

# TRADE SECRETS OF PUBLIC ENTERPRISES

## Paradoxes of Practice in Montenegro



*This Project is financed by the European Union and co-financed  
by the Ministry of Public Administration of Montenegro.*



Ministarstvo javne uprave

---

Publication:

**Trade Secrets of Public Enterprises:  
Paradoxes of Practice in Montenegro**

Publisher:

**Institute Alternative**

57, George Washington Boulevard  
Podgorica, Montenegro

Tel/Fax: **+ 382 (0) 20 268 686**

E-mail: **info@institut-alternativa.org**

For the publisher:

**Stevo Muk**

Editor:

**Stevo Muk**

Authors:

**Marko Sošić, Milena Muk**

Prepress and design:

**Ana Jovović**

**Podgorica, June 2019**



Ministarstvo javne uprave

*This Analysis was prepared within the project "Money Watch: Civil Society Guarding the Budget", implemented by the Institute Alternative in cooperation with the Institute of Public Finance and NGO New Horizon, supported by the European Union and co-financed by the Ministry of Public Administration.*

*The contents of this document are the exclusive responsibility of the authors and in no way reflect the opinions of the European Union or the Ministry of Public Administration.*

CIP - KATALOГИЗАЦИЈА У ПУБЛИКАЦИЈИ  
НАЦИОНАЛНА БИБЛИОТЕКА ЦРНЕ ГОРЕ, ЦЕТИЊЕ

ISBN 978-9940-533-83-0  
COBISS.CG-ID 39279632

---

## TABLE OF CONTENTS:

Introduction .....	4
Whatever is “declared a trade secret” constitutes a trade secret .....	5
When does public interest override trade secret? .....	8
OECD standards for state-owned enterprises .....	9
Practice as “good” as the Law .....	9
What next? .....	11
Recommendations: .....	12
List of sources .....	14
Annex 1: Provisions on trade secret contained in specific laws .....	15



---

## INTRODUCTION

The 2017 **Montenegrin Law on Free Access to Information (LFAI)** introduced the concepts of **trade and tax secret as the grounds for restricting access to information**. Under Article 14 of the Law, an authority may restrict access to information<sup>1</sup> or a part of information, inter alia, if it constitutes a trade or a tax secret in accordance with the law. Unlike the rest of the grounds for restricting access to information, the Law did not lay down the duration of the restriction imposed on such grounds. Although the provision refers to specific laws (“in line with the law”), Montenegrin legislation does not contain a single definition of trade secret, leaving room for the abuse of this concept.

Additional confusion arises from the fact that trade secret is referred to again in the same article of the LFAI. Namely, item 5 of Article 14 stipulates that access to information or a part thereof may be restricted for the sake of “protecting trade and other economic interests from the disclosure of data relating to the protection of competition and trade secret related to intellectual property rights”. **This suggests the distinction between the concepts of trade secret related to intellectual property rights and “other trade secrets”, but the distinction is not sufficiently specified.**

In its analysis titled **Tax Arrears Rescheduling and Public Finance Management: Through the Lens of Tax Secret**, the Institute Alternative (IA) described how the introduction of “tax secret” set back the transparency of public finance.<sup>2</sup> Given the importance of launching a debate on these issues, this analysis focuses on another area where commercial and public interest intersect, with plenty of ambiguities, disparate interpretations of legal provisions, unjustified restriction of the citizens’ right to know how public funds are being managed, namely **the way trade secret is regulated by the enterprises in which the state has majority ownership**.

The 2019 Government Work Programme envisages amendments to the LFAI. Since the new Law is currently being drafted, this analysis aims to point to the unfoundedness of the legal provision concerning trade secret and to the “confusion” it generates in practice, at the expense of the citizens, who are unable to obtain essential information that should improve government accountability and thus also the accountability in public finance management.

In an attempt to shed light on this issue, we focus on the state-owned enterprises (SOEs), which remain a neglected segment of public finance management, although one that accounts for a significant share of public spending and overall economy. Although there are no official aggregate data on the number of SOEs in Montenegro, the IA put together the list of 37 enterprises in which the state had majority ownership in 2015; while the latest Ministry of Finance data from 2019 include only 32<sup>3</sup>. The 21 companies whose data were

---

1 / Protection of privacy; security, defence, foreign, monetary and economic policy of Montenegro; prevention of investigation and criminal prosecution; performance of official duty; protection of trade and economic interests.

