



REFORM OF PUBLIC FINANCING AND TAX SECRECY: THROUGH THE LENS OF MUNICIPAL DEBTS



Publication name:

**Reform of public financing and tax secrecy:
through the lens of municipal debts**

Publisher:

Institut alternativa

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Podgorica, June 2018.



This study was written as part of the project Money Watch– Civil society guarding the budget. The project is implemented by the Institute Alternative, the New Horizon and the Institute for Public Finance, and financed by the European Union. The contents of the study are the sole responsibility of the authors and in no way reflect the opinion of the European Union.

SUMMARY

This study examines the tax arrears of 16 Montenegrin municipalities in the context of increasing the efficiency of collection of tax arrears and ensuring more transparent financial reporting, which are the main goals of the 2016-2020 **Public Finance Management Reform Programme**. Municipal debts account for 40 percent of total tax arrears. These arrears are managed through a debt restructuring programme concluded between the Ministry of Finance and all legal and natural persons that owe taxes to the state. For this reason, important aspects of the overall public finance reform in Montenegro can be assessed through the lens of municipal debt management.

In 2015, in response to high levels of indebtedness of local self-governments Ministry of Finance concluded individual contracts with local self-governments to define the terms for the settling of EUR 90 million in arrears on tax payments and payments of social security contributions for employees of local self-governments. Among other, these contracts obliged local self-governments to reduce the number of employees in local government bodies, public institutions, agencies and municipally owned enterprises. Nevertheless, out of the 16 municipalities that signed such contracts, seven failed to live up to this obligation. Municipality of Rožaje is a glaring example of non-compliance with contract obligations: instead of reducing the number of employees, in the three years since signing the contract it employed an additional 189 persons, doubling the total number of employees in the municipality. Nine municipalities reduced the number of employees.

Municipalities Berane, Pljevlja, Ulcinj and Old Royal Capital Cetinje have also failed to live up to the original schedule of repaying their tax arrears. Although these municipalities were given an extended deadline to settle their tax debts by 1st April 2018, the Royal Capital Cetinje has not yet even adopted a strategy for employment reduction. Municipality Berane has fallen behind payments on its current obligations, and the municipality of Pljevlja is not in the possession of information that would confirm their compliance with the new deadlines and fulfilment of past obligations.

According to the Tax Administration, 95.15% of reprogrammed liabilities of local self-governments have been collected. The Tax Administration does not, however, provide breakdown of repayments by municipality, and maintains that such information is regarded as a tax secret. Refusing information on grounds of tax secrecy has become possible in the wake of the May 2017 amendment to the Law on Free Access to Information, which has thus directly undermined the transparency of public finances and with it the accomplishment of objectives laid out by the Public Finance Management Reform Programme.

To ensure a more effective use of the budget and transparency in financial reporting, the Government ought to create a more efficient system of control of payments by local self-governments and to proactively inform the public of the fulfilment of their financial obligations.

INTRODUCTION

Contracts that the Ministry of Finance signed with 16 municipalities in 2015 represent a unique of precedent in the relations between the central administration and local self-governments. These contracts were preceded by poor public finance and staff management, which resulted in accumulated tax arrears and unpaid employer contributions in local self-government bodies, as well as institutions and companies owned by local self-governments.



As a consequence, the current situation of nearly two thirds of Montenegrin municipalities reflects accumulated problems in multiple areas of governance in Montenegro.

The Public Finance Management Reform Programme for the period of 2016-2020 (hereinafter: The Programme) states as its objectives better collection of tax arrears, and strengthening of the administrative capacities of the Tax Authority, the key institution in charge of this area. The 2017 Annual Report on the execution of the Action plan for

Programme implementation states that **by 20th December 2017** more than EUR 20 million in tax debts had already been collected through debt restructuring programme, which means that **over 70% of due payments have been settled**.¹ However, the Report does not provide the breakdown of payments by debtor at the central or local levels. Two years into the implementation of the Programme, the Ministry of Finance developed draft sets of indicators to monitor progress in the realization of measures envisioned by the Programme, with the goal of completing the reforms. However, no indicators were presented that would explain the methodology for calculating outstanding tax liabilities for the beneficiaries of the tax restricting programme.²

