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Innovative Administrative Procedure Law: Mission Impossible?

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Abstract

Law and innovation are often seen as antagonistic notions, particularly in administrative (authoritative) relations. This paper addresses this issue based on the regulation of administrative procedures, since they represent core public-administration activities in contemporary society. Hence, they need to be codified and implemented, both on the EU and national levels, in a more flexible and party-oriented way, even though still preserving legal certainty. The author argues that Europeanisation contributes to innovation in administrative procedure law, with institutions such as alternative dispute resolution or one-stop-shops. In order to explore the potential drivers of and barriers to innovation, particularly in Eastern Europe, a survey and several structured interviews were carried out in Slovenia as a case study. The results reveal that the culture in the region is legalistically driven and thus hinders innovation, even that which has already been introduced in the law. Consequently, a key obstacle to be addressed in future measures is the mind-set in public administration rather than a pure legal change.

Keywords:
innovation, law, administrative procedures, Europeanisation, public administration, Slovenia

1. Introduction

Innovation is usually considered a separate phenomenon from law since legal rules aim at stability and certainty while innovation leads to dynamics and flexibility. Regulation is very often seen as one of the main barriers to innovation in the public sector as such (de Vries et al. 2016, 146ff., for Slovenia and Eastern Europe, see also Bučar and Stare 2003, 9ff., Raipa and Giedraityte 2014, 10). Namely,

an innovative idea is one that brings new processes, technologies and measures into a system, which usually contradicts the stability of regulation. However, this opposite character of the two notions is no longer the case in contemporary public administration, where administrators need to tackle complex wicked issues. The latter require a balance between more or less strict predictability and responsivity to new emerging life situations.[1]

Hence, new approaches are required in administrative procedure law, particularly since administrative procedures represent one of the key processes of public governance, although public administration pursues many other functions and activities. The role of administrative procedures is illustrated also by applying innovation in processes as by far the largest category (de Vries et al. 2016, 153; beside technological, product or service, governance and conceptual innovations). There are, however, many additional recognised innovations on other bases, such as modernised technology, digitalisation, managerial and leadership practices, but his article limits its focus to administrative procedural law.

There are already some cases and good examples of innovative codification and its implementation on the level of the European Union (EU) and individual Member States (MS) that can be seen as a role model for other countries (see Hofmann et al. 2014, Auby 2014). Usually the term "innovative regulation" involves a new law that introduces new institutions or brings together existing principles or approaches, which have been scattered across different regulations, as long as this represents an added value to the goals and efficiency of procedures (see Majone 1994, Kovač 2012, 38, Hofmann et al. 2014, 2ff.). The regulatory process must take into account the effects of regulation on innovation as well as the implications of technical changes for the rationale and design of regulation. The regulation vs. innovation interface is mutual and dynamic; its understanding is crucial to regulatory reform efforts (see OECD 2017, Peter et al. 2014).

Administrative procedures as a core process within public administration are *materia* to be modernised to support the contemporary role of public administration in a society. The respective law, which inevitably regulates administrative affairs due to their authoritative character, therefore changes accordingly and rather rapidly. The aim is to cover a number of challenges, such as the increasing complexity of administrative affairs, the redefinition of public-administration functions, globalisation and Europeanisation, privatisation, digitalisation, etc. (Rose-Ackerman and Lindseth 2010, Hof and Groothuis 2011, Mulgan 2017). Thus, administrative procedures and the respective law need to address the balance between protection of the public interest and protection of individual (even human) rights of the parties

1 On the trends in this respect, addressing the conflict between traditional rigidity of (administrative) law and modern society and public administration, see Metzger 2015, 1519, Helleringer and Purnhagen 2014, 151–160, Raadschelders 2011, 10–41. More broadly, and with in-depth insights on innovative public governance regarding different environments and fields, see Torfing and Triantafillou 2016.

in proceedings (Jerovšek and Kovač 2017, 4, Tratar 1997, 59). However, the protection of individual rights shall be guaranteed within administrative procedure law only on the highest level, with judicial review as a main form to which subjectively affected parties can turn in case of an infringement of their fundamental rights.

Since many countries have adopted a codified Administrative Procedure Act (APA), the mentioned conflicts are taken into account differently. Some still insist on a traditional concept of APA being a tool against the arbitrary use of power. However, an innovative regulation has proven to be more productive if effective public policies are set as a primary goal at this level. Especially, innovative approaches seem to cover the twin objectives of administrative procedures. A good example is alternative dispute resolution, which brings together proportionally protected public and private interests. Moreover, innovation in public administration can be detected also beyond the regulatory framework, since innovation means any novelty or renewal in the administrative process that is positive as long as it contributes to its ultimate goal (Virant 2007, 255, similarly Završnik 2011, VII). Stewart (1981, 1279–1287, 1312), for instance, sets a model of several types of regulatory innovation, e.g. in relation to market, social and institutional innovations, with additional alternative tools.

The research goal is to analyse holistically the relation between administrative law and innovation, based on selected European innovative mechanisms of administrative procedures. Hereby, some of the recent changes of administrative procedure codification are studied in the EU, and Slovenia as an example of an Eastern European country. Administrative procedure codification has been characteristic of the current Slovene territory since the Austrian (1925) and Yugoslav laws (1930, 1956) as Slovenia gained its independence only in 1991. A new APA was adopted in 1999.[2] The study presents the novelties, which can be regarded as innovative methods and solutions, such as the – mainly EU-driven – redefinition of fundamental principles, alternative dispute resolution, one-stop-shops, removal of administrative barriers, etc. Additionally, a survey and several structured interviews were conducted with representatives of (a) ministries responsible for the APA and substantive administrative regulation, and (b) implementing administrative units. Research was carried out in order to detect if and to what extent selected innovative APA institutions do, do not or might work in practice in the region, based on legal traditions, Europeanisation and modernisation of public administration (cf. OECD 1999, 18–19, 25).