2 / Reform of Public Financing and Tax Secrecy: Through the Lens of Municipal Debts, available at: <https://institut-alternativa.org/en/reform-of-public-financing-and-tax-secrecy-through-the-lens-of-municipal-debts/>

3 / Data provided to the IA by the Ministry of Finance, 24 June 2019.

---

available on the Tax Administration portal had **5,286 employees in 2018** and paid more than **EUR 70 million in wages**. Almost one-half (9 out of 21) recorded losses **totalling EUR 8 million** in the previous year.

Aiming to address the issue of the scope of trade secrets of public enterprises, we started by gathering the publicly available documents (articles of association, rulebooks on trade secret) and filing 24 additional requests for free access to information, in order to consult the otherwise unavailable Management Board decisions or other internal regulations governing trade secret. **The first section** of this document provides an overview of the categories of information that are most frequently declared trade secrets by the Montenegrin “public” enterprises. **The next section** contains the analysis of the collected data in the light of the international standards. **In the final section**, we highlight the need for more specific regulation of trade secret in the Montenegrin legal system, along with the need for detailed specification of exceptions i.e. the categories of information that the enterprises in which the state or local self-governments have majority ownership must not declare trade secrets.

## **WHATEVER IS “DECLARED A TRADE SECRET” CONSTITUTES A TRADE SECRET**

Montenegro does not have a specific law that would systemically regulate the issue of trade secret; instead, there are several laws (Law on Protection of Competition, Company Law, Law on Obligations, Law on Public Procurement, Law on Official Statistics, Law on Customs Service, Law on Banks, Law on Protection of Undisclosed Information, Criminal Code etc.) include sections that indirectly introduce the concept of trade secret by stipulating the obligation of keeping the trade secret or confidential information etc. on the part of the contracting authorities in public procurement, agents, auditors or employees, usually without specifying to detail.

Thus, companies, including the ones in which the state has majority ownership, **do not have the precise legal basis for defining the documents and data that may be considered trade secret**. In practice, they usually regulate these issues in general terms in their articles of association and then specify them further in the management bodies’ decisions or rulebooks.

Through online search and requests for free access to information, we obtained the documents of seventeen enterprises (Articles of Association, Codes of Ethics, Rulebooks on Trade Secret) in which the state has majority ownership that define trade secret in their possession<sup>4</sup>; four enterprises responded that they had no documents that included

---

4 / National Parks of Montenegro, Regional Waterworks for the Montenegrin Coast, Coastal Zone Management, Electric Power Company of Montenegro -EPCG JSC Niksic; Monteput LTD Podgorica; Port of Bar JSC Bar, H.T.P. Ulcinj Riviera Ulcinj; Ferrous Metallurgy Institute JSC Niksic; Barska Plovidba JSC Bar; Centre for Ecotoxicology Research LTD; Montenegrin Electricity Transmission System-CGES; Postal Service of Montenegro JSC Podgorica; Maintenance of Railway Vehicles; Montenegrin Electricity Market Operator LTD; Montenegro Bonus LTD Cetinje; Railway Infrastructure of Montenegro JSC Podgorica; Plantaze 13 July JSC Podgorica.

---

definitions of trade secrets.<sup>5</sup> The review of these documents showed that – with the exception of a smaller share of data concerning protection of innovation and potential inventions or ongoing procedures<sup>6</sup> – they often included too broad formulations that implied that anything might be considered to constitute a trade secret or declared information that would have to be publicly available under the LFAI trade secrets.

The data that should not be secret and are identified as such by the enterprises include:

- **data on wages** – decisions on monthly wage increase; decisions on annual wage increase (Public Enterprise Coastal Zone Management of Montenegro); data on the employee's wages and other income (Postal Service of Montenegro JSC Podgorica, Port of Bar JSC Bar, Maintenance of Rail Vehicles, Hotel and Tourism Enterprise Ulcinj Riviera, "Plantaze 13 July" JSC Podgorica);
- **work of management bodies** – the Coastal Zone Management Enterprise, for instance, declared as trade secret, in advance, all of the information concerning the work and decisions of its Management Board prior to the decision being issued; Monteput LTD Podgorica did the same with regard to all of the materials, minutes and decisions from its Board of Directors' meetings and to the documents defining the strategy and business policy; the Port of Bar did the same for all the data on the work and decision-making of its collective bodies; "Plantaze 13 July" JSC Podgorica also declared the minutes and decisions from its Board of Directors' meetings trade secrets;
- **contracts** – the Rulebook on trade secret of Monteput JSC included the contracts on the sale and acquisition of assets; Barska Plovidba JSC Bar included data from a lease agreement; H.T.P. Ulcinj Riviera Ulcinj included elements of a business and technical cooperation agreement, while "Plantaze 13 July" JSC Podgorica included purchase agreements;
- **capital and development projects of relevance for the citizens** – Monteput JSC, the company in charge of the construction of the Bar – Boljare motorway, declared information on capital projects a trade secret, while the Montenegrin Electricity Transmission System-CGES did the same with regard to the documentation and data on the implementation of the project of construction of the undersea transmission cable with Italy.

