter of 2011, 72% of households had access to the Internet. The statistics show that some 70 per cent of these users use internet for searching information. http://www.stat.si/eng/novica_prikazi.aspx?id=4240.
Public RTV Slovenia is the largest television broadcaster. It consists of two national TV channels and three national radio channels as well as radio and TV channels in the regional centres of Koper and Maribor. It also has one radio and TV channel for the Italian and Hungarian minority community respectively, radio and TV programs for the Roma community, radio and TV programs for Slovenian national minorities in neighbouring countries and Slovenian emigrants and workers abroad, as well as an internet and mobile portal. In addition, RTV Slovenia includes a special national TV program for direct broadcasting of sessions of the National Assembly.

RTV Slovenia is subject to the Radio and Television Corporation of Slovenia Act, while the Mass Media Act regulates all media. In addition, the Election and Referendum Campaign Act regulates the coverage of the campaign in public media. RTV Slovenia is obliged to ensure broadcasting of credible and impartial information and to provide equal conditions for campaign coverage. Parties and candidates represented in the National Assembly are entitled to equal time to present their campaign programs, while other candidates and political parties receive one-third of the total time provided to parliamentary parties.

In addition to existing legal obligations, RTV Slovenia determines and publishes its own rules for the use of broadcasting time for presentation of campaign programs. The OSCE/ODIHR NAM was informed that it plans extensive coverage of the election campaign, including a series of debates between parties and candidate lists.

The three largest commercial channels are Pop TV, Kanal A and TV3. Pop TV and Kanal A are owned by American-owned Central European Media Enterprises (CME), while TV3 was established by the Slovene Roman-Catholic Church, but later sold to a Croatian entrepreneur.

Most OSCE/ODIHR NAM interlocutors voiced concerns about balanced and equal coverage of the campaign as well as of candidates and political parties in the media.

H. COMPLAINTS AND APPEALS

Election dispute resolution is primarily regulated by the election law. The SEC and the ConECs adjudicate complaints about alleged election irregularities at every level of the election process. Judicial review of administrative decisions is provided with District Courts and the Supreme Court serving as instances of appeal. In addition, the Constitutional Court receives appeals regarding complaints about candidate registration and election results. Furthermore, political parties and voters can address the Constitutional Court in case their voting or general human rights are violated. The deadlines for filing and adjudicating appeals appear to be sufficient for timely and effective legal remedy.

The law mandates the National Assembly, particularly the Commission for Public Office and Elections, to confirm the election of MPs. The commission is formed when the newly elected National Assembly constitutes itself and ceases to exist after mandates have been confirmed. Candidates or representatives of a candidate list have the right to lodge a complaint with the commission about the confirmation of an MP’s term of office. The commission decides on all such complaints before confirming a term of office. This may constitute a conflict of interest, potentially impacting on the impartiality of the commission and its decisions. Decisions of the commission can be appealed to the Constitutional Court.
The OSCE/ODIHR NAM was informed that there are generally very few complaints pertaining to the election process.

IV. CONCLUSIONS AND RECOMMENDATIONS

All OSCE/ODIHR NAM interlocutors expressed significant confidence in the election administration and their ability to organize elections professionally and transparently. They expressed trust in the legal framework. Nevertheless, most interlocutors welcomed a potential OSCE/ODIHR observation activity for these elections, recognizing that electoral processes can always be improved and that an external assessment and recommendations offered by the OSCE/ODIHR may contribute to this process.

In this regard, the election process could benefit from closer scrutiny in a few areas, including implementation of regulations on party funding and campaign finance, effectiveness of legal redress, and access to media of parliamentary and non-parliamentary political parties. As none of the interlocutors expressed any concerns related to the conduct of election day procedures, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission (EAM) for these early elections to the National Assembly.
ANNEX: LIST OF MEETINGS

**Ministry of Foreign Affairs**
Amb. Andrej Logar, Head of Division for International Organizations
Aleška Simkić, Head of OSCE and Council of Europe Section
Boštjan Širnik, OSCE and Council of Europe Section

**Ministry of Public Administration**
Vanda Remškar Pirc, Head of NGO's Service
Natalija Sajevec-Plavčak, NGO's Service
Vera Hrovatin, Administrative Units Service

**Ljutomer Administrative Unit**
Darija Mohorič, Head of the Unit

**Ministry of Interior**
Alenka Colja, Head of Division for Civil Status, Public Documents and Residence Registration
Vladimir Logofetov, Head of Division for Internal Administrative Affairs Information Services

**Constitutional Court**
Urška Umeš, Head of Analysis and International Cooperation Department

**State Election Commission**
Dušan Vučko, Director

**Human Rights Ombudsman Office**
Jernej Rovšek, Deputy Ombudsman
Gašper Adamič, adviser

**Political Parties**
Uroš Jauševec, Secretary General, Social Democrats (SD)
Petra Aršič, Assistant to the International Secretary, Social Democrats (SD)
Miro Petek, MP, Slovenian Democratic Party (SDS)
Franco Juri, MP, ZARES – New Politics
Željko Železnik, Democratic Party of Pensioners of Slovenia (DeSUS)
Pavel Brglez, Democratic Party of Pensioners of Slovenia (DeSUS)
Miran Györek, MP, Slovenian National Party (SNS)
Franc Bogovič, MP, Slovenian People’s Party (SLS)

**Non-aligned Parliamentarian Group**
Franc Žnidaršič, MP
Vili Rezman, MP

**Italian and Hungarian National Communities Deputy Group**
Roberto Battelli, MP, Italian Minority Community Constituency

**Radio-Television Slovenia**
Ilinka Todorovski, Assistant Editor