The hypotheses address two issues. First, a purely normative attitude is counterproductive, and innovative administrative procedures can be achieved only when comprehensive measures are taken, yet the legal component is inevitable. The latter

2 APA or GAPA (General Administrative Procedure Act). In Slovenia: *Zakon o splošnem upravnem postopku,* Official Gazette of the Republic of Slovenia, No 80/99 and amendments, in force since April 2000.

includes changes of laws since legal provisions can either enhance or hinder innovative and good public governance. Hence, better regulation is required and indeed carried out as a result of Europeanisation and convergences within the European Administrative Space.[3] However, in addition to the regulatory level, it is necessary to restructure administrative infrastructure, change the attitude of officials from bureaucratic to pro-active and apply mechanisms to stimulate individual creativity. Second, it is anticipated that there is significant untapped innovation potential in (Slovene) administrative procedures, despite limitations in the respective relations due to the collision of public and private interests. The gap is assumed to be grounded partially on the lack of full implementation of the law and partially on traditionalist legalism.

The paper is structured into four main sections. The first section outlines the general background and the impacts on innovation in administrative procedures and its regulation. The following two sections are dedicated to the assessment of the field in the selected region and individual countries by theoretical and empirical analyses and discussion. Finally, recommendations are developed through complementary studies of theoretical principles, comparative trends, normative acts and empirical survey. These identify the key elements that need to be addressed on the strategic level for the countries to become innovative in both administrative procedure law and its implementation. The results are useful for academia, policy makers and administrative practitioners in comparable legal environments, cultures and traditions. Hopefully, this will upgrade the deployment of innovation within administrative procedures and similar areas.

2. Innovation in administrative procedures: Antagonism of notions?

As recognised in different legal fields, any innovation reflects the conceptual framework of the proposers' normative as well as broader societal dimensions (Završnik 2011 III, van Acker and Bouckaert 2017), although many authors that address the innovation do not even provide a definition thereof (de Vries et al. 2016, 152). Therefore, administrative law and public administration often meet with misunderstanding. This is evident *inter alia* when comparing administrative agencies' internal practices and administrative law doctrines (see Metzger 2015).

3 See OECD 1997, 15–16, Cardona and Freibert 2007, Trondal and Peters 2013, Rusch 2014, Galetta et al. 2015, Kovač 2016, Koprić et al. 2016, Kovač and Bileišis 2017.

Any innovation has certain benefits, yet some side effects can indeed be identified.[4] The reason for such a gap is that administrative procedures are a notion, which is at the centre of several systems' drivers (see Figure 1). Several societal frameworks need to be taken into account when innovating administrative procedures' scope, goals, regulation and practical conduct. First, public administration and administrative procedures and the participants' roles therein are changing rapidly to respond to the changes in the society, especially when other players demand public administration to be responsive and efficient.[5] Still, public law is supposed to ensure legal certainty and in principle strives for less flexibility to enable predictability and equality. This is true due to privatisation and deregulation that have created the conditions for the rise of the regulatory state to replace the dirigiste state of the past (see Majone 1994; cf. Barnes in Rose-Ackerman and Lindseth 2010, 339, Kovač 2012, 26–42). That is the case since administrative law has been most often nationally characterised while modern field regulation is evolving based on Europeanisation, striving for a higher global efficiency and lowering the gap vs. real life (Tratar 1997, 51).

Additionally, there are different levels of governance that put pressure on individual states within the EU[6] and beyond due to the globalisation of the modern world. Europeanisation is a key notion in Eastern and Southern European regions that have not completed their transitional processes or aspire to become members of the EU (Rusch 2014, OECD 2014, Koprić et al. 2016, Kovač and Jukić 2017). In this context, Europeanisation is understood as the introduction of the principles and standards of the European Administrative Space and good administration into the regulation and the implementation thereof in national administrative systems. Inter alia, the EU has introduced several innovation-related programmes, such as *Green Paper on Innovation* (1995), *Innovation Tomorrow* (2003), *Cutting Red Tape in Europe* (2014) and others. In these terms, innovation is generally seen as a way to drive economic and societal progress and improve the quality of goods and services. Therefore, it is central in the EU policies for smart, sustainable and inclusive growth

4 Such as digitalisation, which most often increases access by the parties, reduces time and costs while also opening questions of security. In this field, another phenomenon is evident. As put forward by Mulgan 2017: "A host of regulatory theory, and regulatory institutions, emerged from the 1970s onwards, to put the economic theory of regulation into practice. They promised to replace the capricious decisions of bureaucrats with more arm's length rule-makers and more rational rules. They promised more competition and a better deal for consumers. The idea was that regulators should not try to second guess the direction of technological change. Instead they should set the rules of the game, and then stand back." However, this was not the case and in many cases rules acted counterproductively.

5 More in Jerovšek and Kovač 2017, 1–11. See also Vigoda 2002, 531, on the cultural exchange of profiles where – mainly through delegation and responsiveness – citizens and other parties become the owners of interactions and are thus no longer subject to coerciveness as in the traditional, "old" generation of public administration.

6 On good administration, see Article 41 of the EU Charter on Fundamental Rights (cf. Venice Commission 2011).

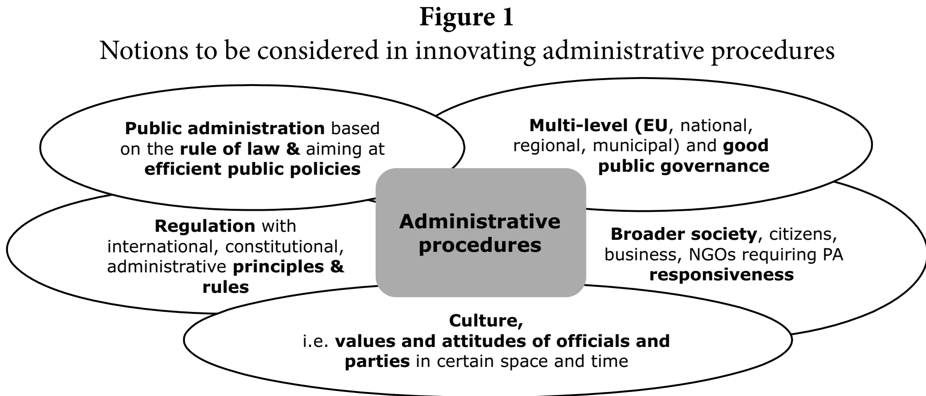
(Bučar and Stare 2003, 20, Peter et al. 2014, 4). On the other hand, legal determination is necessary to ensure minimum public-interest standards and even private rights as acknowledged, among others, after heavy regulatory reforms to simplify administrative law and ease the burden on SMEs, etc. Nevertheless, the anticipatory regulation logic may point in the opposite direction, towards more complexity; ideally with simple principles but the flexibility to devise sufficiently detailed regulations to enable new models to emerge (Mulgan 2017).