Declaring these data categories trade secrets is directly contrary to the LFAI; the regulated entities under this Law include also the companies "founded, co-founded or in which the state has majority ownership". Furthermore, the Law stipulates the obligations of proactive

---

5 / Institute "Dr Simo Milosevic" JSC Igalo; Castello Montenegro JSC Pljevlja; Broadcasting Centre LTD Podgorica; Port of Kotor JSC Kotor.

6 / For instance, the EPCG's Code of Ethics declares its innovation and patents trade secrets, while the Postal Service of Montenegro JSC Podgorica considers data on inventions and technical upgrades trade secrets.

disclosure of precisely those data sets that are declared secret by the major Montenegrin public enterprises, including the contracts on the management of public revenue funds and state assets, lists of public officials and their wages, drafts, proposals and final texts of plans, programmes and strategic documents.<sup>7</sup> In other words, although there is no law that lays down the definition of what may constitute a trade secret, it is set forth in the law what must be proactively disclosed.

The competent authorities, namely the Ministry of Public Administration and Agency for Personal Data Protection and Free Access to Information, failed to systematically check the public enterprises' compliance with the obligation to proactively disclose information. The review of the websites of 33 public enterprises in Montenegro, conducted by the Network for Affirmation of NGO Sector in partnership with the expert organisation Access Info Europe from Madrid in 2018, showed that none of the enterprises proactively disclosed all the categories of information in the manner prescribed by the Law. Only two of them disclosed slightly more than one-half of the information envisaged in the LFAI, while as many as nine enterprises' websites contained no such information.<sup>8</sup>

It is, however, particularly concerning that, in addition to some categories that should be proactively disclosed being declared trade secrets, **most of the reviewed public enterprises' documents included imprecise formulations which practically precluded any form of ex-ante and ex-post control of decision-making.** The most illustrative examples were the following: the Port of Bar Rulebook on Trade Secret defined as trade secret any documents and data declared as such by the Board of Directors; the Internal Rulebook on Trade Secret of the Public Enterprise for Coastal Zone Management included all the data "designated as such by the Director's Act"; the Ferrous Metallurgy Institute JSC Niksic ("data declared secret by the competent bodies"); Centre for Ecotoxicology Research LTD ("documents declared trade secrets by the Centre's bodies), and the Montenegrin Electricity Market Operator ("data that, if revealed to unauthorised parties, could cause damage to the operation of the enterprise").

---

7 / Law on Free Access to Information (Official Gazette of Montenegro 044/12 of 09 Aug 2012, 030/17 of 09 May 2017).

8 / Network for the Affirmation of NGO Sector, Većina javnih preduzeća u Crnoj Gori proaktivno ne objavljuje ni polovinu informacija, 19 Nov 2018, available at: <http://www.mans.co.me/vecina-javnih-preduzeca-u-crnoj-gori-proaktivno-ne-objavljuje-ni-polovinu-informacija/> (accessed on 17 April 2019).

---

## WHEN DOES PUBLIC INTEREST OVERRIDE TRADE SECRET?

The LFAI recognises the concept of prevailing public interest, which implies the obligation to disclose information which evidently indicates corruption, non-compliance with regulations, unlawful use of public funds or abuse of public authority, suspicion of criminal offence, cause for challenging a court judgment, unlawful allocation or spending of public revenue funds, danger to public security, threat to human lives, health or environment. The compulsory harm test is envisaged prior to denying access to some information on the ground that it constitutes a trade secret. However, the public enterprises' internal acts which contain the formulations presented above practically preclude any assessment of threat to public interest and are also contrary to the essence of the harm test, which should serve to identify whether, in the specific case, the right of the public to know has priority over the public enterprise's need to declare something a trade secret. This is further supported by the fact that **there is no single act that defines a trade secret in terms of its key criteria and elements, which gives rise to the "anarchy" in regulating trade secret by means of inferior legal acts (Rulebooks, Decisions etc).**