The Programme only marginally addresses the situation of local self-governments. As the document states, the Programme is mainly aimed at the central level – ministries and other beneficiaries of the public budget, which account for around 90% of public finances. “Based on the results achieved at the central level, it will be decided in the future whether or not to include local self-governments in the subsequent programming periods”, the Programme states. Thus local self-governments remain out of purview of public finance management reforms, despite the fact that the findings of the concluding mission of the International Monetary Fund point to the need for stronger central monitoring of municipal finances.³

Considering the role of the Ministry of Finance and the Tax Administration in the monitoring

1 / The Annual report on Action Plan implementation for Public Finance Management 2016-2020, for the period of Jan – Dec 2017, available at: <https://goo.gl/j3JkGx>, accessed on June 4th 2018

2 / Ministry of Finance, Passport indicators for Public Finance Management Reform Programme 2016-2020 (DRAFT), Jun 2018

3 / MONTENEGRO: Final review from Mission on Consultations for 2018, regarding Article IV, IMF, available at: <https://goo.gl/LfCWFg>, accessed on 4.6.2018

of obligation fulfilment, the analysis directly concerns the special goals of the Public Finance Management Reform Programme – **better budget execution and transparent financial reporting**. The tax debt of municipalities makes up for 40% of the total debt reprogrammed by the Ministry of Finance. This means that the subject matter that we chose also reflects the important aspects of public finance reforms in Montenegro in general.

Data for the analysis was collected via: requests for free access to information, sent to the Ministry of Finance, the Tax Authority, the Ministry of Public Administration, as well as local self-governments; interviews done with the representatives of municipalities Kolašin, Royal Capital Cetinje, Tax Authority; analysis of legal and institutional frameworks that regulate this area and of relevant strategies.⁴ Methodological difficulties faced during the research concerned denial of access to certain information and appeal to tax secret. Also, it is impossible to independently confirm the data on the number of employees in local self-governments. Municipalities delivered data on the number of employees to the Ministry of Public Administration by filling questionnaires required to develop a Plan of Optimization of the Public Sector, but there are as yet no established records on the number of employees by local self-government.⁵ Our own requests for information to local self-governments yielded different figures, which were impossible to compare. Some local self-governments did not respond at all, for which we filed complaints with the Agency for Personal Data Protection and Free Access to Information.⁶ Considering the fact that the State Audit Institution had already highlighted the lack of reliability of local self-government reports in its previous reviews, the inability to cross-check data acquired from local self-governments with other sources could negatively impact their reliability.⁷

The analysis consists of **two key sections**. The first section contains an overview of the main obligations defined in the tax debt reprogramming contracts, and a review of how these obligations have been fulfilled to date. The second section focuses on the effects of new exceptions introduced into the Law on Free Access to Information on the successful

4 / Public Finance Management Reform Programme for 2016-2020, available at: <https://goo.gl/85mC8u>, accessed on 4.6.2018; and the Strategy on Public Administration Reform for 2016-2020, available at: <https://goo.gl/EhihmR>, accessed 4.6.2018.

5 / Plan for Optimization of the Public Sector 2018-2020, considered on 11.6.2018 at fourth Inter-departmental team meeting for creating the Methodology and Plan to optimize the number of personnel in the public sector; <http://www.mju.gov.me/vijesti/185890/Razmatran-Nacrt-plana-optimizacije-broja-zaposlenih-u-javnom-sektoru.html>, accessed 5.6.2018

6 / Out of 16 municipalities, 15 responded – Berane, Plav, Šavnik, Andrijevica, Danilovgrad, Cetinje, Mojkovac, Nikšić, Kolašin, Žabljak, Rožaje, Pljevlja, Bijelo Polje, Ulcinj and Bar. The municipality of Budva is the only one that did not respond to our request in 17 months, even after the Agency for Personal Data Protection and Free Access to Information adopted the complaint of IA against the „administrative silence“ of the municipality. On 7.6.2017 we filed a complaint against the administrative silence of the municipality of Ulcinj, for not delivering a response to a request we delivered on 15.5.2018.

7 / DRI, the Audit Report of the final budget accounts of the Royal Capital of Cetinje for 2013 and the Final Budget Account Report of the municipality of Budva for 2014, when both municipalities received negative reviews, available at: <https://goo.gl/vD7VvM> and <https://goo.gl/6LMXQm>, accessed 5.6.2018.

accomplishment of the goals of the Public Finance Management Reform Programme. These concern above all lack of available information on the tax debt reprogram in 16 municipalities. Finally, we offer recommendations for more transparent financial reporting and accomplishment of reform objectives.