Despite a general acknowledgment of innovation benefits, one must be careful in certain legal fields, administrative law included. Namely, the core of a relation under broader public law is, as a rule, at least a potential conflict, as well as the subsequent weighting between public and private interests. Any recognition of a particular private person's right or legal entitlement might entail a hazard or even actual damage for the public benefit. In general, administrative law is characterised by the fact that even after administrative acts become final (*res iudicata*), they can be altered or replaced if so required by the public interest, since administrative proceedings, unlike court proceedings, are aimed at reaching a certain end rather than asserting the law as the end in its own right. If an administrative act does not result in the realisation of the public interest, it has lost its *raison d'*être. Therefore, it is limited how much innovation is indeed possible within public (and especially administrative) law. On the other hand, limitations do not mean that innovation is excluded, as long as a balanced approach between public and private interests is pursued. Moreover, innovation can even enhance such a balance.

In this respect, we must further emphasise the role of the cultural framework in a country or a region that searches for new solutions. Some Central European and even more Eastern and Southern European countries are known to nurture the legacy of a state governed by the rule of law (more in Koprić et al. 2016, Kovač and Bileišis 2017). Moreover, a comparative analysis of over 200 cases of innovations in six different European countries showed that particularly a culture (of feedback, accountability and learning) is a driving source for innovations to last (van Acker and Bouckaert 2017, 12–16). Based on different grounds, e.g. lack of capacity and accountability, this aim is often blurred and leads to legalism and formalistic codification. For instance, Slovenia adopted its APA in 1999 with 325 articles, formalising every detail in order to prevent different interpretations towards the parties. Naturally, when such a law is combined with the cultural formalism of officials, the results are often counterproductive. In this context, one can differentiate between at least legal, political, administrative and managerial cultures that affect administrative-procedure innovations (Kovač 2015, 33ff.). Service-mindedness or value- or objectives-based officials' orientation can be achieved only when the law and (*sic!*) cultural attitude, both top-down driven, allow officials to act with certain discretion. Otherwise, we meet with a compliance-based reactivism and bureaucratic understanding of merely a fragment of the party's life situation, without any accountability of the system as such (Kovač and Virant 2011, 198). Culture is an

internal phenomenon and a key factor contributing to or hindering innovation in public administration, besides political orientation and external drivers (Raipa and Giedraityte 2014, 11–12).

Figure 1
Notions to be considered in innovating administrative procedures



Source: own research.

Due to the complexity of administrative relations, any reform should be more than normative but also legally determined to protect conflicting legal interests, legal certainty and equality.[7] Administration is inevitably an interdisciplinary notion to be addressed in several dimensions (Raadschelders 2011, 30; Jerovšek and Kovač 2017, 6). If only legal views are considered, one can find an overloading of the "Ought" perspective and the prevalence of legalism over legitimacy. When managerial aspects prevail, we face constitutional crisis and democracy erosion, since the parties cannot be considered clients only. If politology is a single framework for change, especially in the Central European context, reforms are not clear and coordinated due to regulatory determined state-citizens relations (see Helleringer and Purnhagen 2014, 139–162; cf. Kovač and Jukić 2017).

When facing a tradition of bureaucratic culture, which is often the case in Central, Eastern and Southern Europe, innovation is harder to achieve, but not impossible. Certain approaches, such as more abstract and less detailed codification, a law that offers guidance with educative norms (e.g. introducing mediation) and systemic training to enhance a proactive attitude can enable slow but significant progress. In order to increase ambition and scope in this sense, there are procedural and institutional steps to encourage greater consideration of innovation and its impacts within the existing regulation, its modification, litigation promotion,

7 There are, however, different views. As emphasised by Stewart (1981), 1262, innovation as such should not be a concern in the design and implementation of regulatory programmes; if programmes were designed to achieve worthy social goals in a cost-effective way, market productivity problems might be entirely solved through macroeconomic, tax and labour policies.

economy-based incentive system, etc. (Stewart 1981, 1263, cf. Bučar and Stare 2003, 53, 63, 81). Excessive regulation is to be reduced, firstly for the sake of removal of red tape (see many OECD and EU policy papers on this field, above all those that encompass "better/smart regulation" as a holistic issue). Moreover, a more abstract codification contributes to indicate important principles and rules (e.g. right to be heard, reasoning of a decision, forms to enhance the parties' right to legal protection) that need to be codified by the law.[8] Regulation should often be iterative rather than definitive (Mulgan 2017) since the benefits from continuous adaptation may outweigh the benefits of stability and predictability, although there will be trade-offs. In parallel, operational rules (e.g. the structure of the minutes or the form of a delivery envelope for administrative acts) should be a part of internal administrative instructions only.

The above-mentioned grounds were taken into account when designing the rules of the adopted draft EU APA in June 2016[9], based on the 2014 ReNEUAL Model Rules and the 2013 European Parliament Resolution. This document incorporates the previously scattered fundamental theoretical and case-law principles. Besides its merging function, innovative codification strives for the introduction of some new rules if such are found to be beneficial to the main objectives of administrative procedures. Such codification follows an innovative approach by scrutinising existing codification Europe-wide and regulating best practices as a minimum joint standard. The method allows contradictions in the existing laws to be resolved and gaps to be mitigated and fosters further dynamic development of EU law (see Hofmann et al. 2014, 6, 7, Helleringer and Purnhagen 2014, 56). However, the draft EU APA is consistently abstract, aiming with individual articles at certain goals of the regulation instead of (over) formalism. This allows sector-specific rules to deviate from general codification when such is reasoned and necessary, but still needs to guarantee the basic principles of administrative affairs (Tratar 1997, 54, Hofmann et al. 2014, 33, Kovač 2016, 429).

Another step forward is the spillover effect to the MS. One such example is the introduction of the responsible official for the party, imported from the Italian APA (Hofmann et al. 2014, 105). It aims to strengthen procedural transparency, avoid the dilution of responsibilities that may occur when no particular person is formally denoted as responsible for the conduct of the procedure and a stronger protection of the parties' procedural rights. Nevertheless, despite convergences world-wide,

8 More in Kovač 2016, in light of the main European principles, cf. OECD 1999, Galetta et al. 2015, Helleringer and Purnhagen 2014, 313–322. Regarding EAS, there is a similar concept known as the "obligation of results", aiming to achieve a homogeneous conduct of public administration across the EU (see Cardona and Freibert 2007, 52, cf. Trondal and Peters 2013, Kovač and Bileišis 2017).