In 2016, the European Union adopted the specific Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure<sup>9</sup>. The very title of the Directive indicates the contents of the notion of "trade secret" in the context of the EU; the document goes on to clarify that it primarily refers to the protection of intellectual property rights such as patent, design rights or copyright, i.e. **protection of access to the know-how that has commercial value for the entity and is not widely known**. One of the key reasons for adopting the Directive was the growing exposure of innovative companies to dishonest practices aimed at misappropriation of trade secret; it follows that the Directive primarily concerns the **innovative commercial companies operating in competitive market conditions**, which does not apply to most of the Montenegrin companies in which the state has majority ownership; many of them operate at a loss and spend mostly on the essentials – wages, rather than innovation. It is, furthermore, clearly stated that the Directive should not impact the application of the national rules requiring public disclosure of information, including trade secret. In other words, the Directive should not undermine the right of access to information of public relevance or the obligation of transparency on the part of the authorities, as specified in Article 1 of the Directive.<sup>10</sup>

---

9 / Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, Official Journal of the European Union, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0943&from=HR> (accessed on 26 May 2019).

10 / This Directive shall not affect: (a) the exercise of the right to freedom of expression and information as set out in the Charter, including respect for the freedom and pluralism of the media; (b) the application of Union or national rules requiring trade secret holders to disclose, for reasons of public interest, information, including trade secrets, to the public or to administrative or judicial authorities for the performance of the duties of those authorities.



## ▪ OECD STANDARDS FOR STATE-OWNED ENTERPRISES

With regard to the international standards for the transparency of state-owned enterprises, the Guidelines developed by the OECD in 2015 also provide a good framework for the assessment of practice in Montenegro.<sup>11</sup> Namely, in addition to going against the LFAI, the Montenegrin public enterprises' understanding of trade secret also undermines the generally accepted transparency standards.

The list of obligations identified by the OECD is long – it starts from the need for the state-owned enterprises to adhere to the practice of disclosing financial and non-financial information on their business operation, in particular in the areas of general public interest and concerning the delivery of public services. Among other things, such information should include: financial and operational performance, with an overview of spending for the purpose of implementing specific policy objectives; contents of internal acts and procedures and information on their application; wages of the management and members of management bodies; information on guarantees and state aid, but also on the financial arrangements launched by the enterprise itself, including contractual obligations and obligations stemming from public-private partnerships, and all material transactions with the state and other related entities.

## PRACTICE AS “GOOD” AS THE LAW

The Agency for Personal Data Protection and Free Access to Information did not keep proper records on denied requests and on complaints that referred to trade secret as the ground for restricting access. For instance, the 2018 Report on the Status of Personal Data Protection and the Situation in the Area of Free Access to Information - that the Agency prepared and that was in the parliamentary pipeline at the time of drafting this analysis - did not address the impact of “trade secret” on access to information.

The IA filed a request for free access to information to obtain access to a number of authorities' acts where access had been denied by invoking item 6 of Article 14 of the LFAI (trade and tax secret), disaggregated per authority, from the initiation of such records until 4 April 2019. However, we only received aggregate information stating that the total number of such acts was more than 290, but without a detailed breakdown per authority which would enable us to establish to what extent public enterprises invoked this legal provision. As already mentioned, the contents and merits of the acts wherein the authorities invoked trade secret were not subject to a specific analysis.

The available individual decisions of competent authorities, however, show that the absence of the definition of trade secret in Montenegro affects the administrative procedures and disputes in this area. The complaints handled by the Agency for Personal Data Protection

---

<sup>11</sup> / OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 edition, available at: <https://www.oecd.org/corporate/guidelines-corporate-governance-soes.htm> (accessed on 26 May 2019).

---

and Free Access to Information, in its capacity as the second-instance authority, point to the cases where applicants were denied access to information such as: copies of the electricity purchase contract signed by the National Electric Power Company-EPCG; copies of the settlement contract signed by the EPCG and A2A, and payments made on the basis of that settlement contract; Board of Directors' decisions, copies of the annual performance reports and loan agreements of Barska Plovidba; copies of business and technical cooperation agreement with the Aluminum Plant Podgorica JSC, signed with Montenegro Bonus and Ministry of Economy; copies of payrolls; contracts with the job-placement agencies; sponsorship and donation contracts of "Plantaze 13 July"; copies of the spending records of the Railway Transport of Montenegro etc.<sup>12</sup> These examples show that, when responding to the requests, the enterprises adhere to the broad formulations contained in their internal acts which are contrary to the LFAI.