FINANCIAL AND NON-FINANCIAL OBLIGATIONS IN DEBT REPROGRAMMING CONTRACTS

Contracts on the tax liability reprogram that the local self-governments signed with the Ministry of Finance in 2015 contain obligations concerning better public finance management, but also better management of human resources at the local level. They define the **fulfilment of obligations regarding unpaid taxes and social security contributions, as well as the obligation to create plans to reduce the number of employees** in local government bodies, institutions, agencies, legal entities and companies founded by municipalities. The

contracts therefore do not just require a financial result, but also envision strategic action in reducing the number of employees.



The total reprogrammed debt of local self-governments determined by the Government at the end of 2014 was EUR 89.07 million.⁸ Nikšić has the largest debt to settle – EUR 17,705,863.65 over a period of 20 years, while the smallest debt is owed by the municipality of Andrijevica, EUR 367,686.78, also to be repaid over the same time period. The contracts state the structure of the tax debt, as well as the amounts to be repaid every year.⁹

From the overview provided in Annex 1 it is clear that the financial obligations, or the settlement of the reprogrammed tax debt represent only one part of the obligations undertaken by the municipalities in these contracts. In order to effectively monitor the fulfilment of the contracts, information about debt payments is not sufficient. The following sections point to significant shortcomings not only in the reporting on the settlement of the contracts, but also with regard to monitoring of their implementation as concerns non-financial obligations - the number of employees. The fact that EUR 47 million will be spent on employee salaries in 2018 at the local level shows just how important this matter is for the financial sustainability of local self-governments.¹⁰

8 / Information on the realization of obligations defined in the contracts on municipal tax debt reprograms and contracts on regulating the relations between the Government and the municipalities regarding bank loans with guarantees from the state: Twelve municipalities, which use the Equalization fund, would pay out 74.45 million euros, in a 20-year timeframe, while the remaining 14.62 million would be paid by the municipalities of Bar and Budva, in the next five years, available at: http://www.gov.me/sjednice_vlade/167, accessed 6.6.2018

9 / The contracts define the analytics of the tax debt in local self-governments, so it is possible to see which body, office, institution and company of one municipality has to settle their tax debt, as well as the dynamic.

10 / Stevo Muk, Aleksandra Vavić "Enchanted Circle of Rationalization", Institute Alternative, May 2018, available at: <http://media.institut-alternativa.org/2018/06/Racionalizacija.pdf>, accessed 24.6.2018

MUNICIPALITIES PAY, BUT WE DON'T KNOW HOW

In July 2016 for the first and the last time since the contracts were signed the government informed the public of municipalities' progress in fulfilling their debt obligations. According to the document prepared during the so-called government of electoral trust, when the head of the Ministry was a representative of the opposition, most municipalities were not meeting their obligations. Among other, municipalities failed to obtain Ministry of Finance's consent for employment of additional 155 persons, although they had been obliged to do so by debt reprogramming contracts.¹¹ Although the Ministry of Finance is responsible for monitoring the municipalities' progress in fulfilling the terms of reprogramming contracts and sanction potential failures to comply, it is not known whether any measures have been taken against local self-governments that were at the time revealed to be falling behind on their obligations.



According to data in the possession of the Tax Authority, the reprogrammed debt of Montenegrin municipalities amounts to 40.64% of the total reprogrammed debt at the central level.¹² **However, the Tax Authority treats information on how single municipalities settle their payments as a tax secret.** According to the response to our request for free access to information to Tax Administration dated March 2018, the municipalities **have no outstanding obligations under the 2015 reprogramme**, and have already repaid 95% of all arrears.¹³ One month earlier, in February

2018, the Tax Administration announced that the municipalities of Pljevlja, Ulcinj, Berane and the Royal Capital of Cetinje are not making regular payments towards their reprogrammed obligations,¹⁴ and a meeting was held with representatives of these local self-governments in order to find a solution for their tax debt. By the end of 2017, these municipalities had not yet defined a strategy to reduce the number of employees, nor that of making repayments, and the Tax Authority had subsequently given them until 1 April 2018 to do so.

Yet according to the data obtained via requests for free access to information, by May 2018 **the efforts of the Tax Authority had still not yielded result.** The Royal Capital Cetinje still

11 / Information on the realization of obligations defined in the contracts on tax debt reprogram of municipalities and contracts on regulating the relations between the State and municipalities regarding bank loans with state guarantees, adopted on the 167th government session on 28.7.2016; available at: http://www.gov.me/sjednice_vlade/167, accessed 6.6.2018.