9 See European Parliament, Resolution for an Open, Efficient and Independent EU Administration with Proposal for Regulation of the EP and of the Council (2016/2610 (RSP)). Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0279+0+DOC+XML+V0//EN>.

administrative/procedure law is part of national autonomy, regardless of the European *acquis* (except in selected procedures regulated centrally, such as competition protection, Western Balkans harmonisation; see Koprić et al. 2016, 14). Therefore, European comparative experiences, theoretical grounds and trends in national regulation can serve to elaborate in more detail the prevailing or emerging examples of innovative institutions in administrative procedure law and its implementation.

As in Europe in general, in Eastern Europe several innovations in administrative procedures seem to offer the most satisfying effects in terms of a balanced protection of public and private interests. Let us pay attention to some selected institutions. The first one is alternative dispute resolution (ADR).[10] ADR means that disputes between two or more legal entities are resolved outside (or parallel within) ordinary authoritative structures, institutions and processes, thus allowing a more peaceful, i.e. amicable, cooperation among the participants than formal procedures. In this way, disputes are resolved not only formally and legally, but also *de facto*. ADR offers several functions of innovative law, such as a general character, consensus orientation, innovation within regulatory set limits, i.e. flexibility combining and not contradicting legal certainty, adaptation to different life situations etc. Considering that in administrative relations, particularly in individual administrative matters, administrative bodies strictly adhere to the law and primarily protect the public interest, ADR is yet being gradually introduced into the relevant legal systems and practice. The obstacles to ADR in administrative relations are of a legal nature, namely superior lawfulness in the sense of adherence of the administration to the law and hence non-dispositiveness of administrative matters and respect for the equality of the parties before the law. Moreover, it is necessary to take into account the sociological boundaries, i.e. the protection of the public interest as the *ratio* of the administrative relation and the lack of a proactive administrative culture and institutionalised and qualified ADR operators. Yet ADR can, within the given limits, be considered a useful complementary system that legitimises the *ratio* of the administrative relation, given that without a context, the procedure can be lawful but still improper (i.e. maladministration). The main advantages of ADR include simpler and more flexible procedures, resolution of disputes under the principle of equity and not only under strict legal rules, amicable settlement, as well as increased acceptance of decisions by the parties. The latter seems particularly relevant for administrative relations since the acceptance of decisions, particularly forcible ones, is a demonstration of respect for the rule of law. ADR brings advantages with it, such as faster and more efficient procedures, increasing satisfaction of participants and faster adoption of decisions (even if unfavourable), less burdens for appellate

10 See more in Dragos and Neamtu 2014, for Western Balkans in Koprić et al. 2016, 133–148. Regarding ADR, the Council of Europe adopted in 2001 *Recommendation Rec(2001)9 on Alternatives to Litigation between Administrative Authorities and Private Parties*, which was an important step vs. prior usually principally emphasised limits to ADR in public law. ADR is a potential to be developed especially in the resolution of appeals to resolve the matter within PA and avoid burdening the Judiciary (Jerovšek and Kovač 2017, 228).

and sanctioning bodies and courts, a more creative role of the administration, etc. As put forward by Stewart (1981, 1271, 1276), adversary procedures and the ready availability of judicial review can introduce even more delays and uncertainties, even though they aim at more smooth conciliation of legitimate interests. Hence, unilateral administrative procedure law should regulate ADR in a different way than, e.g., in litigations, since the benefits of such an approach outweigh the existing formalisation – provided that corrective mechanisms against malpractice are introduced in the existing administrative and judicial procedures. ADR is thus seen as an excellent tool for developing good administration.

The next illustrative innovation-related scheme is the one-stop-shop as a single entry point for the parties at a certain life event, regardless of an otherwise structured set of procedures and competences of administrative authorities issuing licences to grant the party's application. One-stop-shops (or points of single contact/entry) are innovative since they offer customer orientation in almost any administrative field (e.g. registration of business, tax, social affairs, construction permits), combining different procedures of otherwise closed authorities. Like ADR, one-stop-shops are often legally regulated but only in an abstract way to allow flexible solutions in individual cases. They can be implemented through internet portals, providing easier, faster and cheaper services through transaction as two-way communication between authorities and parties, based on previous online services and inter-communication. These points are popular, particularly at the local level (see Koprić 2017, 564–569), e.g. in the UK, Australia, Germany, Austria, Nordic countries, but also Hungary, the Czech Republic or Georgia. An important impetus for their development was definitely the EU Directive 2006/123/EC on services in the internal market upgrading the *Simple Procedures Online for Cross-Border Services* scheme, a project run from 2009 to 2012 in 16 countries, and eIDAS Regulation (EU) 920/2014. Some countries support one-stop-shops with their regulation in general law (APA), such as Croatia (cf. OECD 1999 and 2014, more on national profiles in Auby 2014).

To summarise, innovation and administrative procedure – including its codification – are two concepts that can easily be merged into a new synergic value. Bureaucracies can actually stimulate innovation by the creation of rules, beside the exercise of task, mobilisation of resources, etc. (Torfing and Triantafillou 2016, 9ff.). In fact, administrative procedures must be regulated and executed innovatively to simultaneously provide for the values of public governance and the parties' interests (Bučar and Stare 2003, 84). The respective innovations are inevitably supported by a reorganisation of administration at least toward the party, very often digitalised by more or less comprehensive information systems (ICT).

Although there are heterogeneous drivers and goals of innovation in public affairs, it should not be limited but rather encouraged, considering the complexity of the society (cf. Završnik 2011, VI). However, one must be careful to consider individual

tools of innovation as recommendable and feasible in the field due to a balanced protection of the public interest and the parties' fundamental rights and not to follow often populistic views in public. In this respect, comparative practices, incremental approaches and pilot actions seem to be an approach to follow, rather than codifying and implementing unlawful or maladministration-related "solutions".

3. Assessment of the Slovene APA through the lenses of innovation

Slovenia presents several different legacies and contemporary characteristics. The majority of administrative indicators recognise Slovenia as a rather efficient EU MS. This is shown by its full membership in the EU since 2004, while for instance neighbouring Croatia acceded only in 2013. The latter and similar cases show that other countries, besides Croatia also Montenegro or Macedonia, have renewed their APA and related legislation in a more Europeanised way than Slovenia. Probably this is a result of a longer transition period and supporting schemes (e.g. SIGMA assistance and assessments).