Although most of the mentioned complaints were granted, access to the information that was declared trade secret without adequate grounds remains hindered. Namely, the available decisions of the Administrative Court in the disputes initiated in the cases when the public enterprises and other authorities invoked trade secret show that, even when the Court's decision was correct and identified irregularity in declaring some information a trade secret, justice was slow, due to no final/decision on the merits of the cases concerning free access to information.

For instance, in the case challenging the decision of the Council for Privatisation and Capital Projects that denied access to the Long-term Lease Agreement for the share of assets of HTP Ulcinj Riviera JSC Ulcinj, which was signed with a private company in September 2017, the Administrative Court found flaws in the rationale to the decision. Namely, the Council declared the information in question a trade secret and explained that it constituted a tender document, although the request had referred to the Long-term Lease Agreement. The Court reminded that **restrictions to access to information were "restrictive"**, i.e. that they were valid only "if disclosure could cause harmful consequences to the interest that is of greater importance than the interest of the public to know".<sup>13</sup> However, that judgment was passed in February 2019 concerning the decision from November 2017, and it remanded the case for repeated decision-making procedure, supporting the argument concerning inadequate legal protection in such cases.

Although the Administrative Court adheres, to an extent, to the legal provisions identifying the procedures for applying the harm test for disclosure of some information and point to the assessment of prevailing public interest, the series of decisions concerning the information declared trade secrets under the Law on Customs Service (e.g. customs declarations), the Court adopted the position that the harm from disclosure of the data collected by the

---

12 / Decisions of Agency for Personal Data Protection and Free Access to Information, available at: <http://www.azlp.me/me/rjesenja-spi>

13 / Administrative Court Judgment No: U 12506/2017, 5 Feb 2019.

---

customs authorities was assessed in the provisions of that specific law, and that application of harm test was therefore irrelevant.<sup>14</sup> Given the imprecise provisions on trade secret in the LFAI, such **practice relativises the concept of prevailing public interest and the obligation to apply a harm test**; together with the “ping-pong” effect (remanding the case for repeated decision-making), this hinders access to information.

## WHAT NEXT?

The enterprise in which the state has majority ownership and which are mainly funded from the national budget **have particular obligations in being accountable to citizens and must not be equalised with the private sector**. This is supported by the fact that the international standards in this area are set specifically for these enterprises (OECD) and that the EU regulations clearly indicate that protection of a trade secret must not undermine the realisation of public interest and the obligation to inform the public.

Still, the practice in Montenegro shows that the absence of a single definition of a trade secret, lack of supervision over the contents of the internal acts passed by the state-owned enterprises, coupled with insufficiently efficient safeguards to the right to free access to information and controversial amendments to the Law from 2017, hamper the efforts towards a real assessment of the public enterprises’ decision-making and operation.

The examples from practice prompt the conclusion that many of the enterprises consider that anything that is business-related may be arbitrarily designated as a trade secret. They thus breach the obligations imposed by other laws and by international standards. In addition, public enterprises predominantly recognise their status of “enterprises”, while neglecting the obligations stemming from the fact that they are “public enterprises” rather than private ones.

**Besides the disputable contents of the internal acts concerning trade secret, it should be noted that these acts are for the most part not publicly available.** The online search at the beginning of our research identified only eight documents, mainly general acts (Articles of Association), where public enterprises included general definitions of a trade secret, leaving more detailed elaboration to other internal acts that were not proactively disclosed. This is contrary to the standards of good corporate governance in state-owned enterprises as developed by the OECD, which point to the need for proactive disclosure of all internal acts and procedures. This seemingly technical oversight results in **legal uncertainty**, as citizens cannot be certain, ahead of initiating a procedure or dispute, what specifically an enterprise considers to constitute a trade secret and to what extent the decision to declare something a trade secret is warranted.

In addition, the list of information and documents that constitute trade secrets is in conflict with the obligation of the authority to apply a harm test before denying access

---

14 / Administrative Court Judgment No: U 8230/2017, 22 Jan 2019.

to information on the grounds that it constitutes a trade secret. In other words, the public enterprises' Rulebooks and decisions concerning trade secrets render meaningless the provision on the prevailing public interest and the obligation to apply a harm test to show whether in the specific case at hand the public interest prevails over some of the prescribed restrictions on access to information.