12 / In the decision of the Tax Authority, at the request for free access to information to Institute Alternative, it is stated that the total reprogrammed debt at a central level amounts to 248,763,351.87 euros, decision No. 03/1-4291/2-18, from 22.3.2018

13 / Decision of the Tax Authorities, No. 03/1-4291/2-18. From 22.3.2018

14 / After meeting with representatives from municipalities Pljevlja, Ulcinj, Berane and the Royal Capital Cetinje, the Tax Authority issued a statement available on the following link: <https://goo.gl/aJP8cS>, accessed 4.6.2018.

had no plan for employee rationalization, though it had formulated a timetable for repayment of tax arrears. The municipality of Pljevlja dismissed our request as not being in their jurisdiction, stating that “it had no instructions” and “did not possess the required information”, nor knew who might have it – all of which suggests that the municipality **did not fulfil** its obligations towards the Tax Authority.¹⁵ The response from the municipality of Berane stated that they were a month behind on their payments. The Agency for development of Berane LLT (DOO Agencija za izgradnju i razvoj Berana) owes EUR 197,122.92 for 2017

The Tax Authority states that 95% of all current obligations were paid by 2017, according to the contract on the tax debt reprogram with 16 municipalities. However, apart from the total sum, there is no proactively published information on how each municipality is making their payments and implementing the rationalization of the number of employees. Institute Alternative has gained information that three municipalities, even after urging by the Tax Administration, haven't managed to fulfill their contracted obligations.

and 2018. The tourist organization of Berane has failed to make reprogram payments in the last two months of 2017 and January 2018, amounting to a total of 8.5 thousand euros in delayed payments; Radio Berane hasn't paid employer contributions in the whole of 2017¹⁶ (a total of EUR 28,638.00), the public institution “Day center for children and youths with difficulties in development” is one month behind on its debt payments, and likely accumulating more as the last time it has settled current obligations for tax and employer contributions was September 2017. The Regional Business Centre is EUR 13,033.07 behind on current obligations.¹⁷ The municipality of Ulcinj has not answered our request for information within the legally prescribed deadline, for which reason we had filed a complaint to the Agency for Personal Data Protection and Free Access to Information.¹⁸

LONG-TERM SUSTAINABILITY AT RISK FROM NEW HIRES

The contracts state the obligation to create a programme of staff reductions at the local level in accordance with the earlier Plan on Internal Organization of the Public Sector (2013-2018).¹⁹ Additionally, adoption of separate rationalization plans is stated as a contractual obligation for four local self-governments that had reprogrammed their tax debt (Andrijevica, Budva, Žabljak and Rožaje). Still, **almost half of the municipalities included in**

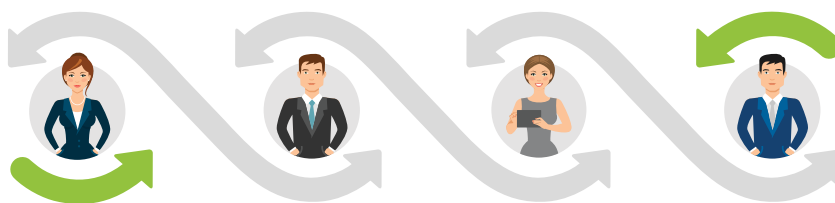
¹⁵ / Decision of the municipality of Pljevlja No. 032-517/2018, 18.5.2018

¹⁶ / March, April, May, June, July, August

¹⁷ / Decision of the Municipality of Berane, No. 06-401-367/2, from 31.5.2018

¹⁸ / Institute Alternative filed a complaint at the Agency for Personal Data Protection and Free Access to Information, for “silence of administration” of the Municipality of Ulcinj, 12.6.2018

¹⁹ / Strategy on Public Administration Reforms 2011-2016; Strategy on Public Administration Reforms 2016-2020; The Plan on Internal Reorganization of the Public Sector 2013-2017, available at: <https://goo.gl/HnUoyh> (access to documents was acquired 3.6.2018)



the reprogram have increased their number of employees, instead of reducing it.²⁰ These are: Pljevlja, Berane, Rožaje, Mojkovac, Šavnik, Andrijevica and Plav. The **total staff numbers**