Still, regarding administrative law in practice, Slovenia is often regarded as more responsive to the needs of the business sector and/or the citizens, while the other above-mentioned countries face the so-called implementation gap and are not taken as role models compared to more successful states in the West or North. For instance, the World Bank's Doing Business, the annual European Semester evaluations or the Digital Government Barometer regard Slovenia as relatively efficient among the Eastern European countries. At the same time, other Eastern and Southern European countries are more often seen as the ones with ongoing transition (more comparatively in Kovač and Bileišis 2017, cf. Bučar and Stare 2003, 49, 58).[11]

The Slovene APA was adopted in 1999 but did not introduce any major novelties compared to the previously common Yugoslav APA of 1956 and the Austrian APA of 1925 (see Kovač 2016, 446). In Slovenia, as broadly in Central, Eastern and South Eastern European countries, this long tradition entails a rather strong acknowledgment of the classic rights of the parties and the rule of law as a limitation of the possibly arbitrary authority. Despite the radical changes in social and economic relations following independence in 1991, there have been no major improvements introduced so far, although regulations present a certain degree of (over) formalism that is evident in the deviation from comparable countries. Naturally, there are issues in

11 There are significant differences regarding administrative procedures already between Slovenia and Croatia, as identified by the WB Doing Business, although the two countries share governance frameworks and legacies. For instance, as regards starting a business, Slovenia ranks 49th and Croatia 95th among all participating countries. As regards tax collection, Slovenia ranks 24th and Croatia 49th. As regards construction-permit procedures, Slovenia ranks 80th while Croatia ranks 128th. See the European Commission country reports for respective countries for 2016, available at http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_slovenia_en.pdf and http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_croatia_en.pdf.

administrative practice reflecting such a ground, for example, the excessive length of procedures and the lack of almost any initiative beyond the rigid observance of the valid provisions (more in Kovač in Dragos and Neamtu 2014, 365–392).

The reforms mostly involved the de-bureaucratisation of regulations, for instance simplified notification or reduced legal remedies. On the contrary, some amendments even increased the level of the rights of the parties on account of the main aim of administrative procedures to implement public policies efficiently through goals of substantive law. Other novelties are usually only fragmentary, as is substantive administrative law that, for instance, offers some initiatives regarding ADR in family, schooling and tax procedures, but not as a general rule or guidance. Slovenia in particular took a number of regulatory steps in order to deal with modern societal needs. Namely, it has adopted eight APA amendments since 2002, mostly oriented towards reducing administrative burdens and increasing the efficiency of procedural institutions, such as faster and deformalised delivery of acts or fewer legal remedies with shorter deadlines. There are some other good practices in the Slovene administrative procedure law, such as the *mutatis mutandis* application to non-administrative public procedures that are not regulated by a specific act and special administrative enforcement.

An example of good practice in Slovenia is the institution of one-stop-shops to register a new business, even though, parallel to the GAPA, such is regulated by substantive law only (Slovene: *VEM, vse na enem mestu*, all in one place, see Kovač and Virant 2011, 255). VEM was launched as an autonomous project but is part of the Government's red tape programme, combining normative novelties, organisational mergers and an e-platform. This initiative, which enables a 45-minute e-registration for entrepreneurs without costs and physical contact and forms, was introduced in 2008 and won the United Nations Public Service award in 2009 with a proven reduction of registration from formerly 60 to only 3 days on average. The estimated savings of VEM are almost EUR 11 million annually, which would mean a 75 % reduction of costs if all entrepreneurs chose this option. Its success can be attributed to a strategic approach. Such is based on the following sequence of steps: a careful analysis and an inventory of all the procedures required to start a business; coordination of all the institutions involved through optimisation of processes; legal changes; development of an information system and training of officials; and measurement of customer satisfaction as a basis for continuous improvement.

As for the ADR, Slovenia adopted the Mediation in Civil and Commercial Matters Act in 2008 and the Alternative Dispute Resolution in Judicial Matters Act in 2009, but ADR is not regulated under the APA. This is different to most EU countries, such as Austria or the Netherlands, where ADR is codified by a single law. Nevertheless, certain forms of ADR in Slovenia can be found in sector-specific legislation (relating to family disputes, schooling, health, consumer protection, etc.), although it is partial and non-systemic, as it combines substantive law and

procedural elements, as well as the administrative and civil spheres (e.g. as regards concessions). The most established forms of ADR in administrative relations are settlement, substitute decisions through legal remedies, mediation, and recently tribunals, arbitration and administrative contracts.

In sum, if one compares the characteristics of the Slovene APA to the EU level in terms of innovative aspects, the following elements can be identified (see Table 1). The Croatian APA was added to get comparable insight, since Croatia adopted a rather up-to-date version in 2009 that takes into account several comparatively acknowledged innovative approaches, e.g. one-stop-shop (see Koprić 2017, 561).[12] To get a general overview, a qualitative assessment with levels from A to D was applied. A stands for "highly developed" in terms of innovativeness, but not too rigidly regulated to enable different ways of achieving the objectives of the law. B indicates "basic norms", encouraging the implementers to pursue innovative solutions, albeit maybe too abstract. C is used for "rare or anecdotal" provisions regarding innovative institutions, and D for "too detailed" provisions that in fact regulate individual institutions but tend to be counterproductive due to the existence of innovative institutions recognised in selected acts.

Table 1

Slovene, Croatian and EU innovative approaches in the APA

Examples of innovative regulation in general administrative procedure act	Slovene APA (1999)	Croatian APA (2009)	The EU APA related acts*
Scope of the law beyond single-case decision-making	C	C	A
Redefinition of basic principles	D	B	A
Informing parties and responsible officials, exchange of data within PA	B	B	A
One-stop-shops	C	B	B
Alternative dispute resolution (ADR)	C	C	B/A
Legal remedies (balance, consistency)	D	D	A
Guarantee acts and administrative agreements	C	B	B/A

* Council of Europe recommendations, EP resolutions (2013, 2016), and the ReNEUAL Model Rules (2014).

Source: own research.