## RECOMMENDATIONS:

### 1.

The Government of Montenegro, through the proposed amendments to the Companies Law or through the proposal for the specific law on trade secret, should clearly define what constitutes a trade secret, with emphasis, inter alia, on the information:

- that has **commercial value**;
- that contains undisclosed know-how, inventions, achievements (innovation), **that did not originate from delivery of a specific public service and do not concern management of public revenue funds and state assets**;
- for which **no obligation of proactive disclosure has been prescribed in other specific laws**;
- i.e. the disclosure of which does not entail any **prevailing public interest**;

### 2.

The improved legal framework should **eliminate the option** for the enterprises in which the state has majority ownership to identify the information/documents that may be declared trade secrets in their discretionary internal acts;

### 3.

The improved legal framework should **eliminate the “dual” definition of a trade secret** as the ground for restricting access to information contained in the current LFAI (items 5 and 6 of Article 14);



#### 4.

In the course of drafting the new LFAI, the Government of Montenegro, Ministry of Public Administration and Secretariat for Legislation should conduct a thorough review of the provisions on trade secret in specific laws and **harmonise the definitions** so as to prevent conflict with the obligations of proactive transparency of authorities within the meaning of the LFAI;

#### 5.

The Agency for Personal Data Protection and Free Access to Information should conduct **inspection supervision** of proactive disclosure of information by the enterprises in which the state has majority ownership, and report proactively and with precision on the public enterprises' and other authorities' compliance with the provisions of the LFAI;

#### 6.

On the basis of conducted inspection supervision, the Agency for Personal Data Protection and Free Access to Information should make use of the statutory possibility to initiate the procedure for establishing the misdemeanour liability in the enterprises failing to comply with the obligation of proactive disclosure.

---

## LIST OF SOURCES:

- Agency for Personal Data Protection and Free Access to Information, *Izveštaj o stanju zaštite ličnih podataka i stanju u oblasti pristupa informacijama za 2018. godinu*, Podgorica, March 2019, available at: <http://skupstina.me/index.php/me/sjednice/zakoni-i-drugi-akti>;
- DIRECTIVE (EU) 2016/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, Official Journal of the European Union, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0943&from=HR>;
- Internal Acts of the following enterprises: National Parks of Montenegro; Regional Waterworks for the Montenegrin Coast; Coastal Zone Management; Electric Power Company of Montenegro-EPCG JSC Niksic; Monteput LTD Podgorica; Port of Bar JSC Bar, H.T.P. Ulcinj Riviera Ulcinj; Ferrous Metallurgy Institute JSC Niksic; Barska Plovidba JSC Bar; Centre for Ecotoxicology Research LTD; Montenegrin Electricity Transmission System-CGES; Postal Service of Montenegro JSC Podgorica; Maintenance of Rail Vehicles; Montenegrin Electricity Market Operator LTD; Montenegro Bonus LTD Cetinje; Railway Infrastructure of Montenegro JSC Podgorica; "Plantaze 13 July" JSC Podgorica;
- Network for Affirmation of NGO Sector, *Većina javnih preduzeća u Crnoj Gori proaktivno ne objavljuje ni polovinu informacija*, 19.11.2018, available at: <http://www.mans.co.me/vecina-javnih-preduzeca-u-crnoj-gori-proaktivno-ne-objavljuje-ni-polovinu-informacija/>;
- OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 edition, available at: <https://www.oecd.org/corporate/guidelines-corporate-governance-soes.htm>;
- Administrative Court of Montenegro Judgment No: U 12506/2017, 5 Feb, 2019;
- Administrative Court of Montenegro Judgment No: U 8230/2017, 22 Jan, 2019;
- Decisions of the Agency for Personal Data Protection and Free Access to Information, available at: <http://www.azlp.me/me/rjesenja-spi>;
- Law on Free Access to Information (Official Gazette of Montenegro 044/12 of 09 Aug 2012, 030/17 of 09 May 2017).