From 2014 to 2017, seven out of 16 municipalities have increased their number of employees. Imprecise contractual obligations also contributed to this. The contracts did not contain the targeted values of staff cuts, but only included the obligation to determine a dynamic that would lead to a decrease. Paradoxically, the municipality of Rožaje had in the meantime doubled its number of employees, even if it had, according to information from the Government, adopted a plan for rationalization of the number of employees.

were increased by 300.²¹ The municipality of Rožaje is the most drastic example, as in the three years since signing the contract instead of reducing staff numbers it hired an additional 189 people, doubling its total staff numbers.²² Meanwhile, nine municipalities included in the reprogram have decreased the number of their employees by 546: Kolašin, Žabljak, Nikšić, Cetinje, Budva, Bar, Danilovgrad and Bijelo Polje.²³

Failure to ensure employment reductions in all municipalities that have signed the contracts is a consequence of, among other things, shortcomings of the contracts

themselves. These contracts did not stipulate the target number of employees who ought to be let go, but simply obliged the municipalities to “define a framework for the reduction of employment numbers”, or “adopt rationalization plans”. Paradoxically, according to the July 2016 Information published by the Government,²⁴ **the municipality of Rožaje had adopted a plan for rationalization,²⁵ but still increased the number of employees the most.** Imprecise contract obligations are further weakened by their interdependence on a wider strategic framework for the optimization of the number of employees in the public sector, which so far has not given any results. On the contrary, since 2013 the public sector has been stuck

20 / Infograph: Number of employees at local level, Institute Alternative, February 2018, available at: <http://institut-alternativa.org/infografik-broj-zaposlenih-na-lokalnom-nivou/> (accessed 10.5.2018.)

21 / Mojkovac had increased its number of staff by 4, Šavnik by 4, Andrijevica by 7 and Plav by 3 employees.

22 / According to data from the Ministry of Public Administration, there were 235 employees in 2014, and 424 in 2017.

23 / A weaker reduction in the number of employees was achieved in the municipalities of Plužine (by 6), Danilovgrad (by 5), Bijelo Polje (by 3).

24 / Information on the fulfilment of obligations stated in the tax reprogram contracts of municipalities and contracts on regulating relations between the State and municipalities regarding state guaranteed bank loans, adopted on the 167th government assembly, 28.7.2016; available at: http://www.gov.me/sjednice_vlade/167, accessed 6.6.2018.

25 / Information on the fulfilment of obligations stated in the tax reprogram contracts of municipalities and contracts on regulating relations between the State and municipalities regarding state guaranteed bank loans, adopted on the 167th government assembly, 28.7.2016; available at: http://www.gov.me/sjednice_vlade/167, accessed 6.6.2018.

in „enchanted circle of rationalization“, in which cuts have been continuously announced while employment numbers continued to grow.²⁶

Municipalities are obligated to submit reports on progress in employment reduction every six months to the Ministry of Finance and the Ministry of Interior, which took over the responsibility in this area from the Ministry of Public Administration in 2016. However, these reports were never submitted to the Ministry of Finance.²⁷ Municipalities from which the Institute Alternative tried to obtain these reports through individual requests for information responded with a variety of documents: brief reports on activities carried out to reduce employment numbers addressed to the Ministry of Finance²⁸, a copy of the public call for consensual termination of employment contracts²⁹, a plan to overcome financial difficulties in the municipality³⁰ and a plan of internal reorganization of the public sector³¹; reports on payments made under debt restructuring programmes for public institutions and enterprises³², action plan for reduction of employment numbers³³, answers to the questions sent by the Ministry of Finance in the course of compiling the „Information on the realization of obligations defined in the tax debt reprogram contracts“³⁴, a contract regulating relations in the course of realization of the plan to restore financial stability with the aid of state-guaranteed loans³⁵, as well as one plan for rationalization of the number of employees.³⁶

Most problems have been encountered in fulfilling the non-financial obligations of the tax debt reprogram contracts. These problems stem, on the one hand, from imprecise contract clauses, and on the other from ineffective monitoring by the Ministry of Finance and its directly responsible unit, the Tax Authority. Organizational preconditions for more effective control of local public finances in the coming period have been created through the establishment of a new directorate in the Ministry of Finance – The Directorate for Public Administration and Majority State-Owned Enterprises in 2018, but the effectiveness of this arrangements are yet to be demonstrated.