12 Slovenia and Croatia are often compared due to a common historical background over several hundreds of years, recently being legal successors to former Yugoslavia and adopting much of its regulation after becoming independent in 1991. Both became EU member states, Slovenia in 2004 and Croatia in 2013. They are so called small states with 2 mio Slovenes and 4.5 mio Croatians. Both countries share a *Rechtsstaat* heritage regarding cultural attitude, relations between administration and citizens and many of legal regulations and rules (see more in Koprić as well as Kovač and Pevcin in Kovač and Bileišis 2017). Most frequently, the countries are compared particularly regarding administrative functions and development (for instance, see Sever et al. 2016, Kovač and Jukić 2016, Koprić et al. 2016).

As shown in Table 1, there are many further options to be addressed in future APA codification, in Slovenia in particular, but also more broadly. It is evident that older codifications respond to modern changes more conservatively and too traditionally. To begin with, there are some necessary efforts needed in order to implement some of the already introduced novelties since the analyses show that due to cultural resistance and lack of capacity, they remain a dead letter (e.g. administrative agreements in Croatia, more in Koprić et al. 2016, 144, Auby 2014, 108).

4. Results of the research on the implementation of APA innovations in Slovenia

Based on the normative analysis presented below, a survey comprising 10 questions[13] was conducted among selected policy makers and executive agencies in order to verify the state of affairs and future potentials. In this context, innovation in administrative procedures was defined as any approach, measure or technique, regardless of its character (legal, organisational, managerial)[14], which contributes to the key objectives of administrative procedure, i.e. a balanced protection of the public interest as regulated under substantive law and of the fundamental rights and private legal interests of the parties in the proceedings. We applied a combined definition, which pursues not only a new approach as such but its aim to a higher quality of the process, as well.

We explored in more detail the general attitude toward innovation in administrative procedures, the approaches to its development and, finally, selected elements of innovation in the respective field. Among the latter, we selected those that seemed to reflect significant differences, as analysed above (see Table 1), such as one-stop-shops and ADR. Through these elements, the hypotheses on regulatory and cultural triggers – and the consequent (lack) of measures to increase innovation in the respective relations – were addressed. To compare the theoretical and empirical sides, we carried out a survey and several structured interviews among:

a) heads of administrative units as administrative law implementers; and
b) higher officials at the ministries responsible for sector-specific policymaking, i.e. administrative affairs run mainly under the key sector-specific legislation.

13 The questions in the survey allowed for only one possible answer, usually on a scale of 1 to 4, which means that the respondents had to decide what their prevailing opinion was (i.e. excluding mean values). Some questions were designed to verify prior answers (controlling function). The latter most often proved the consistency of the results.

14 For more on various complementary measures, see Hof and Groothuis 2011, Koprić et al. 2016, Jerovšek and Kovač 2017. See also a different understanding of innovations and their types in de Vries et al. 2016, 152–154; particularly, process innovation as an improvement of quality and efficiency of internal and external processes.

The survey and the interviews were carried out in spring 2017, based on the same key elements of research in order to be able to compare the positions and experiences of different target groups. Following a basic statistical analysis, the results obtained were presented to selected respondents in a more detailed discussion. We expected to find innovation to be regarded higher and more openly on the decision-making level and more determined regulation to be preferred at executive levels.

In Slovenia, the administrative units, 58 in total with approx. 2,300 employees, operate as a general state authority on the local level and run around 850,000 first instance administrative procedures annually, mainly at the request of the parties (e.g. building permits, personal documents, visas, war veterans and disabled grants). The response rate in this group – based on the online survey questionnaire – was 55 % (32 out of 58), which ensured a representative value of the answers, especially since all standard deviations did not exceed 1.2 (mostly 0.9, some even 0.4). Furthermore, Slovenia has 11 ministries, but administrative procedures are not characteristic of all sectors. Hence, only the relevant ministries were selected, i.e. the ministries of economy, environment and spatial planning, finance, internal affairs, public administration, and social affairs. Four ministries eventually answered the questions put forward in this study, providing unanimous views. Interviews were carried out with ministry representatives responsible for the preparation and improvements of sector-specific regulation (e.g. heads of legal offices or areas for sector-specific procedures run by other implementation authorities, e.g. administrative units).

Generally speaking, the prevailing majority of respondents do not find innovation and administrative procedures to be a match without explicitly formalising innovative institutions at least in abstract legal principles. When asked whether they see these notions as complementary, on a scale of 1 to 4 (1 being a full match, 4 exclusion), the average value was 2.8 with a standard deviation of 1.1. Namely, 47 % of administrative units and all the responding ministries answered that there was an overlay only to a small extent. At the same time, 11 % or 10 out of 32 heads of units found no objection towards a holistic complementarity of innovation and administrative procedures. A rather dispersed opinion was established, although reservation prevailed, particularly on the policy-making level. Finally, the respondents were asked to assess their unit or ministry as above or below average in the group of all units or ministries in order to get an insight into the potentially significant differentiation among authorities being more or less inclined to innovation in both regulatory and implementation procedures. None of the ministries and only five out of 32 administrative units opted for below average. All others saw themselves above average, i.e. approx. 90 % of administrative units and all the ministries. This result at least partially contradicts not only the usual statistics but also the sometimes sceptical and reserved inclination toward innovation in general (see the results presented above and below).

We further asked the respondents some questions related to the drivers and/or grounds enabling or hindering innovation in administrative procedures. Thus, we wished to verify the results from other studies, claiming certain reasons for barriers to a higher innovation. Namely, barriers are usually supposed to result from (a) a lack of resources and capacity, management and incentives; (b) too strict a regulatory framework; (c) a risk-averse culture among the administrators and a lack of trust among the parties (see Raipa and Giedraityte 2014, 15–19, for Lithuania). As seen further on, the first two groups of barriers listed above are not likely to be considered the most hindering factors by the respondents in Slovenia. Culture orientation, on the other hand, represents a significant resistance to innovation, even though the respondents usually do not (directly) admit this. The respondents from the Slovene administrative units experienced the following as the key drivers toward higher innovation:

1. good practices in comparable bodies and countries (38 % of administrative units and all line ministries);
2. scientific doctrine and fundamental administrative law principles (34 % of administrative units and the Ministry of Public Administration); and
3. demands and expectations by the parties (25 % of administrative units).