- ANNEX 1: PROVISIONS ON TRADE SECRET CONTAINED IN SPECIFIC LAWS

## Customs Service Law

*Individual data and information on natural and legal persons included in customs declarations, as well as the data necessary for validation and checking of customs value of goods, in line with the provisions of the law governing customs affairs and the provisions of the law governing official statistics and the system of official statistics, shall be considered official secret and the customs authority shall not communicate them further without explicit consent of the person or authorised bodies that provided them.*

## Public Procurement Law

*Classified information shall mean any information or material, regardless of their form, nature or mode of transmission thereof, labelled as confidential in accordance with regulations governing data confidentiality, where the disclosure of such information to an unrelated party would or might result in harmful consequences to the security and defence, foreign, monetary and economic policies of Montenegro. A contracting authority shall: 1) keep as confidential all data contained in bids that are designated as confidential by a special regulation and designated as such in the bid by the bidder; 2) refuse to disclose information that would entail a breach of confidentiality of data received in a bid. The price and other information from the bid that are of significance for applying the criteria elements and bid ranking shall not be deemed confidential. A contracting authority may require in the tender documents the protection of confidentiality of the information it places at the bidders' disposal. (...) In the event that a section of tender document contains confidential data, the contracting authority shall outline, in the section of the tender document that is published, how interested parties may obtain the section of the tender document that contains confidential data in line with the regulations governing data confidentiality.*

## Law on Obligations

*An agent shall keep those business secrets of his principal which become known to him in connection with the transaction entrusted. Agent shall be liable if he uses them or discloses them to another even after the termination of the contract of commercial agency.*

## Company Law

*The members of the Board of Directors shall be obliged to keep the company's business secrets confidential. (...) The auditor shall be responsible for abuse of his position and authorisations, in particular if he intentionally or by negligence contributes to a fraudulent activity of the manager or publishes or reveals contrary to law business secrets of the client to unauthorised persons or in another manner contributes to the occurrence of damage to the company, and he may be sued for damage compensation together with members of the Board of Directors and the Executive Director. (...) Copying of documents that the shareholder can access shall be allowed if they do not represent a business secret of the company.*

## Law on the Protection of Competition

*President of the Council, member of the Council, Director of the Agency, Deputy Director of the Agency, Assistant Director of the Agency and employees of the Agency shall keep secret all of the data they obtain in the course of performing the duties and tasks under this law, in line with the regulations governing data confidentiality (...) The Agency shall decide without holding a hearing, unless it finds, upon a reasoned request from the party or at its own discretion during the proceedings, that it is necessary to hold a hearing. The proceedings before the Agency in which a hearing is held shall be closed to the public for the purpose of protecting official and business secret. A trade secret is in particular any business information that has real or potential market value whose disclosure or use may result in economic advantage to other undertakings. (...) State bodies, state administration authorities, local administration authorities, local self-government authorities and other legal persons exercising the function of public authority shall, at the request of the Agency, provide, free of charge, all the data necessary in the Agency's decision-making procedure in line with this law, including data that may constitute trade secret, and other confidential data, within 15 days from the date of submission of the request.*



## Criminal Code

### Unauthorised Disclosure of Secret

#### Article 171

*(1) An attorney-at-law, a physician or another person who discloses without authorization a secret that has come to his knowledge while performing his professional duties shall be punished by a fine or a prison term up to one year.*

*(2) A person who discloses a secret in the public interest or in the interest of another person, where such interest has priority over the interest to keep a secret, shall not be punished for the offence under para. 1 above.*

### Revealing a Business Secret

#### Article 280

*(1) Anyone who without authorisation communicates, hands over or otherwise makes accessible to another person the data classified as business secret or who obtains such data with the intention to hand them over to an unauthorized person shall be punished by a prison term from three months to five years.*

*(2) Any unauthorised person who uses the data that constitute a business secret obtained in the manner referred to in paragraph 1 of this Article shall be subject to the punishment from paragraph 1 of this Article.*

*(5) A business secret is considered to include data and documents which were classified as such by a law, or a regulation or decision issued by a competent authority on the basis of a law, and revealing of which would or could cause harmful effects to the business entity or other business enterprise.*

#### Article 368

*(1) Anyone who discloses or hands over or makes available to a foreign state, foreign organization or a person in their service classified data or documents shall be punished by a prison term from three to fifteen years.*

*Anyone who creates an intelligence service in Montenegro or who manages it for a foreign state or organization shall be punished by a prison term from five to fifteen years.*

*(3) Anyone who joins a foreign intelligence service, collects data for it or otherwise supports its work shall be punished by a prison term from two to ten years.*

*(4) Anyone who obtains classified data or documents with the intention to disclose them or deliver them to a foreign state, a foreign organization or a person in their service shall be punished by a prison term from one to eight years.*

*(5) Where the offences under paras 1 and 2 above resulted in severe consequences for the security, economic or military power of the country, the perpetrator shall be punished by a prison term not shorter than ten years.*



(6) Classified data are considered to be the data marked with one of the following levels of confidentiality: 'top secret', 'secret', 'confidential' and 'restricted' the disclosure of which would cause or could cause detrimental consequences for the security, defense or for political or economic interests of Montenegro.