26 / Stevo Muk, Aleksandra Vavić “The magic circle of rationalization”, Institute Alternative, May 2018, available at: <http://institut-alternativa.org/zacarani-krug-racionalizacije/>, accessed 19.6.2018

27 / Response from the Ministry of Finance to request from IA, June 2016, No. 011-173/2

28 / Municipalities Andrijevica, Danilovgrad, Plav

29 / Municipality of Bar

30 / Municipality of Kolašin and Berane

31 / Municipality of Berane

32 / Municipality of Mojkovac

33 / Municipality of Nikšić

34 / Municipality of Šavnik

35 / Municipality of Bijelo Polje

36 / From the Municipality of Žabljak

DEBT UNDER THE COVER OF TAX SECRECY

Apart from the 2016 Information, the Government had not once proactively informed the public of the municipalities' progress in fulfilling their debt obligations since the reprogramming contracts had been signed in 2015. The lack of transparency is further aggravated by the following facts:

- The contracts the local self-governments signed with the Ministry of Finance in 2015 had never been published or posted to the official sites of the Ministry or the Government. We gained access to the contracts by requesting free access to information and made them available through our portal [Moj grad](#).³⁷
- The first and last information from the Government on local self-governments' progress on debt repayment under reprogramming contracts was published two years ago, in July 2016.³⁸
- It is not possible to find out whether and how individual local self-governments have been meeting their payments, as the Ministry of Finance and Tax Authority have declared this information as **tax secret**.

The above analysis suggests that the way in which the municipalities meet their tax obligations reflects larger problems in local governance that further complicate the key goals of the Public Finance Management Reform Programme, especially in the area concerning the improvement of control and transparency of public spending and transparent financial reporting in general.



The transparency of public spending has been further undermined by the latest amendments to the Law on Free Access to Information³⁹ of May 2017, which allows information of public importance to be declared a business or tax secret, under a special law.⁴⁰ The key special law that concerns tax liabilities is the Law on Tax Administration.⁴¹ According to

37 / Contracts available at: <http://www.mojgrad.me/vijesti/452/Ugovori-o-poreskom-reprogramu-duga-opština>, accessed 3.6.2018.

38 / Information on obligation realization defined in the municipality tax debt reprogram and contracts on regulating relations between the Government and the municipalities regarding state guaranteed bank loans, adopted on the 167th government assembly, 28.7.2016; http://www.gov.me/sjednice_vlade/167, accessed 6.6.2018.

39 / Law on Free Access to Information ("Official Gazette of Montenegro", No. 044/12 from 9.8.2012, 030/17 from 9.5.2017)

40 / New clauses in the law further limit the public of knowing: Information under locks, the Agency has their back, more at: <http://institut-alternativa.org/novim-odredbama-zakona-dodatno-uskraceno-pravo-javnosti-da-zna-podaci-pod-kljucem-agencija-cuva-ledja/>

41 / The Law on Tax Administration ("Official Gazette of Montenegro", No. 065/01 from 31.12.2001, 080/04 from 29.12.2004, 029/05 from 9.5.2005, "Official Gazette of Montenegro", No. 073/10 from 10.12.2010, 020/11 from 15.4.2011, 028/12 from 5.6.2012, 008/15 from 27.2.2015, 047/17 from 19.7.2017)

this law, a tax secret is any information or data on a tax payer available to a tax institution, apart from information which the tax payer declares in a written statement not to be a tax secret. This includes information on the existence of tax arrears, in case a mortgage or fiduciary has been entered as security into the **public record**.⁴² The wording of the special law on tax secrecy suggests that it is mainly aimed at the private sector, all the more so since the Law on restructuring of tax arrears explicitly excludes from its jurisdiction local self-governments.⁴³

It is especially problematic that the 2017 amendments to the Law on Free Access to Information have been adopted without any public discussion about this issue, and the Government never had to justify its proposal to include tax secrecy as possible ground for limiting access to information. Moreover, the Law does not stipulate the period after which such information would become accessible, although all the other exemptions contained in the law are temporally limited. Neither the Ministry of Finance, nor the Ministry of Public Administration, as key monitoring institutions in this field, had any information on the extent to which tax secrecy had affected the implementation of reforms in the management of public finances and public administration.⁴⁴

By interpreting the regulations in such a way that municipalities must give written consent to publish information about their repayments of restructured debt in order to this information to be available to the public, the Tax Administration can refuse to allow access to such information. This means that taxpayers have no way of finding out how the 16 municipalities that owe taxes and contributions to the public budget have been meeting their payment obligations, whether or not they are regularly settling current financial obligations, and what the total debt of each individual municipality is.⁴⁵ By the same token, it is also