The latter is not that evident on the ministerial level where the respondents highlighted practices from abroad, such as the "internal competition" within the EU that promotes innovation in general as well as its specific mechanisms to reduce red tape, e.g. informatisation, exchange of data, one-stop-shops. Contrary to the expectations, at least the administrative units did not opt highly for the goals and directives of the EU to ground their activities, while the respondents from the ministries saw them as the second most important driver. Differences can be explained by direct contact with and pressure from the parties (e.g. businesses) on the implementers of procedures. Moreover, the lack of European guidelines is not a surprise for these units due to the transposition of the *acquis* into national (substantive) law. This result allows us to assume the EU Regulation on AP (as drafted in 2016) to probably have a major spillover effect on national APAs in the Member States due to the globalisation of life and work in the EU.

Regarding the abstract formulation of the law, we anticipated that the respondents would express considerations as to the very strong role of the rule of law and the legalistic culture characteristic of this region, deriving from the Austrian and post-socialist legacies. In the theory of innovation and administrative procedures, innovation *per se* is not a legal matter. However, administrative affairs require at least a certain level of predictability (more in Hofmann et al. 2014). Therefore, the European role models follow the path of an initial provision in the general law (usually APA) and allow sector-specific laws to eliminate or further elaborate the relevant institutions (e.g. ADR). An over-detailed law can pursue a more formalised action, contrary to the innovative approach. In practice, as revealed by Table 2, the

opinions and experiences of the Slovene respondents differ slightly from the theoretical arguments. Marked with ✓✓ when the respondents fully agree and with ✓ in case of partial agreement, one can see that implementers and decision makers in Slovenia would wish for a more abstract codification. Yet approx. half the respondents demand that the rather rigid legal framework should "dare" to act innovatively without precise provisions. On the other hand, when asked which tool was the most appropriate to pursue innovativeness, administrative units opted for strategic top-down directives (50 %) rather than reorganisation and HRM (25 %), law (16 %) or IT (9 %).

Table 2

Regulation vs. implementation on innovation in procedures

Claims	Slovene admin. units	Slovene ministries
The law must explicitly provide a ground for innovative institutions.	✓ (25 %)	✓
The law should be more abstract to allow innovation in its implementation.	**✓✓ (41 %)**	**✓✓**
Procedures should be implemented innovatively regardless of the law.	× (6 %)	×
The law should be fully determined, innovation is limited per se.	✓ (28 %)	✓

Source: own research.

Moreover, some contradictions can be found in the answers provided by the implementers: they seem to prefer exact law but search for innovation rather outside the law (see Table 3). This might prove dangerous in terms of unequal treatment of the parties or populistic measures (cf. Završnik 2011, II). The risk is confirmed by the dispersion of answers, since some heads of administrative units see the options in a more abstract APA, which is compliant to European trends. However, almost half (47 %) the respondents claim that they either do not find it necessary for innovations to be part of regulation (28 %) or do not believe in innovative procedures at all (19 %).

Table 3

Tool of innovation

The tool of innovation in administrative matters is/shall be:	Slovenia
• substantive law through higher discretion on the merits	19 %
• procedure law by procedural discretion accredited to officials	**34 %**
• no legal instruments since innovation is not a legal phenomenon	28 %
• there is no "real" innovation in these procedures anyway	19 %

Source: own research.

Based on the results above, it is not surprising that the proactive approach of officials is the dominating factor of innovation for 69 % of the respondents in administrative units, while 25 % prefer to select very good knowledge on legal regulation not to innovatively infringe the law. Working experiences and skills of mediation and similar conduct do not seem to be crucial. Thus, one can see that there is room for manoeuvre for innovative solutions already within positive regulation.

Innovations are often born "accidentally" in the context of a single case – but with further elaboration, such solution can in general represent an added value. In this context, we asked the respondents to which extent innovations were incorporated into administrative law based on the initiatives proposed by the implementers (i.e. administrative units). The latter often acted as a pool of innovative ideas later introduced as general administrative standards (e.g. regarding exchange of data, informing parties proactively; see Virant 2007, 259–261). Not surprisingly, the opinions of the administrative units as implementers and of the ministries as policy makers in this respect differed (see Table 4). Administrative units felt that their proposals were not taken into account frequently enough. On the contrary, the ministries' representatives answered that this was quite often the case. The difference can, to a certain extent, be attributed to the differing conduct in individual ministries, as explicitly emphasised by almost one-third of the heads of administrative units. Again, room for improvement is identified in a systemic approach of the identification of possible novelties or at least in the communication to the proposers why a proposal was (not) selected (e.g. not to jeopardise the protected sector-specific values or due to the lack of capacities to implement a proposal). This would definitely help to understand innovation in the field and enhance the level of proactive proposals.

Table 4
Consideration of experiences of the implementers in the regulation of law

Regulators (line ministries) consider the suggestions of implementers:	Slovene adm. units	Slovene ministries
• rarely or never	✓ (19 %)	×
• **sometimes but not often**	✓✓ **(50 %)**	✓
• **fairly often**	× **(3 %)**	✓✓
• depends on the sector (ministry)	✓ (28 %)	✓

Source: own research.

As put forward earlier, the respondents were also asked to state their opinion and experiences regarding two widely recognised innovations in the European Administrative Space, i.e. one-stop-shop and ADR (see Table 5). The assumption was that the answer would be rather the same for both innovations. However, the results are more complex although all respondents found this to be the most beneficial ap-

proach, complementary to legal and organisational measures. Beside this expected answer, even if at a higher value – *sic* for further identified potentials *de lege ferenda* and in practice – it is evident that some innovations require a more or less in/formal approach. Others, such as ADR, are based more on soft skills in addition to the knowledge of law and an open attitude. As for one-stop-shops, usually more legal grounds are demanded since this novelty redefines the competence of authorities, which is otherwise a primary element of formal legality as stipulated by the Slovene APA (Jerovšek and Kovač 2017, 76). In any case, it can be concluded that the respective novelties must be interdisciplinary in order to be effective, as proven also in Western Europe (cf. Auby 2014, Hofmann et al. 2014).

Table 5

One-stop-shops and ADR as innovations

Pursuing innovativeness would be:	One-stop-shops in Slovenia	ADR in Slovenia
• a benefit to introduce based on the existing law, trainings and reorganisation	✓ (13%)	✓ (22%)
• a benefit to introduce based on an amendment to the law	✓ (19%)	✓ (19%)
• a benefit based on parallel legal and organisational measures	**✓✓ (56%)**	**✓✓ (53%)**
• not a benefit at all	✓ (13%)	× (6%)

Source: own research.