## Article 369

(1) Anyone who, without authorisation, discloses, hands over or makes available to an unauthorised person confidential data entrusted to him, or data that he obtained in some other manner shall be punished by a prison term from one to eight years.

(2) Where the offence under para. 1 above was committed with respect to confidential data marked as top secret, or where the offence was committed during a state of war, armed conflict or a state of emergency, the perpetrator shall be punished by a prison term from three to fifteen years.

(3) Where the offence under paras 1 and 2 above was committed by negligence, the perpetrator shall be punished by a prison term from one to six years.

(4) Confidential data are deemed to be the data marked with one of the following levels of confidentiality: 'top secret', 'secret', 'confidential' and 'restricted' the disclosure of which would cause or could cause detrimental consequences for the security, defence or for political or economic interests of Montenegro.

(5) Confidential data within the meaning of this Article shall not be considered to be the data directed at endangering the constitutional order and security of Montenegro, gross violations of the fundamental rights of human beings, or the data aimed at concealing a committed criminal offence punishable by law by a prison term of five years or a more severe punishment.

## Law on Protection of Undisclosed Information

*This law shall govern the protection of undisclosed information constituting a trade secret, as a specific intellectual property right.*

## Article 4

(1) Undisclosed information shall be protected in line with this law if it:

1) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question:

2) has commercial value because it is secret;

3) has been subject to measures taken by the owner to keep it secret.

## Law on Official Statistics

*Individual data on natural, legal persons and households shall be confidential and represent official secret.*

## Law on Banks

*The banking secret shall be considered:*

1) information about the account holders and their account numbers opened in a bank;

2) information on individual deposit accounts and transactions in individual accounts of legal persons and natural persons opened in a bank;

3) other information on a client in the bank's knowledge obtained on the basis of providing services to the bank client.

*The banking secret shall represent the business secret.*





**Institute Alternative (IA)** is a non-governmental organization, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector.

**Our mission** is to contribute to strengthening of democracy and good governance through and policy analysis as well as monitoring of public institutions performance.

**Our objectives** are to increase the quality of work, accountability and transparency, efficiency of public institutions and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in the state and society for the development of public policies.

**The values** we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

We function as a **think tank** or a research centre, focusing on the overarching areas of good governance, transparency and accountability.

On the basis of our five programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups Public procurement (5), Judiciary and Fundamental rights (23) and Financial control (32). Our flagship project is the Public Policy School, which is organized since 2012, and in 2018 we organized the first Open Budget School.

So far we cooperated with over 40 organizations within regional networks in the Western Balkans and with over 100 organizations in Montenegro. Institute is actively engaged in regional networks: Think for Europe (TEN), Pointpulse, SELDI, WeBER, UNCAC Coalition, Global BTAP, PASOS and The Southeast Europe Coalition on Whistleblower Protection.

The results of our research are summarized in 107 studies, reports and analyses, and the decision-makers were addressed 1036 recommendations. Over four thousand times we communicated our proposals and recommendation to the media for better quality public policies.

We started three internet pages. **My town** is a pioneer endeavour of visualization of budgetary data of local self-administrations. **My Administration** followed, which serves as an address for all those citizens that have encountered a problem when interacting with public administration and its service delivery system. The newest internet portal, **My Money**, provided national budget data visualization.

Institute Alternative regularly publishes information about finances, projects and donors that support the work of the organization. For this reason, the Institute have five-stars rating third year in a row, according to a survey conducted by the international non-profit organization Transparify, which evaluates transparency for over 200 research centers.

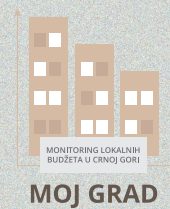
President of the Managing Board is Stevo Muk, and our organization currently has ten members.

**institut alternativa**

[www.institut-alternativa.org](http://www.institut-alternativa.org)



[www.mojnovac.me](http://www.mojnovac.me)



[www.mojgrad.me](http://www.mojgrad.me)