42 / Article 16 of the Law on Tax Administration ("Official Gazette of Montenegro", No. 065/01 from 31.12.2001, 080/04 from 29.12.2004, 029/05 from 9.5.2005, 047/17 from 19.7.2017)

43 / "Municipalities, the Capital and Royal Capital can't be considered as tax payers, in terms of Paragraph 1 of this Article", stated in the second Paragraph, Article 3 of the Law on Tax Claim Reprogram ("The Official Gazette of Montenegro", No. 83/2016, from 31.12.2016)

44 / Milena Milošević and Aleksandra Vavić, "Let's discuss the effects...or gaps in public administration reform reports", Institute Alternative, May 2018, available at: http://institut-alternativa.org/hajde_da_govorimo_o_ucincima/ (accessed 18.6.2018)

45 / The Tax Administration declared the following information as tax secrets: Information on the fulfillment of reprogramming and new tax obligations of 16 local self-governments, according to contracts that the municipalities had signed with the Ministry of Finance in 2015, for the timespan from 2015 to 27.9.2017, Decision by the Tax Administration 03/1-17995/2-17, from 12.10.2017; The Plan on Tax debt management and strengthening of payments for the period 2017-2021. Decision of the Tax Administration No. 03/1-4983/2-18 from 15.3.2018; Copy of the Tax Administration records on the fulfillment of the reprogrammed municipal tax debt, concluded on 28.2.2018, Decision No. 03/1-4291/2-18; Plans on employee number rationalization, as well as the payment dynamic of the remainder of tax liabilities in bodies, public departments, public institutions and enterprises of the municipalities of Berane, Pljevlja, Ulcinj and the Royal Capital Cetinje, in accordance with the conclusion made at the meetings with the representatives of the Ministry of Finance, municipalities, local enterprises, held on 15.2.2018, 03/1-8477/2-18, 7.5.2018.

impossible to know how well the Tax Authority has implemented its Plan on managing tax debts and strengthening payment measures 2017-2021 in 2017.⁴⁶

Paradoxically, most local self-governments that received the 1 April 2018 extended deadline to develop a plan to rationalize the number of employees were willing to provide us with information on tax payments. As described in the previous section, Pljevlja, Berane and the Royal Capital Cetinje delivered information on their success or failure to settle the outstanding and current tax obligations, and reduce or adopt plans to reduce the number of employees.

WHAT NEXT?

Government's passive and non-transparent approach to the reporting on local self-government tax debt is all the more likely to continue after the provision on tax secrecy had been introduced into the Law on Free Access to Information. Declaring tax secrecy as grounds to refuse access to information undermines one of the key goals of the Programme for Public Finance Management – transparent financial reporting. Moreover, it prevents "better quality monitoring and reporting on public debt",⁴⁷ and prevents proper oversight of public debt, the reduction of which has been set as a long-term strategic goal.

The tax debt of municipalities and the number of employees on a local level are information of prevailing public interest, as they concern taxpayers' money.⁴⁸ The fact of overriding public interest is decisive in this case, as confirmed by the Regulation (EC) No 1049/2001 of the European Parliament and of the Council on public access to EU institution documents, which stresses that access to documents of commercial interest of legal and natural persons should not be limited if there is an overriding public interest in disclosure.⁴⁹ The Tax Administration publishes a quarterly black list of tax debtors, in accordance with the Regulation on the conditions and criteria of publishing a list of tax debtors.⁵⁰ The latest edition of this list includes one local enterprise that has restructured its debt, LLT "Čistoća" from Herceg Novi, so it is unclear what prevents the Tax Authority from publishing the names of those debtors whose debt was restructured in 2015.⁵¹

The fact that neither the Programme for the Reform of Public Finance Management nor

46 / Decision of Tax Authority No. 03/1-4983/2-18, 7.5.2018.

47 / The goal of the Programme for Public Finance Management reforms 2016-2020, available at: <https://goo.gl/ryWBFd>, accessed 25.6.2018.

48 / Article 17 from the Law on Free Access to Information ("Official Gazette of Montenegro", No. 044/12 from 9.8.2012, 030/17 from 9.5.2017) regulates the prevailing public interest.

49 / Regulation of the European Parliament 1049/2001; article 4, available at: <https://goo.gl/2g8xHF>, accessed on 12.6.2018.

50 / "Official Gazette of Montenegro", No. 56/12 from 9.11.2012.