As seen, innovation is a very limited notion within administrative procedures, even on policy-making levels and among the most innovative implementation units. To conclude, on a declaratory level innovation is not infrequently a value to be put forward, yet in real life it is still seen as a notion infringing well-recognised modes of conduct under the protection of the rule of law and its predictability. In order to pursue innovation, a top-down approach is necessary since the political branch is the most likely to present itself as open to innovation due to businesses' and citizens' demands and European comparisons in competitiveness. Internal barriers, mostly related to a legalistic culture and resistance to change, are still the most rigid factor to be reduced in the future. Nevertheless, innovativeness is not to be achieved by force since the vector of innovation is always a human being with his creativity and attitude.

Therefore, it is not about the mere adoption of a "law on innovation" or a provision within the GAPA requiring the officials to act innovatively, but about explicitly allowing and encouraging them to follow Europeanised innovative practice through law and complementary measures. A systemic introduction of legal grounds and limits for/to innovation, organisational changes and managerial incentives for the development of a proactive culture and service-mindedness in pub-

lic administration and the benevolence of the parties should be interdisciplinarily enhanced (as when developing good administration, see Venice Commission 2011, Rusch 2014, etc.). Since transitional societies present some resistance to change, Europeanisation is the most important external factor to support such an evolution, in MS and candidate countries alike.

With the so-called "educative" norms, any legislator can promote institutions such as ADR (Koprić et al. 2016, 145). Even though we consider law to be static and thus to enable legal certainty and legitimate expectations, it can also be a driver of innovation in public administration. If regulated in an abstract way by promoting certain approaches, such as participation in administrative relations instead of a purely authoritative stance, it contributes to a more flexible and responsive public sector and society as a whole. Participation and transparency are therefore welcome as due process and good administration guidelines in terms of innovative problem-solving, on both constitutional and APA levels (cf. Venice Commission 2011, Kovač 2015, 15ff.). The administrative procedure law needs to be modernised by red tape reduction not only as a blocker to innovative solutions but also as a promoter of innovative practices. Moreover, only a complex set of measures, addressing management, organisation and digitalisation of administrative work, its legal regulation and complementary socio-psychological aspects can lead to the sustainable progress in public governance. However, administrative procedures seem to offer new opportunities since different approaches can be applied, such as, so far, the most successful innovations within New Public management and e-government (de Vries et al. 2016, 154, see also Torfing and Triantafillou 2016, 13–17, and more on (non) survival of innovations in van Acker and Bouckaert 2017). Therefore, administrative functions, from policy design to leadership and management or data processing, can be developed significantly when the procedural component is taken into account as well. It is not a surprise then that the notion of anticipatory regulation has recently become one of the focal points of global trends (Mulgan 2017).

In other words: public administration should base its activities, especially in the services area, on all solutions as long as they remain within the legal goals and are not explicitly forbidden – not vice versa. Transparent procedures can contribute significantly in this sense, preventing the excessive, arbitrary or unequal use of authority for the parties. We thus confirm that law is necessary to set minimum basic standards and procedures while organisational, managerial and IT measures should support legal principles and aims.

5. Conclusion

Innovation and administrative procedures need to be interpreted and researched further as complementary instead of conflicting notions. The main reason for this guideline is based on understanding administrative procedures as a key process for

an inevitably responsive public administration in the contemporary changing society. Administrative relations have two main goals to pursue. On the one hand, legal certainty and equality require a certain level of regulation of administrative procedures, while on the other, administrative bodies are expected to act proactively regarding the protection of public interest and service-mindedness toward the parties, especially when the law is incapable of determining the variety of life situations.

As anticipated in the beginning, literature overview, theoretical elaboration and empirical research have proven that legal regulation is a factor of innovativeness in administrative procedures. Administrative law should offer innovative, flexible, prevention-oriented and consensual solutions, mainly through administrative procedures (Tratar 1997, 50). At the same time, a purely normative approach is counterproductive, in particular regarding innovation as an informal notion *per definitionem*. On the contrary, abandoning the existing procedures without substituting them with other quality control measures could affect the technical soundness of regulations and their responsiveness to compliance problems (Stewart 1981, 1338). Sector-specific laws and the APA can define relations more narrowly and thus strive for legal certainty, even though this is reflected in a legalistic manner. However, regulation is not the only dimension to be taken into account since empirical studies reveal different approaches and results within the same legal framework, for instance when Slovenia and Croatia are compared. Differences between the two countries seem to be more practical than regulatory oriented despite major innovative novelties in the Croatian APA of 2009 in comparison to the "old" Slovene law of 1999, which actually still reflects the Austrian legacy of 1925. Our second presumption regarding a rather high level of open and non-realised options of innovative administrative procedures in the respective countries has been confirmed, as well. The low level of innovation is a result of several factors, mainly those based on a rather bureaucratic culture. The latter is not much different on the higher decision level within the ministries than on the executive or implementation level within the administrative units.

In order to increase innovation in administrative procedures, the following combined approaches on the level of individual countries are recommended (cf. Kovač 2016, 458, Koprić et al. 2016, 157). First, one should constantly review European and comparative regulatory and empirical (best) practices as a role model for a national system. Second, it seems reasonable to generally enhance trends toward procedures that are more informal, such as conflict-resolution forms, on both regulatory and execution levels. In this context, national policy makers should develop centrally guided organisational and managerial activities to support the implementation of innovation and to introduce, promote and regularly execute pro-active-attitude-oriented trainings for the drafters of sector-specific regulations as well as for the officials authorised to run procedures.

Regulation can allow or even pursue innovative mechanisms and conduct. In this respect, the APA should be amended as a systemic law to educate and support sector-specific legislators and officials to apply innovative mechanisms, such as one-stop-shop or alternative dispute resolution. Nevertheless, in addition to the law, the most influential element leading to lower or higher innovation is the culturally related attitude of officials, as proven in this study. Nationally, attitudes of (top) management are crucial. On the middle and lower levels, also organisational and managerial or IT-related measures significantly enhance or hinder different innovative solutions. To mitigate the potential gaps in the future evolution of more innovative public administration, comparable foreign practices, EU directives and spillover effects offer the most promising ground.

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