51 / Blacklist of tax payers, published on 7.5.2018, available at: <https://goo.gl/gctkjQ>, accessed 15.6.2018.

the Strategy contain any mention of the introduction of tax secrecy provision points to shortcomings in the systemic understanding of this problem. Furthermore, sets of indicators developed in June 2018, two years after the beginning of Programme implementation, do not envisage accounting for revenues accruing from repayments of restructured debts.

To date, none of the Government mechanisms devised to monitor repayments of tax arrears have been proven effective. Implementation of the contracts is weakest with regard to the promised rationalization of the number of employees as the main cause of excessive spending at the local level. This leads us to conclude that one of the main goals of the programme to restructure the tax debt of municipalities – greater sustainability of public spending – has not been accomplished.

RECOMMENDATIONS:

1	The Tax Authority should compile and quarterly publish a list of tax debtors who restructured their debt through contracts in 2015, modelled after the existing black list of tax debtors.
2	The newly created directorate at the Ministry of Finance should compile and proactively publish comprehensive information on the implementation of debt reprogramming contracts twice a year, including information on the obligation concerning reductions in the number of employees.
3	Indicator sets developed to monitor implementation of the Programme should also contain a clear method prescribing the collection and presentation, in regular time periods, of the exact proportions of tax debt that have been repaid by individual debtors, as well as their progress in fulfilling the non-financial obligations.
4	Local self-governments should report on own initiative on their progress in fulfilling the obligations under debt reprogramming contracts, by publishing every six months on their websites reports on the fulfilment of debt reprogramming obligations.
5	The provision on tax secrecy as grounds for refusing access to information should be removed from the Law on Free Access to Information, especially when it concerns overriding public interest.

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INTERVIEWS:

- Interview conducted with the Tax Authority Director's Assistant, Danilo Jovanović, at the Tax Authority offices, on 28.2.2018 at 14h.
- Interview conducted with the Secretary for finance and entrepreneurship development of the Royal Capital Cetinje, Zoran Jovanović, in the offices of the Royal Capital Cetinje, on 13.3.2018 at 10h.
- Interview conducted with the Municipality President of Kolašin, Željka Vuksanović, and Secretary for Finance and General Administration, Goran Rakočević, at the Municipality office on 14.3.2018, at 12h.

Section 1: Overview of key municipality obligations based on tax debt reprogram contracts signed with the Ministry of Finance (Source: individual contracts available at portal Moj Grad)

Municipality	Contracted financial obligations	Contracted non-financial obligations
Andrijevica	367,686.78 euros	<ul style="list-style-type: none"> - Staff Rationalization plan for public enterprise "Stambeno Komunalno" – Andrijevica - Approval from Municipality and Ministry of Finance for further hiring in public enterprise "Stambeno Komunalno" Andrijevica
Bar	6.321.325,80 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Berane	9.468.381,01 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Bijelo Polje	8.767.387,92 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Budva	8.302.840,23 euros	<ul style="list-style-type: none"> - Staff Rationalization plan - Approval from the Ministry of Finance for further hiring
Cetinje	8.855.867,58 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts

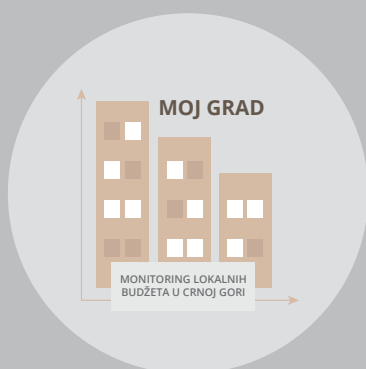
Municipality	Contracted financial obligations	Contracted non-financial obligations
Danilovgrad	3,989,248.41 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Kolašin	2.784.522,41 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Mojkovac	817.925,22 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Nikšić	17.705.863,65 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Plav	3.088.595,56 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Pljevlja	10.829.409,80 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Rožaje	1.391.270,37 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Šavnik	594.134,95 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Ulcinj	5.939.108,14 euros	<ul style="list-style-type: none"> - Staff reduction plan - Approval from the Ministry of Finance for further hiring - Semi-annual reports on staff cuts
Žabljak	808.626,93 euros	<ul style="list-style-type: none"> - Staff Rationalization Plan for public enterprise "Komunalno i vodovod" - Approval from the Ministry of Finance and the Municipality for further hiring in public enterprise "Komunalno i vodovod"

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